

Port State control: aligning the Directive to the Maritime Labour Convention requirements

2012/0062(COD) - 02/07/2013 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 679 votes to 20, with 13 abstentions, a legislative resolution on the proposal for a Directive of the European Parliament and of the Council amending Directive 2009/16/EC on port State control.

Parliament adopted its position at first reading under the ordinary legislative procedure. The amendments adopted in plenary are the result of a compromise negotiated between the European Parliament and the Council. They amend the proposal as follows:

Application of the Directive: the amendments seek to align the text of the Port State Control Directive more closely with that of the Maritime Labour Convention (MLC), 2006, adopted by the International Labour Organisation (ILO) in Geneva on 23 February 2006.

The amended Directive also makes reference to: (i) the International Convention on the Control of Harmful Anti-fouling Systems on Ships (AFS 2001); (ii) the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (Bunkers Convention, 2001).

Level of protection under social law: according to the amended text, measures adopted to give effect to this Directive shall not lead to a reduction in the general level of protection of seafarers under Union social law in the areas to which this Directive applies.

In implementing those measures, if the competent authority of the port State becomes aware of a clear violation of Union law on board ships flying the flag of a Member State, it shall, in accordance with national law and practice, forthwith inform any other relevant competent authority in order for further action to be taken as appropriate.

Inspections: Member States, when inspecting a ship flying the flag of a State which is not a party to a Convention, shall **ensure that the treatment of that ship and its crew is not more favourable than that of a ship flying the flag of a State party to that Convention**. Such ship shall be subject to a more detailed inspection in accordance with procedures established by the Paris Memorandum of Understanding (MOU) on port State control signed in Paris on 26 January 1982.

Report to the master of the ship: where, following a more detailed inspection, the living and working conditions on the ship are found not to conform to the requirements of MLC 2006, **the inspector shall forthwith bring the deficiencies to the attention of the master of the ship**, with required deadlines for their rectification.

Complaints: the amendments strengthen the clauses regarding the **confidentiality of complaints** so as to reduce the risk that seafarers may feel inhibited about lodging complaints for fear of subsequently suffering adverse consequences. The identity of the complainant shall not be revealed to the master or the shipowner of the ship concerned.

The text stipulates that a complaint by a seafarer alleging a breach of the requirements of MLC 2006 (including seafarers' rights) may be reported to an inspector in the port at which the seafarer's ship has

called. In such cases, the **inspector shall undertake an initial investigation and may also conduct a more detailed inspection**. The inspector shall, where appropriate, seek to promote a resolution of the complaint at the ship-board level.

Where the complaint has not been resolved following action taken in accordance with the Directive, the port State shall transmit **a copy of the inspector's report to the Director-General of the International Labour Office**. The appropriate seafarers' and shipowners' organisations in the port State shall be similarly informed. In addition, **statistics and information regarding complaints** that have been resolved shall be regularly submitted by the port State to the Director-General of the International Labour Office.

Suppression of deficiencies and detention of ships: in the case of living and working conditions on board which are clearly hazardous to the safety, health or security of seafarers or deficiencies which constitute a serious or repeated breach of MLC 2006 requirements (including seafarers' rights), the competent authority of the port State where the ship is being inspected shall ensure that the **ship is detained or that the operation in the course of which the deficiencies are revealed is stopped**. The detention order or stoppage of an operation shall not be lifted until those deficiencies have been rectified or if the competent authority has accepted a plan of action to rectify those deficiencies and it is satisfied that the plan will be implemented in an expeditious manner.

In the event of detention, the competent authority shall immediately inform, in writing and including the report of inspection, the flag State administration or, when this is not possible, the Consul or, in his absence, the nearest diplomatic representative of that State, of all the circumstances in which intervention was deemed necessary.

Moreover, if a ship is prevented from sailing due to serious or repeated breach of the requirements of MLC 2006 (including seafarers' rights), the competent authority shall forthwith notify the flag State accordingly.

Implementation: when establishing the implementing rules, the Commission shall take specific care that those rules take into account the expertise and experience gained with the inspection system in the Union and build upon the expertise of the Paris MOU.