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Montenegro on the path to Paris MoU accession: Towards achieving sustainable shipping industry

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

Keywords: port state control; Paris MoU; Montenegrin accession; sustainable shipping.

1. Introduction

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

In order to ensure the sustainability of the world ocean, the mankind should work on prevention of these threats by acting proactively in all spheres of maritime affairs, including the legal framework toward the adoption of preventive regulations. It would be incorrect to say that the legislation in this field does not exist on a global basis. However, its full implementation in specific
regions is in delay. This, in turn, requires the need for increased responsibility of countries in terms of coordinated decrease of shipping environmental impact [5]. Finding of optimal legal solutions creates a favorable ground for the sustainability of shipping industry and marine ecosystem in extremely dynamic present conditions [6]. The legislative framework necessitates positive changes which would accompany socio-economic needs and dynamics, while observing the principle of sustainability. Additionally, efforts should be made to develop inclusive strategies for the successful management of seas for today and the future.

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

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

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

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

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

Forty years ago, the overall field of the maritime law on the territory of the former Yugoslavia was systematised and codified by the Law on Maritime and Inland Navigation (LMIN) which was adopted in 1977 [10]. This Law, in qualitative and quantitative terms, exceeded the scope of “ordinary” laws. Given that this Law regulated the overall field of maritime law, it is clearly a very large legal text comprising 1.078 Articles [11]. We can freely say that this was the most voluminous legal codifying act adopted on the territory of the former SFRY. In 1992, when SFRY dissolved, this Law was transposed in its totality to the legislation of the newly set up Federal Republic of Yugoslavia [12]. This period was characterised by political unrests, which was largely reflected on the maritime-legal regulations. Namely, from 1992, due to the sanctions imposed by the international community and dissolution of the state, the Federal Republic of Yugoslavia did not keep the pace with the development of international law. International conferences were not
attended and, accordingly, no Convention in the field of maritime law was either signed or ratified during the period of sanctions. Although expert-scientific groups were set up with the task to update the LMIN, the task remained unfinished. Following this discontinuity caused by sanctions and civil war, the old-new LMIN [13] was adopted on 5 March 1998. However, it did not incorporate any update which was necessary despite the fact that certain international Conventions were adopted in the meantime.

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

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


2.1. Montenegrin legislation – de lege lata

In the context of this work, of particular importance are the Law on Maritime Navigation Safety and the Law on the Prevention of Sea Pollution from Vessels as essential laws establishing the legal framework for safe navigation and ensuring prevention of sea pollution from vessels in the function of sustainability of the marine ecosystem of Montenegro. The Law on Maritime Navigation Safety regulates all segments of safety at sea (ship safety, cargo safety, occupational safety and navigation safety) with the aim of ensuring the avoidance of maritime accidents and, in relation to this, pollution of the sea and marine ecosystem. Particularly important is Part XIV entitled “Inspection” (Article 183 to 198) which regulates, inter alia, the performance of port state control of foreign ships and their fleets calling at the ports or anchorages of Montenegro by the Montenegrin Port State Control Officers (PSCO), with the view of protecting the sea and improving safety [22]. On the other hand, the Law on the Prevention of Sea Pollution from Vessels endeavours to prevent, decrease and, to the greatest possible extent, eliminate the pollution of marine environment. The Law regulates the following: materials prohibited from being discharged into the sea from vessels; measures and communication procedures to be observed while ships enter and leave the ports of Montenegro; the construction, equipment and conditions to be fulfilled by vessels; conditions and manner of packing of harmful and polluting substances; conditions and manner of discharging of sewage from ships; discharge of communal waste from ships; pollution of air from ships; ballast water (measures and procedures for their replacement, replacement control); manner of waste discharge into the sea and waste burying; waste reception and management; responsibility and compensation of damage...
In April 2011, Montenegro adopted the National Plan for Emergent Reaction in the Event of Sea Pollution from Vessels. This Plan specifies the manner of work and action, tasks and responsibilities, measures and procedures aimed at prevention, decrease and remedy of consequences of sea pollution from vessels. The purpose of the Plan is to ensure a timely and efficient reaction to maritime accidents of sea pollution from vessels at the national level. The Plan applies in the event of a maritime accident which caused or may have caused pollution in the maritime areas, at the sea bed or below the sea bed of Montenegro, which includes internal waters and territorial sea [24]. Protection and preservation of maritime environment have been regulated by other Laws of the Montenegrin legislation. In this regard, particularly important are Article 2 and Article 19 paragraph 2 of the Law of the Sea [17], Article 26 paragraph 2 of the Law on Ports [19] and Articles 33 and 42 of the Law on Yachts [18].

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

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

### 2.2. Adopted international Conventions

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


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


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

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

3. Paris MoU

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

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

3.1. Concept

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

Although the Paris MoU is the earliest regional Agreement on the Port State Control, this type of control is not new and has not been first introduced by the MoU. Instead, it has been envisaged by numerous existing international Conventions [41]. The generally adopted attitude is that the need for the establishment of PSC would not exist if the flag states behaved in a responsible manner to their ships and observed their commitments envisaged by international Conventions [35,42]. Given that the mechanisms of control of flag state ships, classification entities and other participants in the chain of maritime safety turned out to be inefficient in practice in terms of struggle against
substandard ships, the active participation of port states in the control of foreign ships imposed
itself like something inevitable [43,44].

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

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

The Paris MoU does not introduce new rules or standards (requirements) to be met by ships.
Instead, it establishes inspection (control) over application of the existing safety standards contained
in numerous international Conventions i.e. “relevant instruments”, as termed by MoU, adopted by
IMO and ILO [41,49,50]. Section 2.1 Article 2 of the Paris MoU [48] provides a list of seventeen
relating to the International Convention on Load Lines, 1966 (LL PROT 88); The International
Convention for the Safety of Life at Sea, 1974; The Protocol of 1978 relating to the International
Convention for the Safety of Life at Sea, 1974; The Protocol of 1988 relating to the International
Convention for the Safety of Life at Sea, 1974; International Convention for the Prevention of
Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto, and as further
amended by the Protocol of 1997; The International Convention on Standards of Training,
Certification and Watchkeeping for Seafarers, 1978; The Convention on the International
Regulations for Preventing Collisions at Sea, 1972 (COLREG 72); The International Convention on
Tonnage Measurement of Ships, 1969 (TONNAGE 69); the Merchant Shipping (Minimum
Standards) Convention, 1976 (ILO Convention No. 147); The Protocol of 1996 to the Merchant
Shipping (Minimum Standards) Convention, 1976 (ILO Convention No. 147); The Maritime Labour
Convention, 2006; The International Convention on Civil Liability for Oil Pollution Damage, 1969
(CLCl969); Protocol of 1992 to amend the International Convention on Civil Liability for Oil
Pollution Damage, 1969 (CLC PROT 1992); International Convention on the Control of Harmful
Anti-Fouling Systems on Ships, 2001 (AFS2001); The International Convention on Civil Liability for
Bunker Oil Pollution Damage, 2001 and The International Convention for the Control and

The listed IMO and ILO “relevant instruments” make the basis for performance of inspections,
and the maritime authorities of Signatory States are bound to apply them (Section 2 under 2.2 and
2.3) [48]. Additionally, ships entitled to fly the flag of a State which is not a Party to a “relevant
instrument” will not have a more favorable treatment (“no more favorable treatment”). Such ships
will not be exempted from inspection. Instead, the same procedures will apply to them as those
stipulated for ships to which “relevant instruments” apply. In the case of ships below convention
size, the Paris MoU envisages that authorized persons i.e. port state control officers are obliged to
assess whether the ship is of an existing (required) standards with regard to safety, health or the
environment (Section 2 under 2.4, and Annex I) [48].
The Paris MoU stipulates the obligation of State Parties to perform inspection of any foreign ship of a certain priority, calling at port or anchorage of the MoU region [48,51,52,53,54,55]. Ship detention and arrest must be reduced to a minimum. In that sense, the primary objectives of the Paris MoU are to avoid multiple controls of the same ship navigating within the Paris MoU region within a certain period and to harmonize PSC in all ports covered by the Paris MoU in order to avoid the so-called “port shopping” – avoidance of ports with strict control and visiting of ports with milder control [56].

3.2. Principles of functioning

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

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

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

<table>
<thead>
<tr>
<th>Priority</th>
<th>Level</th>
<th>Category of inspection</th>
</tr>
</thead>
<tbody>
<tr>
<td>I</td>
<td>Overriding factor</td>
<td>Additional</td>
</tr>
<tr>
<td>Ship must be inspected</td>
<td>HRS not inspected in last 6 months</td>
<td></td>
</tr>
<tr>
<td>II</td>
<td>SRS not inspected in last 12 months</td>
<td>Periodic</td>
</tr>
<tr>
<td>Ship may be inspected</td>
<td>LRS not inspected in last 36 months</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Additional factor</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Ship with unexpected factors</td>
<td></td>
</tr>
<tr>
<td></td>
<td>SRS not inspected in last 10 months</td>
<td>Periodic</td>
</tr>
<tr>
<td></td>
<td>LRS not inspected in last 24 months</td>
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Selection scheme has been designed so as to put an emphasis on the more frequent inspection of high risk ships, while low risk ships and standard risk ships undergo inspection in longer time intervals between inspections. While selecting ships, the first thing to do is to determine the priority of inspections i.e. to determine the Priority (priority group) within which a ship falls. Ships may fall into Priority I or Priority II. If a ship has not been categorised within Priority I or Priority II, it is deemed that such a ship has no priority at all and, accordingly, will not undergo inspection, unless there are clear grounds for doing so [48,52,53,55].

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

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

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

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

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

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

4. Montenegro on the path to become the Paris MoU member

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

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

4.1. Impediments and success

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

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

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

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

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

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

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

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

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

b) Taking into consideration the recommendations and objections provided by the Monitoring Team in terms of harmonisation of national legislation with the provisions of the Paris MoU, the maritime authorities of Montenegro very quickly became aware of deficiencies in the national legislation on PSC as well as of the need to introduce changes in this field. In this regard, it was assessed that the most appropriate thing to do first was to amend the Law on Maritime Navigation Safety in compliance with the Paris MoU. After that, it was necessary to adopt a new Rulebook on PSC which would be fully compliant with the Paris MoU. The Law on Maritime Navigation Safety, with improved solutions in the field of inspection of foreign ships and undertaking corrective measures toward remedying of deficiencies in PSC, was adopted in October 2017. The Proposal for the new Rulebook on PSC was developed in 2017. However, it has not been adopted up to date. The reason for not doing so may lie in the lack of administrative capacities, poor vertical communication,
insufficiently clear strategic orientation of the Montenegrin maritime industry – all these being
characteristics of transition economies. Montenegro has been functioning in transition conditions
for decades.

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

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

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

5. Conclusions

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

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

What has been identified as an impediment on this path is the necessity to improve the standard
of performance of PSC inspections through continuous training of Montenegrin inspectors in
compliance with MoU, provision of adequate equipment for inspection performance, and a non-
restrictive access to the THETIS database. In addition, it is necessary to further harmonise national
legislation on PSC. In this sense, it is necessary to adopt a new Rulebook on PSC where the solutions
from the Paris MoU would be fully transposed, which would result in the performance of PSC in
compliance with international standards. The reasons for such situation should certainly be traced
among the lack of administrative capacities, poor vertical communication between the Government
– line Ministry – maritime administration, insufficiently clearly defined strategy of maritime
development, non-existence of environmental protection strategy, lack of funds etc. All this, and
much more, characterizes transition conditions in which Montenegro functions, permanently facing
the recurrence of economic crisis and slow development.

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

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