ECSA

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EUROPEAN COMMISSION PROPOSAL FOR A DIRECTIVE ON PORT STATE CONTROL

COMMENTS BY
EUROPEAN COMMUNITY SHIPOWNERS' ASSOCIATIONS AND
INTERNATIONAL CHAMBER OF SHIPPING

GENERAL

Improved targeting

We strongly support the general aims of this proposed Directive, especially the stated intention to move away from the requirement for national PSC authorities to inspect 25% of all visiting ships, so that resources can be better targeted at ships that are more likely to be sub-standard. We also greatly welcome the intention of the Directive to encourage the possibility of well-operated, quality ships being subjected to fewer periodic inspections, whereby low risk ships might be inspected once every two to three years. This should provide a real incentive for responsible operators to maintain their commitment to continuous improvement.

It is hoped that the practical technical details of the new inspection regime are established as soon as possible and subsequently introduced through the 'comitology' procedure. We also hope that the industry will have every opportunity to be involved in the process of developing an appropriate system.

Access Refusal Measures

We fully support the Directive's intention to deter the operation of sub-standard ships, including proposals to tighten-up the circumstances in which seriously sub-standard ships might be denied access to EU ports.

That said, we believe as a principle that Criteria for Refusal of Access should only be based on the inspection history of the particular ship rather than the flag or ownership. A sub-standard ship should not be protected because it is registered with a generally sound flag. Regardless of the flag and ownership, which could in any a case have changed one or more times, three detentions in 36 months may well be appropriate criteria for banning. However, there needs to be recognition that a ship may be detained for reasons which do not imply any fault by the company or the crew (e.g. a detention to rectify storm damage caused since the last port of call) and which should not automatically count towards a banning order. We suggest

this important detail requires careful consideration, and that the precise criteria for refusing access would benefit from consultation with the Paris MOU.

While it is recognised that pressure needs to be exerted to ensure that flag states properly undertake their obligations we consider that this is best realised through targeting rather than refusal of access criteria.

Flag state performance

We fully support the desire to place emphasis on flag state performance as criteria for PSC targeting, in order to discourage the use of poorly performing flag states.

The industry has been a vociferous supporter of the establishment of the IMO Member State Audit Scheme, and we agree that participation in the Scheme should be taken into account for targeting calculations. However, it should be borne in mind that the Scheme is not yet operational and that the real objective proof of a flag's performance will continue to be its ships' PSC inspection records. Again, we acknowledge that the issues are complex, but would suggest that this aspect merits careful consideration.

Company Performance

While we do not disagree with taking account of company performance for PSC targeting purposes, we wonder whether the new Directive places sufficient weight on the performance of individual ships as the various weighting factors for calculating the target factor are not specified in the Directive. Again, we suggest this is a question of balance – but it is important to retain incentives for good performance by individual ships and their crews.

Company blacklist

We also think that the proposal to name and shame poorly performing companies requires careful reflection. The criteria for black listing operators in Annex XV – especially the inclusion of fleets in which more than one ship has been detained in the last 12 months – seems rather severe, especially in the case of companies that operate a large fleet of ships. One approach could be to take account of the detention rate of the company compared to the average detention rate under the Paris MOU; at least the number of ships operated by the company should be listed to enable an objective judgement to be made.

Using the ISM definition of the company referred to in the ship's Document of Compliance, there may also be practical and legal difficulties in establishing whether ships are actually operated by the same company, and it will no doubt be possible for companies to circumvent this requirement by establishing new financial structures for the purpose.

In practice, due to the publication of detention records of individual ships, through mechanisms such as Equasis which also name the operator, there is perhaps already sufficient deterrent against companies being associated with detained ships.

Harmonisation with Paris MOU

Given the vital need for harmonisation of procedures between the EU and other nations within the Paris MOU (which also forms the basis of standards adopted by other regional MOUs worldwide and from which EU Member States benefit) it is clearly important that these other Paris MOU members (not least Canada and Russia with their membership of the Tokyo MOU) have an opportunity to contribute to the development of the Directive. While the details of the Directive still acknowledge the important role of the Paris MOU, our reading of the entirety suggests that the role of the Paris MOU is not afforded sufficient emphasis, while deletions of various references (not least in Article 1), and only passing mention of the Paris MOU in the 'Explanatory Memorandum', may possibly send the wrong political signals.

Detailed comments

In addition to elaborating on the points above, we have a number of detailed comments on other issues raised by the text which we outline below:

Preamble

New para 7 – suggest addition of 'in accordance with agreed international standards' after 'security checks'.

Para 20 - notwithstanding our comments on the use of pilots below, if this provision is maintained it might be better to refer to pilots providing information on 'suspected' defects.

Para 23 – some reference to the Paris MOU information system might be retained, even if a reference to Sirenac is no longer felt appropriate

Para 24 – The initial inspection should not be paid by the ship, including inspections leading to detentions. Currently, PSC has an incentive to detain ships in order to recover the cost of inspection; only follow up inspections to clear the detained ship should be charged to the ship. This is an important principle to incorporate into the Directive since the Paris MOU is a model for many other PSC regimes that may misuse such a provision giving them an incentive to detain ships.

Article 1

Para (b) - 'taking proper account of the commitments… under the Paris MOU' should be restored – deletion suggests an unwelcome political signal.

Article 3

Para 1 – the new text needs careful scrutiny to avoid any impression that it interferes with innocent passage or freedom of navigation if a ship is not calling at an EU port. It is vital to ensure consistency with UNCLOS.

Article 5

Paragraph 1 obliges Member States to collectively inspect all ships and to contribute an individual effort as may be allocated to them (Annex II, paragraph III refers) to achieve this. For reasons of clarification, the words 'eligible for inspection' should be added after the words 'all ships'.

Article 7

New Para c – although hygiene is very important, moving the text as proposed seems to give this undue emphasis in comparison to the safety of the ship.

Article 8

Para 2 – the reference should be to Annex I point A2.

Para 3 – is it wise to make reference to a specific (Paris MOU) target factor (7) given that this might change? The same applies to other such references throughout the Directive, not least in Annex I.

Article 9

Para 4 – the reference should be to Annex I point A2.

Article 10

See our general remarks above. Refusal of access should occur regardless of flag and ownership during this period. Annex IX to be amended accordingly.

Article 12

While accepting that on inspection of the living and working conditions there may be instances to justify detention of the ship until rectified, as catered for in Article 13, it is important to ensure that the act of lodging the complaint is not used to unduly delay the ship's voyage.

Where a crew member detects any perceived non-compliance, he should be required to first take this up with the officers on board or the company, and when a PSC officer is investigating such a claim the extent to which this has been undertaken should be checked.

Article 13

In case a ship is detained, Art.13(6) stipulates that the PSC shall notify in writing the flag state etc. However, while it is obvious that the Master must also be notified, it is not actually specified. It is therefore proposed to add this in 13(2) after the first sentence, as follows " ….revealed is stopped, by issuing a detention order or stoppage order to the master of the ship"

Article 14

It is important that the Right of Appeal should be independent and impartial, and to achieve this goal the procedure as established under the Paris MOU should be incorporated into the Directive. In such a system shipowners should have the possibility to raise issues other than those relating to detentions.

Para 1 – perhaps the addition of words like 'that has not yet been considered' after 'appeal' might add clarity. Otherwise the text gives the impression that an appeal will never have any effect.

Para 4 – this text seems most welcome, it being particularly important to ensure that when a detention or a refusal of access is revoked or amended the Member State involved should ensure that the inspection database is amended accordingly without delay.

Article 17

While understanding the intention of wanting to involve pilots in reporting suspected defects, this text may need careful consideration. It must be understood that the expertise of pilots is limited. The word 'encourage' rather than 'ensure' may be more appropriate. The word 'their' before pilots also suggests that they are employed by the Member State.

The question of potential financial liability on pilots needs careful consideration.

In addition, the proposed new role of pilots should not have the consequence of giving them a public service status; they must remain a commercial service.

Article 21

The Article implies that the initial inspection should be paid by the ship. As indicated above, PSC currently has an incentive to detain ships in order to recover the cost of inspection; only follow up inspections to clear the detained ship should be charged to the ship.

Article 26

Insufficient weight seems to be given to the PSC records of individual ships.

Annex I

B.I 4

We note the proposal concerning failure to take a pilot in the entrances to the Baltic becoming an overriding factor for priority inspection. Whilst recognising the intention behind this, and not necessarily disagreeing, for now we wish to reserve our position. In any event, we believe such a proposal will need careful consideration, and discussion with non-EU members of the Paris MOU.

Annex 2

I. Ship Risk Profile

d) Company performance

As mentioned above, it may prove difficult to establish, in a consistent manner, whether two ships are operated by the same legal entity as defined by ISM.

f) Inspection history

Accept including these factors should be taken into account, but the individual weights should be further looked at to reflect a proper deterrent and balance, not least by experts in the context of the Paris MOU.

II. Inspection of Ships

1. Periodic Inspections

Although we may wish to debate the detail, the proposals concerning the treatment of low risk ships are most welcome.

2. Additional Inspections

4th last line – should the reference be to ships detained 'less than' 3 months ago and not 'more than'?

Annex IV

Para 13. In the context of STCW – the words 'or any other documents' may need careful consideration, since there are many documents with which seafarers may need to be issued under STCW but which are not actually required on board in their original form. We will be happy to elaborate on this point.

Para 15. The reference should be to records of work 'or' rest not 'and', consistent with ILO 180.

Paras 41 and 42

We have difficulty with the inclusion of references to new documents concerning civil liability which may or may not be required by the proposed Directive on Civil Liability and Security, with which the industry has major problems, and which in any case may take some time to finalise. Any such references would be better to refer to documents required by the relevant international Conventions.

Annex VI

We understand that the ILO publication 'Inspection of Labour Procedures' is out of date, and in any case will need to be revised following the expected adoption of the new consolidated ILO Convention

Annex VII

Para A 4

It might be helpful to include a reference to the right of the master to refuse access to security inspectors that fail to produce the necessary ID (the words ''duly authorised' are not entirely adequate).

Para B 5

Inclusion of a reference to the 'Declaration of Security' as defined by the ISPS Code might be helpful.

Para B 6

We suggest the word 'complaint' is not appropriate here and that security related 'report' is sufficient.

Annex IX

As suggested in Art. 10, ships detained more than twice during a 36 months period might be refused access, regardless of flag and ownership during that period, and para A1 to be amended accordingly..

Annex X

I point 13 – suggest a reference to the ISM Document of Compliance when naming the ship operator.

Annex XV

As mentioned in our general remarks, we feel the criteria for blacklisting operators are too extreme and may have practical difficulties.

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