

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).