Port State control. Recast

2005/0238(COD) - 23/04/2009 - Final act

PURPOSE: to carry out a reform of the system on port State control of shipping.

LEGISLATIVE ACT: Directive 2009/16/EC of the European Parliament and of the Council on port State control.

CONTENT: following a conciliation agreement after a third reading by the European Parliament, the Council adopted this Directive which recasts successive amendments to Directive 95/21/EC on port state control in a consolidated text. It also simplifies and amends certain provisions in order to reinforce the effectiveness and quality of inspections on vessels by the port State with a view to enhancing the fight against substandard vessels navigating in Community waters. The text agreed between Parliament and Council establishes a new inspection system with the aim of ensuring that a maximum of vessels calling at ports or berths in the Member States are inspected, taking into account equitable sharing of the overall inspection commitment among Member States.

The purpose of the Directive is to help to drastically reduce substandard shipping in the waters under the jurisdiction of Member States by:

- increasing compliance with international and relevant Community legislation on maritime safety, maritime security, protection of the marine environment and on-board living and working conditions of ships of all flags;
- establishing common criteria for control of ships by the port State and harmonising procedures on inspection and detention, building upon the expertise and experience under the Memorandum of Understanding on Port State Control, signed in Paris on 26 January 1982;
- implementing within the Community a port State control system based on the inspections performed within the Community and the Paris MOU region, aiming at the inspection of all ships with a frequency depending on their risk profile, with ships posing a higher risk being subject to a more detailed inspection carried out at more frequent intervals.

Scope: the Directive applies to any ship and its crew calling at an anchorage as well as a port of a Member State, to engage in a ship/port interface. Fishing vessels, warships, naval auxiliaries, wooden ships of a primitive build, government ships used for non-commercial purposes and pleasure yachts not engaged in trade are excluded from the scope.

Ship risk profile: all ships calling at a port or anchorage of a Member State shall, in the inspection database, be attributed a ship risk profile which determines their respective priority for inspection, the intervals between the inspections and the scope of inspections. Determination of the risk profile is set out in the text.

Selection of ships for inspection: ships must be selected for inspection on the basis of their risk profile and when overriding or unexpected factors arise in accordance with the text. Member States must inspect all Priority I ships. They are allowed, however, to miss 5 % of the total number of Priority I ships with a high risk profile calling at their ports and anchorages and 10 % of the total number of Priority I ships other than those with a high risk profile calling at their ports and anchorages. The new inspection regime provides for an equitable share of the overall inspection commitment between Member States, while also taking account of specific circumstances through flexibility mechanisms applicable to compulsory

inspections. Member States must, however, pay particular attention to vessels that do not often call at Community ports and, at berths, to high-risk priority I vessels that do not often call there. Furthermore, Member States may, in specific circumstances, postpone an inspection for 15 days.

Refusal of access: any ship will be refused access (except under specified circumstances) if it:

- flies the flag of a State whose detention rate falls into the black list, adopted in accordance with the Paris MOU, and has been detained or has been issued with a prevention of operation order more than twice in the course of the preceding 36 months, or
- flies the flag of a State whose detention rate falls into the grey list, adopted in accordance with the Paris MOU, and has been detained or has been issued with a prevention of operation order more than twice in the course of the preceding 24 months.

Access of these vessels to Member States' ports may be refused for 3 months. This period becomes 12 months if there is a second refusal of access. A third refusal of access can be lifted only after 24 months, but solely under specific conditions relating to the flag State, the approved body and the company responsible for the vessel concerned. Any subsequent immobilisation gives rise to a permanent refusal of access to the vessel at any port or berth in the Community. This latter point was insisted upon by Parliament.

Review: the Commission shall review the implementation of the Directive no later than 30/06/2012, examining, inter alia, the fulfilment of the overall Community inspection commitment, the number of port State control inspectors in each Member State, the number of inspections carried out, and the compliance with the annual inspection commitment by each Member State and the implementation of provisions on the modalities of compliance with the inspection commitment, the modalities allowing a balanced inspection share within the Community, and postponement of inspections and exceptional circumstances.

This Directive is part of a series of measures, comprising the **third maritime package**, aiming to strengthen the security of maritime transport in Europe by improving accident prevention and investigations into accidents and by strengthening vessel quality control. (See also COD/2005/0236, COD/2005/0237, COD/2005/0239, COD/2005/0240, COD/2005/0241 and COD/2005/0242).

ENTRY INTO FORCE: 17/06/2009.

TRANSPOSITION: 31/12/2010.

APPLICATION: from 01/01/2011.