

EN

EN

EN



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 26.11.2008  
COM(2008) 830 final

2005/0238 (COD)

**COMMISSION OPINION**

**pursuant to Article 251(2), third subparagraph, point (c) of the EC Treaty  
on the European Parliament's amendments  
to the Council Common Position regarding the  
proposal for a**

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**on port State control (recast)**

AMENDING THE PROPOSAL OF THE COMMISSION pursuant to Article 250 (2) of the  
EC Treaty

**COMMISSION OPINION**

**pursuant to Article 251(2), third subparagraph, point (c) of the EC Treaty  
on the European Parliament's amendments  
to the Council Common Position regarding the  
proposal for a**

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**on port State control (recast)**

**(Text with EEA relevance)**

**1. INTRODUCTION**

Article 251(2), third subparagraph, point (c) of the EC Treaty provides that the Commission is to deliver an opinion on the amendments proposed by the European Parliament at second reading. The Commission sets out its opinion below on the 34 amendments proposed by Parliament.

**2. BACKGROUND**

Date of transmission of the proposal to the European Parliament and to the Council	9.1.2006
Date of the opinion of the European Economic and Social Committee	13.9.2006
Date of the opinion of the Committee of the Regions:	15.6.2006
Date of the opinion of the European Parliament, first reading	25.4.2007
Date of adoption of the common position (with Malta abstaining)	6.6.2008
Date of the opinion of the European Parliament, second reading	24.9.2008

**3. PURPOSE OF THE PROPOSAL**

The proposal to recast Directive 95/21/EC on port State control of shipping is one of a series of measures aimed at strengthening and supplementing existing maritime safety legislation.

It has a twofold objective: the first is to produce a consolidated version of the Directive in the form of a single text to make it more legible and coherent.

The second is to carry out a thorough reform of the existing system by replacing the present regime based on a quantitative threshold under which 25% of ships are inspected by each Member State by a collective objective, which is to inspect all ships calling at ports in the

Union, with high-risk ships being inspected more frequently. The most dangerous ships will therefore be inspected every six months, while high-standard ships will be inspected less frequently.

The proposal to recast the Directive on port State control takes due account of the conclusions of the temporary committee set up by the European Parliament following the incident involving the Prestige (the MARE Committee). In particular, it proposes strengthening the arrangements for banning ships by extending them to all categories of ships, introducing a minimum duration of the ban and providing for a permanent ban on ships which have been banned twice and are detained a third time. The Commission also proposes publishing a black list of poorly performing shipping companies.

Lastly, the technical aspects of the proposal are based on the work carried out by experts under the Paris Memorandum of Understanding (Paris MoU) on Port State Control.

#### **4. THE COMMISSION'S OPINION ON THE EUROPEAN PARLIAMENT'S AMENDMENTS**

##### **4.1. Amendments accepted by the Commission**

###### **4.1.1. Amendments accepted in full**

The Commission can accept amendments 1, 3, 5, 6, 7, 12, 14, 16, 26, 30, 32, 36, 38, 39, 40, 42, 44, 45 and 51.

###### **4.1.2. Amendments accepted in part**

The general objectives of amendment 15, which specifies the scope of the Directive as regards anchorages, can be accepted. 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.

On the flexibility which Member States are allowed as regards their inspection obligations, amendments 19, 22 and 24 contain useful details which the Commission can accept. However, the total lack of flexibility as regards the operation of the inspection system cannot be accepted. A degree of flexibility is essential in order to take account of operational realities and to ensure that the inspections to be carried out are equitably divided among the Member States so as to achieve the collective objective of 100% inspection.

As regards the refusal of access to Member States' ports, amendment 31 applies 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 Moll, thereby following the Commission's initial proposal. However, the Commission has accepted the Council common position which provides for a less severe regime for ships on the grey list.

Amendment 28, which provides for recourse to be had to committee procedure to define certain criteria regarding the risk profile of a ship, can be accepted, except certain points which are already covered by the procedure.

Amendments 25 and 50 concerning the requirement for ships subject to an expanded inspection to notify their arrival in port can be accepted, except the excessive and pointless requirement of providing information about all ports previously visited by the ship. Amendment 4 deletes a recital introduced by the Council concerning the transmission of this

information by the port authorities to the port State control inspectors, provided the authorities have sufficient resources available. The deletion of this reservation can be accepted but the rest of the recital can be kept.

Amendment 33, which can be accepted in principle, calls 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.

The aims of amendment 43 concerning the Commission's assessment of the application of the Directive can be accepted. However, a period of 18 months for the Commission to assess the application of the Directive is manifestly insufficient. The bulk of the work will consist of examining in detail the impact of these mechanisms on the collective objective of inspecting all ships calling at Community ports. The inspection data will need to be collected and analysed over a representative period of time. A minimum period of 36 months is required to complete such an assessment.

Amendments 2 and 17 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. The Commission can accept this. 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. Furthermore, the Commission notes the political agreement on the proposal for a Directive on the financial securities of shipowners for maritime claims reached by the Council on 9 October 2008.

#### 4.1.3. Amendments accepted in principle and/or subject to rewording

The definitions of what constitutes a complaint (amendment 11) and an inspections database (amendment 13) can be accepted, subject to editorial improvement.

Amendments 27 and 49, which describe the factors that make up a risk profile and the scope of enhanced inspections, are acceptable but should be reworded ('shall' should be replaced by 'are': this is not an obligation but a simple factual description).

Amendment 34, which requires inspectors to inform the port authorities if a ship is detained, is acceptable in principle, but should be reworded so as to form part of a more comprehensive framework for cooperation between the port State control authorities and the port authorities.

The Commission supports the aim of amendment 35, which promotes cooperation between Member States regarding appeals against decisions to detain ships or refuse them access, but considers that it would be sufficient to refer to this aim in a recital.

Amendment 41, which concerns the transmission of information about the arrival and departure of ships to the inspection database, can be accepted, but the period allowed for transmitting the information is far too short.

#### 4.2. Amendments not accepted by the Commission

Amendment 8: the Commission has accepted the common position which retains the concept of an inspection system rather than an inspection regime.

Amendment 9, which introduces the definition of a port, cannot be accepted: the definition is unhelpful and unsuitable as it also includes the onshore part of a port.

Amendments 10 and 23 take away the flexibility which Member States are allowed with regard to not carrying out inspections at night. The Commission cannot accept this. Flexibility is needed because of issues relating to feasibility and the security of staff during night inspections.

Amendment 18, which would 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, is not acceptable as it would impose an excessive burden of compulsory inspections on Member States.

Amendments 20 and 21, which delete the compensation mechanisms which were introduced in the common position to restore balance between the volume of inspections carried out in Member States, cannot be accepted as they would increase the present imbalances within the Community. Without such a mechanism, some Member States would find themselves facing a very heavy inspection burden, whilst others, because of the characteristics of the shipping traffic, would find it difficult to meet their inspection quota.

Amendment 37 requires ships which cannot have faults rectified in the port of inspection to sail directly to the nearest port of repair, i.e. without calling at any other port. This requirement is excessive and could give rise to problems of safety, e.g. if an intermediate stop is essential to unload a hazardous cargo on board a ship

Amendment 46 makes it possible for a low-risk ship to be inspected every 30 months instead of every 36 months. This amendment departs from the Commission's objective, which is to reward ships of a high standard by reducing the burden of inspections on low-risk ships.

The Commission does not accept amendments 47 and 48, which 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. This would considerably increase the number of compulsory inspections to be carried out by the competent authorities, which would be difficult to manage.

## **5. CONCLUSION**

Under Article 250(2) of the EC Treaty, the Commission is amending its proposal in accordance with the above.