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STATEMENT OF THE COUNCIL'S REASONS

Subject : Position of the Council at first reading with a view to the adoption of a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1406/2002 establishing a European Maritime Safety Agency
= Statement of the Council's reasons
– Adopted by the Council on 4 October 2012

I. INTRODUCTION

On 28 October 2010, the Commission presented the proposal for a Regulation (EU) [.../....] of the European Parliament and of the Council amending Regulation (EC) No 1406/2002 establishing a European Maritime Safety Agency¹.

The proposal was the subject of a progress report to the Council (Transport, Telecommunications and Energy) on 31 March 2011. Two questions were put to ministers in order to obtain some guidance for the examination of the proposal by the Council's preparatory bodies².

On 16 June 2011, the Council (Transport, Telecommunications and Energy) adopted a general approach on the proposal³.

On 15 December 2011, the European Parliament voted on its position at first reading⁴.

Following the vote in the European Parliament, negotiations took place between the European Parliament, the Council and the Commission with a view to reaching an agreement on the proposal. Agreement was reached on 12 April 2012 and was subsequently endorsed by the Committee of Permanent Representatives on 17 April 2012 and by the European Parliament Committee on Transport and Tourism (TRAN) on 24 April 2012.

Taking the above agreement into account and following legal and linguistic revision, the Council adopted its position at first reading on 4 October 2012, in accordance with the ordinary legislative procedure laid down in Article 294 of the Treaty on the Functioning of the European Union (TFEU).

¹ 15717/10.

² 7644/11.

³ 11769/11.

⁴ T7-0581/2011.

In carrying out its work, the Council took due account of the opinion of the European Economic and Social Committee⁵. The Committee of the Regions declined to give an opinion.

II. ANALYSIS OF THE POSITION AT FIRST READING

1. General

The proposed Regulation aims to expand the European Maritime Safety Agency's (EMSA) tasks to reflect new needs and developments at Union and international level, in particular needs arising from the adoption of the "third maritime safety package". Another objective is to adapt the governance structure of the Agency, particularly in the light of an external evaluation commissioned in 2007.

Although the Council agrees with the Commission as regards the objective of the proposal, namely to adapt EMSA's tasks and governance structure to new circumstances, the Council's position involves major adjustments to the original proposal. In particular, the Council considers that the Commission proposal did not take sufficient account of the need to keep EMSA focused on its core business - maritime safety. In the Council's view, it is particularly important at a time of limited financial and human resources not to disperse those resources over too many new tasks; EMSA's activities should, instead, concentrate on those areas in which the Agency has established and recognised expertise and tools. Therefore, the Council has chosen an approach clearly setting out the objectives of the Agency. Furthermore, the Agency's tasks are separated into core tasks and ancillary tasks. Ancillary tasks would only be carried out by the Agency after a thorough examination of cost-effectiveness.

As a result of this approach, the Council's position at first reading significantly modifies the original Commission proposal, rewording it and deleting several provisions.

⁵ OJ C 107, 6.4.2011, p. 68.

2. The Council's position on the Parliament's amendments on certain key issues

(i) The Agency's objectives

The Parliament proposed that the Agency should provide the Member States and the Commission with the technical and scientific assistance needed and with a high level of expertise, in order to help them to apply Union legislation properly with a view to ensuring a high, uniform and efficient level of maritime safety and security, using their existing capabilities for assistance, preventing and tackling marine pollution, including from offshore oil and gas installations, and developing a European Maritime Transport Space without Barriers (amendment 29). The objectives represent the primary responsibilities of the Agency and must be met as a priority (amendment 30).

The Council welcomes the clear description of the Agency's objectives proposed by the Parliament, and the prioritisation of tasks. In essence, both amendments go in the same direction as the Council's general approach. Furthermore, the Council can see the usefulness of making facilitating the establishment of the European Maritime Transport Space without Barriers an overall objective for the Agency's activities, where appropriate.

However, the Council is not willing to accept the extension of the Agency's tasks to cover prevention of pollution from offshore oil and gas installations (see point 2(ii)(c) below), and therefore that part of the Parliament's amendment is not included in the Council position. Moreover, clearer prioritisation of tasks is important for the Council, and therefore its position makes a distinction between core tasks and ancillary tasks.

(ii) The Agency's tasks

The Parliament proposed a number of new tasks for the Agency, the most important of which relate to training of seafarers, combating "illegal traffic" and acts of piracy and pollution from offshore oil and gas installations.

(a) Training of seafarers

The initial Commission proposal did not provide for any specific EMSA tasks with regard to the training of seafarers. In its general approach, the Council did not amend the Commission proposal in this respect.

The Parliament, however, proposed several amendments with a view to involving the Agency in the training of seafarers:

- The Agency should assist the Commission in the development and implementation of a policy to enhance the quality of the training of European seafarers, and in promoting maritime careers (amendment 35).
- The Agency should work with the Member States to gather and analyse data on the qualifications and employment of seafarers so as to share best practice in the training of seafarers across Europe (amendment 41), to coordinate the training schools' programmes to ensure consistency (amendment 42) and to facilitate the establishment of Erasmus-type exchanges between maritime training institutions (amendment 43).
- An appropriate recital covering the above tasks should be inserted (amendment 20).

The Council can agree with the Parliament that EMSA could play a role in matters relating to the training of seafarers, but that should not be part of its core tasks, except as far as statistics are concerned, and it should fully respect the responsibility of the Member States for the content and organisation of vocational training (Article 166 TFEU). This is reflected in the Council position in the following way:

- As a core task, the Agency must facilitate cooperation between the Member States and the Commission in gathering and analysing data on seafarers provided and used in accordance with Directive 2008/106/EC on the minimum level of training of seafarers⁶ (Article 2(4)(e)).
- As an ancillary task, the Agency must, where appropriate, assist the Commission and the Member States by facilitating voluntary exchange of best practices in maritime training and education in the Union and by providing information on Union exchange programmes relevant to maritime training, while fully respecting Article 166 TFEU (Article 2a(3)(c)). This provision is further explained in recital 31.

(b) Piracy

As in the case of training for seafarers, the Commission did not provide for any role for EMSA with regard to combating piracy or other unlawful acts directed at maritime transport. In its general approach, the Council did not amend the Commission proposal in this respect.

The Parliament, on the other hand, considered that combating piracy and "illegal traffic" should be a core task for the Agency. To that end, the Parliament introduced three amendments:

⁶ OJ L 323, 3.12.2008, p. 33.

- the Agency's data monitoring and collection should also gather basic information for example on piracy (amendment 21);
- the Agency should forward to the EU Naval Force operation Atalanta detailed information about the position of EU-flag vessels transiting through certain dangerous areas (amendment 22);
- the Agency should support the actions taken by the Commission and Member States to combat illegal traffic and acts of piracy (amendment 45).

The Council is well aware of the increasing threat of acts of piracy and other unlawful acts against maritime transport, and the Agency does have certain data at its disposal that could be useful in this respect. The Council position reflects this by including among the Agency's core tasks the provision of relevant vessel positioning and earth observation data to competent national authorities and relevant Union bodies in order to facilitate measures against threats of piracy and of intentional unlawful acts. It should be noted that data should only be provided upon request, without prejudice to national and Union law, subject to applicable data protection rules and in accordance with administrative procedures to be established either by the Agency's Administrative Board or, in certain cases, by the High Level Steering Group set up in accordance with Directive 2002/59/EC establishing a Community vessel traffic monitoring and information system⁷ (Article 2(4)(b)). The provision of long range identification and tracking of ships data will also be subject to the consent of the flag State concerned (last sentence of Article 2(4)(b)). The Council considers it particularly important to use the term "intentional unlawful acts", which is well established and defined in Union and international law. Furthermore, the Council position makes particular reference to the protection of data, and consequently introduces some amendments to Article 4 on the safe handling and processing of confidential information, to which neither the Commission nor the Parliament made any reference.

⁷ OJ L 208, 5.8.2002, p. 10.

Finally, recital 32 contains further elements for the interpretation of the above provisions.

(c) Pollution from offshore oil and gas installations

The Commission's initial proposal gave EMSA a limited role in the analysis of the safety of mobile offshore gas and oil installations. In its general approach, the Council made this an ancillary task consisting in assisting the Commission in the examination of IMO requirements and in gathering basic information on potential threats to maritime transport and the marine environment. The Council specified that EMSA should not carry out any inspection activities or any activities specifically relating to the exploration or exploitation of mineral resources.

The Parliament, on the other hand, adopted numerous amendments concerning such prevention of pollution. It proposed in particular:

- deleting the words "caused by ships" from references in the proposal to prevention of pollution (amendments 29, 30, 71 and 73);
- deleting the word "mobile" from the references to analysing the safety of offshore oil and gas installations (amendments 14 and 33);
- referring to the value of the Agency's expertise in the development of guidance on the licensing of oil and gas exploration and production (amendment 24);
- making preventing and tackling marine pollution, including from offshore oil and gas installations, an objective of EMSA (amendment 29);
- having EMSA provide assistance relating to the licensing of oil and gas exploration and production (amendment 37);
- having EMSA assist the Member States during accident investigations involving coastal and offshore maritime installations, including accidents affecting oil and gas installations (amendment 47);

- having EMSA facilitate cooperation in assessing Member States' arrangements concerning emergency response plans and emergency preparedness with respect to offshore oil and gas installations (amendment 49);
- having EMSA facilitate cooperation in ensuring independent third party oversight of the maritime aspects related to safety, prevention, protection of the environment, and contingency planning (amendment 50).

In line with what the Commission proposed, the Council believes it is feasible and appropriate to give EMSA a role in the response to marine pollution from offshore installations. The Agency has the response capabilities to conduct clean-up operations following an oil spill, regardless of whether the pollution is caused by a ship or by an offshore installation. Furthermore, it also has the required expertise in the field of pollution by other hazardous and noxious substances to assist States affected by such pollution. However, the Council considers it premature to give the Agency an increased role in the prevention of pollution from offshore oil and gas installations. As stated above, EMSA should focus its activities on areas where it has established and recognised expertise and tools. Consequently, the Council position does not include the Parliament amendments on this issue.

Nevertheless, some of the Parliament's concerns are addressed in the Council position. In particular, the Council introduces a new, broader understanding of marine pollution, covering not only oil but also other hazardous and noxious substances (recital 3). The Agency's core tasks will include using its CleanSeaNet service to monitor the extent and environmental impact of marine oil pollution caused by oil and gas installations (Article 2(4)(g) and recital 22), which is also in line with Parliament amendments 15 and 48. As an ancillary task, the Agency could, where appropriate, assist the Commission in the examination of IMO requirements and in the gathering of basic information on potential threats to maritime transport and the marine environment (Article 2a(2)(e)).

Finally, in the framework of a progress report, the Commission is invited to examine the Agency's potential contribution to the implementation of a future legislative act on the safety of offshore oil and gas prospection, exploration and production activities, with regard to the prevention of pollution from offshore oil and gas installations, taking into account the Agency's established and recognised expertise and tools (recital 44).

(d) Other new tasks assigned to the Agency

The Council has taken Parliament amendment 38 into account, with slight changes, giving the Agency the task of providing, at the request of a Member State, appropriate information resulting from EMSA's inspections of *recognised organisations* in order to support the monitoring of the recognised organisations that carry out certification tasks on behalf of the Member States in accordance with Article 9 of Directive 2009/15/EC on common rules and standards for ship inspection and survey organisations and for the relevant activities of maritime administrations⁸, without prejudice to the rights and obligations of the flag State (Article 2(3)(c)). The Council considers that such information-sharing by the Agency could be of added value for the requesting Member State.

The Parliament tabled a number of amendments concerning the establishment of a *European Maritime Transport Space without Barriers* and closely related matters, such as e-Maritime and the Blue Belt project (amendments 12, 16, 17, 19, 27, 29 and 33).

The Parliament proposed that the Agency should assist the Commission in the development and implementation of the Blue Belt project (amendments 16, 17 and 33). The Council had already included a similar provision in its general approach, but as an ancillary task. The Blue Belt concept is thus included among the ancillary tasks in Article 2a(3)(a), as one of the policies and projects supporting the establishment of the European Maritime Transport Space without Barriers.

⁸ OJ L 131, 28.5.2009, p. 47.

Furthermore, in addition to being listed among the objectives of the Agency (Article 1(3)), the European Maritime Transport Space without Barriers is also mentioned in the Council position in Article 2a(3)(a) and recitals 15, 17, 28 and 45. As a means of achieving this space without barriers, the Council considers Directive 2010/65/EU on reporting formalities for ships arriving in and/or departing from ports of the Member States⁹ to be of particular importance and therefore the Agency will, as one of its core tasks, facilitate cooperation between the Member States and the Commission by facilitating the electronic transmission of data through SafeSeaNet and by supporting the development of the single window (Article 2(4)(i)). It will also support Member States in the implementation of that Directive (recital 15).

Contrary to the Commission proposal and the Council's general approach, the Parliament proposed that the Agency should not be involved in tasks relating to *inland waterways*. However, the Council considers that it could be useful to give the Agency limited, well-defined ancillary tasks in providing relevant information with regard to classification societies for inland waterway vessels (Article 2a(2)(f) and recital 25) and in exploring the possibility of sharing information between the River Information Services System and maritime transport information systems (Article 2a(3)(b) and recital 26). Therefore, the Council position does not include this part of Parliament amendment 33.

⁹ OJ L 283, 29.10.2010, p. 1.

(iii) Governance structure of the Agency

One of the main objectives of the Commission proposal amending the EMSA Regulation is to adapt the governance structure of the Agency.

The Council is broadly in favour of the objective of the Commission proposal, namely to adapt the governance structure in line with the findings and recommendations of the external evaluation of June 2008. However, the Council cannot agree with all aspects of the Commission proposal on this issue. Furthermore, the Parliament made numerous amendments.

The main points of divergence between the institutions concern the decision-making procedure for visits to Member States and inspections in third countries, provisions on gender balance, certain provisions concerning the members of the Administrative Board (relating to conflict of interest and the duration of the term of office) and the procedure for appointing the Executive Director and the duration of his/her term of office.

(a) Visits and inspections

The Commission proposed that the inspections policy should be established through an implementing act and not by decision of the Administrative Board, as is currently the case. On this matter, the Parliament tabled amendments to the effect that the inspections policy should be decided by delegated act (amendments 25, 26, 55, 81, 82 and 83).

In the Council's view, neither of these options is suitable. The current system works well and the Administrative Board is the body best suited to decide on the methodology for the visits. Nevertheless, the Council has introduced an additional safeguard in the event that the Commission disagrees with the methodology decided by the Administrative Board. In that case, the Board must re-examine and adopt it, possibly amended, in second reading either with a two-thirds majority, including the Commission representatives, or by unanimity of the representatives of the Member States (Article 3 in conjunction with Article 10(2)(g) and recital 39).

As for the other amendments proposed by the Parliament in this context, the Council does not consider it appropriate to involve the Agency in reviewing environmental impact assessments and carrying out inspections in the Member States at the request of the Commission (amendment 54). With regard to amendment 56, the Council does agree that the cost-efficiency of the measures in place is an important aspect of the general conclusions of a cycle of visits or inspections, but does not deem it necessary to include rules on making the reports on visits available to the public, since rules on information for the public are to be found elsewhere in the Regulation (see Article 4(2) in the current Regulation).

(b) Gender balance

The Commission proposal did not include any specific provisions on gender balance. In its general approach, the Council was careful to use gender-neutral language when referring to the Executive Director (in line with the current Regulation). The Parliament, however, introduced some amendments with the aim of ensuring balanced gender representation on the Administrative Board and when electing the Chairperson, the Deputy Chairperson and third country representatives (amendments 8, 88 and 90).

The Council does of course agree with the principle of gender balance. Nevertheless, in practice it could prove difficult to ensure perfect gender balance on the Administrative Board, in particular for smaller maritime administrations. As for third country representatives, the Union cannot dictate the terms of appointment of such representatives.

The Council has, however, included a provision in Article 11(1) to the effect that the Member States and the Commission must each strive for a balanced representation between men and women on the Administrative Board. In addition, recital 9 contains a recommendation that the importance of ensuring balanced gender representation should be fully taken into account when appointing members of the Administrative Board, electing the Chairperson and Deputy Chairperson of the Administrative Board and appointing the Agency's Heads of Department.

(c) Provisions concerning the members of the Administrative Board

The Commission did not propose any particular rules on possible conflicts of interest in relation to the members of the Administrative Board, nor any changes to the current term of office (five years, renewable once). In its general approach, the Council did not propose any changes to the Commission proposal in this respect.

The Parliament proposed to insert a specific provision on conflicts of interest, whereby board members would be obliged to sign a written declaration indicating any direct or indirect interest which might be considered prejudicial to their independence. They would also have to abstain from voting on such matters (amendment 62). The Parliament also proposed to shorten the term of office to four years, renewable once (amendment 63).

The current Regulation already contains a provision on conflict of interest for those board members who are nominated in their capacity as professionals from the sectors concerned (Article 13(4)). The Council therefore finds it more appropriate and simpler to amend this existing provision, making it applicable to all board members.

As regards the term of office of board members, the Council's position at first reading shortens it to four years but makes it renewable more than once, to take account of any difficulties certain maritime administrations may have in finding suitable candidates (Article 11(3)).

(d) Procedure for the appointment of the Executive Director

Currently, the Executive Director is appointed by the Administrative Board and the Commission has the right to propose candidates.

The Commission suggested that it have the exclusive right to propose candidates. The Executive Director would be appointed for five years, renewable for not more than three years. Furthermore, before appointment the candidate selected might be invited to make a statement before the competent committee of the Parliament and answer questions put by its members.

In its general approach, the Council accepted the proposed duration of the term of office (five + three years). However, the Council considers that it should be renewable only once. Furthermore, the Council did not agree with the Commission on the involvement of the Parliament committee before appointment of the candidate selected. Finally, the Council could accept an exclusive right for the Commission to propose candidates, but has introduced a number of safeguards to ensure an open, fair and transparent selection procedure. This included obliging the Commission to propose at least three candidates (Article 16(1)) and appointing an observer from amongst the members of the board to follow the Commission's selection procedure (Article 10(2)(m)). Recital 42 contains further elements for the interpretation of these provisions, including a reference to the protection of personal data.

The Parliament amended the Commission proposal by increasing the possible renewal period to five years (amendment 72). Furthermore, it proposed that the Parliament committee should be more involved in the selection procedure through an opinion on the candidate selected, which should be considered before appointment (amendment 71) and reappointment (amendment 72).

The Council's position at first reading sets the possible renewal period at a maximum of four years. It also gives the Parliament the right to invite the candidate selected to an exchange of views. Nevertheless, the Council does not consider it appropriate to involve the Parliament or the Council in the selection procedure, which should be the prerogative of the Commission and the Agency's board members.

3. Other amendments adopted by the European Parliament

The Council position in relation to other amendments by the Parliament not mentioned above is set out below.

- Reference to the Erika and Prestige oil tanker incidents (amendments 1 and 2): the Council position includes a slightly redrafted version of these amendments in recitals 1 and 2.
- Mentioning changes to the Agency's areas of competence among the recommendations of the external evaluation (amendment 3): the Council position includes this amendment in recital 4.
- Reference to focusing on priority tasks, budget constraints of the Union and avoiding overlapping when justifying the Agency's new tasks (amendment 4): the Council position includes this amendment in recital 5, with slight changes.
- Redeployment of the Agency's staff should be coordinated with agencies in the Member States (amendment 5), while the Agency's new tasks require an increase in its resources (amendment 7): the Council position does not include these two amendments.
- Certain tasks can be more efficiently undertaken at European level (amendment 6): the Council position includes this amendment in recital 7, with slight changes.
- The Agency should promote the Union's maritime safety policy by means of scientific and technical cooperation with third countries (amendment 9): the Council position includes this amendment in recital 12, with slight changes.
- The Agency should bring additional, cost-effective measures to support the response to marine pollution, including any pollution from offshore oil and gas installations (amendment 10): the spirit of this amendment is reproduced in recital 21.
- The Agency's tasks should be described clearly and precisely and duplication should be avoided (amendment 11): the Council position includes the essence of this amendment in recital 6.

- Reference to effectiveness of enforcement and penalties under Directive 2005/35/EC on ship-source pollution and on the introduction of penalties for infringements¹⁰ (amendment 13): the Council position includes an invitation to the Commission in recital 19 to provide information on the effectiveness and consistency of the enforcement of that Directive.
- Synergies should be created between authorities, including coastguard services, in order to contribute to the establishment of a "Single European Sea" (amendment 18): the Council position includes an invitation to the Commission in recital 30 to prepare a feasibility study on enhancing coordination and cooperation of coastguard functions, subject to strict conditions.
- The Agency and the Paris Memorandum of Understanding on Port State Control (Paris MoU) should cooperate closely (amendment 23): the Council position contains several references to the Paris MoU, including one on close cooperation to maximize efficiency (recitals 33 and 38, Article 2(4)(h) and Article 2(5)).
- Reference to the Financial Regulation (amendment 28): the Council position includes this amendment in recital 46, with slight changes.
- Provision of technical assistance to the Commission concerning port security (amendment 31): the Council position does not include this amendment.
- Assistance to the Commission in the updating and development of provisions necessary to take part in the work of certain international and regional organisations (amendment 32): the Council position does not include this amendment. In the Council's view, the Agency's role in facilitating cooperation between the Member States and the Commission in this field should be limited to technical assistance (Article 2(4)(h) and recitals 34 and 35).
- Exchange of information with the Commission on any other policy which may be appropriate given the Agency's areas of competence and its expertise (amendment 34): the Council position does not include this amendment. However, in practice it is covered by Article 2(2)(d) but in more precise terms.
- Analysis of research projects (amendment 36): the Council position includes the essence of this amendment (Article 2(2)(c)).

¹⁰ OJ L 255, 30.9.2005, p. 11.

- Assistance to the Commission in completing certain tasks mentioned in Regulation (EC) No 391/2009 on common rules and standards for ship inspection and survey organisations¹¹ (amendment 39): the Council position does not include this amendment.
- Support pollution response actions by providing the appropriate technical resources (amendment 40): the Council position includes the essence of this amendment, but with more precise wording (Article 2(3)(d)).
- Provision of technical expertise in the field of shipbuilding or any other relevant activity related to maritime traffic, so as to develop the use of environment-friendly technologies and ensure a high level of security (amendment 44): the Council position does not include this amendment as such, but recital 24 contains a reference to more environment-friendly maritime transport in general.
- Development and implementation of a macro-regional Union policy (amendment 46): the Council position does not include this amendment.
- Enabling the Commission and the Member States to evaluate the cost-efficiency of existing measures by providing statistics, information and data (amendment 51): the Council position includes this amendment in Article 2(4)(d).
- Yearly overview of marine incidents (amendment 91): the essence of this amendment is included in the Council position (Article 2(4)(c) on investigation of marine casualties and incidents).
- Technical assistance to European Neighbourhood partner countries, as and when applicable (amendment 53): the Council position does not include this amendment, but the wording of Article 2(5) is very similar to what was proposed by the Parliament.
- Further conditions for the establishment of regional centres (amendment 57): the Council position includes this amendment, with slight changes (Article 5(3)).
- Several amendments adapting the budgetary procedures to changes in the relevant legal acts (amendments 58, 60 and 68, first part; amendments 70, 74, 75 and 76): the Council position includes all of these amendments.

¹¹ OJ L 131, 28.5.2009, p. 11.

- Taking the opinion of the Parliament into account when the Agency's board adopts the multi-annual strategy (amendment 59), consultation of the competent Committee of the Parliament when the Executive Director prepares the multi-annual strategy (amendment 66) and the multi-annual staff policy plan (amendment 67), and exchange of views with the competent committee of the Parliament on the annual work programme (amendment 68, second part): the Council position does not include these amendments, but makes specific reference to taking a written opinion from the Commission into account (Article 10(2)(ca)) or consulting the Commission on those documents (Article 15(2)(a) and (aa)). Furthermore, the Executive Director must report to the Parliament and the Council, in particular on the state of play with regard to the preparation of the multi-annual strategy and the annual work programme (Article 15(3)).
- Specification of the experience and expertise required for board members (amendment 61): the Council position does not include this amendment, but simplifies the text by making a general reference to experience and expertise in the fields referred to in Article 1, i.e. the Agency's objectives.
- Provisions on the Commission's share of votes on the Administrative Board (amendments 64 and 65): the Council position does not include these amendments.
- Elements to be included in the external evaluation of the Agency (amendments 77 and 78): the Council position includes these amendments, with slight changes (Article 22).
- Feasibility study on a national coastguard coordination system (amendment 79): the Council position does not include this amendment in the enacting terms, but recital 30 contains a reference to such a feasibility study.
- Progress report on gains in effectiveness realised through greater integration of EMSA and the Paris MoU and on the effectiveness of Member States' enforcement of Directive 2005/35/EC (amendment 80): the Council position does not include this amendment in the enacting terms. However, as stated above, it does contain several references to the Paris MoU (recitals 33 and 38, Article 2(4)(h) and Article 2(5)) and there is a reference in recital 19 to a report by the Commission on the enforcement of Directive 2005/35/EC.

III. CONCLUSION

In establishing its position at first reading, the Council has taken full account of the Commission proposal and the European Parliament's position at first reading. With respect to the amendments proposed by the European Parliament, the Council observes that a considerable number of amendments have already been included in its position at first reading – fully, partially or in spirit.
