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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 11.6.2008
COM(2008) 208 final

2005/0238 (COD)

**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN
PARLIAMENT**

pursuant to the second subparagraph of Article 251(2) of the EC Treaty

concerning the

**common position adopted by the Council with a view to the adoption of a Directive of
the European Parliament and of the Council on port State control (recast)**

(presented by the Commission)

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1. BACKGROUND

Date on which the proposal was sent to the European Parliament and to the Council: 24.01.2006
[document COM(2005) 588 final – 2005/0238 (COD)]

Date of the opinion of the Committee of the Regions: 15.06.2006

Date of the opinion of the European Economic and Social Committee: 13.09.2006

Date of the opinion of the European Parliament, first reading: 25.04.2007

Date of adoption of the common position: 17.04.2008

2. OBJECTIVE OF THE COMMISSION 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.

In addition to the work needed to consolidate the Directive into a single text in order to make it more coherent, the Commission aims to completely overhaul the existing system of port State controls to focus on substandard ships, which compete unfairly with the high-quality European fleet.

The objective is twofold: on one hand, to replace the individual target per Member State to inspect 25% of ships by a collective target at European Union level to inspect all ships and, on the other, to inspect high-risk ships more frequently. Too many substandard ships currently slip through the net. The new system will prevent this, while at the same time rewarding ships of a high standard by making them subject to fewer controls, which will also help to make more effective use of resources.

Substandard ships which simply pass through European waters without calling at a port pose a particular risk. This is why the Commission also intends to step up inspections of ships anchored at sea.

In addition, the Commission 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.

3. COMMENTS ON THE COMMON POSITION

The principles and the main arrangements proposed by the Commission to implement the new inspection scheme are generally supported by the Council in its common position, which was adopted unanimously (Malta abstained). The Council therefore supports the new scheme, which provides for controls on 100% of ships, with the worst ships a priority.

The Commission endorses the Council's approach regarding the flexibility of the new inspection scheme. This mechanism is essential in ensuring the new scheme is sufficiently flexible. However, regarding the authorised ceiling for missed inspections, the Commission feels that the 5% rate of missed inspections which it had proposed and which is also in line with the current Directive, is a realistic approach. The Commission cannot therefore accept raising this percentage to 10% for medium or low-risk ships as suggested by the Council, as this would detract from the main objective of the new inspection scheme, namely to inspect all ships calling at ports in the European Union.

Moreover, by removing the permanent ban and replacing it with a temporary one of up to 36 months depending on several criteria, the Council has deviated significantly from one of the most important aspects of the Commission's proposal. The Commission cannot endorse the Council's approach regarding this issue.

To a lesser extent, the way in which the Council deals in its common position with the matter of inspections at anchor also poses problems. The Council has not retained the inclusion of ships anchored outside ports in the scope of the Directive and simply refers to the concept of ports' jurisdiction. The construction proposed by the Council risks being interpreted differently and restrictively by different Member States and could potentially make this provision meaningless. The Commission does feel it is essential to be able to inspect ships at anchor. Moreover, this is what the Council itself called for after the Prestige disaster. Substandard ships which simply pass through European waters without calling at a port pose a particular risk. An inspection at anchor by the port State may be the only way to inspect these ships.

4. DETAILED COMMISSION COMMENTS

4.1. Amendments accepted by the Commission and incorporated in full or in part in the common position

Amendments 1, 4, 5, 7, 15, 16, 18, 19, 22, 26, 27, 30, 32, 33, 38, 53, 55, 72, 83, 84, 86, 87, 90, 94, 95, 98, 101, 102, 105, 106 provide useful clarifications of the Commission's proposal, in particular at a technical level. It was useful to remove the provisions relating to the current inspection scheme which have become obsolete, as well as to further define the rules of the

new inspection scheme, taking into account the progress made by experts under the Paris Memorandum of Understanding on Port State Control.

4.2. Amendments accepted by the Commission but not incorporated in the common position

The Commission feels that amendments 2, 3, 6, 8, 9, 14, 20, 24, 25, 28, 29, 31, 39, 41, 43, 44, 45, 47, 48, 49, 50, 51, 52, 57, 58, 59, 60, 61, 62, 63, 64, 65, 67, 69, 70, 71, 74, 75, 76, 77, 78, 80, 81, 85, 88, 89, 92, 97, 99, 100, 103 provide useful clarifications of the text of the proposal. It therefore regrets that the Council did not include these amendments in its common position.

Amendment 17 which introduced a definition of ports made it possible (by slightly amending this definition) to include anchorages in the scope of the Directive.

Lastly, the Commission was in favour of amendment 54 concerning refusal of access and more specifically the permanent ban.

4.3. Amendments rejected by the Commission and not incorporated in the common position

Amendment 73 serves no purpose as it introduces a reference to the tasks to be undertaken by the European Maritime Safety Agency, which are adequately described in the horizontal Regulation (EC) No 1406/2002 establishing the Agency.

Amendment 91 concerning the reduction of the "time window" for inspecting low-risk ships from 24/36 to 24/30 months is not in line with the overall objective of the Commission's proposal, which aims to reduce the burden of inspections for high-standard ships.

Lastly, the parts of amendments 34, 36 and 37 concerning the methods for dividing up inspections between Member States are not included as they rule out any possible recourse to a flexibility mechanism for carrying out inspections. A mechanism of this kind is indispensable in ensuring the smooth running of the new inspection scheme.

5. CONCLUSIONS

The Commission takes note of the Council's common position, which was unanimously adopted and which does not generally amend either the objectives or the spirit of its proposal, but wishes to point out that its views differ on several specific points, such as removing the permanent ban and replacing it by a temporary one, and to a lesser extent on the Council's approach concerning inspections at anchor and increasing the authorised ceiling for missed inspections from 5% to 10%.