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General Secretariat

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### WORKING PAPER

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#### **MEETING DOCUMENT**

From:	General Secretariat of the Council
To:	Working Party on Shipping
N° prev. doc.:	ST 12499/18
N° Cion doc.:	ST 9123/18 + ADD 1
Subject:	Proposal for a Directive of the European Parliament and of the Council amending Directive 2008/106/EC on the minimum level of training of seafarers and repealing Directive 2005/45/EC - Presidency compromise proposals for recital 3a and Article 19(2)

Delegations will find attached the Presidency compromise proposal for recital 3a and for Article 19(2), as presented at the Shipping Working Party meeting on 9 October 2018.

For the sake of clarity and ease of reference, a reference to the relevant court case has been added (available in 10 official languages in EUR-Lex) and the whole of Article 19(2) has been reproduced so as to put the Presidency compromise proposal in its right context.

Presidency compromise proposal for recital 3a and Article 19(2)

Recital 3a:

"(3a) It is one of the objectives of the common transport policy in the field of maritime transport to facilitate the movement of seafarers within the Union. Such movement contributes, among other things, to making the Union maritime transport sector attractive to future generations to avoid the European maritime cluster encountering a shortage of competent staff with the right mix of skills and competencies. The mutual recognition of seafarers' certificates issued by Member States is an essential element necessary to facilitate the movement of seafarers. **In the light of the right to good administration, Member States' decisions in respect of acceptance of certificates of proficiency issued to seafarers by other Member States for the purposes of issuing national certificates of competency should be based on reasons ascertainable by the seafarer concerned.**"<sup>1</sup>

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<sup>1</sup> See Case C-340/89, Irène **Vlassopoulou** v Ministerium für Justiz, Bundes- und Europaangelegenheiten Baden-Württemberg, paragraph 22:

"22. Finally, it must be pointed out that the examination made to determine whether the knowledge and qualifications certified by the foreign diploma and those required by the legislation of the host Member State correspond must be carried out by the national authorities in accordance with a procedure which is in conformity with the requirements of Community law concerning the effective protection of the fundamental rights conferred by the Treaty on Community subjects. It follows that any decision taken must be capable of being made the subject of judicial proceedings in which its legality under Community law can be reviewed and that **the person concerned must be able to ascertain the reasons for the decision taken in his regard** (see the judgment in Case 222/86 UNECTEF v Heylens, cited above, paragraph 17)."

Article 19(2):

"2. A Member State which intends to recognise, by endorsement, the certificates of competency or the certificates of proficiency referred to in paragraph 1 of this Article issued by a third country to a master, officer or radio operator, for service on ships flying its flag, shall submit a request to the Commission for the recognition of that third country, accompanied by a preliminary analysis of the third country's compliance with the requirements of the STCW Convention by collecting the information referred to in Annex II to this Directive. In the preliminary analysis, further information on the reasons for recognition of the third country shall be conveyed by the Member State in support of its request.

Following the submission of the request by a Member State, a decision for initiating the recognition procedure for that third country shall be taken by the Commission by means of an implementing act. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 28(2) **within a reasonable time with due regard to the time limit set out in paragraph 3.**

When a positive decision for initiating the recognition procedure has been adopted, the Commission, assisted by the European Maritime Safety Agency and with the possible involvement of the Member State submitting the request, shall collect the information referred to in Annex II to this Directive and shall carry out an assessment of the training and certification systems in the third country for which the request for recognition was submitted, in order to verify whether the country concerned meets all the requirements of the STCW Convention and whether appropriate measures have been taken to prevent issuance of fraudulent certificates."

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