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STATEMENT OF THE COUNCIL'S REASONS

Subject : 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)

STATEMENT OF THE COUNCIL'S REASONS

I. Introduction

In the framework of the codecision procedure (art. 251 TEC), the Council reached, on 7 June 2007, a political agreement on the draft Directive on port State control (recast).¹ Following legal/linguistic revision, the Council adopted its common position on xx May 2008 with the Maltese delegation abstaining.

In taking its position, the Council took account of the opinion of the European Parliament in its first reading on 25 April 2007², as well as of the opinions of the Economic and Social Committee³ and of the Committee of Regions⁴.

The proposal aims at recasting successive amendments to Directive 95/21/EC on Port State Control in a consolidated text and at simplifying or amending certain provisions in order to reinforce the effectiveness and quality of inspections on ships by the port State. *Inter alia* it strengthens the requirements for the competent administrations and inspectors and provides for a reinforcement of the notification obligation for pilots.

In order to enhance the dissuasive effect of the Directive, the proposal simplifies and extends the measures to refuse the access to ports of the Member States and provides for the publication of a black list of shipowners and operators.

Furthermore, the proposal introduces the principles of a new inspection system, according to which all ships calling at Member States' ports are inspected, based on a risk profile that allows to intensify inspections on high risk ships and to reduce the burden of inspections for quality ships. According to the Commission's proposal, the details of this new system will be introduced through the comitology procedure, once all elements of this mechanism have been established.

¹ The Commission transmitted its proposal on 24 January 2006 (doc. 5632/06).

² doc. 8724/07 CODEC 389 MAR 28 ENV 206 (not yet published in the Official Journal).

³ CESE 1177/2006 of 13.9.2006 (OJ C 318 of 23.12.2006 - p.195 - 201).

⁴ CdR 43/2006 of 15.6.2006 (OJ C 229 of 22.9.2006, p.38).

II. Analysis of the Common Position

General

The common position, as agreed by Council, pursues the same objective as the opinion of the European Parliament voted in first reading, namely to replace the existing port State control system with the entry into force of the recast Directive by a new inspection system. This new system aims at ensuring that a maximum of ships calling at Member States' ports are inspected, taking into account the equitable sharing of the overall inspection commitment among Member States. The detailed elements of the new inspection system, which have been agreed upon, based on the work carried out in the framework of the *Paris Memorandum of Understanding on Port State Control* (Paris MOU), are contained in Annex II that is exempted from comitology.

Resulting from this new approach, the common position modifies, in a number of cases, the original Commission proposal by redrafting it entirely, inserting completely new provisions or supplementing the text with new elements. These modifications correspond to a major extent to a large number of the European Parliament's first-reading amendments (1, 3, 4, 5, 6, 7, 9, 11, 14, 15, 16, 18, 19, 22, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 46, 47, 48, 49, 50, 51, 52, 53, 55, 56, 57, 58, 71, 72, 75, 76, 78, 81, 83, 84, 85, 86, 87, 88, 89, 90, 92, 94, 95, 98, 101, 102, 105, 106 and 111), which are reflected either verbatim or partly or in principle in the common position.

A number of other amendments of the European Parliament (8, 12, 13, 17, 21, 24, 26, 36, 37, 45, 54, 59, 60, 61, 62, 63, 64, 65, 67, 68, 69, 70, 73, 74, 77, 80, 82, 91, 96, 97, 99, 100 and 103) were, however, not accepted by the Council. These relate mostly to the main issues raised in the discussions within the Council bodies and are not consistent with the approach chosen by the Council in its common position. Further details concerning these amendments are set out in the next section.

Main issues

1) Scope of the Directive

The Council shares the view of the Commission and the European Parliament (amendments 29 to 34) that the current port State control regime, imposing a purely quantitative threshold of 25% of ships to be inspected by Member States, results in an insufficient control and leads sometimes to unjustified inspections carried out solely to reach this arbitrary threshold.

Therefore, the common position establishes a new system with a collective inspection objective for the whole Community based on a fair share of the number of inspections among Member States and States within the Paris MOU region. The inspections are focused on substandard vessels, which shall be checked more often, while the burden of inspections is alleviated with regard to quality vessels.

Contrary to the Commission and the European Parliament (amendments 8, 13, 17, 22, 26, 31, 34, 35, 39, 40, 41, 54, 64, 65 and 96), the Council, however, deems it appropriate to take into account practical difficulties of some Member States in terms of financial and personal resources. The common position, therefore, modifies the scope of inspections under this Directive, applying them to ships calling at a port of a Member State to engage in a ship/port interface, including ships at anchor in a port or another area within the jurisdiction of a port.

Furthermore, the Council, as the European Parliament (amendment 12 and 26), includes in its common position the possibility for landlocked Member States to derogate from the Directive under specific conditions. For reasons of legal certainty, these conditions are spelt out in the related provision. They constitute essential elements of the Directive and, therefore, cannot be modified through comitology, in contrast to what is provided for in the European Parliament's amendments.

2) Flexibility mechanism for inspections

Following the objective of establishing an inspection system that is fair and practically applicable, the Council, in its common position, takes into consideration the specific situation of each Member State resulting in an unequal number of ships calling at their respective ports. To this effect, Member States are allowed, according to the Council's position and contrary to the European Parliament's view, to miss a small percentage of inspections, namely inspections on 5% of the total number of Priority I ships (ships due for a mandatory inspection) with a high risk profile and on 10% of the total number of Priority I ships other than those with a high risk profile. Member States shall, however, give particular attention to ships that do not call often at ports within the Community.

In addition, the Council, as the European Parliament (amendments 35 to 37), is of the opinion that, for practical reasons, flexibility mechanisms are necessary in specific circumstances, i.e. to provide the possibility to postpone an inspection for 15 days, not to carry out an inspection for safety reasons or to miss an inspection if the ship calls at night time. The last flexibility provision is not provided for by the European Parliament (amendments 36 and 37).

3) Access refusal

The Council, as the European Parliament (amendments 8 and 54), supports the Commission's proposal to tighten the access refusal measures against substandard ships. As criteria for such a measure, the performance of the ship is evaluated in relation to the performance of its operator, indicated by repeated detentions during a certain timeframe, and of its flag State, determined on the basis of the "black", "grey" and "white" lists of flag States established by the Paris MOU.

The duration of the access refusal to Member States' ports increases with each time such a measure is taken. While the Commission, supported by the European Parliament, proposed to provide for an ultimate possibility of permanently banning ships that are caught for the third time in such a situation, the Council considers that, for legal reasons, it is necessary to foresee the possibility to lift the ban after a certain period, namely 36 months, but only if the ship concerned complies with a series of conditions.

4) Reports from pilots

The Council fully supports the Commission's proposal to reinforce the obligation for all pilots, including deep sea pilots on ships bound for a port or in transit, to report apparent anomalies they encounter on board of ships to the competent authority of the port or coastal State. Unlike the European Parliament (amendment 68), the Council considers that this can only be done through a mandatory provision.

5) List of companies with a low and very low performance

Similar to the Commission and the European Parliament (amendment 71), the Council intends to strengthen the dissuasive effect of the Directive and requests the Commission to establish and publish regularly information on badly performing ship operators, however without specifying the publication modalities, which will be established through the comitology procedure.

6) Transposition date

The Council is of the opinion that the new inspection system should apply at Community level with the entry into force of the recast Directive. Nonetheless, given the complexity of the new system, including the necessary technical work related to the inspection database, Member States are allowed to a transposition period of 36 months, unlike the provision of the European Parliament's amendment 82.

7) Other issues

The Council was unable to accept a number of other amendments, as they would cause unproportionate administrative burden (amendments 60, 62, 70, 73 and 96), are not entirely clear, not precise enough or do not correspond to the Council's approach of structuring the Directive (amendments 13, 21, 24, 45, 59, 61, 63, 67, 69, 77, 80, 82, 91, 97, 99, 100 and 103).

III. Conclusion

The Council believes that its common position is a balanced tool to put in place a fair and efficient new inspection system reinforcing the fight against substandard vessels navigating in Community waters.

The Council notes the contacts which have already taken place with the European Parliament on this proposal and looks forward to constructive negotiations in order to come quickly to an agreement and to allow the adoption of the Directive.
