Port State control. Recast

2005/0238(COD) - 08/12/2008 - Commission opinion on Parliament's position at 2nd reading

The Commission accepts in full 19 amendments to the common position, adopted by the European Parliament in first reading.

The Commission retained in part the amendments which:

- specify the scope of the Directive as regards anchorages. However, some parts cannot be accepted in their present wording, in particular the provisions concerning the arrangements for a derogation from the Directive for landlocked States, which cannot be left to committee procedure but should be spelt out in the operative part as they are an essential part of the instrument;
- clarify the issue of the flexibility which Member States are allowed as regards their inspection obligations. However, the total lack of flexibility as regards the operation of the inspection system cannot be accepted;
- as regards the refusal of access to Member States' ports, apply the rules on banning in the same way to ships flying the flag of a blacklisted State and ships which are on the grey list as defined by the Paris MoU. However, the Commission has accepted the Council common position which provides for a less severe regime for ships on the grey list;
- provide for recourse to be had to committee procedure to define certain criteria regarding the risk profile of a ship (except certain points which are already covered by the procedure);
- require ships subject to an expanded inspection to notify their arrival in port (except the excessive and pointless requirement of providing information about all ports previously visited by the ship);
- call on the competent authorities to make a prior assessment of complaints received. However, the additional requirement that reasons must be given for the complaint and that it must be specific are an excessive restriction of the right to complain;
- set a period of 18 months for the Commission to assess the application of the Directive. The Commission considers this period to be insufficient and believes that a minimum period of 36 months is required to complete such an assessment;
- take over points contained in the proposal for a Directive on the civil liability of shipowners, an integral part of the Third Maritime Safety Package, which has not yet been the subject of agreement within the Council. However, these amendments also contain new points regarding full compensation for losses, according to the ‘polluter pays principle’, which cannot be included in their present form.

The Commission also accepted in principle and/or subject to rewording, amendments which:

- clarify definitions of what constitutes a complaint and an inspections database;
- describe the factors that make up a risk profile and the scope of enhanced inspections;
- require inspectors to inform the port authorities if a ship is detained;
- promote cooperation between Member States regarding appeals against decisions to detain ships or refuse them access;
- concern the transmission of information about the arrival and departure of ships to the inspection database (but the period allowed for transmitting the information is far too short).

Lastly, the Commission did not accept amendments which would:

- introduce the definition of a port;
- take away the flexibility which Member States are allowed with regard to not carrying out inspections at night;
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include all the stops ships make at anchorages in the basis for calculating the number of inspections to be carried out by each Member State;

- delete the compensation mechanisms which were introduced in the common position to restore balance between the volume of inspections carried out in Member States;
- require ships which cannot have faults rectified in the port of inspection to sail directly to the nearest port of repair;
- make it possible for a low-risk ship to be inspected every 30 months instead of every 36 months;
- provide for the compulsory inspection of ships which have failed to notify their arrival in port and ships which have not had all their faults rectified.