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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: COUNCIL DECISION on the position to be taken on behalf of the European Union within the Port State Control Committee of the Paris Memorandum of Understanding on Port State control as regards the Russian Federation's membership of the Paris Memorandum of Understanding

COUNCIL DECISION (EU) 2022/...

of ...

**on the position to be taken on behalf of the European Union within the
Port State Control Committee of the Paris Memorandum of Understanding on
Port State control as regards the Russian Federation's membership of
the Paris Memorandum of Understanding**

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. The Paris MOU has 27 maritime authorities as members, namely Belgium, Bulgaria, Canada, Croatia, Cyprus, Denmark, Estonia, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Latvia, Lithuania, Malta, the Netherlands, Norway, Poland, Portugal, Romania, the Russian Federation, Slovenia, Spain, Sweden and the United Kingdom. The Union is not a member of the Paris MOU.
- (2) Directive 2009/16/EC of the European Parliament and of the Council¹ sets out the Union's legal regime on port State control, reformulating and reinforcing the previous Union legal acts in this field, in place since 1995. The Union's legal regime on port State control is based on the Paris MOU.
- (3) As regards the Member States, Directive 2009/16/EC effectively brings the procedures, tools and activities of the Paris MOU within the scope of Union law. By virtue of that Directive, certain decisions taken by the Port State Control Committee ('PSCC') established pursuant to Section 7.1 of the Paris MOU become binding on the Member States.

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).

- (4) In its conclusions of 24 February 2022, the European Council condemned in the strongest possible terms the Russian Federation's unprovoked and unjustified military aggression against Ukraine. In its conclusions of 24-25 March 2022, the European Council declared that the Russian Federation's war of aggression against Ukraine grossly violates international law and demanded that the Russian Federation immediately stop its military aggression in the territory of Ukraine.
- (5) In the context of the Russian Federation's military aggression against Ukraine, on 14 March 2022 the Paris MOU Secretariat received a letter from the Ukrainian Minister of Infrastructure. In that letter, the Paris MOU was requested not to unduly detain Ukraine-flagged vessels following port State control inspections, to exclude the Russian Federation from the Paris MOU and not to recognise certificates issued on behalf of the Russian Federation's Maritime Administration.
- (6) In relation to the request not to unduly detain Ukrainian vessels, on 2 March 2022 the Paris MOU issued PSCircular 101 (Guidance on repatriation of seafarers due to situation in Ukraine) which addresses this matter. PSCircular 101 informs member authorities that there is a need to apply flexibility under the current circumstances, including with respect to seafarer repatriation, the Maritime Labour Convention, 2006 certificates issued under the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 and medical certificates. If developments make it necessary, the Paris MOU can consider further adjustments to PSCircular 101. This position should be communicated to the Ukrainian authorities.

- (7) In relation to the request regarding the membership of the Russian Federation of the Paris MOU, it should be noted that the Russian Federation has been excluded from access to and use of the THETIS port State control targeting tool and inspection database provided for under Article 24 of Directive 2009/16/EC. This means that the Russian Federation's participation in the work of the Paris MOU has already been severely limited and without access to that database the Russian Federation cannot effectively discharge its obligations under the Paris MOU.
- (8) Neither the Paris MOU nor any of the policy instructions contain any procedure or mechanism to remove members from the Paris MOU. Apart from exclusion from the Paris MOU, an alternative is to suspend membership until further notice. While the immediate effect of suspension would be similar to exclusion, it is less permanent. However, no provision has been included in the Paris MOU for suspension either. Suspension would allow for further consideration of the need for complete exclusion from the Paris MOU and it could be reversed if the circumstances change.

- (9) The Union, as a global actor, is at the centre of efforts within the United Nations (UN) and other multilateral fora and processes to hold the Russian Federation accountable for their unprovoked and unjustified military aggression against Ukraine, to stop the military aggression in the territory of Ukraine and to ensure a return to full respect for the sovereignty, independence, and territorial integrity of Ukraine within its internationally recognised borders. The Russian Federation’s unprovoked and unjustified military aggression against Ukraine is a serious violation of Article 2(4) of the UN Charter, which prohibits the threat or use of force against the territorial integrity or political independence of any State.
- (10) In light of the above, in view of the gravity of the situation and for as long as the Russian Federation does not abide by the principles of the UN Charter, nor complies with its international obligations, it is appropriate to suspend the Russian Federation’s Membership of the Paris MOU in accordance with Article 62(3) of the Vienna Convention on the Law of Treaties.
- (11) Cooperation within the PSCC with other third country members of the Paris MOU, namely Canada, Iceland, Norway and the United Kingdom, is essential in reaching a decision to suspend the Russian Federation’s membership of the Paris MOU.

- (12) In relation to the request not to recognise certificates issued by the Russian Federation's Maritime Administration, such certificates are issued in accordance with international conventions. As the Russian Federation remains a member of the International Maritime Organisation, the Paris MOU does not have competence to derecognise such certificates. This position should be communicated to the Ukrainian authorities.
- (13) It is appropriate to establish the position to be taken on the Union's behalf within the PSCC as regards the Russian Federation's membership of the Paris MOU as the decisions could affect Union law, namely Directive 2009/16/EC.
- (14) The Union's position should be expressed by the Member States of the Union that are members of the Paris MOU, acting jointly in the interest of the Union,

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf within the Port State Control Committee ('PSCC') of the Paris Memorandum of Understanding on Port State Control ('Paris MOU') as regards the Russian Federation's membership of the Paris MOU shall be the following:

- (a) to agree with the approach set out in paragraph 5 of PSCC document PSCC55/11.1 regarding the detention of Ukrainian flagged vessels in Paris MOU ports;
- (b) to actively support the suspension of the Russian Federation from the Paris MOU;
- (c) to strive to reach consensus between Paris MOU members other than the Russian Federation on the suspension of the Russian Federation from the Paris MOU until further notice;
- (d) to agree with the approach set out in paragraph 7 of PSCC document PSCC55/11.1 regarding the derecognition of statutory certificates issued by the Russian Federation.

Article 2

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

Article 3

This Decision shall enter into force on the date of its adoption.

Done at ...,

For the Council

The President
