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'I' ITEM NOTE

From: General Secretariat of the Council
To: Permanent Representatives Committee (Part 1)

No. Cion doc.: 11377/21
No. prev. doc.: 11620/21

Subject: Draft submission by Member States and the Commission to the 77th session of the Marine Environment Protection Committee of the International Maritime Organization proposing guiding principles for the further development of Market-Based Measures
– *Endorsement*

Attention is drawn to the following corrections:

1. a verb is missing in paragraph 11.6 of the Annex to document ST 11583/21 which should then read as follows: ".6 MBMs should be designed to be flag-neutral and they should **ensure** equal treatment of all operators."; and
2. the following cover note replaces that in document ST 11583/21:

I. INTRODUCTION

1. On 7 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 guiding

principles for the further development of market-based measures (MBMs). The deadline for transmitting the draft submission to the IMO Secretariat is 17 September 2021.

2. The purpose of the submission is to invite MEPC 77 to agree on the use of a set of basic guiding principles for the further development of any MBMs. The proposal builds on the list of criteria identified in IMO document MEPC 76/7/15. This document focused on the importance of starting work on mid-term GHG reduction measures that incentivise the use of sustainable low-carbon and zero-carbon fuels in international shipping. The present draft submission develops them further to address specific issues related to market-based measures. The aim is to use the proposed criteria to guide and enhance future discussions on carbon pricing measures, namely a GHG levy and a cap-and-trade scheme.

II. WORK WITHIN THE COUNCIL

3. The draft submission was orally presented by the Commission at Shipping Working Party on 1 September 2021, before an advance copy reached the delegations on 3 September 2021¹ and the Commission Staff Working Document was officially transmitted. The draft submission was examined at two meetings of the members of the 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 delegation 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

¹ WK 10344/2021.

² ST 11620/1/21 REV 1.

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.
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.
