COUNCIL DECISION

of 13 May 2013

on the position to be taken on behalf of the European Union within the International Maritime Organization (IMO) with regard to the adoption of certain Codes and related amendments to certain conventions and protocols

(2013/268/EU)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 100(2) in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) The IMO Marine Environment Protection Committee (MEPC) at its 64th session in October 2012 and the IMO Maritime Safety Committee (MSC) at its 91st session in November 2012 approved an IMO Instruments Implementation Code (III Code). The 28th IMO Assembly is expected to adopt that code in December 2013.

(2) The MEPC at its 64th session and the MSC at its 91st session also approved an IMO Code on Recognised Organisations (RO Code). The MEPC is expected to adopt that code at its 65th session in May 2013 and the MSC at its 92nd session in June 2013.

(3) The MSC at its 91st session approved amendments to the International Convention on Load Lines, 1966 ('the Load Lines Convention'); to the Convention on the International Regulations for Preventing Collisions at Sea, 1972; and to the International Convention on Tonnage Measurement, 1969 with a view to rendering the III Code mandatory, together with an associated flag State audit scheme, for consideration and adoption by the 28th IMO Assembly.

(4) The MEPC at its 64th session approved amendments to the protocols of 1978 and 1997 relating to the International Convention for the Prevention of Pollution from Ships, 1973 ('the MARPOL Convention'), with a view to rendering the III Code mandatory, together with an associated flag State audit scheme. The MEPC is expected to adopt those amendments at its 66th session in 2014.

(5) The MSC at its 91st session approved amendments to the International Convention for the Safety of Life at Sea, 1974 ('the SOLAS Convention') and the 1988 protocol to the SOLAS Convention, as well as to the protocol of 1988 relating to Load Lines Convention, 1966, with a view to rendering the III Code mandatory, together with an associated flag State audit scheme. At its 92nd session, due to take place in June 2013, the MSC is expected to approve amendments to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 ('the STCW Convention'), with the same purpose. The MSC is expected to adopt those amendments to the SOLAS Convention and to the STCW Convention at its 93rd session in 2014.

(6) The MEPC at its 64th session approved amendments to the Protocol of 1978 relating to the MARPOL Convention with a view to rendering the RO Code mandatory. The MEPC is expected to adopt those amendments at its 65th session.

(7) The MSC at its 91st session approved amendments to the SOLAS Convention and to the protocol of 1988 relating to the Load Lines Convention, with a view to rendering the RO Code mandatory. The MSC is expected to adopt those amendments at its 92nd session.

(8) Once adopted, the amendments to those conventions and protocols will be submitted by the IMO Secretary-General to the respective contracting parties in order for them to express their consent to be bound by those amendments either tacitly or expressly, according to the relevant provisions of each convention or protocol.

(9) None of the conventions and protocols contain clauses excluding the formulation of reservations as regards amendments.

(10) The draft III Code is meant to replace IMO Assembly Resolution A.1054(27) which contains the existing Code for the implementation of mandatory IMO instruments, which in turn replaced, after several amendments, IMO Assembly Resolution A.847(20), which the Member States, as regards their responsibilities as flag States, are obliged to apply by virtue of Directive 2009/15/EC of the European Parliament and of the Council of 23 April 2009 on common rules and standards for ship inspection and survey organisations and for the relevant activities of maritime administrations [1].

(11) The matter of the RO Code is exhaustively regulated by Directive 2009/15/EC and by Regulation (EC) No 391/2009 of the European Parliament and of the Council of 23 April 2009 on common rules and standards for ship inspection and survey organisations [2], either directly or by reference to a number of IMO resolutions.

[1] OJ L 131, 28.5.2009, p. 47.
[2] OJ L 131, 28.5.2009, p. 11.

(12) Furthermore, Directive 2009/15/EC provides that, following the adoption of new instruments or protocols to the international conventions referred to therein, the Council, acting on a proposal from the Commission, is to decide, taking into account the Member States' parliamentary procedures as well as the relevant procedures within the IMO, on the detailed arrangements for ratifying those new instruments or protocols, while ensuring that they are applied uniformly and simultaneously in the Member States. The term 'international conventions' as defined both in Directive 2009/15/EC and in Regulation (EC) No 391/2009 includes the SOLAS, MARPOL and Load Lines conventions, together with the protocols and amendments to those conventions, and the related codes of mandatory application, in their up-to-date version.

(13) The obligations incumbent on the flag States under the STCW Convention are covered by Directive 2008/106/EC of the European Parliament and of the Council of 19 November 2008 on the minimum level of training of seafarers ([1]).

(14) In some areas, possible discrepancies have been identified between the III Code and the RO Code on the one hand, and legal acts of the Union on the other. It is necessary to ensure the consistency with Union law of the Member States' obligations arising from the application of the III Code and the RO Code under the STCW, SOLAS, MARPOL and Load Lines conventions, their protocols and other conventions and protocols which render the III Code and the RO Code mandatory for the Contracting Parties.

(15) Directive 2009/21/EC of the European Parliament and of the Council of 23 April 2009 on compliance with flag State requirements ([2]) lays down a number of obligations for the Member States as flag States. These include in particular an obligation for Member States to take the necessary measures for an IMO audit of their administration to be carried out at least once every seven years. However, the relevant provision is to expire at the latest on 17 June 2017 or at an earlier date, as established by the Commission, if a mandatory IMO Member State Audit Scheme has entered into force.

(16) With the exception of the areas of discrepancy with Union law, the two draft Codes must, on the whole, be considered a positive development in so far as they will establish high global standards for the activities of flag States and recognised organisations alike. For those reasons, the development of an IMO RO Code was explicitly envisaged in recital 4 of Regulation (EC) No 391/2009. The Union should therefore support the adoption of both Codes as mandatory instruments of the IMO.

(17) The Union is neither a member of the IMO nor a Contracting Party to the conventions and protocols concerned. It is therefore necessary for the Council to authorise the Member States to give their consent to be bound, in the interests of the Union, by the amendments to those conventions and protocols which will make the III Code and the RO Code mandatory, together with an associated flag State audit scheme,

HAS ADOPTED THIS DECISION:

Article 1

1. The position of the Union at the 28th IMO Assembly shall be to agree to the draft IMO Instruments Implementation Code, as approved by the IMO Maritime Safety Committee in its 91st session and as laid down in Annex 16 to IMO document MSC 91/22.

2. The position of the Union at the 28th IMO Assembly shall be to agree to the following:

(a) amendments to Regulation 3 of Chapter 1 of Annex I and the inclusion of a new Annex IV to the International Convention on Load Lines, 1966 with a view to rendering the IMO Instruments Implementation Code mandatory, together with an associated flag State audit scheme, as approved by the IMO Maritime Safety Committee at its 91st session and as laid down in Annex 10 to IMO document MSC 91/22;

(b) amendments to Regulation 2 of Annex I and the inclusion of a new Annex III to the International Convention on Tonnage Measurement, 1969 with a view to rendering the IMO Instruments Implementation Code mandatory, together with an associated flag State audit scheme, as approved by the IMO Maritime Safety Committee at its 91st session and as laid down in Annex 12 to IMO document MSC 91/22;

(c) amendments to the Convention on the International Regulations for Preventing Collisions at Sea, 1972, by including a new Part F with a view to rendering the IMO Instruments Implementation Code mandatory, together with an associated flag State audit scheme, as approved by the IMO Maritime Safety Committee at its 91st session and as laid down in Annex 11 to IMO document MSC 91/22.

Article 2

1. The position of the Union at the 65th session of the IMO Marine Environment Protection Committee shall be to agree to the draft IMO Code on Recognised Organisations, as approved by that committee at its 64th session and by the IMO Maritime Safety Committee at its 91st session and as laid down in Annex 19 to IMO document MSC 91/22.

2. The position of the Union at the 65th session of the IMO Marine Environment Protection Committee shall be to agree to the adoption of the amendments to Regulation 6 of Annex I and Regulation 8 of Annex II to the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973 with a view to rendering the IMO Code on Recognised Organisations mandatory, as approved by that committee at its 64th session and as laid down in Annex 23 to IMO document MEPC 64/23.

([1]) OJ L 323, 3.12.2008, p. 33.
([2]) OJ L 131, 28.5.2009, p. 132.

3. The position of the Union at the 66th session of the IMO Marine Environment Protection Committee shall be to agree to the adoption of the amendments to Regulation 1 of Annex I; the inclusion of a new Chapter 10 in Annex I; the amendments to Regulation 1 of Annex II; the inclusion of a new Chapter 9 in Annex II; the inclusion of new Chapters 1 and 2 in Annex III; the amendments to Regulation 1 of Annex IV; the inclusion of a new Chapter 6 in Annex IV; the inclusion of new Chapters 1 and 2 in Annex V; the amendments to Regulation 2 of Annex VI; and the inclusion of a new Chapter 5 in Annex VI to the protocols of 1978 and 1997 relating to the International Convention for the Prevention of Pollution from Ships, 1973 with a view to rendering the IMO Instruments Implementation Code mandatory, together with an associated flag State audit scheme, as approved by that committee at its 64th session and as laid down in Annex 20 to IMO document MEPC 64/23.

Article 3

1. The position of the Union at the 92nd session of the IMO Maritime Safety Committee shall be to agree to the draft IMO Code on Recognised Organisations, as approved by that committee at its 91st session and by the IMO Marine Environment Protection Committee at its 64th session and as laid down in Annex 19 to IMO document MSC 91/22.

2. The position of the Union at the 92nd session of the IMO Maritime Safety Committee shall be to agree to the following:

(a) amendments to Regulation 1 of Chapter XI-1 of the International Convention for the Safety of Life at Sea, 1974, as amended (SOLAS 1974) with a view to rendering the IMO Code on Recognised Organisations mandatory, as approved by that committee at its 91st session and as laid down in Annex 20 to IMO document MSC 91/22;

(b) amendments to Regulation 2-1 of Chapter I of Annex I to the 1988 Protocol to the International Convention on Load Lines, 1966 with a view to rendering the IMO Code on Recognised Organisations mandatory, as approved by that committee in its 91st session and as laid down in Annex 21 to IMO document MSC 91/22.

3. The position of the Union at the 93rd session of the IMO Maritime Safety Committee shall be to agree to the following:

(a) amendments to the International Convention for the Safety of Life at Sea, 1974, as amended (SOLAS 1974) by including a new Chapter XIII with a view to rendering the IMO Instruments Implementation Code mandatory, together with an associated flag State audit scheme, as approved by that committee at its 91st session and as laid down in Annex 17 to IMO document MSC 91/22;

(b) amendments to Regulation 3 of Chapter 1 of Annex I and the inclusion of a new Annex IV to Annex B to the 1988 Protocol to the International Convention on Load Lines, 1966 with a view to rendering the IMO Instruments Implementation Code mandatory, together with an associated flag State audit scheme, as approved by that committee at its 91st session and as laid down in Annex 18 to IMO document MSC 91/22.

4. The position of the Union at the 92nd and 93rd sessions of the IMO Maritime Safety Committee shall be to agree to the approval and subsequent adoption of appropriate amendments to the Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 with a view to rendering the IMO Instruments Implementation Code mandatory, together with an associated flag State audit scheme.

Article 4

1. The position of the Union as set out in Articles 1, 2 and 3 shall be expressed by the Member States which are members of the IMO acting jointly in the interest of the Union, and subject to the declaration contained in the Annex.

2. Formal and minor changes to the Union's position as set out in Articles 1, 2 and 3 may be agreed without requiring that position to be amended.

Article 5

Member States are hereby authorised to give their consent to be bound, in the interest of the Union and subject to the declaration set out in the Annex, by the amendments referred to in Article 1(2), Article 2(2) and (3) and Article 3(2), (3) and (4).

Article 6

This Decision is addressed to the Member States.

Done at Brussels, 13 May 2013.

For the Council
The President
S. COVENEY

ANNEX

Declaration by [*insert name of the contracting Member State*]

[Insert name of the contracting Member State] considers that the *[Insert name of the relevant Code]* contains a set of minimum requirements on which States can elaborate and improve as appropriate for the enhancement of maritime safety and the protection of the environment.

In particular, as regards the *[Insert name of the relevant Code]*, *[Insert name of the contracting Member State]* wishes to make clear that nothing in the said Code shall be construed to restrict or limit in any way the fulfilment of its obligations under the law of the European Union in relation to:

— the definition of 'statutory certificates' and 'class certificates',

— the scope of the obligations and criteria laid down for recognised organisations,

— the duties of the European Commission as regards the recognition, assessment and, where appropriate, the imposition of corrective measures or sanctions on recognised organisations.

In the case of an IMO audit, *[Insert name of the contracting Member State]* will state that only compliance with those provisions of the relevant international conventions which *[Insert name of the contracting Member State]* has accepted, including in the terms of this declaration, shall be verified.