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PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	1 April 2020
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2020) 117 final
Subject:	Proposal for a COUNCIL DECISION on the position to be taken on behalf of the European Union in the Port State Control Committee of the Paris Memorandum of Understanding on port State control

Delegations will find attached document COM(2020) 117 final.

Encl.: COM(2020) 117 final

EUROPEAN
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Brussels, 31.3.2020
COM(2020) 117 final

2020/0046 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be taken 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. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns the decision establishing the position to be taken on the Union's behalf in the Port State Control Committee of the Paris Memorandum of Understanding on port State control in connection with the envisaged adoption of decisions necessary for the correct functioning of the EU regime on port State control (PSC) is set out in Directive 2009/16/EC[1].

2. CONTEXT OF THE PROPOSAL

2.1. The Paris Memorandum of Understanding (PMoU) on Port State Control

The Paris Memorandum of Understanding (Paris MOU) provides for an international inspection regime for foreign ships in other national ports by PSC officers for the purpose of verifying that the competency of the master, officers and crew on board, the condition of a ship and its equipment comply with the requirements of international conventions and that the vessel is manned and operated in compliance with applicable international law. The Paris MOU was signed on 26 January 1982.

Directive 2009/16/EC (as amended) incorporates the procedures and tools of the Paris MOU. All EU Member States with maritime ports[2] as well as Canada, Russia, Iceland and Norway are members of the Paris MOU. The European Union is not a member of the Paris MOU.

2.2. The envisaged act of the Port State Control Committee of the Paris MoU

In order for PSC in the Union to function a certain number of decisions have to be taken each year in the context of the Paris MOU. 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 Paris MOU become binding on EU Member States.

3. POSITION TO BE TAKEN ON THE UNION'S BEHALF

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 Paris MOU when they are called upon to adopt acts having legal effects, must be adopted by Council Decision, on a proposal from the Commission.

In 2016, Council Decision (EU) 2016/381[3] set out the position to be adopted, on behalf of the European Union, within the PSCC for the period 2016-2019. The Council Decision was

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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).

2 Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Netherlands, Portugal, Spain and the United Kingdom adhered to the Memorandum on 26 January 1982. Bulgaria adhered to the Memorandum on 10 May 2007. Croatia adhered to the Memorandum on 8 November 1996. Cyprus adhered to the Memorandum on 12 May 2006. Estonia adhered to the Memorandum on 12 May 2005, Latvia adhered to the Memorandum on 12 May 2005. Lithuania adhered to the Memorandum on 12 May 2006. Malta adhered to the Memorandum on 12 May 2006. Poland adhered to the Memorandum on 27 November 1991. Romania adhered to the Memorandum on 10 May 2007. Slovenia adhered to the Memorandum on 15 May 2003.

established according to a two-tier approach. The Decision itself set out the guiding principles and orientations of the Union's position on a multiannual basis. This was adjusted for each annual PSCC meeting by Commission non-papers to be discussed in the Council Shipping Working Party. The present proposal aims at setting out the Union's position for PSCC for the period 2020-2024.

The approach provided for in this proposal is 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.

4. LEGAL BASIS

4.1. Procedural legal basis

4.1.1. Principles

Article 218(9) of the Treaty on the Functioning of the European Union (TFEU) provides for decisions 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, with the exception of acts supplementing or amending the institutional framework of the agreement*.'

Article 218(9) TFEU applies regardless of whether the Union is a member of the body or a party to the agreement[4].

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*'[5].

4.1.2. Application to the present case

The Paris MOU is a body set up by an agreement.

The act which the Paris MOU is called upon to adopt constitutes an act having legal effects. The envisaged act is capable of decisively influencing the content of EU legislation, namely Directive 2009/16/EC on port State control because the PSCC of the Paris MOU adopts a number of decisions which have to be taken each year in order for the directive to function correctly.

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3 Council Decision (EU) 2016/381 of 14 March 2016 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 (OJ L 72, 17.03.2016, p. 53).

4 Judgment of the Court of Justice of 7 October 2014, Germany v Council, C-399/12, ECLI:EU:C:2014:2258, paragraph 64.

5 Judgment of the Court of Justice of 7 October 2014, Germany v Council, C-399/12, ECLI:EU:C:2014:2258, paragraphs 61 to 64.

The envisaged act does not supplement or amend the institutional framework of the Agreement. Therefore, the procedural legal basis for the proposed decision is Article 218(9) TFEU.

4.2. Substantive legal basis

4.2.1. Principles

The substantive legal basis for a decision under Article 218(9) TFEU depends primarily on the objective and content of the envisaged act in respect of which a position is taken on the Union's behalf. If the envisaged act pursues two aims or has two components and if one of those aims or components is identifiable as the main one, whereas the other is merely incidental, the decision under Article 218(9) TFEU must be founded on a single substantive legal basis, namely that required by the main or predominant aim or component.

4.2.2. Application to the present case

The main objective and content of the envisaged act relate to transport. Therefore, the substantive legal basis of the proposed decision is Article 100(2).

4.3. Conclusion

The legal basis of the proposed decision should be Article 100(2), in conjunction with Article 218(9) TFEU.

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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 Article 100(2), in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) The Memorandum of Understanding on Port State Control ('Paris MOU') was signed in Paris on 26 January 1982 and took effect on 1 July 1982. Pursuant to Section 8.1 of the Paris MOU, any maritime authority may propose amendments to it. Furthermore, pursuant to Section 7.1 of the Paris MOU, the Port State Control Committee ('PSCC') is composed of a representative of each of the maritime authorities and of the Commission and has the competences set out in Section 7.3. It is appropriate to establish the position to be taken on the Union's behalf in the PSCC, as decisions taken by the competent body of the Paris MOU is of relevance to the Union's legal framework, namely Directive 2009/16/EC of the European Parliament and of the Council[6].

(2) Directive 2009/16/EC, sets out the Union's legal regime on port State control and reformulates and reinforces the previous Union legislation in this field in place since 1995. That Union's legal regime is based on the pre-existing structure of the Paris Memorandum of Understanding on Port State Control, an international organisation created in 1982. As regards Member States, Directive 2009/16/EC effectively brings the procedures, tools and work of the Paris MOU within the scope of Union law.

(3) The PSCC of the Paris MOU meets annually and during its meetings decides on a number of agenda items necessary for the operation of Directive 2009/16/EC.

(4) The internal rules of the Paris MOU provide for 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) 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.

(5) This Decision should cover the period 2020-2024.

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[6] 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).

(6) The Union's position is to be expressed by the Member States of the Union, the maritime authorities of which are members of the PSCC of the Paris MOU, acting jointly.

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf in the annual meeting of the Port State Control Committee ('PSCC') of the Paris Memorandum of Understanding on Port State Control ('Paris MOU') is set out in Annex I to this Decision.

Article 2

The year-to-year specification of the position to be taken on the Union's behalf in the annual meetings of the PSCC of the Paris MOU is set out in Annex II to this Decision.

Article 3

The position referred to in Article 1 shall be assessed and, where appropriate, revised by the Council upon a proposal from the Commission, at the latest for the annual meeting of the PSCC of the Paris MOU in 2024.

Article 4

The position referred to in Article 1 shall be expressed by the Member States of the Union that are members of the PSCC of the Paris MOU, acting jointly.

Article 5

This Decision is addressed to the Member States.

Done at Brussels,

For the Council
The President