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"I/A" ITEM NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee/Council
No. Cion doc.:	8173/12 ENV 242 MAR 33 TRANS 101 COMER 71 - COM(2012) 120 final
Subject:	Proposal for a Council Decision concerning the ratification of, or the accessionto, the Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships, 2009, by the Member States in the interest of the European Union - Request by the Council for the consent of the European Parliament

Statement by Romania

The proposal for a Council Decision requiring Member States to ratify or to accede to the Hong Kong International Convention for the Safe and Environmentally Sound recycling of ships, 2009, in the interests of the European Union, refers to article Article 192(1) and Article 218(6)(a)(v) and the first subparagraph of Article 218(8) of the Treaty on the functioning of the European Union (TFEU) as the legal basis for the proposal. Romania has concerns on the use of article 218 TFEU as procedural legal basis.

Romania would like to underline the fact that article 218 TFEU represents the procedural basis for concluding an international agreement to which the EU will be a party (paragraph 1: "[…] agreements between the Union and third countries or international organisations […]"). In the current case, the provisions of article 218 TFEU do not apply, since only states can be parties to the Hong Kong International Convention for the Safe and Environmentally Sound recycling of ships.

Statement by Austria, Hungary and Slovenia

Concerning Article 1 Austria, Hungary and Slovenia would like to state that, in their understanding this provision – also in the light of Art. 32 (4) of Regulation (EU) No XX/… of the European Parliament and of the Council on ship recycling – only clarifies that those Member States who wish to ratify the Hong Kong Convention are hereby enabled to do so. Thus, in their understanding an obligation to ratify the Convention cannot be derived from Article 1.

Statement by Slovak Republic

The Slovak Republic has concerns relating to use of the Article 218 paragraph 6(a)(v) TFEU and the first sub paragraph of Article 218 paragraph 8 TFEU as a legal basis of the Council decision concerning the ratification of, or the accession to, the Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships, 2009, by the Member States in the interests of the European Union.

According to the Slovak Republic, the Article 218 TFEU is applicable only to international agreements concluded by the European Union.

Article 218 paragraph 1 TFEU states that "agreements between the Union and third countries or international organisations shall be negotiated and concluded in accordance with the following procedure" .

The phrase "in accordance with the following procedure " takes all the paragraphs of Article 218 TFEU into account.

The Slovak Republic agrees with the Council Decision concerning the ratification of, or the accession to, the Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships, 2009, by the Member States in the interests of the European Union without prejudice to its reservation against the use of Article 218 TFEU as a legal basis for the decision of the Council.

Statement by the United Kingdom and the Netherlands

The United Kingdom and the Netherlands strongly support the Hong Kong Convention. However, neither State can support the adoption of this Decision. The EU is not party to the Hong Kong Convention. We note that the EU will shortly adopt a Regulation to give effect to some parts of the Convention. Nevertheless the proposed Regulation sets minimum standards only and as the Court of Justice has recognised, such rules do not give rise to exclusive Union competence. In such circumstances we do not consider that it is appropriate for the EU to seek to authorise Member States to ratify the Convention and the proposed Decision is devoid of purpose.