

Port State control. Recast

2005/0238(COD) - 24/09/2008 - Text adopted by Parliament, 2nd reading

The European Parliament adopted by 603 votes to 51, with 12 abstentions, a legislative resolution amending the Council common position for adopting a directive of the European Parliament and of the Council on port State control (Recast).

The recommendation for second reading (co-decision procedure) had been tabled for consideration in plenary by Dominique **VLASTO** (EPP-ED, FR) on behalf of the Committee on Transport and Tourism.

The main purpose of the amendments is to reinstate Parliament's position adopted at first reading.

Anchorage: MEPs consider that the provisions of the directive should apply to ships calling at anchorages as well as at ports. This was the position of the Commission in its proposal. The proposed amendments therefore aim to restore anchorages to the Directive where Council has removed them. Member States without sea ports may derogate from the application of this Directive, under certain conditions. The Commission shall adopt, in accordance with the regulatory procedure with scrutiny, the measures for the implementation of this derogation mechanism.

Limitation of liability: Member States shall take the necessary measures to adapt their national law to the provisions on limitation of liability under the 1996 Convention. The principle of compensation to third parties in respect of damage caused by waste falling under the 'polluter pays' principle, opens up the right to be compensated for the totality of the damage caused, including where there is not complete coverage and beyond the national provisions on incorporation of conventions. Member States may maintain or introduce provisions that are stricter than those of the directive.

Missed inspections: the Council amended the proposal to include a provision which allows Member States a margin of 'missed inspections'. It proposes that a Member State is in compliance with the Directive if 5% of priority 1 vessels with a high risk profile calling at its ports are not inspected. MEPs believe that this margin is too generous and therefore introduced an amendment that ensures a sufficient number of inspections are carried out. Furthermore, MEPs deleted a provision of the common position allowing sub standard vessels to call at night.

Frequency of inspections: ships shall be subject to periodic inspections at predetermined intervals depending on their risk profile. According to MEPs, the interval between periodic inspections of high risk ships shall not exceed six months.

Notification of the arrival of a ship: the operator of a ship which is eligible for an expanded inspection and bound for a port of call or anchorage of a Member State shall notify its arrival at the first port of call or anchorage. On receipt of the notification, the port authority concerned shall transmit such information to the competent authority and to those of the ports of call or anchorages successively reached in the Community. Electronic means shall be used for the purposes of any communication, except if electronic means are not available.

Permanent ban: the Council common position would prevent any ship from being definitively banned. MEPs propose that any ship which appears on the black or grey list, as defined by the Paris MOU, and has been detained or issued with a prevention of operation order at least three times in the preceding 36 months, should be refused access to the ports and anchorages of a Member State. The refusal of access order shall be lifted only after a period of three months has passed from the date of issue of the order and when certain conditions are met. If the ship is subject to a second refusal of access, the period shall be

increased to 12 months. Any subsequent detention in a Community port shall result in the ship being permanently refused access to any port or anchorage within the Community.

Ship detention order: the competent authority shall inform the port authorities or bodies at its earliest convenience when a detention order is issued.

Complaints: all complaints shall be subject to a rapid initial assessment by the competent authority. This assessment shall make it possible to determine whether a complaint is justified, concrete and properly grounded. Should the above be the case, the competent authority shall take the necessary action on the complaint. It shall, in particular, ensure that the ship's master and owner, as well as anyone else directly concerned by the complaint, including the complainant, can make their views known. The competent authority shall inform the port authorities or bodies at its earliest convenience when a detention order is issued. Member States shall cooperate in particular in order to ensure that appeals are dealt with in a reasonable time.