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## COVER NOTE

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
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Subject:	COMMISSION STAFF WORKING DOCUMENT Union submission to the 55th meeting of the Port State Control Committee (PSCC 55) of the Paris Memorandum of Understanding on Port State Control

Delegations will find attached document SWD(2021) 426 final.

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**COMMISSION STAFF WORKING DOCUMENT**

**Union submission to the 55th meeting of the Port State Control Committee (PSCC 55) of  
the Paris Memorandum of Understanding on Port State Control**

## **Union submission to the 55th meeting of the Port State Control Committee (PSCC 55) of the Paris Memorandum of Understanding on Port State Control**

### **PURPOSE**

This Staff Working Document contains a draft Union submission to the Paris Memorandum of Understanding on Port State Control's PSCC55 meeting. The Paris Memorandum of Understanding on Port State Control (Paris MoU) has indicatively scheduled PSCC 55 from 16-20 May 2022.

There is a high and increasing percentage of non-compliant pilot transfer arrangements, which is demonstrated, among others, in the most recent (2020) report published by the International Maritime Pilot's Association (IMPA), which has been conducting safety campaigns on the subject of pilot transfer/boarding arrangements. This report shows, inter alia, that the European pilots involved in the campaign were of the opinion that 20.49% of pilot transfer/boarding arrangements (up from 15.89% in 2019) did not meet the international standards.

Another example is a recent investigation conducted by the German Federal Bureau of Maritime Casualty Investigation (BSU) of an accident involving a canal helmsman. In that case, the person fell from a height of 3-4 m and struck his head on the deck, leading to life-threatening injuries. During the investigation, it became clear to the BSU that there had been some "near misses" involving other vessels in recent years.

The BSU concluded that the primary cause of the accident was the lack of adequate handholds for accessing the deck as required by SOLAS 1999/2000 Amend Ch. V Reg. 23.4.1. The BSU accident investigation report is attached for reference (Annex 1).

In that specific case, the BSU has issued safety recommendations to the effect that port State inspections should pay more attention to possibly absent hand-holds at pilot embarkation points with a gateway in the rails during port State control inspections so as to initiate appropriate measures to remedy shortcomings if necessary. It also recommended that port State control authorities launch an initiative to conduct a Concentrated Inspection Campaign (CIC) focussing on pilot transfer arrangements taking into account all aspects of the pilot embarkation point in accordance with the IMPA safety campaign.

In the light of the above, the matter of non-compliant pilot transfer arrangements could be considered as an issue of high priority in accordance with the PMoU Policy of joint CICs. The draft Union submission suggest that the Paris MoU should consider the issue of pilot transfer arrangements as a matter of principle within the framework of a concentrated inspection campaign and decide to schedule a CIC on pilot transfer arrangements for 2025.

### **EU COMPETENCE**

The EU port State control system is established by Directive 2009/16/EC of the European Parliament and of the Council on port State control.

The purpose of Directive 2009/16/EC is to help to drastically reduce substandard shipping in the waters under the jurisdiction of Member States by increasing compliance with international and relevant Union legislation on maritime safety, maritime security, protection of the marine environment and on-board living and working conditions of ships. Directive 2009/16/EC regulates the way in which port State control inspections are carried out by Member State authorities in their ports.

CICs focus on specific areas falling within the scope of the international conventions where a higher risk of non-compliance could exist. This is evidenced by the number of deficiencies encountered, accidents or where new convention requirements have recently entered into force. CICs take place yearly over a period of 3 months and are carried out as part of a regular inspection.

As the CIC is carried out on board ships as part of a regular inspection, any changes or additions to a

regular port State control inspection with respect to pilot transfer arrangements falling within SOLAS requirements fall under EU competence.

In light of the above, the present draft Union submission (in annex) falls under EU exclusive competence.<sup>1</sup> This Staff Working Document is presented to establish an EU position on the matter and to transmit the document to the Paris MoU Secretariat prior to the required deadline of 7 March 2022.<sup>2</sup>

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<sup>1</sup> An EU position under Article 218(9) TFEU is to be established in due time should the Paris MoU eventually be called upon to adopt an act having legal effects as regards the subject matter of the said draft Union submission. The concept of '*acts having legal effects*' includes acts that have legal effects by virtue of the rules of international law governing the body in question. It also includes instruments that do not have a binding effect under international law, but that are '*capable of decisively influencing the content of the legislation adopted by the EU legislature*' (Case C-399/12 Germany v Council (OIV), ECLI:EU:C:2014:2258, paragraphs 61-64). The present submission, however, does not produce legal effects and thus the procedure for Article 218(9) TFEU is not applied.

<sup>2</sup> The submission of proposals or information papers to the Paris MoU, on issues falling under EU competence, are acts of external representation. Such submissions are to be made by an EU actor who can represent the Union externally under the Treaty, which for non-CFSP (Common Foreign and Security Policy) issues is the Commission or the EU Delegation in accordance with Article 17(1) TEU and Article 221 TFEU. Paris MoU internal rules make such an arrangement absolutely possible as regards existing agenda and work programme items. This way of proceeding is in line with the General Arrangements for EU statements in multilateral organisations endorsed by COREPER on 24 October 2011.

## **AGENDA ITEM 4**

### **Proposal for a CIC on pilot transfer arrangements**

<b>Summary:</b>	This document provides a background for a CIC on pilot transfer arrangements
<b>Strategic direction:</b>	
<b>Planned action:</b>	
<b>Action to be taken:</b>	Paragraph 8
<b>Budgetary implication:</b>	none

#### **Background**

- 1 In accordance with paragraph 3.2 of the PMoU Policy of joint concentrated inspection campaigns (CICs), a demonstrated need for a CIC should be based on inspection records, entry into force of new requirements, accident reports, or to address issues of high priority.
- 2 The European Union considers that the matter of pilot transfer arrangements is an issue of high priority in accordance with paragraph 3.2. of the PMoU Policy on joint CICs. Indeed, for several years, the International Maritime Pilot's Association (IMPA) has been conducting safety campaigns for the pilot transfer arrangements on vessels requiring a pilot following worldwide reports of sometimes-fatal accidents during pilot transfers and countless near-misses. The most recently published report in 2020 (Annex 1) shows, inter alia, that the European pilots involved in the campaign were of the opinion that 20.49% (previous year: 15.89%) of the pilot boarding arrangements did not meet the international standards. (IMPA campaign 2020).
- 3 An example of a recent case is an accident involving a helmsman, investigated by the German Federal Bureau of Maritime Casualty Investigation (BSU). The person fell from a height of 3-4 metres onto the pilot vessel's rails and then struck his head on the deck. The accident led to life-threatening injuries, especially a basilar skull fracture. During the course of the investigation, it became clear that before this accident there were some "near miss" events. The accident investigation report is attached for reference (Annex 2).
- 4 The BSU concluded that the primary cause of the accident was the lack of adequate handholds for accessing the deck as required by SOLAS 1999/2000 Amend Ch. V Reg. 23.4.1.
- 5 In that particular case, the BSU has issued safety recommendations to the effect that port State inspections should pay more attention to possibly absent hand-holds at pilot embarkation points with a gateway in the rails during port state control inspections so as to initiate appropriate measures to remedy shortcomings if necessary (see Annex 2 section 7.4.a). It also recommended that port State control authorities launch an initiative to conduct a CIC focussing

on pilot transfer arrangements taking into account all aspects of the pilot embarkation point in accordance with the IMPA safety campaign (Annex 2, section 7.4.b).

#### **Proposal for a CIC on pilot transfer arrangements**

- 6 In the light of the above, it is appropriate that the port State control authorities consider the issue of pilot transfer arrangements as a matter of principle within the framework of a CIC.

#### **Action requested of the Committee**

- 7 The Committee is invited to:
- .1 comment as appropriate and
  - .2 decide to schedule a CIC on pilot transfer arrangements for 2025.

#### **Annex 1:**

International Maritime Pilot's Association safety campaign report of 2020

#### **Annex 2:**

Accident investigation Report 19/19 of the German Federal Bureau of Maritime Casualty Investigation