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**REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND  
THE COUNCIL**

**Third report assessing the implementation of the Directive on enhancing port security**

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## Third report assessing the implementation of the Directive on enhancing port security

### 1. INTRODUCTION

The main objective of Directive 2005/65/EC<sup>1</sup> on enhancing port security ('the Directive') was to complement the measures adopted in 2004 by means of Regulation (EC) No 725/2004<sup>2</sup> on enhancing ship and port facility security ('the Regulation').

The scope of application of that Regulation was limited to cover security measures on board ships and the immediate interface between ships and ports. It is to these obligations, which essentially fall under the ISPS (International Ship and Port facility Security) Code which Member States have committed as a priority, before agreeing to implement further obligations as part of the adoption of the Directive. The Directive complements the mechanism provided for by establishing a security system for all of the port area, in order to ensure a high and equal level of security for all European ports serving direct sea-going services<sup>3</sup>.

Over 1 200 commercial maritime ports are operated along the 70 000 km of coastline in the European Union, one of the regions in the world with the largest number of ports. Around one thousand of these ports (see point 6.1) fall within the scope of the Directive, i.e all ports housing one or more port facilities which are the subject of a security plan approved under the Regulation.

The objective of the Directive is to improve security coordination in areas of ports not covered by the Regulation and also to ensure that the enhancement of port security can support the security measures taken under the Regulation. Whilst responsibility for the implementation of security measures at port facility level essentially falls to the port facility operator<sup>4</sup>, the appropriate security measures at port level are, as a priority, the responsibility of the port authority<sup>5</sup> and of those authorities which are responsible for keeping public order, safety and security measures within the port area (in both, public and operational areas).

Article 19 of the Directive states that the Commission is to assess compliance with the Directive and the effectiveness of measures taken by 15 December 2008 and every five years thereafter.

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<sup>1</sup> Directive 2005/65/EC of the European Parliament and of the Council of 26 October 2005 on enhancing port security – OJ L 310, 25.11.2005, p. 2

<sup>2</sup> Regulation (EC) No 725/2004 of the European Parliament and of the Council of 31 March 2004 on enhancing ship and port facility security - OJ L 129, 29.4.2004, p. 6

<sup>3</sup> The EFTA Surveillance Authority ensures that Iceland and Norway comply with their obligations under the agreement on the European Economic Area.

<sup>4</sup> In the vast majority of cases, port facility operators are private operators.

<sup>5</sup> The port security authority is appointed by the Member State in accordance with Article 5 of the Directive.

The first report was adopted on 20 January 2009, the second on 18 November 2013<sup>6</sup>. This third report on progress made in terms of implementing the Directive describes the measures which have been taken in order to promote the implementation of standardised port security measures across the Union, progress made during the last five-year reference period and the continued problems which have arisen during the implementation period.

The report is based on:

- exchanges of information with Member State authorities responsible for maritime security and other stakeholders;
- the results of the large number of port security inspections carried out by the Commission for the monitoring of this Directive during the period of reference;
- ongoing dialogue between the national authorities and the various players from the maritime and port sectors.

The report draws attention to various difficulties encountered as regards achieving the desired outcomes but also in terms of the global impact of the implementation of the Directive.

## **2. CONCLUSIONS OF THE FIRST AND SECOND REPORT**

The first report stressed the fact that, although the Directive had been adopted at first reading and approved by a large majority at the European Parliament and unanimously at the Council, there had been significant delays in terms of transposing its provisions in the majority of Member States involved. This led to the opening of infringement proceedings, two of which had resulted in a judgment finding failure to fulfil obligations<sup>7</sup>.

At the end of this assessment period, the provisions of the Directive had finally been transposed into the national law of the vast majority of Member States. Unfortunately, there continued to be organisational and functional difficulties in terms of ensuring implementation in practical terms at port level, since local administrations did not yet have all the resources necessary in order to ensure the practical implementation of the Directive. The main difficulty related to defining the port perimeter from a security point of view.

The second report showed significant progress but that the measures needed to implement all provisions of the Directive in full still needed to be improved in most Member States. The level of security had increased in European ports and the combination of the implementation of the Regulation and the application of the Directive had made possible a credible framework for preventing security breaches in ports and to obtain adequate protection for maritime and port activities. The introduction of security measures often led to a review of the organisation of ports, such as – for example – the movement and storage of goods, the control of access to different areas of the port or a definition of restricted areas. These measures proved to be very important for making port activities more efficient, in a highly competitive environment.

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<sup>6</sup> COM(2009)2 final and COM(2013)792 final

<sup>7</sup> Case C-464/08 Commission v Estonia, 3 September 2009 and Case C-527/08 Commission v United Kingdom, 3 September 2009.

### **3. SUPPORT AND MONITORING MEASURES SINCE THE PREVIOUS EVALUATION PERIOD**

The Directive – in keeping with the principle of subsidiarity– stipulates that Member States should themselves establish each port’s boundaries, leaving ports free to decide whether they should also apply to adjacent areas. Member States should also ensure that port security assessments and plans are properly drawn up. However, in 2014, a number of ports were still unable to meet the requirements of the Directive.

During the period 2014-18, the Commission has therefore continued its commitment to ensuring a more effective implementation of the Directive. The measures taken by the Commission took the form of initiatives to help Member States together with a robust programme of monitoring activities deployed through a large number of inspections.

The implementation of Directive 2005/65/EC was monitored in the period 2014–2018 through:

- 17 inspections of national administrations;
- 41 inspections of ports.

These measures have focused on the following main areas:

- maintaining a system of regular reporting on the performance and implementation of action plans by Member States in order to ensure the practical implementation of the Directive;
- the performance of the above mentioned 58 inspections to monitor implementation of the Directive in accordance with Regulation (EC) No 324/2008<sup>8</sup>, as amended by Commission Implementing Regulation (EU) 2016/462. collating and disseminating best practices within the MARSEC Committee;

### **4. MONITORING THE IMPLEMENTATION OF THE DIRECTIVE**

#### **4.1. Monitoring action plans for completion of the practical implementation of the Directive**

Since 2009, the Commission has had a system for receiving regular information from Member States on the implementation of the Directive. A sustained dialogue has been opened with the authorities of the Member States in order to obtain regular and reliable information on the extent to which assessments have been carried out and port security plans adopted. In addition, annual Member States monitoring reports submitted to the Commission are the basis for monitoring of the status of port security assessments and plans by the Commission services.

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<sup>8</sup> Commission Regulation (EC) No 324/2008 of 9 April 2008 laying down revised procedures for conducting Commission inspections in the field of maritime security, as amended, OJ L 98, 10.4.2008, p.5.

#### **4.2. Inspections carried out by the Commission in order to monitor the implementation of the Directive**

The procedures for monitoring the implementation of the Directive were carried out during inspections by the Commission in accordance with Regulation (EC) No 324/2008, as amended.

The inspections carried out, both regarding national administrations and direct inspections of a sample of ports, have shown that although the general legal framework of the implementation of the Directive has been correctly applied, there is still a series of recurrent common issues regarding proper implementation at the level of Member States ports, as follows.

Discrepancy between the objective of improving port security coordination among local authorities, port operators and public law enforcement bodies and the still imperfect results which have actually been reported remain, even if there has been significant improvement over the last years.

Defining port boundaries for security purposes is still an issue for certain Member States, and this despite Commission assistance, including two seminars in September 2006 and October 2010 and the study on the technical aspects of port area security (TAPS II) which had been assigned to the Joint Research Centre (JRC Ispra). TAPS II gives clear guidelines on how to proceed with port security boundaries definition which is a basis for establishing the extent of the port security plan measures defined in Annex II of this Directive.

Another essential issue concerns the review of port security assessments and port security plans. According to Article 10 of the Directive, Member States shall ensure that port security assessments and port security plans are reviewed as appropriate, and be reviewed at least once every five years. Inspections have shown that this five years regular review is not yet done everywhere. Changes or suppressions regarding port facilities did not result in a review of the port security assessments and port security plans and in several cases the 5 year deadline had been missed.

Furthermore, Commission inspections in the Member States ports disclosed the difficulties that some ports experience to launch the five years review process of port security assessments and plans. These notably include the large number of authorities and actors involved in the revision and on approval process which must be scheduled well in advance before the five years anniversary date.

Furthermore, some Member States still did not ensure adequate supervision of the port security plans and their implementation as requested under Article 13.1 through a regular system of monitoring and inspections jointly with the inspections required in the port facilities of each port as provided in Article 9.4 of Regulation (EC) No725/2004.

Other deficiencies relate to taking into account all requirements when establishing the port security assessment or discrepancies between port security assessments and port security plans.

### **4.3. Infringement procedures**

The decrease in the number of infringement procedures initiated is also an indicator of significant improvement of the implementation of the Directive.

As referred to in the second report, from 2009 to 2013 five infringement procedures had to be initiated; three cases were related to delays regarding the implementation of the Directive at Member State level and the other two cases related to incorrect implementation revealed during inspections.

Between 2014 and 2018 only one infringement procedure took place, and this for the reason of incorrect implementation of the Directive: On 6 April 2017 the European Court of Justice gave its judgment on Case C-58/16. For a series of ports the German Land of North Rhine-Westfalia had failed to define the boundaries, approve port security assessments and plans and appoint port security officers. In early 2018 Germany confirmed that all ports in North Rhine-Westfalia were now in conformity with the provision of the Directive and that Germany complies with the Court judgment.

## **5. SPECIFIC POINTS RESULTING FROM THE ASSESSMENTS**

### **5.1. Critical size of the ports subject to the requirements of the practical implementation of the Directive**

During discussions with stakeholders, the view was often expressed that the Directive is generally well designed for large ports with high commercial activity but that implementation is harder for small ports.

It should be noted that the Directive applies to all ports situated in Member States housing one or more port facilities covered by a port facility security plan approved under Regulation (EC) No 725/2004 (Article 2(2)) and also that Member States are required to ensure that port security measures are closely coordinated with measures taken in application of the Regulation (Articles 4 and 7). The Directive stipulates that the Member States should themselves establish each individual port's boundaries and allows them discretion in terms of deciding whether to apply the Directive to port adjacent areas if these have an impact on the security of the said port.

Consequently, in order to ensure the balanced implementation of useful measures in accordance with the principle of proportionality, the co-legislators have taken the possibility and option provided for in Article 2(4) that if the boundaries of a port facility within the

meaning of Regulation (EC) No 725/2004 have been defined as effectively covering the entire port, the relevant provisions of the Regulation shall take precedence over the provisions of the Directive.

This provision has been widely used by Member States in ports with only one port facility under the Regulation. On the basis of the port security assessment, the port boundaries have very often (but not always) been defined as being the same as that of the port facility. Therefore, of the 1087 ports housing one or several port facilities covered by a port facility security plan approved under the Regulation, 405 ports have been considered as falling under the provisions of Article 2(4) of the Directive, i.e. 37,2 % of ports in the European Union. This has particularly been the case in Member States with small ports scattered along coastlines or on islands<sup>9</sup>.

## **5.2. Awareness of the threat and awareness-raising amongst players**

The work carried out during assessments makes it possible to identify the assets and infrastructure which need to be protected against the threats and risks of intentional illegal action facing port activities. The next phase involves designing and implementing appropriate measures which can be used to counteract threats, at each of the three risk levels identified (normal, increased, high), by means of specific procedures and by using technical equipment tailored to the needs of ports and which make it possible to provide the right response to the potential vulnerability of infrastructure.

The Directive has made it possible to set up port security committees responsible for providing practical advice (9th recital). In Member States with this type of structure, this generally consists of local representatives from the bodies responsible for security (police, coastguards, maritime affairs, customs, etc.) and also in most cases private operators acting in the port. This provides an appropriate forum for the essential exchange of information and a forum for the dissemination of knowledge of the threat, thus promoting awareness amongst all stakeholders.

Increasing awareness of the protection of ports forms part of general security policy, of which all staff employed at the port (i.e. staff of port undertakings but also those employed by external companies involved in port activities) and also the various users of the port need to be aware. Awareness-raising activities provide key tools for ensuring effective dissemination and appropriate ways of raising awareness as regards security measures. It is important that security measures are seen as a means to encouraging a port's economic activities and how to develop these activities.

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<sup>9</sup> These ports with a single port facility represent a significant proportion of ports in Finland (65/78, or 83 %), Sweden (131/162, or 81 %), Greece (82/119, or 69 %), the United Kingdom (119/175, or 68 %) and Denmark (51/82, or 62 %).

### **5.3. Inspection and supervision of port security plans**

In accordance with Article 13 of the Directive, Member States shall conduct inspections in a way that enables them to monitor, in an appropriate and regular manner, port security plans and the implementation of those plans. This is a crucial issue which is still not performed adequately in all Member States, mainly due to the discrepancy between the objectives established and the resources needed to conduct such checks.

Each Member State has developed its own monitoring system depending on its own internal organisation and the human resources available. This monitoring role has been devolved to either central or local governments, or even to multi-purpose teams combining several administrative bodies (Departement of transport, police, customs, harbour-master offices, etc.). The audits were designed to verify that the plans complied with the rules and provisions set in Annex II of the Directive, that the reality of security measures implemented in the ports matched the requirements of the plan and that they had been correctly implemented.

These tasks are carried out in keeping with a work programme which is approved on a regular basis. If a shortcoming is identified, a proposal is made in order to rectify the problem. On the basis of the report submitted to the competent administration, a new or updated port security assessment may be required. One important subject of concern for the inspectors is to verify the existence of coordination between the measures taken at port facility level and those envisaged at port level. The monitoring of corrective measures is done through regular audits.

The reports, both of national auditors and also of those of Commission inspectors, serve as a basis for the national authorities to provide advice and assistance to the competent authorities at the ports, with a view to rectifying the shortcomings identified. This practice should be encouraged and extended. However, as mentioned some Member States still do not systematically provide this verification of compliance on a regular and appropriate basis. It is important that the human and financial resources needed for these monitoring tasks are put in place as soon as possible. Further attention will be paid in the future as regards this point; the current systems for monitoring port security plans within a number of Member States still need improvement.

## **6. CONCLUSION**

The assessment of the implementation of Directive 2005/65/EC has shown that further significant progress has been made, but that the security measures needed to implement all provisions of Annex I and II of the Directive in full still need to be improved in some Member States.

The level of security coordination among local authorities, port operators and public law enforcement bodies has further increased in European ports. The combination of the implementation of the Regulation and the application of the Directive has made possible a credible framework for preventing security breaches in ports and to obtain adequate protection for ships in port and port commercial activities. Although it is difficult to assess the



impact of these measures in terms of providing a deterrent for terrorist acts, port authorities agree that there has been a major impact in terms of smuggling, theft and malicious acts, which have been greatly reduced. Furthermore, the introduction of security measures have often led to a review of the organisation of ports, such as – for example – the movement and storage of goods, the control of access to different areas of the port or a definition of restricted areas within the port operational areas. These measures have proved to be very important for making port activities more efficient in terms of security and protection of persons, goods and ships in port, in a highly competitive environment.

The large number of port security inspections has also significantly contributed to this high level of port security; findings are exchanged between Member States through the MARSEC Committee and the exchange of best practices fostered.

As recalled by the Commission in its Communication dated 23 May 2013 (*'Ports: an engine for growth'*)<sup>10</sup>, the European Union is extremely dependent on maritime ports for trade with the rest of the world and also within its own internal market. The security of ports and their approaches is therefore essential to ensuring the overall security of maritime transport. Conditions of port security require a high level of vigilance on the part of Member States and the preparation of all those involved in order to ensure high and comparable security for all European ports. All players involved must therefore continue to work towards the constant improvement of prevention, protection and response in order to combat the new threats. To this end, port facility security systems and those of the port must complement each other fully. Ensuring effective relationships between the port, its port facilities and the ships which serve them, continues to be a major challenge for operators and administrations.

The combination of Regulation and Directive constitutes the key element in securing our ports and thus directly contributes to the objectives of the Security Union. The Directive is a good example upon how heterogenous complex infrastructure can be secured through individual assessments and corresponding plans based upon a common approach and through fostering coordination and communication amongst a high number of stakeholders involved. Providing plans with measures foreseen for three different security levels matches security and operational needs in full flexibility.

The Commission considers that this system is currently meeting the expectations and that Directive 2005/65 on enhancing port security does not need to be amended at this point in time.

In the coming months, Member States will again re-examine port security assessment and plans in accordance with the provisions of Article 10 of the Directive, which lays down that this review should take place at least once every five years. The Commission therefore considers that the methodology developed in the TAPS II study could be useful where necessary, in order to redefine the perimeter of ports, including the necessity to take due account of the water side of these ports.

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<sup>10</sup> COM(2013)295 final

Moreover, the Commission's multi-annual inspections work programme will continue to include detailed examinations of port security measures. For example, the implementation and application of procedures under the port security plans to be applied to passengers and vehicles to be loaded on RO-RO vessels (which are, by nature, particularly vulnerable) will continue to be the subject of further examination and monitoring by the Commission inspection services. Similarly, in the case of international maritime transport services, the approach of checks on both sides of the route will be continued in order to verify and ensure that the Member States concerned are cooperating in port security assessments.

Finally, the Commission will continue to work with Member States to improve the implementation of the Directive, with the common objective of better safeguarding EU ports for the benefit of all port users, transport users, the maritime transport economy and society as a whole. It will continue to monitor the application of this Directive and continue to take legal action where it considers this to be necessary.