



Council of the European Union
General Secretariat

Brussels, 02 February 2024

WK 1743/2024 INIT

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MEETING DOCUMENT

From:	General Secretariat of the Council
To:	Working Party on Shipping
Subject:	Proposal for a Directive of the European Parliament and of the Council amending Directive 2009/16/EC on port State control - Presidency non-paper

In view of the Shipping Working Party meeting on 29 January 2024, delegations will find attached a Presidency non-paper accompanying the four-column document 16968/3/23 REV 3.

Presidency Non-paper**INTRODUCTION**

Technical exchanges between the Council and the European Parliament (EP) continued on 31 January. Following internal consultations, the Parliament confirmed its agreement with the Council text on a few more lines: 25, 38a-b (definition of inspector), 41 (scope for fishing vessels), 49-51, 53, 60, 60b-e (missed inspections), 90f (right of appeal to detention or ban), 145a and 190d-bc which are now greened in the 4-column document.

MAIN OUTCOMES

1. In respect to the technical issues (B points):

- Line 70 – 2 inspectors for expanded inspections – the EP understands the practical difficulties that determined the Council to introduce the wording ‘**as far as possible**’ in the text; however, they consider that it is not sufficiently precise and leaves too much discretion to Member States. For this reason, the exemption to the general rule (of having 2 inspectors for such expanded inspections) should be better delineated.

The Presidency noted the objections of the delegations to the previous compromise proposal, and provides a new text in the 4-column document. This text keeps the wording “as far as possible” as per the general approach, but adds the condition that any derogation from the principle of 2 inspectors should be recorded in the inspection database. A new recital (12c) would be added containing a non-exhaustive list of possible reasons for applying this derogation.

- Lines 21b, 68b, 77, 81a and 87 – the Commission indicated that, following further examination of the issue, the correct terminology used by Paris MoU is ‘medium performance list’ and not ‘standard performance list’. The text was updated.

2. The discussions then focused on the more political issues (C points):

- Line 68, 190 – environmental parameters as grounds for detention – the EP considers the addition of the Council as particularly important; this new condition makes the environmental factors become insignificant, and this is not acceptable for the EP. For this reason, it requested the deletion of the final part of the paragraph: “and whether these deficiencies are grounds for detention”. COM has similar views and reminded both co-

legislators of the information they have received on this topic during the examination of the proposal.

The Presidency acknowledges that the reference to detentions in this line could significantly limit the impact of the environmental parameters. For this reason, it proposes to delete “and whether these deficiencies are grounds for detention” and revise Annex II. To aid in setting the threshold for the deficiencies in line 9 of the table in annex II, the Commission provided following information on the impact each threshold would have compared to the SRP in the current directive over the period 2017-2019:

Threshold	>3	>2	>1
Absolute number of ships which would receive a weighting point toward the high risk category	114	401	1475
Percentage of ships which would receive a weighting point toward the high risk category	0,6%	2%	7%
Absolute number of additional ships in the high risk category	5	24	48
Percentage increase in the number of ships falling in the high risk category	~1%	~3%	7%

The Presidency suggests to set the threshold at >2 deficiencies, which would mean that there is a clear incentive to avoid environmental deficiencies whilst limiting the impact on the Port State administrations of the Member States. The number of ships for which an inspection would be mandatory after 6 months, instead of 12 months, since the previous inspection would increase by 24. In the period between 2017 and 2019, 20 165 individual ships have been inspected.

This compromise would be conditional on the EP agreeing to delete all references to the (potential) inclusion of the CII in the Ship Risk Profile (lines 21a, 139a and annex II).

- Lines 68, 190 and 190a – Ship Risk Profile – Both the EP and the Presidency agreed that the positions of both institutions are very close, with the exception of the line “and at least one of these is ground for detention” (as discussed supra). Both the Presidency and COM pointed out that the inclusion of regulation (EU) 1257/2013 in line 190a is mostly superfluous and that the scope for Port State Control should only be international conventions. The EP agreed to review the necessity of their proposed amendment internally.
- Lines 20, 21 – Fit for 55 – the EP sees this as an important political message, given the significant efforts the Union is doing to reduce emissions and impact of climate change. EP took good note of the arguments presented by the Presidency on the suitability of including all these elements in this legislative proposal during the ITM. However, the more condensed wording they provided after the meeting referencing the Fit For 55 package in general, not specifying the specific contribution of this revision (cfr. Infra) to its objectives is still problematic for Council.
- Line 19a – The EP Legal Service noted that wording prescribing positions that should be taken in the Paris MoU should not be included in legislative texts. The EP agreed to reflect on the proposed recital.
- Line 38d – definition of inspection – The EP remarked that not all inspections are equally extensive in scope, and thus that not all inspections are “overall verifications”. Defining an inspection this way could be misleading. The Presidency proposes to remove the word “overall”.
- Lines 23 and 24 – Seafarers welfare and working conditions – The presidency conferred to the EP its position that referencing STCW-F, C188 and the CTA in this directive is inappropriate as they are not in the scope, that the language used on detention for repeated breach of MLC is already in the directive and that the proposed amendment on line 24 has no link with the directive and is in part factually incorrect. The EP agreed to retract the amendments, but would provide a new, more condensed version combining both recitals in one.
- 131 – Conformity check – The Presidency and the EP noted that this is a horizontal issue in the Maritime Safety Package. The Presidency proposes to have a horizontal approach, and is exploring new wording that would be applied on all files of the Maritime Safety Package currently being discussed.

- Line 135 – Implementing acts – The Presidency explained that the initial COM proposals referenced several non-existing articles. The EP and COM agreed to review the article.
- Lines 14b-d and 139b – Ratification of fishing conventions – The Presidency expressed the firm opposition from Council to include any calls for ratification of the listed conventions. The EP noted that these proposals were received from the PECH Committee, and that they would liaise with their colleagues in that Committee to see if an alternative wording could be proposed.
- Line 43 – Parallel PSC regime for fishing vessels – The Presidency clarified that the proposed EP amendment is factually incorrect as the entry into force of the Cape Town Agreement does not lead to a mandatory PSC regime for fishing vessels in the Union, and the EP agreed to retract it. The discussion then focused on whether implementing acts or guidelines would be the appropriate instrument for establishing a voluntary PSC regime for fishing vessels. The EP expressed its fear that guidelines would mean that participants in such a regime would selectively apply the rules of such a regime, leading to an unharmonized approach. COM clarified that it does not see this as a problem, as the voluntary nature would mean that all participants are willing to have a harmonized approach. The Presidency noted that implementing acts cannot be used to establish a full parallel PSC regime as it would include similar measures to the directive, thus not adding to the directive but supplanting it. The EP agreed to review internally.

Lines 20-21

(11) Over the last decade and despite increases in the number of vessels calling to EU ports including the short sea shipping transport of goods between main ports in the EU Member States and ports situated in geographical Europe or in non-European countries on the Mediterranean and the Black Sea, the safety profile of vessels calling to EU ports has improved considerably. Port State control inspections are being increasingly used to enforce environmental legislation such as in relation to sulphur emissions or the safe and environmental scrapping of ships. *In line with its commitments under the Paris Agreement¹, adopted on 12 December 2015 under the United Nations Framework Convention on Climate Change, the Union should continue to exert its leadership in a sector that is regulated both at European and international level and is still highly dependent on fossil fuels.* The “Fit for 55 package” aims to reduce the EU’s total green-house gas emissions by 55% by 2030, paving the way to climate neutrality by 2050 and maritime transport is expected to contribute to this effort. However, the ship risk profile devised prior to 2009 had different priorities and is not fully adapted to focus the inspection effort on the least environmentally performing vessels.

¹. [1a OJ L 282, 19.10.2016, p. 4.](#)

(12) On this basis, the ship risk profile should be updated to reflect environmental issues by attaching more importance to the environmental performance, including the operational carbon intensity of the ships

being inspected as well as to environmental related deficiencies and detentions. Port State control - along with support to circular economy as well as low and zero emission port industries - can play an important role in ensuring that 'Fit for 55' measures that apply to the maritime sector are effective through the imposition of more numerous inspections on polluting ships. While safeguarding the competitiveness of the sector this will help promote the use of on-shore power supply or any other energy saving technology which reduces greenhouse gas emissions and air pollutants in ports. This, along with the support to port industries, small and medium enterprises and start-ups specialised in circular economy and investment in renewable, low and zero emission alternatives, will contribute to the achievement of the Union's climate neutrality goals.