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## 2 **Montenegro on the path to Paris MoU accession:** 3 **Towards achieving sustainable shipping industry**

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8 **Abstract:** In order to ensure the sustainability of the shipping industry and marine ecosystem of  
9 Montenegro, it is necessary that Montenegro becomes a full member of the Paris Memorandum of  
10 Understanding (Paris MoU) on Port State Control. The reasons for doing so are numerous: the full  
11 adoption of standards stipulated by the Memorandum in relation to ship control; continuous  
12 keeping the pace with and development of new standards in compliance with turbulent changes in  
13 the maritime industry and operation (including the increasing scope of maritime transport);  
14 decrease in the number of detained ships which meet the requirements stipulated in international  
15 conventions and elimination of substandard ships in perspective; prevention of environmental  
16 pollution, sea and port incidents. This justified endeavour is supported by the fact that Montenegro  
17 is one out of two countries in Europe that are not the full members of the Paris MoU. Additionally,  
18 in this context it is necessary to emphasise the fact that the marine ecosystem of Montenegro makes  
19 an integral part of the world ocean. Accordingly, the improvement of the quality of national  
20 legislation which is compliant with international requirements is an imperative which has positive  
21 implications on the regional and global sustainability.

22 **Keywords:** port state control; Paris MoU; Montenegrin accession; sustainable shipping.  
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### 24 **1. Introduction**

25 The world ocean absorbs carbon-dioxide from the atmosphere, provides one half of oxygen  
26 needed to the living world and food for approximately three billion people across the world. It  
27 abounds by other numerous resources used by people, regulates climate, over 90% of the world  
28 transport in terms of scope and over 60% of transport in terms of value takes place by the sea [1,2].  
29 Throughout history, the sea has always played an extremely important role for mankind both as a  
30 space of communication and as an inexhaustible source of food, which has been evidenced by  
31 numerous historical sources [3]. Some countries link practically all their economic activity to the sea  
32 and marine resources. Throughout history, the sea has been the *condicio sine qua non* of the  
33 development of numerous civilizations and numerous wars waged in order to gain access to the  
34 sea. On the other hand, the world ocean has been exposed to numerous threats in terms of  
35 sustainability due to increasingly dramatic climate changes, deacidification of seas-oceans, increase  
36 in the sea level, volatile catch of fish, numerous natural and human-induced disasters. Human-  
37 induced disasters include, inter alia, the problems related to the so-called "sub-standard ships" i.e.  
38 ships which do not fulfill the standards stipulated by international Conventions, which sail by world  
39 oceans and frequently cause maritime accidents. Clearly, maritime accidents result in great losses  
40 for shipping industry and overall society since they cause the loss of human lives, ships, cargo and  
41 pollution of marine ecosystem [4].

42 In order to ensure the sustainability of the world ocean, the mankind should work on prevention  
43 of these threats by acting proactively in all spheres of maritime affairs, including the legal  
44 framework toward the adoption of preventive regulations. It would be incorrect to say that the  
45 legislation in this field does not exist on a global basis. However, its full implementation in specific

46 regions is in delay. This, in turn, requires the need for increased responsibility of countries in terms  
47 of coordinated decrease of shipping environmental impact [5].

48 Finding of optimal legal solutions creates a favorable ground for the sustainability of shipping  
49 industry and marine ecosystem in extremely dynamic present conditions [6]. The legislative  
50 framework necessitates positive changes which would accompany socio-economic needs and  
51 dynamics, while observing the principle of sustainability. Additionally, efforts should be made to  
52 develop inclusive strategies for the successful management of seas for today and the future.

53 IMO, as the overarching organization which is in charge of, *inter alia*, protection of sea against  
54 pollution, adopted numerous international and regional regulations in this field [7]. Of particular  
55 importance are those regulations which put an emphasis on sustainable shipping industry and  
56 inspection of faults in ships. The Paris Memorandum of Understanding, which is in the focus of this  
57 work, is one of regional Agreements i.e. legal instruments for identification and resolution of issues  
58 in shipping industry as well as the activities related to incidents which can negatively affect the  
59 marine ecosystem. A special attention in this work has been devoted to this Memorandum from  
60 the aspect of necessity of ensuring the full membership of Montenegro in the Memorandum in the  
61 recent future - Montenegro being one out of two countries in Europe which have still not become  
62 full members, thus making discontinuity in insurance of sustainable shipping industry on the  
63 European and global scale.

64 The first part of the work provides a brief overview of the development of the legal framework  
65 of Montenegro in two segments, following its constitution as an independent state. One segment  
66 relates to navigation safety and the other relates to environmental protection including marine  
67 environment. Additionally, the work lists regional and international Conventions adopted by  
68 Montenegro in these fields. The second part of the work describes the Paris MoU in terms of its tasks  
69 and manner of functioning. The third part of the work is devoted to activities of Montenegro toward  
70 the full membership, as well as to certain impediments and successes on this path. Finally, the work  
71 provides concluding considerations and guidelines for further research.

## 72 **2. Creation of legislative framework of Montenegro in the function of sustainable shipping** 73 **industry**

74 Following turbulent political changes on the territory of the former Yugoslavia [8], Montenegro  
75 recovered its statehood in 2006, established its legal system [9], and entered international scene as  
76 an independent state and the subject of international law and obligations. The establishment of the  
77 new legislative framework implied quite complex legal reforms for Montenegro in all fields of  
78 society, with special reflection on maritime legislation including the protection of marine ecosystem  
79 and insurance of sustainability.

80 In order to understand properly the maritime legislation of Montenegro which is in force at  
81 present, we provide below the brief overview of the legislation which existed in the past, while  
82 Montenegro was a part of the Socialist Federal Republic of Yugoslavia – (SFRY 29/11/1945 –  
83 27/04/1992), then the Federal Republic of Yugoslavia (28/04/1992 – 4/02/2003) and, finally, the State  
84 Union of Serbia and Montenegro (4/2/2003 – 5/06/2006). This legal heritage had a significant  
85 influence on the creation of maritime legislation of Montenegro.

86 Forty years ago, the overall field of the maritime law on the territory of the former Yugoslavia  
87 was systematised and codified by the Law on Maritime and Inland Navigation (LMIN) which was  
88 adopted in 1977 [10]. This Law, in qualitative and quantitative terms, exceeded the scope of  
89 “ordinary” laws. Given that this Law regulated the overall field of maritime law, it is clearly a very  
90 large legal text comprising 1.078 Articles [11]. We can freely say that this was the most voluminous  
91 legal codifying act adopted on the territory of the former SFRY. In 1992, when SFRY dissolved, this  
92 Law was transposed in its totality to the legislation of the newly set up Federal Republic of  
93 Yugoslavia [12]. This period was characterised by political unrests, which was largely reflected on  
94 the maritime-legal regulations. Namely, from 1992, due to the sanctions imposed by the  
95 international community and dissolution of the state, the Federal Republic of Yugoslavia did not  
96 keep the pace with the development of international law. International conferences were not

97 attended and, accordingly, no Convention in the field of maritime law was either signed or ratified  
98 during the period of sanctions. Although expert-scientific groups were set up with the task to  
99 update the LMIN, the task remained unfinished. Following this discontinuity caused by sanctions  
100 and civil war, the old-new LMIN [13] was adopted on 5 March 1998. However, it did not incorporate  
101 any update which was necessary despite the fact that certain international Conventions were  
102 adopted in the meantime.

103 Following the recovery of its statehood in 2006, Montenegro created its legislative framework in  
104 the field of maritime affairs as an independent and sovereign state. Pursuant to the Decision  
105 Promulgating Independence [14], Montenegro transposed into its national legislation the  
106 unmodified LMIN which was in force in the State Union of Serbia and Montenegro. The question  
107 which arose at the very beginning was how to regulate the subject of maritime law conceptually: to  
108 adopt a separate law on maritime navigation and a separate one on inland navigation or to make  
109 the existing LMIN compliant with conventions in those aspects where it was not harmonised, or to  
110 adopt new laws that conceptually differ from the existing LMIN while treating the differences noted  
111 in practice.

112 Unlike the former member states of Yugoslavia, Croatia and Slovenia, which started the  
113 development of maritime-legal framework by separating maritime and inland navigation and  
114 adopted separate laws in these fields [15,16], Montenegro opted for a different approach. Namely,  
115 Montenegro became oriented to adoption of several laws which separately regulate specific fields  
116 of maritime law. The provisions of LMIN which related to the subject in question repealed with  
117 effect from the date of entry into force of separate laws. The reasons for such approach of the  
118 Montenegrin legislator should certainly be traced in the excessive volume and extensive systematics  
119 of LMIN and, then, the fact that the subject of maritime law had been regulated by separate pieces  
120 of legislation in many coastal states in the world. The reasons of legal-technical nature should be  
121 added to this. More precisely, from the aspect of legal procedure, it is much easier to adopt and  
122 amend by-laws through which the adopted laws are implemented, than to adopt and amend the  
123 laws themselves.

124 In compliance with the above, Montenegro adopted the following laws: the Law of the Sea [17]  
125 and Law on Yachts [18] in 2007, Law on Ports [19] in 2008, Law on Marine Fisheries and Mariculture  
126 in 2009 [20], Law on the Prevention of Sea Pollution from Vessels [21], Law on Maritime Navigation  
127 Safety [22] and the last adopted Law on Safety Protection of Ships and Ports [23] in 2016.

## 128 2.1. Montenegrin legislation – *de lege lata*

129 In the context of this work, of particular importance are the Law on Maritime Navigation Safety  
130 and the Law on the Prevention of Sea Pollution from Vessels as essential laws establishing the legal  
131 framework for safe navigation and ensuring prevention of sea pollution from vessels in the function  
132 of sustainability of the marine ecosystem of Montenegro. The Law on Maritime Navigation Safety  
133 regulates all segments of safety at sea (ship safety, cargo safety, occupational safety and navigation  
134 safety) with the aim of ensuring the avoidance of maritime accidents and, in relation to this,  
135 pollution of the sea and marine ecosystem. Particularly important is Part XIV entitled “Inspection”  
136 (Article 183 to 198) which regulates, *inter alia*, the performance of port state control of foreign ships  
137 and their fleets calling at the ports or anchorages of Montenegro by the Montenegrin Port State  
138 Control Officers (PSCO), with the view of protecting the sea and improving safety [22]. On the other  
139 hand, the Law on the Prevention of Sea Pollution from Vessels endeavours to prevent, decrease and,  
140 to the greatest possible extent, eliminate the pollution of marine environment. The Law regulates  
141 the following: materials prohibited from being discharged into the sea from vessels; measures and  
142 communication procedures to be observed while ships enter and leave the ports of Montenegro; the  
143 construction, equipment and conditions to be fulfilled by vessels; conditions and manner of  
144 packing of harmful and polluting substances; conditions and manner of discharging of sewage from  
145 ships; discharge of communal waste from ships; pollution of air from ships; ballast water (measures  
146 and procedures for their replacement, replacement control); manner of waste discharge into the sea  
147 and waste burying; waste reception and management; responsibility and compensation of damage

148 etc. [21]. In April 2011, Montenegro adopted the *National Plan for Emergent Reaction in the Event of*  
149 *Sea Pollution from Vessels*. This Plan specifies the manner of work and action, tasks and  
150 responsibilities, measures and procedures aimed at prevention, decrease and remedy of  
151 consequences of sea pollution from vessels. The purpose of the Plan is to ensure a timely and  
152 efficient reaction to maritime accidents of sea pollution from vessels at the national level. The Plan  
153 applies in the event of a maritime accident which caused or may have caused pollution in the  
154 maritime areas, at the sea bed or below the sea bed of Montenegro, which includes internal waters  
155 and territorial sea [24]. Protection and preservation of maritime environment have been regulated  
156 by other Laws of the Montenegrin legislation. In this regard, particularly important are Article 2  
157 and Article 19 paragraph 2 of the Law of the Sea [17], Article 26 paragraph 2 of the Law on Ports  
158 [19] and Articles 33 and 42 of the Law on Yachts [18].

159 In addition to the mentioned Laws in the function of sustainable development of the shipping  
160 industry and marine ecosystem, it is important to mention the Law on Environment from 2008 [25]  
161 which set the grounds for implementation of environmental protection policy in Montenegro based  
162 on the principles of sustainable development. The Laws which were implemented on the territory  
163 of the former Yugoslavia prior to this Law were the following: The Federal Law on the  
164 Fundamentals of Environmental Protection from 1988 [26], Republic Law on Environment from  
165 1996 [27], Law on Nature Protection from 1977 [28]. These Laws only dealt with protection of marine  
166 environment.

167 After a multi-annual implementation of the Law on Environment from 2008, the need arose to  
168 amend the Law and to introduce the new, improved legal solutions. In 2016, Montenegro adopted  
169 the new Law on Environment which is, at the moment, an overarching law in this field [29]. This  
170 Law governs the principles of environmental protection and sustainable development, instruments  
171 and measures aimed at environmental protection, and other issues of importance for environment.  
172 Only few Articles of this Law relate to the sea as a segment of environment which has to be protected  
173 from pollution on a separate basis but also along with other segments of environment, taking into  
174 consideration their mutual relations and mutual influence. The Law particularly emphasises that a  
175 marine ecosystem is a marine environment which has to be preserved and protected in order to  
176 maintain biodiversity and ensure the diversity and dynamism of the processes which take place in  
177 the seas and oceans. The novelty of the Law is Article 29 which stipulates the obligation to adopt  
178 the *Strategy on Marine Environment Protection* as one of documents of sustainable development and  
179 environmental protection i.e. marine environment protection. The Strategy would define the  
180 principles, objectives, measures for accomplishment of a good environmental condition of marine  
181 environment and protection of its resources, and monitoring programme of marine environment  
182 [29]. Up to date, such Strategy has not yet been adopted in Montenegro.

## 183 2.2. *Adopted international Conventions*

184 Clearly, the described chronology of the development of the legal framework of Montenegro is  
185 inextricably linked with the preceding harmonisation with international Conventions. In terms of  
186 international-legal regulation of safety at sea and protection of marine environment, Montenegro  
187 ratified numerous Conventions which, pursuant to Article 9 of the Constitution of Montenegro,  
188 became an integral part of its internal legal order [30].

189 In terms of safety at sea, Montenegro is a signatory to the following Conventions: International  
190 Convention on Safety of Life at Sea (SOLAS 1974) as amended, Convention on Load Line (LL  
191 convention, 1966), International Convention on Tonnage Measurement of Ships (TONNAGE, 1969)  
192 International Convention on Standards of Training, Certification and Watch-keeping for Seafarers  
193 (STCW 1978) as amended, and Maritime Labour Convention (MLC 2006) [31].

194 In terms of sea pollution, Montenegro is a signatory to the following Conventions: UN  
195 Convention on the Law of the Sea (UNCLOS 1982); International Convention relating to  
196 Intervention on the High Seas in Cases of Oil Pollution Casualties (INTERVENTION 1969);  
197 Protocol to the International Convention relating to Intervention on the High Seas in Cases of  
198 Pollution by Substances other than Oil (INTERVENTION PROT 1973) as amended; Convention on



199 the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (LC 1972) as amended;  
200 International Convention for the Prevention of Pollution from Ships, 1973 (MARPOL, 1973) as  
201 modified by the Protocol of 1978 relating thereto, and its Annexes from I to VI (MARPOL 73/78);  
202 Convention concerning Minimum Standards in Merchant Ships, 1976.

203 In 2011, Montenegro ratified the following Treaties: International Convention for the Control  
204 and Management of Ships' Ballast Water and Sediments, 2004.; International Convention on the  
205 Control of Harmful Anti-fouling Systems on Ships, 2001; International Convention on Civil Liability  
206 for Bunker Oil Pollution Damage, 2001; International Convention on Civil Liability for Oil Pollution  
207 Damage, 1992.; International Convention on the Establishment of an International Fund for  
208 Compensation for Oil Pollution Damage, 1992.; Protocol of 2003 to the International Convention on  
209 the Establishment of an International Fund for Compensation for Oil Pollution Damage;  
210 International Convention on Liability and Compensation for Damage in connection with the  
211 Carriage of Hazardous and Noxious Substances by Sea,1996. [31].

212 In addition to national and international legislation, regional cooperation, as a link between the  
213 above specified levels of legal regulations, is important in terms of navigation safety and protection  
214 of marine environment. The advantage of the regional approach is that it takes into account the  
215 specificities of certain marine areas and the possibility of adjustment to the problems of a specific  
216 region and coordinated action, toward the accomplishment of objectives of common interest  
217 [32,33,34,36]. The ratification of the Paris MoU, as one of regional Agreements whose objective is,  
218 among the other things, protection of marine environment, is particularly important for Montenegro  
219 [37].

220 In the next part of the work, a special emphasis will be given to the Paris MoU and justified  
221 endeavours of Montenegro to become a full member of this regional alliance.

### 222 3. Paris MoU

223 In order to increase safety at sea, protect marine environment and improve working and living  
224 conditions of crew, The Paris MoU was adopted and signed in Paris on 26 January 1982. Its adoption  
225 was preceded by the accident of the ship *Amoco Cadiz* which occurred in March 1978 [4,35]. This  
226 accident drew a great political and public attention in Europe toward introduction of more strict  
227 rules related to maritime navigation safety and prevention of sea pollution from vessels.

228 The representatives of the International Maritime Organisation (IMO), International Labour  
229 Organisation (ILO), European Commission and fourteen ministers in charge of maritime safety  
230 agreed that the adoption of a legal instrument in the form of a regional Agreement on Cooperation  
231 of maritime administrations in the field of port state control (PSC) would greatly contribute to  
232 navigation safety.

#### 233 3.1. Concept

234 The concept of the Paris MoU is to ensure a unified and harmonised implementation of law on  
235 ship control through the establishment of a harmonised system of ship control. This system is to  
236 control whether and to what extent the ships calling at the ports of MoU region observe the existing  
237 international rules and standards. The ultimate objective of controls is to completely eliminate  
238 from ports those ships which do not meet the stipulated standards (substandard ships), thus  
239 ensuring navigation safety and marine environment protection [36,38,39,40]. In other words, it is  
240 essential to identify the ships which pose a great risk to navigation (of the Paris MoU region) and  
241 undertake certain corrective measures before permitting such ships to continue navigation.

242 Although the Paris MoU is the earliest regional Agreement on the Port State Control, this type  
243 of control is not new and has not been first introduced by the MoU. Instead, it has been envisaged  
244 by numerous existing international Conventions [41]. The generally adopted attitude is that the  
245 need for the establishment of PSC would not exist if the flag states behaved in a responsible manner  
246 to their ships and observed their commitments envisaged by international Conventions [35,42].  
247 Given that the mechanisms of control of flag state ships, classification entities and other participants  
248 in the chain of maritime safety turned out to be inefficient in practice in terms of struggle against

249 substandard ships, the active participation of port states in the control of foreign ships imposed  
250 itself like something inevitable [43,44].

251 The implementation of the Paris MoU started on 1 July 1982, when it entered into force. Since its  
252 entry into force, the number of Signatory States (State Parties) increased from fourteen to twenty-  
253 seven. Nowadays, it includes almost all coastal states of Europe (excluding Montenegro and Albania)  
254 as well as Canada and Russia, which geographically belong to the North Atlantic basin. Having  
255 been the first regional Agreement, it was a model based on which the other regions of the world  
256 adopted their own Agreements [33,34,41,45]. In addition to the Paris MoU, there have been another  
257 eight regional Agreements in the world at present, which regulate the port state control, such as:  
258 Latin American Agreement 1992; Tokyo MOU, 1993; Caribbean MOU, 1996.; Mediterranean MOU  
259 1997.; Indian Ocean MOU, 1998.; Abuja MOU, 1999; Black Sea MOU, 2000 and Riyadh MOU, 2004.  
260 The most dynamic and ongoing of these regimes are the Paris MoU and Tokyo MoU. In May 2017,  
261 joint ministerial conference of Paris and Tokyo MoU is held in Vancouver, Canada. The significance  
262 of this conference is reiteration of members' commitment to eliminate substandard shipping, protect  
263 the global navigational environment and safeguard working and living conditions for all seafarers  
264 [46,47].

265 In order to meet the requirements of safety and protection of marine environment stipulated by  
266 IMO and ILO instruments and EU legislation to the greatest possible extent, the text of the Paris  
267 MoU has been improved by introducing numerous amendments. In this sense, the consolidated  
268 version of the Paris MoU (9 Sections and 12 supporting Annexes) which entered into force on 1 July  
269 2017 and which at present includes 40 Amendments applies at present [48].

270 The Paris MoU does not introduce new rules or standards (requirements) to be met by ships.  
271 Instead, it establishes inspection (control) over application of the existing safety standards contained  
272 in numerous international Conventions i.e. "relevant instruments", as termed by MoU, adopted by  
273 IMO and ILO [41,49,50]. Section 2.1 Article 2 of the Paris MoU [48] provides a list of seventeen  
274 "relevant instruments": The International Convention on Load Lines, 1966; The Protocol of 1988  
275 relating to the International Convention on Load Lines, 1966 (LL PROT 88); The International  
276 Convention for the Safety of Life at Sea, 1974; The Protocol of 1978 relating to the International  
277 Convention for the Safety of Life at Sea, 1974; The Protocol of 1988 relating to the International  
278 Convention for the Safety of Life at Sea, 1974; International Convention for the Prevention of  
279 Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto, and as further  
280 amended by the Protocol of 1997; The International Convention on Standards of Training,  
281 Certification and Watchkeeping for Seafarers, 1978; The Convention on the International  
282 Regulations for Preventing Collisions at Sea, 1972 (COLREG 72); The International Convention on  
283 Tonnage Measurement of Ships, 1969 (TONNAGE 69); the Merchant Shipping (Minimum  
284 Standards) Convention, 1976 (ILO Convention No. 147); The Protocol of 1996 to the Merchant  
285 Shipping (Minimum Standards) Convention, 1976 (ILO Convention No. 147); The Maritime Labour  
286 Convention, 2006; The International Convention on Civil Liability for Oil Pollution Damage, 1969  
287 (CLC1969); Protocol of 1992 to amend the International Convention on Civil Liability for Oil  
288 Pollution Damage, 1969 (CLC PROT 1992); International Convention on the Control of Harmful  
289 Anti-Fouling Systems on Ships, 2001 (AFS2001); The International Convention on Civil Liability for  
290 Bunker Oil Pollution Damage, 2001 and The International Convention for the Control and  
291 Management of Ships' Ballast Water and Sediments, 2004. (BWM).

292 The listed IMO and ILO "relevant instruments" make the basis for performance of inspections,  
293 and the maritime authorities of Signatory States are bound to apply them (Section 2 under 2.2 and  
294 2.3) [48]. Additionally, ships entitled to fly the flag of a State which is not a Party to a "relevant  
295 instrument" will not have a more favorable treatment ("no more favorable treatment"). Such ships  
296 will not be exempted from inspection. Instead, the same procedures will apply to them as those  
297 stipulated for ships to which "relevant instruments" apply. In the case of ships below convention  
298 size, the Paris MoU envisages that authorized persons i.e. port state control officers are obliged to  
299 assess whether the ship is of an existing (required) standards with regard to safety, health or the  
300 environment (Section 2 under 2.4, and Annex I) [48].

301 The Paris MoU stipulates the obligation of State Parties to perform inspection of any foreign ship  
 302 of a certain priority, calling at port or anchorage of the MoU region [48,51,52,53,54,55]. Ship  
 303 detention and arrest must be reduced to a minimum. In that sense, the primary objectives of the  
 304 Paris MoU are to avoid multiple controls of the same ship navigating within the Paris MoU region  
 305 within a certain period and to harmonize PSC in all ports covered by the Paris MoU in order to  
 306 avoid the so-called “port shopping” – avoidance of ports with strict control and visiting of ports  
 307 with milder control [56].

### 308 3.2. Principles of functioning

309 The functioning of PSC within the Paris MoU region is organized, efficient and consistent. The  
 310 Paris MoU stipulates the procedure of ship inspection [48]. Under this Memorandum, inspection  
 311 procedure comprises certain activities (phases) and has been regulated by different Sections of  
 312 specific Annexes. In this sense, the following Annexes are particularly important: Annex 7 (Ship  
 313 Risk Profile), Annex 8 (Inspection and Selection Scheme) and Annex 9 (Inspection Type and Clear  
 314 Grounds).

315 The first step of ship inspection is determining of Ship Risk Profile (SRP) i.e. performance of risk  
 316 assessment. Determining or, more precisely, assigning a certain risk profile to a ship is performed  
 317 by using certain factors (parameters) specified in the Paris MoU. All factors may be divided into  
 318 two groups. The first group includes generic factors such as type of ship, age of ship, flag,  
 319 recognized organization and company. The second group includes historic factors such as: results  
 320 of previous inspections, existing deficiencies, information on detention and time interval between  
 321 controls [48,52,53,55]. All ships calling at a port or anchorage of a Party to the Paris MoU are  
 322 assigned a ship risk profile in the information system THETIS [57], using the combination of the  
 323 above factors. Under the provisions of the Paris MoU, all ships may be classified as Low Risk Ships  
 324 (LRS), High Risk Ships (HRS) and Standard Risk Ships (SRS) [48,52,53,55]. It is worth noting that  
 325 THETIS, based on the data from the Paris MoU, determines a ship risk profile on a daily basis, so  
 326 that port authorities immediately recognize (high risk) ships which should be paid special attention  
 327 while performing PSC.

328 This information system performs selection of ships which undergo inspection based on the  
 329 determined ship risk profile, in compliance with Annexes 8 and 9 of MoU. Inspection and selection  
 330 scheme determines the priority of inspections, frequency scope and type of inspections. The Paris  
 331 MoU provides a selection scheme which determines the priority of inspections, level, category and  
 332 type of inspections (Table 1).

333 **Table 1.** Selection scheme for inspection of different ship risk profiles at different intervals  
 334 (Point 10 of Annex 8) [44].

Priority	Level	Category of inspection
I Ship must be inspected	Overriding factor	Additional
	HRS not inspected in last 6 months	Periodic
	SRS not inspected in last 12 months	
II Ship may be inspected	LRS not inspected in last 36 months	Additional
	HRS not inspected in last 5 months	
	Ship with unexpected factors	Periodic
	SRS not inspected in last 10 months	
	LRS not inspected in last 24 months	

335 Selection scheme has been designed so as to put an emphasis on the more frequent inspection of  
336 high risk ships, while low risk ships and standard risk ships undergo inspection in longer time  
337 intervals between inspections. While selecting ships, the first thing to do is to determine the priority  
338 of inspections i.e. to determine the Priority (priority group) within which a ship falls. Ships may fall  
339 into Priority I or Priority II. If a ship has not been categorised within Priority I or Priority II, it is  
340 deemed that such a ship has no priority at all and, accordingly, will not undergo inspection, unless  
341 there are clear grounds for doing so [48,52,53,55].

342 Inspection of ships falling within Priority I is obligatory, while inspection of ships falling within  
343 Priority II is not obligatory – those ships *may* be inspected [48,52,53,55].

344 The data on the ship risk profile, priority level, previous inspections with an insight into  
345 deficiencies, are available to port authorities based on (from) the THETIS information system of the  
346 Paris Memorandum. These data condition the type of inspection to be carried out, marine areas  
347 where special attention should be paid, as well as the composition of the team of inspectors to  
348 perform an inspection.

349 Inspection types of foreign ships in the ports of the Paris MoU may be initial, more detailed and  
350 expanded. After the completion of an inspection, the record of the inspection is kept following an  
351 appropriate template. The record includes the results of the inspection, identified deficiencies, as  
352 well as details on every measure undertaken. The inspector notifies the ship master of the contents  
353 of the record, as well as of all commitments resulting from the records for the ship master, ship  
354 owner or other authorised person.

355 In the event that less severe deficiencies in the implementation of regulations have been  
356 identified during inspection, the inspector orders the ship master to rectify them within a given  
357 deadline. If the ship master fails to do so or the deficiency is such that it obviously endangers safety,  
358 health or environment, the inspector imposes the measure of prohibition of leaving the port or  
359 termination of the activity during which deficiencies have been identified [48,52]. The Paris MoU  
360 envisages the possibility that a ship concerned proceeds to the nearest appropriate repair yard  
361 available where deficiencies cannot be remedied in the port of inspection (Article 3.8) [48].

362 In case of detention, the competent authority of the port state where the ship has been inspected  
363 will immediately notify the flag administration and, where appropriate, the recognised organisation  
364 that has issued the relevant certificates on behalf of the flag Administration.

365 The possibility of banning the ships which do not meet the prescribed standards from the Paris  
366 MoU region is particularly important [58]. Namely, the Parties have been recommended to ensure  
367 that a foreign merchant ship is refused access to its ports and anchorages in certain cases (Article 4)  
368 [48].

#### 369 **4. Montenegro on the path to become the Paris MoU member**

370 In order that a candidate state becomes a full member of the Paris MoU, it should inevitably  
371 meet certain qualitative criteria (Annex 5) [48]. In addition to meeting the basic geographical  
372 criterion (Article 9 Section 9.2) [44], the maritime authority of the state may adhere as a full member  
373 provided that certain criteria have been met. Firstly, it should explicitly subscribe to the  
374 commitments under the Paris MoU and ratify all “relevant instruments” in force. Secondly, the state  
375 should have sufficient capacity, logistically and substantially, to appropriately enforce compliance  
376 with international maritime safety standards as well as provisions and activities specified in the  
377 Paris MoU. “Sufficient capacity” means the employment of properly qualified persons i.e. qualified  
378 PSCOs who will have the capacity to inspect foreign ships. The Paris MoU envisages also a negative  
379 criterion to be met by a candidate state: its flag must not appear in the list of detentions (exceeding  
380 the average detention percentage), as published in the annual report in any of three years  
381 immediately preceding its application for full membership. The other criteria relate to the  
382 commitments of a candidate country as of its effective date of membership. Namely, on the effective  
383 date of membership, the country is obliged to establish a connection to the information system  
384 THETIS and pay its share in the operating cost of the Memorandum based on the previously signed



385 Financial Agreement. The assessment of compliance with the above conditions of a candidate  
386 country will only be valid for each individual case.

387 In its endeavours to become integrated into the international maritime framework, Montenegro  
388 applied for membership of the Paris MoU in 2011. The primary task set by Montenegro was the  
389 improvement of safe maritime transport and environmental protection [59]. The same year, it  
390 became a cooperating member of the MoU, with the realistic possibility to become a full member in  
391 future [60].

#### 392 4.1. *Impediments and success*

393 To assess the current state of play in the field of maritime affairs, the Monitoring Team of the  
394 Paris MoU visited the maritime authorities of Montenegro on several occasions. The Team provided  
395 certain recommendations as well as objections which should be particularly treated in order to meet  
396 the qualitative criteria.

397 The *Report of the Fact-Finding Mission to the Maritime Authority of the Republic of Montenegro* [53]  
398 states the following:

399 a) Necessity of ratification of all “relevant instruments” and their implementation in the  
400 Montenegrin national legislation;

401 b) Harmonisation of national legislation with provisions of the Paris MoU. Since it has been  
402 noted that the procedure of inspection of foreign ships in the ports of Montenegro as well as the  
403 flow of procedures carried out by the Montenegrin port state control officers is not compliant with  
404 provisions of MoU, it has been recommended that the procedure under MoU becomes implemented  
405 in its totality in the legal system of Montenegro.

406 c) Setting up of an adequate institutional structure for the performance of inspection of foreign  
407 ships, clearly defining the competences, responsibilities and role of all entities involved in inspection  
408 of foreign ships.

409 d) The need for training and professional development of the maritime safety inspectors of  
410 Montenegro and the fulfilment of conditions in terms of their qualification pursuant to Annex 6  
411 (Minimum Criteria for Port State Control Officers) of the Paris MoU has been particularly  
412 emphasised. One objection stated was that Montenegrin inspectors have not yet been fully  
413 familiarised with the contents of the Paris MoU manual i.e. PSC inspection guidelines.

414 A positive conclusion was that Montenegro undertook steps toward reducing the detention  
415 percentage of ships entitled to fly the flag of Montenegro, which is below the average detention  
416 of ships from the MoU region. It has been suggested that Montenegro continues with appropriate  
417 activities to that end. This can be considered as a success toward becoming a full member of the  
418 Paris MoU.

419 Following the above recommendations provided by the Paris MoU Monitoring Team (a, b, c, d),  
420 Montenegro made the following steps forward up to date:

421 a) At present, Montenegro has all “relevant instruments” of the Paris MoU ratified. In addition  
422 to the ratification, the Parliament of Montenegro adopted the Law on Ratification of the Paris MoU  
423 on 31 July 2015 [37]. Accordingly, all relevant instruments and the Paris MoU itself became an  
424 integral part of the internal legal order of Montenegro.

425 b) Taking into consideration the recommendations and objections provided by the Monitoring  
426 Team in terms of harmonisation of national legislation with the provisions of the Paris MoU, the  
427 maritime authorities of Montenegro very quickly became aware of deficiencies in the national  
428 legislation on PSC as well as of the need to introduce changes in this field. In this regard, it was  
429 assessed that the most appropriate thing to do first was to amend the Law on Maritime Navigation  
430 Safety in compliance with the Paris MoU. After that, it was necessary to adopt a new Rulebook on  
431 PSC which would be fully compliant with the Paris MoU. The Law on Maritime Navigation Safety,  
432 with improved solutions in the field of inspection of foreign ships and undertaking corrective  
433 measures toward remedying of deficiencies in PSC, was adopted in October 2017. The Proposal for  
434 the new Rulebook on PSC was developed in 2017. However, it has not been adopted up to date. The  
435 reason for not doing so may lie in the lack of administrative capacities, poor vertical communication,

436 insufficiently clear strategic orientation of the Montenegrin maritime industry – all these being  
437 characteristics of transition economies. Montenegro has been functioning in transition conditions  
438 for decades.

439 c) Institutional framework for the performance of PSC has been set up in Montenegro. Harbour  
440 Master's Office in Bar and Harbour Master's Office in Kotor are in charge of inspection operations  
441 in Montenegro (Article 183) [22]. The port state control officers of Montenegro perform inspections  
442 which, *inter alia*, include inspection of foreign ships calling at ports of Montenegro.

443 d) Speaking of the fulfilment of necessary requirements in terms of qualifications and  
444 professional development necessary for the performance of inspection of foreign ships, it could be  
445 said that, at the moment, inspectors in Montenegro fully meet all requirements in formal terms,  
446 which could be evidenced by numerous awarded certificates. All requirements in terms of  
447 qualification of inspectors under the Paris MoU (Annex 6) [48] have been fully implemented in the  
448 Montenegrin legislation. Since 2011, when Montenegro applied for membership of the Paris MoU,  
449 some funds have been allocated for training and professional development of Montenegrin  
450 inspectors despite generally limited funds. In this sense, their active participation in numerous  
451 seminars and workshops organised by IMO, EMSA and other organisations aimed at training and  
452 professional development of PSCO is crucial. Additionally, in order to perform a safe and efficient  
453 inspection of foreign ships, Montenegrin inspectors possess all necessary protective and working  
454 equipment.

455 It is worth noting that an incomplete harmonisation of procedures for performance of PSC,  
456 incomplete training and experience of PSCO have also been observed in the states that are full  
457 members of the Paris MoU [62,63,64]. What has also been observed is a difference between full  
458 members in terms of availability of funds, as well as the lack of staff in specific member states.  
459 Additionally, PSCO are subjective in terms of applying the procedure of ship detention, which  
460 results from differences in experience and training of PSCO. Therefore, we can rightfully say that  
461 Montenegro, as a cooperating member, is facing similar problems like some full members. This  
462 should not be understood as an excuse but, instead, as a challenge in the active action toward  
463 overcoming of the mentioned problems and becoming a full member as soon as possible.

## 464 5. Conclusions

465 The regional PSC keeps strengthening in terms of ensuring safety at sea and marine ecosystem  
466 protection. In our endeavors to show the necessity of strengthening the PSC of Montenegro, in this  
467 work we provided an overview of the relevant legislation and efforts toward the accession of  
468 Montenegro to the Paris Memorandum. The full membership of the Paris Memorandum would  
469 bound Montenegro to act on an equal footing with other members toward the elimination of  
470 substandard ships and reduction of maritime accidents which result in casualties, loss of property  
471 and/or pollution of marine environment. In this sense, Montenegro should be fully responsible, both  
472 as a flag country and a port country, for its own actions in the circle of responsibility of all  
473 participants in the transport chain under the "port to port" principle.

474 On this path, Montenegro has succeeded so far in terms of decreasing the detention percentage  
475 of ships entitled to fly the flag of Montenegro, ratification of all relevant instruments of the Paris  
476 MoU, general harmonization of the Montenegrin legislation on PSC with the requirements of the  
477 Paris MoU, establishment of an adequate institutional framework for the performance of PSC where  
478 the Montenegrin PSCOs play a dominant role.

479 What has been identified as an impediment on this path is the necessity to improve the standard  
480 of performance of PSC inspections through continuous training of Montenegrin inspectors in  
481 compliance with MoU, provision of adequate equipment for inspection performance, and a non-  
482 restrictive access to the THETIS database. In addition, it is necessary to further harmonise national  
483 legislation on PSC. In this sense, it is necessary to adopt a new Rulebook on PSC where the solutions  
484 from the Paris MoU would be fully transposed, which would result in the performance of PSC in  
485 compliance with international standards. The reasons for such situation should certainly be traced  
486 among the lack of administrative capacities, poor vertical communication between the Government

487 – line Ministry – maritime administration, insufficiently clearly defined strategy of maritime  
488 development, non-existence of environmental protection strategy, lack of funds etc. All this, and  
489 much more, characterizes transition conditions in which Montenegro functions, permanently facing  
490 the recurrence of economic crisis and slow development.

491 Future activities should be oriented toward the monitoring of achieved improvements of  
492 Montenegro in the field of PSC, as well as toward the monitoring of the dynamics of improvement  
493 of regional and international standards on supervision of sea activities. With a global approach to  
494 PSC, it is clear that Montenegro needs to cooperate with the members of the Paris Memorandum  
495 more intensely and closely, in order to ensure sustainable and responsible shipping industry and  
496 marine ecosystem protection on the regional and global scale.

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