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WORKING DOCUMENT

From:	General Secretariat of the Council
To:	Working Party on Shipping
N° Cion doc.:	10126/23 ADD 1-4
Subject:	Proposal for a Directive of the European Parliament and of the Council amending Directive 2009/16/EC on port State control - Comments from Belgium

Delegations will find, in Annex, comments from **Belgium** on the above mentioned subject.

Once again, we would like to commend the tireless approach of the Presidency in providing us with compromise texts no matter the tight deadlines. In this proposal, we are happy to see so many of our remarks being incorporated. We are particularly happy with the changes to Art. 5.2 and 7.1. Nevertheless, we remain of the opinion that some form of Art. 9 and the 72h notification should remain in the directive, regardless of the difference with the PMOU. Lastly, we propose some suggestions for annex II (dated 18/10, we place a scrutiny reservation on the proposed changes after the SWP of 18/10).

RECITALS

(9) Correct phrasing is “to not carry out”

(10) Linked to Art. 9: we fully support FR’s approach to preserve the 72h notification by the ship but drop the checklist in annex. As FR stated: the important part is that a push-notification is provided for both the ship and the port State that an expanded inspection might happen soon. This is necessary for the Administration, especially given that often two PSCOs are needed to complete the inspection. We do not think Thetis’ notification is sufficient. Just like FR, we do not think there to be big administrative costs to simply give a 72h notification before arrival.

(11) Support GHG-related addition. However, lines 4-5 say that “the safety profile of vessels calling to EU ports has improved considerably”. This is not the case, detention rate in the EU has risen significantly since COVID, from 2.9% to 4.1%. This should probably be amended or simply left out. We understand the argument by the Commission to remain positive about the safety of ships in the Union, but we believe retaining this text could lead to difficulties in the future.

ARTICLES

2.1(d) Just like with protocols, amendments are considered in the first paragraph of the article. No need to mention Manila amendments. Also, these amendments date back to 2010, and a new comprehensive revision will happen soon. We therefore suggest including the wording “as amended” instead.

2.6bis We support the definition of “visit”, as we also believe it should be interpreted separately from “inspection”.

3.4a As long as it is separate from the PMOU, we support the voluntary guidelines. We can agree with the proposals to include the wording “parallel”.

5.2a Language may lead to misinterpretation. The way we read it, a number exceeded by more than a 150% would mean 250% of the original number. Instead, the text might say: “**Those inspections of ships carried out by Member States exceeding a 120% of their annual inspection commitment shall not be taken into account in the calculation of the annual inspection commitment of Member States parties to the Paris MOU.**” We do support the change from 150 to 120%.

7.1 We do strongly support the deletion of the words “on Priority I ships”, we fully agree with their analysis safeguarding the unpredictable amount of Priority I ships to be had in a year. However, we believe that the difference for missing Priority I ships is too large between MS. MS that have less Priority I ships than their fair share can miss 10%, while MS that have more Priority I ships can miss 40%, which is almost half. We would agree with most of the other MS and retain the original 30%.

8.2d Directive should be consistent in using “pandemic situations” or “pandemics”. We are scrutinizing the different options on the definition of force majeure.

9 See recital (10).

10 We support the editorial comments by Finland.

20.1 This was already the interpretation in Belgium, so OK.

24.2 To reiterate our original position, we strongly support the change from “a reasonable time frame” to “three hours from the departure”, but we would like to see the arrival as well. The text might say: “...within three hours from the departure and the arrival to the...”.

24a.2 This article might have become a little unclear through with the changes along the different compromises. The text might say: “2. The Member States may opt to use the harmonised reporting

interface, validation tool and central repository/database for electronic versions of the statutory certificates to facilitate the transition to electronic certificates.”

Additionally, the “central repository/database for electronic versions of the [statutory] certificates” had been deleted in the first paragraph. We are therefore unsure about what the second paragraph refers to. MS cannot use them if they have not been developed.

30 We agree with deleting the paragraph on QMS, as it has been rendered redundant.

ANNEXES

ANNEX I.I.A(d)(iii) We believe there has been an error in the writing of this part. It does not say how the ships described in this paragraph shall be considered. We believe they should be considered as “shall be considered as posing a lower risk”. This paragraph (iii) might therefore also be included within paragraph (ii). The combined text might say: “Ships which have been delivered certificates from recognised organisations having a high performance level in relation with their detention rates within the Community and the Paris MOU region, as well as Ships with certificates issued by organisations recognised under the terms of Regulation (EC) No 391/2009, shall be considered as posing a lower risk.”

ANNEX II – row 6 We would argue to leave this parameter unaltered. The duplication of the deficiencies mentioned in parameter row 9 is wanted, as it exactly this that increases the weight of the environmental deficiencies. The current version of row 9 is, in our view, so that only a very small number of ships would qualify to comply with those conditions. Not only are more than three (therefore four) environmental deficiencies rare enough as it is, but environmental deficiencies being also ground for detention aren’t very common either. We therefore believe no exclusion is necessary and would support the duplication.

ANNEX II – row 9 With the current phrasing, only a very small number of ships would comply with the conditions of having more than three (thus four) recorded deficiencies related to the environmental conventions, as well as having one of those be ground for detention **in one inspection**. Four environmental deficiencies alone are rare. We therefore propose a slightly different wording:

9	Number of deficiencies related to MARPOL, AFS, BWM, CLC 92, Bunkers, and Nairobi and Hong Kong Conventions recorded in each inspection within previous 36 months	Deficiencies	>3 that were ground for detention	1
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