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'I' ITEM NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee (Part 1)
No. Cion doc.:	11376/21
No. prev. doc.:	11541/1/21 REV 1
Subject:	Draft submission by Member States and the Commission to the 77 th session of the Marine Environment Protection Committee of the International Maritime Organization proposing to include information on ship's EEXI and CII performance in the IMO Data Collection System and to launch a work stream for further amending the IMO Data Collection System – <i>Endorsement</i>

Attention is drawn to the following cover note that replaces the one in document ST 11582/21:

I. INTRODUCTION

1. On 2 September 2021, the Commission transmitted to the Council a Staff Working Document containing a draft submission to the 77th session of the Marine Environment Protection Committee (MEPC 77) of the International Maritime Organization (IMO) proposing to include information on ship's Energy Efficiency Existing Ship Index (EEXI) and Carbon Intensity Indicator (CII) performance in the IMO Data Collection System (IMO DCS) and to launch a work stream for further amending the IMO DCS. The deadline for transmitting the draft submission to the IMO Secretariat is 17 September 2021.
2. The purpose of the submission is to suggest the following: 1) including information on the ship's required and attained EEXI and CII values and rating in the IMO DCS; and 2)

launching a work stream for amending the IMO DCS to pave the way for the review of the Carbon Intensity framework by 1 January 2026. The Annexes of the draft submission also suggest possible amendments to Appendix IX of MARPOL Annex VI and draft terms of reference for the work stream.

II. WORK WITHIN THE COUNCIL

3. The draft submission was presented by the Commission at the Shipping Working Party on 1 September 2021, based on an advance copy¹. The draft submission was further examined at two informal videoconferences of the members of the Shipping Working Party on 8 and 13 September 2021. Further to that last meeting, an informal silence procedure was launched on a Presidency compromise proposal², in view of reaching consensus. No delegations broke the silence procedure and consensus was reached on the substance of the draft submission that also allows the Presidency to indicate at the time of transmission that the document may be released to the public by the IMO secretariat prior to MEPC 77.
4. In its Staff Working Document, the Commission holds the view that the substance of the draft Union submission falls under EU exclusive competence as it is largely covered by EU legislation. In this respect, the Presidency acknowledges that some delegations did not agree with the Commission's claim for EU exclusive competence. However, it is the understanding at the level of the Shipping Working Party that the submission falls under exclusive Union competence only if and to the extent that its subject matter is covered by EU legislation. To the extent that the matters covered by the submission are not largely covered by EU legislation, the understanding is that the submission is made by the Member States under shared competence and that this submission should not be construed as exercising shared Union competence.
5. Additionally, there is no agreement on who should submit the draft submission. The Commission maintains the view that the draft submission should be made by "the European Commission on behalf of the European Union", while the Member States consider that it should be made by the Member States and the European Commission.

¹ WK 10164/2021.

² ST 11541/2/21 REV 2.

6. Given the importance of the matter, it was agreed at working party level to propose to transmit the submission in the name of the Member States and the European Commission, while taking good note of the position of the Commission.

III. CONCLUSION

7. In the light of the above, the Permanent Representatives Committee is invited to endorse the text of the draft submission in the annex, with a view to its transmission by the Presidency to the International Maritime Organization by 17 September 2021.
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