Basic information

2005/0238(COD) COD - Ordinary legislative procedure (ex-codecision procedure) Directive	Procedure completed
Port State control. Recast Repealing Directive 95/21/EC 1994/0068(SYN) Repealing Directive 98/25/EC 1997/0215(SYN) Repealing Directive 2001/106/EC 2000/0065(COD) Amended by 2012/0055(COD) Amended by 2012/0062(COD) Amended by 2013/0224(COD) Amended by 2016/0172(COD) Amended by 2018/0012(COD) Amended by 2021/0210(COD) Amended by 2023/0165(COD) **Subject** 3.20.03.01 Maritime safety 3.20.09 Ports policy 3.20.15.06 Maritime or inland transport agreements and cooperation	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
CODE EP Delegation to Conciliation Committee	VLASTO Dominique (PPE-DE)	24/09/2008

Former committee responsible	Former rapporteur	Appointed
TRAN Transport and Tourism	VLASTO Dominique (PPE-DE)	23/06/2008
TRAN Transport and Tourism	VLASTO Dominique (PPE-DE)	28/03/2006

Council of the European Union

Council configuration	Meetings	Date
Justice and Home Affairs (JHA)	2927	2009-03-11
Justice and Home Affairs (JHA)	2908	2008-11-27
Transport, Telecommunications and Energy	2805	2007-06-06
Transport, Telecommunications and Energy	2772	2006-12-11
Transport, Telecommunications and Energy	2875	2008-06-06
Transport, Telecommunications and Energy	2735	2006-06-08

European Commission	Commission DG	Commissioner
	Energy and Transport	TAJANI Antonio

Key events			
Date	**Event**	**Reference**	**Summary**
23/11/2005	Legislative proposal published	COM(2005)0588	Summary
01/02/2006	Committee referral announced in Parliament, 1st reading		
08/06/2006	Debate in Council		Summary
11/12/2006	Debate in Council		Summary
26/02/2007	Vote in committee, 1st reading		Summary
27/03/2007	Committee report tabled for plenary, 1st reading	A6-0081/2007	
24/04/2007	Debate in Parliament		
25/04/2007	Decision by Parliament, 1st reading	T6-0149/2007	Summary
25/04/2007	Results of vote in Parliament		
06/06/2008	Council position published	05722/3/2008	Summary
19/06/2008	Committee referral announced in Parliament, 2nd reading		
04/09/2008	Vote in committee, 2nd reading		Summary
09/09/2008	Committee recommendation tabled for plenary, 2nd reading	A6-0335/2008	
23/09/2008	Debate in Parliament		
24/09/2008	Decision by Parliament, 2nd reading	T6-0446/2008	Summary
24/09/2008	Results of vote in Parliament		
27/11/2008	Parliament's amendments rejected by Council		
08/12/2008	Formal meeting of Conciliation Committee		
03/02/2009	Final decision by Conciliation Committee		
03/02/2009	Joint text approved by Conciliation Committee co-chairs	03721/2008	
25/02/2009	Report tabled for plenary, 3rd reading	A6-0099/2009	
10/03/2009	Debate in Parliament		
11/03/2009	Decision by Parliament, 3rd reading	T6-0107/2009	Summary
11/03/2009	Results of vote in Parliament		
11/03/2009	Decision by Council, 3rd reading		
22/04/2009	End of procedure in Parliament		
23/04/2009	Final act signed		
28/05/2009	Final act published in Official Journal		

Technical information

Procedure reference	2005/0238(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Recast
Legislative instrument	Directive
Amendments and repeals	Repealing Directive 95/21/EC 1994/0068(SYN) Repealing Directive 98/25/EC 1997/0215(SYN) Repealing Directive 2001/106/EC 2000/0065(COD) Amended by 2012/0055(COD) Amended by 2012/0062(COD) Amended by 2013/0224(COD) Amended by 2016/0172(COD) Amended by 2018/0012(COD) Amended by 2021/0210(COD) Amended by 2023/0165(COD)
Legal basis	EC Treaty (after Amsterdam) EC 080-p2
Stage reached in procedure	Procedure completed
Committee dossier	CODE/6/67459

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee draft report		PE378.539	09/11/2006	
Amendments tabled in committee		PE382.356	21/12/2006	
Committee report tabled for plenary, 1st reading/single reading		A6-0081/2007	27/03/2007	
Text adopted by Parliament, 1st reading/single reading		T6-0149/2007	25/04/2007	Summary
Committee draft report		PE407.930	27/06/2008	
Amendments tabled in committee		PE409.622	23/07/2008	
Committee recommendation tabled for plenary, 2nd reading		A6-0335/2008	09/09/2008	
Text adopted by Parliament, 2nd reading		T6-0446/2008	24/09/2008	Summary
Report tabled for plenary by Parliament delegation to Conciliation Committee, 3rd reading		A6-0099/2009	25/02/2009	
Text adopted by Parliament, 3rd reading		T6-0107/2009	11/03/2009	Summary

Council of the EU

Document type	Reference	Date	Summary
Council position	05722/3/2008	06/06/2008	Summary
Draft final act	03721/2008/LEX	23/04/2009	

European Commission

Document type	Reference	Date	Summary
Legislative proposal	COM(2005)0588	23/11/2005	Summary
Document attached to the procedure	SEC(2005)1499	23/11/2005	Summary
Commission communication on Council's position	COM(2008)0208	11/06/2008	Summary
Commission opinion on Parliament's position at 2nd reading	COM(2008)0830	08/12/2008	Summary
Follow-up document	COM(2012)0660	16/11/2012	Summary
Follow-up document	SWD(2018)0230	16/05/2018	
Follow-up document	SWD(2018)0231	16/05/2018	

Other institutions and bodies

Institution/body	Document type	Reference	Date	Summary
CSL/EP	Joint text approved by Conciliation Committee co-chairs	03721/2008	03/02/2009	

Additional information

Source	Document	Date
National parliaments	IPEX	
European Commission	EUR-Lex	

Final act

Corrigendum to final act 32009L0016R(01)
OJ L 032 01.02.2013, p. 0023

Directive 2009/0016
OJ L 131 28.05.2009, p. 0057 Summary

Port State control. Recast

2005/0238(COD) - 16/11/2012 - Follow-up document

In accordance with the requirements of Directive 2009/16/EC, the Commission presents a report assessing **the implementation and the impact of the measures taken on port State control (PSC)**.

The EU regime on PSC is based on Directive 2009/16/EC1, which re-casted and reinforced the previous legislation in this field introduced in 1995. The EU regime is based on the pre-existing structure of the Paris Memorandum of Understanding on Port State Control (PMoU). All EU coastal Member States as well as Canada, Russia, Croatia, Iceland and Norway are members of the PMoU.

Directive 2009/16/EC introduced a **new inspection regime** (NIR) for PSC from 1 January 2011. The Directive provides that **all qualifying vessels visiting EU ports are inspected**. Directive 2009/16/EC provides for several new requirements in the field of PSC as well as for common criteria and harmonised procedures for control of ships and aims at the inspection of all ships, **depending on their risk profile**, with ships posing a higher risk being inspected more often.

In addition to the actions taken by the Member States, the Directive has been implemented at EU level through the establishment of a system for reporting of results of PSC inspections (the THETIS database). The THETIS system has been developed by the Commission in close cooperation with EMSA. EMSA operates the THETIS system on behalf of the Commission.

The Commission is currently examining the problems identified during implementation as well as issues highlighted by Member States and whether amendments to Directive 2009/16/EC are required. In particular, the Commission (with EMSA) will look at whether these are statistical anomalies related to the first year of implementation or are inherent to the system and whether they will impact on the same Member States each year.

Assessment: the main observations of the report are as follows:

1. The outcome of the implementing actions: the implementation of the Directive has required work and substantial financial resources from the Member State and at EU level. As a result of this work, **the Directive was largely implemented early in 2011**. The general impression of the Commission is that the Directive is being substantially implemented.

On inspection, the Commission notes that while the overall inspection commitment has been achieved, a number of implementation problems appear to exist in some Member States which need to be addressed. **The number of missed Priority I inspections in some Member States gives rise to particular concern**. The Commission/EMSA will work with the Member States concerned to analyse the reasons for these problems taking into account the adaptation to the NIR. Each Member State must carry out the number of inspections assigned to it, otherwise the principle of the fair share is jeopardised.

2. Impact on maritime safety, efficiency of maritime transport and pollution prevention: the NIR establishes full inspection coverage on ships visiting EU ports and anchorages and a more risk-based system of targeting ships for inspection while real-time ship call information provides improved capabilities for decision making on the ships to be inspected.

On an overall basis, **the inspection commitment for the EU Member States was reached**. In 2011 as compared with previous years the total number of inspections to be carried out decreased. As a result, higher quality inspections were carried out, concentrated on substandard ships. This means that **PSC resources are concentrated on inspecting poorer quality vessels and that the inspections carried out are more in-depth**.

Directive 2009/16/EC requires Member States to maintain appropriate competent authorities with the **requisite number of qualified inspectors** for the inspection of ships. The report provides the numbers of qualified PSC inspectors in each Member State by port. The figures vary between Member States as not all are full time equivalent posts. The Commission notes that in general, Member States maintain an appropriate number of inspectors **(832 in total)** to carry out the inspections required.

3. Problems raised by Member States: the main points raised were:

- the Directive allows for Priority I inspections to be postponed in exceptional circumstances. **This possibility does not exist for Priority II inspections that are not mandatory.** However if a Member State is "under burdened" within the meaning of the Directive it has (in effect) to treat Priority II inspections as mandatory. Several Member States request that the possibility of postponing inspections be applied also to "mandatory" Priority II inspections.

- The Directive allows an **inspection at an anchorage** to be missed if the visit of the ship is "too short". Member States requested that this possibility be extended to ports;

- Directive 2002/59/EC allows Member States to exempt scheduled services performed between ports located on their territory from the requirement to notify **dangerous or polluting goods** carried on board, Member States suggested that this exemption should be extended to PSC;

- Member States indicated that the requirements of Directives 2002/59/EC and 2009/20/EC on the **insurance of shipowners** for maritime claims are not included within THETIS and that this should be taken into account;

- in the situation where the **priority status of vessels changes** while it is in the port Member States proposed THETIS to warn the State concerned and the State should have a period of grace in order that this missed inspection not be counted against it.

- Annex III of the Directive includes a **list of information to be provided** in the notification of the arrival of a ship. Member States proposed that requirement (f) "date of last expanded inspection in the Paris MOU region" to be deleted as this information is already included in THETIS.

4. Future developments: in the light of the issues identified during implementation and communicated to the Commission by Member States the Commission is currently evaluating whether changes to the Directive are necessary.

In the coming years it is expected that the EU PSC regime will adapt to future requirements that may arise *inter alia* from international conventions as these enter into force and become relevant instruments for the purposes of Directive 2009/16/EC.

The forthcoming entry into force of the Maritime Labour Convention, 2006 (MLC 2006) and the related Directive 2009/13/EC14 will have to be supported by THETIS. A Commission proposal to modify Directive 2009/16/EC in this regard is currently being discussed in the European Parliament and the Council.

In addition, with the entry into force of the IMO Ballast Water Management Convention (BWM 2004), it is expected that enforcement will be carried out in the context of Directive 2009/16/EC and THETIS.

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.

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;
- 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.

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 time. 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.

Port State control. Recast

2005/0238(COD) - 25/04/2007 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted a resolution drafted by Dominique **VLASTO** (EPP-ED, FR) amending the proposed directive on Port State Control (PSC). The main amendments were as follows:

- under the inspection regime set up by the Directive, the intervals between periodic inspections on ships depend on their risk profile that is determined by certain generic and historical parameters. For high risk ships this interval should not exceed 6 months;

- complaints from persons with a confirmed legitimate interest regarding living and working conditions on board should be investigated. Priority should be given to dealing with complaints on board. The initial investigation must make it possible to establish swiftly whether the complaint is admissible or whether it is manifestly unfounded or clearly abusive;

- the objectives of the directive should include more thorough and frequent inspections for high-risk vessels and the introduction of "elements related to a Community port State control regime", aimed at establishing common criteria for control of ships by the port State and harmonising procedures on inspection and detention;

- in order not to impose a disproportionate administrative burden on Member States without seaports, a de minimis rule will permit them to derogate from the provisions of the Directive under certain conditions. The Commission shall adopt, in accordance with the comitology procedures set out; the measures for the implementation of this derogation mechanism;

- Parliament introduced a new definition for “port” and amended some existing definitions;

- France may decide the legislation does not include ports situated in the overseas departments. Where a Member State carries out an inspection on a ship in its territorial waters but outside a port, such procedure shall be deemed to be an inspection for the purposes of the Directive.

- each Member State shall carry out annually a total number of inspections of individual ships corresponding to its share of the total number of inspections to be carried out annually in the Community and in the Paris MOU area. This share shall be based on the number of ships calling at the

ports or anchorages of the Member State in question in relation to the sum of the number of ships calling at the ports and anchorages of each Member State of the Community and of the states party to the Paris MOU. Parliament deleted the clause stating that the total number of inspections to be carried out annually by the competent authority of each Member State must correspond to at least 25% of the annual number of individual ships which entered its ports;

- Parliament made a number of amendments aimed at tightening up and clarifying some of the provisions relating to the inspection regime, the criteria for selecting ships for inspection and the parameters for calculating a ship's risk profile. It specified inter alia in a new Article 7a dealing with the 'expanded inspection' regime that expanded inspections should apply to ships with a high risk profile and to passenger ships and oil and chemical tankers more than 12 years old;

- the competent authority shall inform the port authority at its earliest convenience when a detention order is issued;

- new article 18a stipulated that the Commission should develop and maintain an inspection database, which shall be a common database for both the European Union and the Paris Memorandum of Understanding, showing the risk profiles of ships, indicating all ships due for inspection, calculating the inspection commitment and capable of receiving ship movement data. The core of the system will be the joint EU/Paris MOU requirements. However, in the case of specific EU requirements, the Community will have full discretion to take decisions on the development and possible adaptation of the system to meet such requirements;

- Parliament deleted references to berthing areas;

- the Commission must ensure that penalties allow for uniform application of the inspection regime throughout the Community and do not create distortions between Member States.

Port State control. Recast

2005/0238(COD) - 11/06/2008 - Commission communication on Council's position

The Commission endorses the Council's approach regarding the flexibility of the new inspection scheme. However, regarding the authorised ceiling for missed inspections, the Commission feels that the 5% rate of missed inspections which it had proposed and which is also in line with the current Directive, is a realistic approach. The Commission cannot therefore accept raising this percentage to 10% for medium or low-risk ships as suggested by the Council.

Moreover, by removing the permanent ban and replacing it with a temporary one of up to 36 months depending on several criteria, the Council has deviated significantly from one of the most important aspects of the Commission's proposal. The Commission cannot endorse the Council's approach regarding this issue.

To a lesser extent, the way in which the Council deals in its common position with the matter of inspections at anchor also poses problems. The Council has not retained the inclusion of ships anchored outside ports in the scope of the Directive and simply refers to the concept of ports' jurisdiction. The construction proposed by the Council risks being interpreted differently and restrictively by different Member States and could potentially make this provision meaningless. The Commission does feel it is essential to be able to inspect ships at anchor. Moreover, this is what the Council itself called for after the Prestige disaster. Substandard ships which simply pass through European waters without calling at a port pose a particular risk. An inspection at anchor by the port State may be the only way to inspect these ships.

In conclusion, the Commission takes note of the Council's common position, which was unanimously adopted and which does not generally amend either the objectives or the spirit of its proposal, but wishes to point out that its views differ on several specific points, such as removing the permanent ban and replacing it by a temporary one, and to a lesser extent on the Council's approach concerning inspections at anchor and increasing the authorised ceiling for missed inspections from 5% to 10%.

Port State control. Recast

2005/0238(COD) - 11/03/2009 - Text adopted by Parliament, 3rd reading

The European Parliament adopted by 641 votes to 15, with 15 abstentions, under the third reading of the codecision procedure, a legislative resolution approving the joint text approved by the Conciliation Committee for a **directive of the European Parliament and of the Council on port State control (recast)**.

For details of the agreement, see the summary dated 08/12/2008.

Port State control. Recast

2005/0238(COD) - 06/06/2007

The Council reached a political agreement on a proposal for a Directive on port State control. The Maltese delegation indicated that it would abstain from voting. The Commission stated that it could not support the text agreed by the Council.

The Council will adopt its common position at one of its forthcoming meetings after finalisation of the text and will forward it to the European Parliament for a second reading in the framework of the codecision procedure.

The text agreed by Ministers incorporates a very few mainly editorial changes to the general approach adopted by the Council in December 2006.

The text agreed establishes a new inspection regime with the aim of ensuring that a maximum of inspections are performed by Member States, applying these inspections to ships calling at their ports and to ships at anchor in areas under the jurisdiction of the port.

- Inspections will be focused on substandard vessels, which will be checked more often, while the burden will be alleviated with regard to quality vessels. As ultimate measure against substandard ships, whose performance will be inter alia evaluated in relation to the performance of the flag State, the access of these ships to Member States' ports will be indefinitely refused. This indefinite access refusal may be lifted after 36 months and only if certain conditions are fulfilled.

- The new inspection regime will provide for an equitable share of the overall inspection commitment, while also taking account of specific circumstances through flexibility mechanisms for obligatory inspections. Member States are allowed to miss a small percentage of inspections, namely inspections on 5% of ships with a high risk profile and on 10% of other ships. They must, however, give particular attention to ships that do not often call at ports within the Community. Furthermore, Member States may, in specific circumstances, postpone an inspection for 15 days.

- In order to allow for a seamless implementation of the new complex port State control regime, the text as agreed by the Council establishes a transposition period of 36 months, after which the Directive will be applied by all Member States as of the same day.

Port State control. Recast

2005/0238(COD) - 23/11/2005 - Legislative proposal

PURPOSE : to recast Directive 95/21/EC on port State control, and make certain amendments with a view to clarification or reinforcement of its provisions, and add provisions, notably on maritime safety.

PROPOSED ACT : Directive of the European Parliament and of the Council.

CONTENT : This proposal aims to recast Directive 95/21/EC on port State control, which has been the subject of numerous amendments which have made it particularly complex. The recasting will clarify the provisions of the Directive to make them more understandable, in line with the "better law-making" policy promoted by the Commission.

In addition, the proposal aims to:

- amend certain provisions, with a view to either simplification or clarification (for example in the case of the expanded inspection programme) or reinforcement (this is the case in particular with provisions on the role of pilots in detecting faults and rules concerning the banning of substandard ships);

- add a number of new provisions in areas which were not covered by port State control, such as maritime safety, in order to take account of recent developments in international and Community law.

It should be noted that the proposal stems from the work of the European Parliament temporary committee on the improvement of maritime safety following the sinking of the tanker Prestige in 2002 (conclusions of the "MARE" Committee).

The main points of the proposal are as follows:

1) Ensuring more effective application of the system of controls in ports and anchorages of the EU: the primary objective is to ensure that port State control is carried out in a uniform manner in ports of all Member States. Thus the arrangements for banning a vessel will be based on detentions enforced in all Member States and not only in the Paris Memorandum ports as is the case in the present Directive. The proposal also lays down the inspection procedures applicable in anchorages.

2) Reinforcing the notification obligations on pilots: the Directive already contains an obligation for pilots to report defects. The PRESTIGE accident showed that information had not been transmitted by sea pilots in the Baltic approaches in the absence of a clear legal basis. The existing provisions have therefore been amended to extend this obligation to deep sea pilots, including those on ships in transit. Moreover, it is proposed to amend the provisions of the Directive to ensure that reports made by pilots and port authorities are followed up more effectively by the Member States.

3**) Extending and simplifying access refusal measures:** refusal of access is a very effective dissuasive tool in the campaign against substandard vessels. The current rules will be :

- extended to all ships: statistics show that bulk carriers and cargo ships are on average the most frequently detained in the European Union;

- simplified: the present criteria are obscure and difficult to implement. A clear message will be given, since the proposal is now based on two simple criteria: firstly, poor management of the vessel by its operator, as indicated by repeated detentions without a significant improvement in the condition of the vessel and secondly, inadequate monitoring by the flag State, attested to by its inclusion on the black and grey lists of the Paris Memorandum;

- tightened up: a minimum banning period is established in order to counter abuses already observed in the implementation of the Directive, in particular access refusals which are lifted too quickly, without any proper inspection of the condition of the vessel. Repeat offenders will be penalised more severely, with the ultimate possibility of permanent banning from EU ports.

4) Tightening up requirements concerning administrations responsible for inspections and the competence of inspectors: in accordance with international law, port State control can be exercised by a State only if the latter is fully in compliance with the rules that it imposes on foreign vessels in

its ports. The Directive will restate this minimum requirement imposed on Member States. Moreover, the competent authorities must be in a position to carry out the compulsory inspections when the ships concerned are in port, including if necessary at weekends and on public holidays, in order to ensure that the vessels concerned do not evade inspection. Finally, it is proposed to tighten up requirements concerning the professional profile of inspectors, by requiring Member States to regularly check their qualifications, particularly in the light of new rules resulting from amendments to the Directive on international conventions. The Commission will also establish, with the assistance of EMSA, harmonised rules on the qualifications and training of inspectors.

5) Improving the planning, preparation and carrying out of inspections: under the improved cooperation between authorities pre-notifications received by ports and other bodies will have to be transmitted immediately to the inspectors, which will enable them to better plan and prepare their inspections. Finally, it is laid down that when carrying out inspections, the inspector verifies whether defects detected but not corrected in a previous port have indeed been rectified in the meantime.

6) Improving the expanded inspection regime: practical improvements have been made to the expanded inspection regime: ships eligible for an expanded inspection will be informed in advance by the inspector that they will be subjected to the expanded inspection on their arrival in port and will have to take appropriate measures to be available for such an inspection. The expanded inspection scheme will be applied to the categories of vessels concerned from a uniform minimum age (12 years).

7) Tightening up provisions concerning the human element: the Paris Memorandum statistics show a high number of anomalies connected with the qualifications of seamen onboard ships and their living and working conditions. Provisions tighten up controls on these aspects, in order in particular to respond to the worrying phenomenon of the increasing number of fraudulent certificates. Moreover, complaints by crew members regarding the safety and health of crews, living conditions and more generally the safety of the ship and the prevention of pollution will be dealt with systematically and seamen informed of the outcome of their complaint.

8) Controls regarding security: maritime transport is particularly vulnerable to the risk of terrorist or other criminal acts. In order to facilitate the application of Regulation 725/2004/EC on enhancing ship and port facility security, the inspection procedures established under the Paris Memorandum have been introduced in the Directive.

9) Greater transparency and wider dissemination of information on ships and operators: in order to reinforce the dissuasive effect on the operators of ships penalised under the Directive, the Commission, through the European Maritime Safety Agency, is planning to publish a black list of owners of ships which have been the subject of repeated detention or access refusal measures. A black list of ships banned will also be published in accordance with the same procedures and updated constantly.

10) Facilitating monitoring by the Commission of the implementation of the Directive by the Member States: the existing provisions, which do not allow satisfactory control by the Commission of implementation of the Directive by the Member States, will be amended to enable EMSA, acting on behalf of the Commission, to obtain precise electronic data on ships' movements. On this basis, detailed analyses of the operation of the regime in the ports of the Member States can be carried out, which will make it possible for example to optimise inspection resources on the basis of traffic or avoid the risk of seeing "ports of convenience" appear.

11) Establishment of a new inspection regime: the current port State control regime is based on compliance with the purely quantitative threshold of 25% of ships inspected by Member State, which not only allows many ships to pass through the net but also sometimes causes the authorities to carry out unjustified inspections solely to reach this figure. The approach proposed establishes a collective objective which is to inspect all ships calling at ports in the Union, with high risk ships being inspected more frequently and quality ships less so. The new inspection regime will help to ease the burden of inspections on quality ships on the basis of criteria relating to the ship itself and its flag (in particular the fact that the flag State applies the IMO voluntary audit system). However, it should be stressed that this new regime must not lead to a weakening of the present system which would result in greater insecurity. In particular, the aim of the new regime should not be a reduction of the resources allocated by the Member States to port State control but their more effective use. A precondition of such a regime, if the development of ports of convenience is to be avoided, is that an objective mechanism is found which guarantees a fair – and verifiable – distribution of the number of inspections between the Member States. The details of such a mechanism are currently being studied under the Paris Memorandum and in EMSA. It is therefore proposed at this stage to incorporate the principles of this new inspection regime in the Directive, along with its essential elements: establishment of a risk profile applicable to ships, incentives for ships with a low risk profile and the adaptation of existing procedures relating to inspections and follow-up.

Subsequent amendments to the Directive which become necessary will be introduced through the "comitology" procedure, once all the elements and practical details of the new inspection regime have been established. However, until these technical details have been adopted and have entered into force at Community level, the existing regime continues to apply and in particular the threshold of 25% of individual ships inspected by Member State.

FINANCIAL IMPLICATIONS :

The proposal has no budgetary implications for the Community. The cost of human resources and associated costs not included in the reference amount is set at EUR 324 000 over 6 years, that is EUR 54 000 per year (1 official working part time).

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.

Anchorages: 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.

Port State control. Recast

2005/0238(COD) - 08/06/2006

Pending the European Parliament first reading opinion, the Council took note of a progress report on a proposal for a directive on Port State control. The progress report takes into account progress made within the instances of the Council and the framework of the Paris Memorandum of Understanding.

Port State control. Recast

2005/0238(COD) - 11/12/2006

Taking into account progress made within the framework of the Paris Memorandum of Understanding and pending the European Parliament's first-reading opinion, the Council reached agreement on a general approach on a proposal for a directive on port State control (recast). The Maltese delegation indicated that it would vote against.

The Ministerial discussion was based on a Presidency compromise proposal concerning in particular the following issues:

– **scope of the directive**: Member States shall perform inspections on any ship and its crew calling at one of their ports or anchoring in areas under the jurisdiction of one of their ports in order to carry out a ship/port interface;

– **flexibility mechanism for inspections**: Member States are allowed to miss a small percentage of inspections, namely inspections on 5% of ships with a high risk profile and on 10% of other ships. They shall, however, give particular attention to ships that do not call often at ports within the Community. Furthermore, Member States may, in specific circumstances, postpone an inspection for 15 days;

– **access refusal**: ships that at various occasions have proven not to comply with international standards on safety, health and environment, will be refused access to Member States' ports. As criteria for such a measure, the performance of the ship is evaluated in relation to the performance of its flag State, determined on the basis of the "black" and "grey" and "white" lists of flag States established by the Paris MoU. As ultimate measure against

substandard ships it can be decided to refuse the access to ports within the Community indefinitely. If the ship concerned however complies with a series of conditions, this measure can be lifted after 36 months. Among the conditions to be fulfilled, the ship is not allowed to fly a flag of a State on the "black" and "grey" Paris MoU list, it has to be classified by an EU recognised organisation and to be managed by a company with a high performance;

– **transposition date**: the complexity of the new inspection system requires an intensive preparation by Member States. The directive will therefore apply in all Member States on the same day after a transposition period of 36 months.

Port State control. Recast

2005/0238(COD) - 23/11/2005 - Document attached to the procedure

COMMISSION'S IMPACT ASSESSMENT

For further information regarding the context of this issue, please refer to the summary of the Commission's initial document COM(2005)0588: proposal for a Directive of the European Parliament and of the Council on port State control (Recast).

1- POLICY OPTIONS AND IMPACTS

The Commission examined four options.

1.1- Option 1 - maintain the status quo: The first option is not to amend Directive 95/21/EC. This option is seen as a reference point against which the other options are evaluated.

1.2- Option 2 - resolve the problem through increased cooperation between Member States. In regard to port state control, the legal framework for cooperation is provided by the Paris Memorandum of Understanding on port State control. This Memorandum lays down the objectives to be reached by its members and draws up harmonised procedures for the inspection of ships, in view in particular of the requirements that have arisen from international conventions on maritime safety and pollution prevention adopted by the IMO. A certain amount of inter-state cooperation exists already thanks to the Paris Memorandum, but it must now be exercised within the limits set by Directive 95/21/EC with the objective of implementing the requirements contained in this Directive. The increase in cooperation between States would depend on the 'decommunitisation' of the port State control system in the areas of action proposed.

1.3- Option 3 - simplification and improvement of the existing legislation. This option involves the analysis of aspects of the directive already in force and proposes updates, improvements and simplifications that should be made. The planned changes would be made in the form of a new proposal for a directive amending Directive 95/21/EC, with recasting being postponed until a later stage.

1.4- Option 4 - modification of the existing regime in the form of a recasting of Directive 95/21/EC. The recasting of directive 95/21/EC shares the same objectives as Option 3, namely to:

- amend the existing directive in order to respond to calls from the Council and the European Parliament following the PRESTIGE accident (for example, on the extension of requirements to notify defects observed on board ships by pilots);
- strengthen the existing regime (for example, with regard to refused access);
- update the directive in view of developments that have taken place at international level or within the Paris Memorandum;
- contribute to the application of existing Community legislation (for example, in the area of safety) or other proposals in the third package (for example, the checking of financial guarantee certificates).

CONCLUSION: **The chosen option is a combination of Options 3 and 4**. It responds to a number of needs:

1. the implementation of principles adopted by the Union is the area of better regulation;
2. the need to strengthen and improve the port State control system called for by the European Parliament and the Council after the PRESTIGE accident;
3. the need to update the directive given developments in international legislation and procedures covered by the Paris Memorandum;
4. the introduction of a new approach to inspections in light of the limits encountered by the current regime.

The proposal will also make it possible to strengthen the existing mechanism by introducing stricter measures with regard to sub-standard ships, while alleviating the pressure on port state control administrations and penalising reputable operators as little as possible.

IMPACTS

Option 1: maintain the status quo.

- **Advantages**: maintains the application of the current port state control system with the current costs and benefits.
- **Disadvantages**:
    - is not in line with the demands of the European Parliament and of the Council, nor with the undertakings made by the Commission following the PRESTIGE accident;
    - requires Member States to apply measures that are outdated as a result of changes in international law or developments in the situation within the EU.

Option 2: inter-State cooperation.

- **Advantages**: allows the flexible development of rules and procedures in regard to port State control.
- **Disadvantages**:
    - risks of divergence and incompatibility with Community legislative measures already in force regarding port State control;
    - risks of diverging application between Member States and distortions to competition resulting from actions decided at intergovernmental level not being of a binding character.

Option 3: simplification and improvement of the existing legislation.

- **Advantages**:
    - facilitates implementation by the Member States and operators concerned;
    - does not increase costs while providing the system with necessary updating and improvements;
    - responds to the political demands of the European Parliament and of the Council following the Prestige accident.
- **Disadvantages**:
    - only responds in a limited way to the concern of promoting quality maritime transport in the context of a healthy competitive environment;
    - the limits of the current approach based on an objective of 25% of inspections by Member State are maintained.

Option 4: modification of the existing regime in the form of a recasting of Directive 95/21/EC.

- **Advantages**:
    - guarantees the inspection of all vessels using EU ports;
    - favourable cost/efficiency ratio: sets in place a modulated approach, concentrating inspections on vessels that are most at risk and by granting the operators of quality vessels the benefit of less rigorous inspections;
    - limits the risk of seeing the development of ports of convenience.
- **Disadvantages**: it is an approach which is in the process of development for which the precise means of application and the impacts have not yet been completely finalised.

2- FOLLOW-UP

The Commission will monitor the practical implementation by the Member States of the Directive's provisions. The Member States will communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive

In addition, the recasting exercise is an occasion for the Commission to improve and strengthen provisions regarding the communication of information by the Member States to the Commission, and broader access to the electronic transmission of data allowing more precise knowledge of the traffic situation and inspection efforts in Community ports.