

Directive 2009/16/EC of the European Parliament and of the Council of 23 April 2009 on port State control (Recast) (Text with EEA relevance)

DIRECTIVE 2009/16/EC OF THE EUROPEAN
PARLIAMENT AND OF THE COUNCIL

of 23 April 2009

on port State control

(Recast)

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 80(2) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee⁽¹⁾,

Having regard to the opinion of the Committee of the Regions⁽²⁾,

Acting in accordance with the procedure laid down in Article 251 of the Treaty⁽³⁾, in the light of the joint text approved by the Conciliation Committee on 3 February 2009,

Whereas:

- (1) Council Directive 95/21/EC of 19 June 1995 on port State control of shipping⁽⁴⁾ has been substantially amended several times. Since further amendments are to be made, it should be recast in the interests of clarity.
- (2) The Community is seriously concerned about shipping casualties and pollution of the seas and coastlines of Member States.
- (3) The Community is equally concerned about on-board living and working conditions.
- (4) Safety, pollution prevention and on-board living and working conditions may be effectively enhanced through a drastic reduction of substandard ships from Community waters, by strictly applying Conventions, international codes and resolutions.
- (5) To this end, in accordance with Council Decision 2007/431/EC of 7 June 2007 authorising Member States to ratify, in the interests of the European Community, the Maritime Labour Convention, 2006, of the International Labour Organisation⁽⁵⁾, Member States should make efforts to ratify, for the parts falling under Community competence, that Convention as soon as possible, preferably before 31 December 2010.
- (6) Responsibility for monitoring the compliance of ships with the international standards for safety, pollution prevention and on-board living and working conditions lies primarily with the flag State. Relying, as appropriate, on recognised organisations,

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the flag State fully guarantees the completeness and efficiency of the inspections and surveys undertaken to issue the relevant certificates. Responsibility for maintenance of the condition of the ship and its equipment after survey to comply with the requirements of Conventions applicable to the ship lies with the ship company. However, there has been a serious failure on the part of a number of flag States to implement and enforce international standards. Henceforth, as a second line of defence against substandard shipping, the monitoring of compliance with the international standards for safety, pollution prevention and on-board living and working conditions should also be ensured by the port State, while recognising that port State control inspection is not a survey and the relevant inspection forms are not seaworthiness certificates.

- (7) A harmonised approach to the effective enforcement of these international standards by Member States in respect of ships sailing in the waters under their jurisdiction and using their ports should avoid distortions of competition.
- (8) The shipping industry is vulnerable to acts of terrorism. Transport security measures should be effectively implemented and Member States should vigorously monitor compliance with security rules by carrying out security checks.
- (9) Advantage should be taken of the experience gained during the operation of the Paris Memorandum of Understanding on Port State Control (Paris MOU), signed in Paris on 26 January 1982.
- (10) The European Maritime Safety Agency (EMSA) established by Regulation (EC) No 1406/2002 of the European Parliament and of the Council⁽⁶⁾, should provide the necessary support to ensure the convergent and effective implementation of the port State control system. EMSA should in particular contribute to the development and implementation of the inspection database set up in accordance with this Directive and of a harmonised Community scheme for the training and assessment of competences of port State control inspectors by Member States.
- (11) An efficient port State control system should seek to ensure that all ships calling at ports and anchorages within the Community are regularly inspected. Inspection should concentrate on substandard ships, while quality ships, meaning those which have satisfactory inspection records or which fly the flag of a State complying with the Voluntary International Maritime Organisation (IMO) Member State Audit Scheme, should be rewarded by undergoing less frequent inspections. In particular to this effect, Member States should give overall priority to ships due for inspections with a high risk profile.
- (12) Such new inspection arrangements should be incorporated into the Community port State control system as soon as its various aspects have been defined and on the basis of an inspection-sharing scheme whereby each Member State contributes fairly to the achievement of the Community objective of a comprehensive inspection scheme and the volume of inspections is shared in an equitable manner among the Member States. This inspection-sharing scheme should be revised taking into account the experience gained with the new port State control system with a view to improving its effectiveness. Moreover, Member States should recruit and retain the requisite number of staff,

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- including qualified inspectors, taking into account the volume and characteristics of shipping traffic at each port.
- (13) The inspection system set up by this Directive takes into account the work carried under the Paris MOU. Since any developments arising from the Paris MOU should be agreed at Community level before being made applicable within the EU, close coordination should be established and maintained between the Community and the Paris MOU in order to facilitate as much convergence as possible.
 - (14) The Commission should manage and update the inspection database, in close collaboration with the Paris MOU. The inspection database should incorporate inspection data of Member States and all signatories to the Paris MOU. Until the Community maritime information system, SafeSeaNet, is fully operational and allows for an automatic record of the data concerning ships' calls in the inspection database, Member States should provide the Commission with the information needed to ensure a proper monitoring of the application of this Directive, in particular concerning the movements of ships. On the basis of the inspection data provided by Member States, the Commission should retrieve from the inspection database data on the risk profile of ships, on ships due for inspections and on the movement of ships and should calculate the inspection commitments for each Member State. The inspection database should also be capable of interfacing with other Community maritime safety databases.
 - (15) Member States should endeavour to review the method of drawing the white, grey and black list of flag States in the framework of the Paris MOU, in order to ensure its fairness, in particular with respect to the way it treats flag States with small fleets.
 - (16) The rules and procedures for port State control inspections, including criteria for the detention of ships, should be harmonised to ensure consistent effectiveness in all ports, which would also drastically reduce the selective use of certain ports of destination to avoid the net of proper control.
 - (17) Periodic and additional inspections should include an examination of pre-identified areas for each ship, which will vary according to the type of ship, the type of inspection and the findings of previous port State control inspections. The inspection database should indicate the elements to identify the risk areas to be checked at each inspection.
 - (18) Certain categories of ships present a major accident or pollution hazard when they reach a certain age and should therefore be subject to an expanded inspection. The details of such expanded inspection should be laid down.
 - (19) Under the inspection system set up by this 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 six months.
 - (20) In order to provide the competent port State control authorities with information on ships in ports or anchorages, port authorities or bodies or the authorities or bodies designated for that purpose should forward notifications on arrivals of ships, on receipt to the extent possible.

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- (21) Some ships pose a manifest risk to maritime safety and the marine environment because of their poor condition, flag performance and history. It is therefore legitimate for the Community to dissuade those ships from entering the ports and anchorages of Member States. The refusal of access should be proportionate and could result in a permanent refusal of access, if the operator of the ship persistently fails to take corrective action in spite of several refusals of access and detentions in ports and anchorages within the Community. Any third refusal of access can only be lifted if a number of conditions designed to ensure that the ship concerned can be operated safely in Community waters, in particular relating to the flag State of the ship and the managing company, are fulfilled. Otherwise, the ship should be permanently refused access to ports and anchorages of the Member States. In any case, any subsequent detention of the ship concerned should lead to a permanent refusal of access to ports and anchorages of the Member States. In the interests of transparency, the list of ships refused access to ports and anchorages within the Community should be made public.
- (22) With a view to reducing the burden placed on certain administrations and companies by repetitive inspections, surveys under Council Directive 1999/35/EC of 29 April 1999 on a system of mandatory surveys for the safe operation of regular ro-ro ferry and high-speed passenger craft services⁽⁷⁾, carried out on ro-ro ferries or high-speed passenger craft by a host State which is not the flag State of the vessel, and which include at least all the items of an expanded inspection, should be taken into account when calculating the risk profile of a ship, the intervals between inspections and the fulfilment of the inspection commitment of each Member State. In addition, the Commission should examine whether it is appropriate that Directive 1999/35/EC be amended in the future with a view of enhancing the level of safety required for the operation of ro-ro ferries and high-speed passenger craft to and from ports of Member States.
- (23) Non-compliance with the provisions of the relevant Conventions should be rectified. Ships which need to be the subject of corrective action should, where the observed deficiencies are clearly hazardous to safety, health or the environment, be detained until the shortcomings are rectified.
- (24) A right of appeal against detention orders by the competent authorities should be made available, in order to prevent unreasonable decisions which may cause undue detention and delay. Member States should cooperate in order to ensure that appeals are dealt with in a reasonable time in accordance with their national legislation.
- (25) Authorities and inspectors involved in port State control activities should have no conflict of interests with the port of inspection or with the ships inspected, or of related interests. Inspectors should be adequately qualified and receive appropriate training to maintain and improve their competence in the conduct of inspections. Member States should cooperate in developing and promoting a harmonised Community scheme for the training and assessment of competences of inspectors.
- (26) Pilots and port authorities or bodies should be enabled to provide useful information on apparent anomalies found on board ships.

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- (27) Complaints from persons with a legitimate interest regarding on-board living and working conditions should be investigated. Any person lodging a complaint should be informed of the follow-up action taken with regard to that complaint.
- (28) Cooperation between the competent authorities of Member States and other authorities or organisations is necessary to ensure an effective follow-up with regard to ships with deficiencies, which have been permitted to proceed, and for the exchange of information about ships in port.
- (29) Since the inspection database is an essential part of port State control, Member States should ensure that it is updated in the light of Community requirements.
- (30) Publication of information concerning ships and their operators or companies which do not comply with international standards on safety, health and protection of the marine environment, taking account of the companies' fleet size, may be an effective deterrent discouraging shippers from using such ships and an incentive to their owners to take corrective action. With regard to the information to be made available, the Commission should establish a close collaboration with the Paris MOU and take account of any information published in order to avoid unnecessary duplication. Member States should have to provide the relevant information only once.
- (31) All costs of inspecting, which warrant detention of ships, and those incurred in lifting a refusal of access, should be borne by the owner or the operator.
- (32) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission⁽⁸⁾.
- (33) In particular, the Commission should be empowered to amend this Directive in order to apply subsequent amendments to Conventions, international codes and resolutions related thereto and to establish the rules of implementation for the provisions of Articles 8 and 10. Since those measures are of general scope and are designed to amend non-essential elements of this Directive, inter alia, by supplementing it with new non-essential elements, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.
- (34) Since the objectives of this Directive, namely to reduce substandard shipping in waters under Member States' jurisdiction through improvement of the Community's inspection system for seagoing ships and the development of the means of taking preventive action in the field of pollution of the seas, cannot be sufficiently achieved by the Member States and can, therefore, by reason of its scale and effects, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.
- (35) The obligation to transpose this Directive into national law should be confined to those provisions which represent a substantive change as compared with Directive 95/21/

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EC. The obligation to transpose the provisions which are unchanged arises under that Directive.

- (36) This Directive should be without prejudice to the obligations of Member States relating to the time limits for transposition into national law of the Directives set out in Annex XV, Part B.
- (37) The port State control system established in accordance with this Directive should be implemented on the same date in all Member States. In this context, the Commission should ensure that appropriate preparatory measures are taken, including the testing of the inspection database and the provision of training to inspectors.
- (38) In accordance with point 34 of the Interinstitutional Agreement on better law-making⁽⁹⁾, Member States are encouraged to draw up, for themselves and in the interests of the Community, their own tables illustrating, as far as possible, the correlation between this Directive and the transposition measures, and to make them public.
- (39) In order not to impose a disproportionate administrative burden on landlocked Member States, a *de minimis* rule should allow such Member States to derogate from the provisions of this Directive, which means that such Member States, as long as they meet certain criteria, are not obliged to transpose this Directive.
- (40) In order to take into account the fact that the French overseas departments belong to a different geographical area, are to a large extent Parties to regional port State control memoranda other than the Paris MOU and have very limited traffic flows with mainland Europe, the Member State concerned should be allowed to exclude those ports from the port State control system applied within the Community,

HAVE ADOPTED THIS DIRECTIVE:

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- (1) [OJ C 318, 23.12.2006, p. 195.](#)
- (2) [OJ C 229, 22.9.2006, p. 38.](#)
- (3) Opinion of the European Parliament of 25 April 2007 ([OJ C 74 E, 20.3.2008, p. 584](#)), Council Common Position of 6 June 2008 ([OJ C 198 E, 5.8.2008, s. 1](#)), Position of the European Parliament of 24 September 2008 (not yet published in the Official Journal), Council Decision of 26 February 2009 and Legislative Resolution of the European Parliament of 11 March 2009 (not yet published in the Official Journal).
- (4) [OJ L 157, 7.7.1995, p. 1.](#)
- (5) [OJ L 161, 22.6.2007, p. 63.](#)
- (6) [OJ L 208, 5.8.2002, p. 1.](#)
- (7) [OJ L 138, 1.6.1999, p. 1.](#)
- (8) [OJ L 184, 17.7.1999, p. 23.](#)
- (9) [OJ C 321, 31.12.2003, p. 1.](#)