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2015/0304 (NLE)

Proposal for a

COUNCIL DECISION

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

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

The EU regime on port State control (PSC) is set out in Directive 2009/16/EC¹ (as amended), which re-cast and reinforced the previous EU legislation in this field in place since 1995. The EU regime has been based on the pre-existing structure of the Paris Memorandum of Understanding (PMoU) on Port State Control which has existed since 1982. Directive 2009/16/EC (as amended) incorporates the procedures and tools of the PMoU. All maritime EU Member States as well as Canada, Russia, Iceland and Norway are members of the PMoU. The European Union is not a member of the PMoU.

Since 1 January 2011 a new inspection regime (NIR) for Port State Control is in place, both in the EU and the PMoU frameworks. In order for the NIR to function a certain number of decisions have to be taken each year in the context of the PMoU. These decisions are taken by consensus at the annual "Port State Control Committee" (PSCC) which meets in May of each year. By virtue of Directive 2009/16/EC decisions taken by the appropriate competent body of the PMoU become binding on EU Member States.

Pursuant to Article 218(9) of the Treaty on the Functioning of the European Union, the position to be adopted on behalf of the Union in international organisations such as the PMoU when they are called upon to adopt acts having legal effects, must be adopted by Council Decision, on a proposal from the Commission.

It is proposed that the EU position for PSCC is established according to a two tier approach. A Council Decision sets out the guiding principles and orientations of the Union's position on a multiannual basis, whereas it is thereafter adjusted for each annual PSCC meeting by Commission non-papers to be discussed in the Council Shipping Working Party. This proposal aims at setting out the Union's position for PSCC for the period 2016-2019. It also aims at incorporating the principles and orientations of European Union policy to improve maritime safety, pollution prevention and on-board living and working conditions. The Union's position also takes into account the provisions of the Lisbon Treaty.

The Commission proposes this approach due to the characteristics of the decisional process in PMoU. The internal rules of the PMoU fix the latest date for submission of any documents by its members and the task forces charged with the development of guidelines and instructions at six weeks before the meeting of the PSCC. It is only at that point that all submissions are available and the Commission can begin its analysis with a view to preparing a proposal for a coordinated Union position under Article 218(9) of the TFEU which has then to be adopted by the Council. As the time available for this analysis, the preparation of the Commission proposal and its adoption by Council is short, the process for the year to year specification of the Union position is set out in Annex 2. The following Decision shall cover the period 2016-2019.

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

2. LEGAL ELEMENTS OF THE PROPOSAL

The following Decision is based on the Treaty on the Functioning of the European Union, and in particular Article 100(2), in conjunction with Article 218(9) which provides that the Council, on a proposal from the Commission shall adopt a decision establishing the positions to be adopted on the Union's behalf in a body set up by an agreement, when that body is called upon to adopt acts having legal effects. This shall apply to the position to be adopted by the Member States, on behalf of the Union, in the PSCC of the PMoU.

Directive 2009/16/EC of the European Parliament and of the Council of 23 April 2009 on port State control (as amended) is the legal basis setting up the principles to be adhered to by the Member States within the PSCC of the PMoU.

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THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

Whereas:

- (1) Maritime safety, pollution prevention and on-board living and working conditions may be effectively enhanced through a drastic reduction of substandard ships from European Union waters, by strictly applying Conventions, international codes and resolutions.
- (2) While the primary responsibility for monitoring the compliance of ships with the international standards for safety, 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 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 international standards.
- (3) Therefore, as a second line of defence against substandard shipping, the monitoring of compliance with the international standards for safety, 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 these international standards by EU coastal Member States in respect of ships sailing in the waters under their jurisdiction and using their ports should avoid distortions of competition.
- (4) Directive 2009/16/EC² (as amended), sets out the EU regime on port State control reformulating and reinforcing the previous EU legislation in this field in place since 1995. The EU regime is based on the pre-existing structure of the Paris Memorandum of Understanding on Port State Control, an international organisation which has existed since 1982.
- (5) As regards EU Member States, Directive 2009/16/EC effectively brings the procedures, tools and work of the PMoU on Port State control within the scope of EU law. By virtue of Directive 2009/16/EC decisions taken by the appropriate competent body of the Paris Memorandum of Understanding on Port State Control become binding on EU Member States.

² OJ L 131, 28.5.2009, p. 57

- (6) The Port State Control Committee of the Paris Memorandum of Understanding on Port State Control meets each year and during its deliberations decides on a number of agenda items necessary for the operation of Directive 2009/16/EC.
- (7) Pursuant to Article 218(9) of the Treaty on the Functioning of the European Union, the position to be adopted on behalf of the Union in international organisations when they are called upon to adopt acts having legal effects, must be adopted by Council decision, on a proposal from the Commission.
- (8) The internal rules of the PMoU fix the latest date for submission of any documents by its members and the task forces charged with the development of guidelines and instructions at six weeks before the meeting of PSCC. It is only at that point that all submissions are available and the Commission can begin its analysis with a view to preparing a proposal for a coordinated Union position under Article 218(9) of the TFEU. As the time available for this analysis and for the adoption of a proposal is short, it is necessary to establish the guiding principles and orientations of the Union's position on a multiannual basis, together with the framework for the year-to-year specification of the Union position.
- (9) This decision should cover the period 2016-2019.

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken by the European Union in the annual Port State Control Committee of the Paris Memorandum of Understanding on Port State Control when that body is called upon to adopt decisions having legal effects is set out in Annex 1 to this Decision.

Article 2

The year-to-year specification of the Union position to be taken in the annual Port State Control Committee of the Paris Memorandum of Understanding on Port State Control shall be conducted in accordance with Annex 2 to this Decision.

Article 3

The Union position set out in Annex 1 to the present Decision shall be assessed and, where appropriate, revised by the Council upon a proposal from the Commission, at the latest for the annual Port State Control Committee of the Paris Memorandum of Understanding on Port State Control in 2020.

Article 4

This Decision shall enter into force on 1st of January 2016.

Done at Brussels,

*For the Council
The President*