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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: COUNCIL DECISION on the position to be adopted, on behalf of the European Union, within the Port State Control Committee of the Paris Memorandum of Understanding on Port State Control

COUNCIL DECISION (EU) 2016/...

of ...

**on the position to be adopted,
on behalf of the European Union,
within the Port State Control Committee
of the Paris Memorandum of Understanding
on Port State Control**

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

Whereas:

- (1) Maritime safety, maritime security, pollution prevention and on-board living and working conditions may be effectively enhanced by means of a drastic reduction of substandard ships in the waters under the jurisdiction of Member States, by strictly applying relevant Conventions, international codes and resolutions.
- (2) While the primary responsibility for monitoring the compliance of ships with the international standards for safety, security, pollution prevention and on-board living and working conditions lies with the flag State, responsibility for maintenance of the condition of the ship and its equipment after survey to comply with the requirements of the Conventions applicable to the ship lies with the ship company. There has, however, been a serious failure on the part of a number of flag States to implement and enforce those international standards.
- (3) Therefore, as a second line of defence against substandard shipping, the monitoring of compliance with the international standards for safety, security, pollution prevention and on-board living and working conditions should also be ensured by port States, while recognising that port State control inspection is not a survey and the relevant inspection forms are not seaworthiness certificates. A harmonised approach to the effective enforcement of those international standards by coastal Member States of the Union in respect of ships sailing in the waters under their jurisdiction and using their ports should avoid distortions of competition.

- (4) Directive 2009/16/EC of the European Parliament and of the Council¹ sets out the Union regime on port State control, reformulating and reinforcing the previous Union legislation in this field in force since 1995. The Union regime is based on the pre-existing structure of the Paris Memorandum of Understanding on Port State Control (the 'Paris MOU'), signed in Paris on 26 January 1982.
- (5) As regards the Union Member States, Directive 2009/16/EC effectively brings certain procedures, tools and activities of the Paris MOU within the scope of Union law. By virtue of that Directive, certain decisions taken by the appropriate competent body of the Paris MOU become binding on the Union Member States.
- (6) The Port State Control Committee ('PSCC') of the Paris MOU meets annually and during its deliberations decides on certain issues which have legal effects.
- (7) Pursuant to Article 218(9) of the Treaty on the Functioning of the European Union (TFEU), the position to be adopted on behalf of the Union in a body set up by an agreement, when that body is called upon to adopt acts having legal effects, is to be adopted by Council decision, on a proposal from the Commission.

¹ Directive 2009/16/EC of the European Parliament and of the Council of 23 April 2009 on port State control (OJ L 131, 28.5.2009, p. 57).

- (8) As the internal rules of the Paris MOU make it difficult to establish a position to be adopted on behalf of the Union in accordance with Article 218(9) TFEU in a timely manner for each individual meeting of the PSCC, it is efficient in this case to establish such a position on a multiannual basis, consisting of guiding principles and orientations, together with a framework for its year-to-year specification. At the same time, most of the topics discussed at the individual meetings of the PSCC concern port State control matters and are generally covered by a single Union legal act, namely Directive 2009/16/EC. In the particular circumstances that apply to the Paris MOU, it is therefore possible to establish a general position to be adopted on behalf of the Union for several of those meetings.
- (9) The Union is not a contracting party to the Paris MOU. It is therefore necessary for the Council to authorise the Member States to act in accordance with the position to be adopted on behalf of the Union and express their consent to be bound by the decisions taken by the PSCC.
- (10) The current method for drawing up the white, grey and black list of flag States has proven to have disproportionate and unintended consequences for flag States with small fleets. At the same time, progress on the development of an alternative calculation method has been slow. It is therefore important to rapidly develop an alternative method in order to ensure fairness.

- (11) Technical discussions and cooperation with third country members of the Paris MOU within the PSCC are of great importance in ensuring the effectiveness and the good functioning of the Paris MOU.
- (12) This decision should cover the period from 2016 to 2019,

HAS ADOPTED THIS DECISION:

Article 1

The position to be adopted on behalf of the European Union within the annual PSCC meeting of the Paris MOU when that body is called upon to adopt decisions having legal effects is set out in Annex I.

Article 2

The year-to-year specification of the position to be adopted on behalf of the Union within the annual PSCC meeting of the Paris MOU shall be conducted in accordance with Annex II.

Article 3

The Member States which are bound by the Paris MOU shall act in accordance with the position to be adopted on behalf of the Union as referred to in Article 1, acting jointly in the interest of the Union.

Article 4

This Decision shall enter into force on 1 April 2016.

It shall expire on 31 December 2019.

Done at Brussels,

For the Council

The President

ANNEX I

The position to be adopted on behalf of the Union
within the Port State Control Committee
of the Paris Memorandum of Understanding
on Port State Control

Guiding Principles

In the framework of the PSCC of the Paris MOU, the Member States which are bound by the Paris MOU, acting jointly in the interest of the Union, shall:

- (a) act in accordance with the objectives pursued by Directive 2009/16/EC, notably to improve maritime safety, maritime security, pollution prevention and on-board living and working conditions by means of a drastic reduction of substandard ships by strictly applying relevant Conventions, international codes and resolutions;
- (b) promote the implementation of a harmonised approach by Members of the Paris MOU to the effective enforcement of the international standards in respect of ships sailing in the waters under their jurisdiction and using their ports;
- (c) work together within the Paris MOU to achieve a comprehensive inspection scheme and the sharing of the inspection burden in an equitable manner, in particular by adopting the annual inspection commitment drawn up in accordance with the agreed methodology set out in Annex 11 to the Paris MOU;

- (d) work within the Paris MOU to maintain appropriate competent authorities, to which the requisite number of staff, in particular qualified inspectors, for the inspection of ships is assigned, for example, through recruitment;
- (e) ensure that measures adopted within the Paris MOU are consistent with international law, and in particular with the relevant Conventions, international codes and resolutions relating to maritime safety, maritime security, pollution prevention and on-board living and working conditions;
- (f) promote the development of common approaches with other bodies carrying out port State control;
- (g) ensure consistency with other Union policies notably in the areas of external relations, security, environment and others.

Orientations

The Member States which are bound by the Paris MOU, acting jointly in the interest of the Union, shall endeavour to support the following actions by the Paris MOU:

- A. in order to ensure the smooth year-to-year functioning of the Union's port State control regime in accordance with Directive 2009/16/EC, the adoption of:
 - 1. the following elements of the ship risk profile used to target vessels for inspection:
 - (a) the white, grey and black flag list in accordance with the formula developed by the Paris MOU and set out in the Annex to Commission Regulation (EU) No 801/2010¹;
 - (b) the performance list for recognised organisations in accordance with the methodology adopted by the PSCC at its 37th session in May 2004 (Agenda Item point 4.5.2);
 - (c) the average deficiency and detention ratio for the company performance formula on the basis of the Annex to Commission Regulation (EU) No 802/2010².

¹ Commission Regulation (EU) No 801/2010 of 13 September 2010 implementing Article 10(3) of Directive 2009/16/EC of the European Parliament and of the Council as regards the flag State criteria (OJ L 241, 14.9.2010, p. 1).

² Commission Regulation (EU) No 802/2010 of 13 September 2010 implementing Article 10(3) and Article 27 of Directive 2009/16/EC of the European Parliament and of the Council as regards company performance (OJ L 241, 14.9.2010, p. 4).

2. changes or updates to the procedures and guidelines of the Paris MOU having legal effects that are consistent with the objectives pursued by Directive 2009/16/EC, notably to improve maritime safety, maritime security, pollution prevention and on-board living and working conditions.

 - B. the development as soon as possible of an alternative method of drawing up the white, grey and black list of flag States in order to ensure its fairness, regardless of the size of the fleet.
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ANNEX II

Year-to-year specification of the position
to be adopted on behalf of the Union
within the Port State Control Committee
of the Paris Memorandum of Understanding
on Port State Control

Before each annual PSCC meeting of the Paris MOU, the necessary steps shall be taken so that the position to be expressed on the Union's behalf takes account of all relevant information transmitted to the European Commission as well as any document to be discussed which falls within Union competence in accordance with the guiding principles and orientations set out in Annex I.

To this effect and based on that information, a preparatory document setting out the particulars of the envisaged Union position shall be transmitted by the Commission services, in sufficient time before the PSCC meeting, to the Council or to its preparatory bodies for consideration and approval.
