

Port State control. Recast

2005/0238(COD) - 06/06/2008 - Council position

The Council's common position accepts 68 amendments, in total or in part, proposed by the European Parliament at 1st reading. A certain number of other amendments proposed by the European Parliament (33 in total) were not accepted by the Council.

The common position was adopted unanimously with the Maltese delegation abstaining. It modifies, in a number of cases, the original Commission proposal by redrafting it entirely, inserting completely new provisions or supplementing the text with new elements.

Scope of the Directive: the Council shares the view of the Commission and the European Parliament that the current port State control regime, imposing a purely quantitative threshold of 25% of ships to be inspected by Member States, results in an insufficient control and leads sometimes to unjustified inspections carried out solely to reach this arbitrary threshold. Therefore, the common position establishes a new system with a collective inspection objective for the whole Community based on a fair share of the number of inspections among Member States and States within the Paris memorandum of understanding region. The inspections are focused on substandard vessels, which shall be checked more often, while the burden of inspections is alleviated with regard to quality vessels.

Contrary to the Commission and the European Parliament, the Council, however, deems it appropriate to take into account practical difficulties of some Member States in terms of financial and personal resources. The common position, therefore, modifies the scope of inspections under this Directive, applying them to ships calling at a port of a Member State to engage in a ship/port interface, including ships at anchor in a port or another area within the jurisdiction of a port.

Furthermore, the Council, as the European Parliament, includes in its common position the possibility for landlocked Member States to derogate from the Directive under specific conditions. For reasons of legal certainty, these conditions are spelt out in the related provision. They constitute essential elements of the Directive and, therefore, cannot be modified through comitology, in contrast to what is provided for in the European Parliament's amendments.

Flexibility mechanism for inspections: the common position takes into consideration the specific situation of each Member State resulting in an unequal number of ships calling at their respective ports. To this effect, Member States are allowed, according to the Council's position and contrary to the European Parliament's view, to miss a small percentage of inspections, namely inspections on 5% of the total number of Priority I ships (ships due for a mandatory inspection) with a high risk profile and on 10% of the total number of Priority I ships other than those with a high risk profile. Member States shall, however, give particular attention to ships that do not call often at ports within the Community.

In addition, the Council, as the European Parliament, is of the opinion that, for practical reasons, flexibility mechanisms are necessary in specific circumstances, i.e. to provide the possibility to postpone an inspection for 15 days, not to carry out an inspection for safety reasons or to miss an inspection if the ship calls at night. The last flexibility provision is not provided for by the European Parliament.

Access refusal: the Council, as the European Parliament, supports the Commission's proposal to tighten the access refusal measures against substandard ships. As criteria for such a measure, the performance of the ship is evaluated in relation to the performance of its operator, indicated by repeated detentions during a certain timeframe, and of its flag State, determined on the basis of the "black", "grey" and "white" lists of flag States established by the Paris Memorandum of

Understanding on Port State Control (MOU). The duration of the access refusal to Member States' ports increases with each time such a measure is taken. While the Commission, supported by the European Parliament, proposed to provide for an ultimate possibility of permanently banning ships that are caught for the third time in such a situation, the Council considers that, for legal reasons, it is necessary to foresee the possibility to lift the ban after a certain period, namely 36 months, but only if the ship concerned complies with a series of conditions.

Reports from pilots: the Council fully supports the Commission's proposal to reinforce the obligation for all pilots, including deep sea pilots on ships bound for a port or in transit, to report apparent anomalies they encounter on board of ships to the competent authority of the port or coastal State. Unlike the European Parliament, the Council considers that this can only be done through a mandatory provision.

List of companies with a low and very low performance: similar to the Commission and the European Parliament, the Council intends to strengthen the dissuasive effect of the Directive and requests the Commission to establish and publish regularly information on badly performing ship operators, however without specifying the publication modalities, which will be established through the comitology procedure.

Transposition date: the new inspection system should apply at Community level with the entry into force of the recast Directive. Nonetheless, Member States are allowed to use a transposition period of 36 months, unlike the provisions set out by the European Parliament.