
Maritime Safety and Environment Protection in the EU; Port State Control Inspections

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Summary: Europe is the green continent surrounded by water. Sea has always played an important role in connecting Europe to the rest of the world. After the dawn of 21th Century and further globalization of trade dependency of Europeans to inland waterways and international ports is growing more than ever. High level of seaborne economic activities at the EU is a good indicator for wealth and number of lives floating at any given moment and raises concerns regarding safety measures taken by Member States and the Union in order to minimise perils of sea for involved stakeholders. The EU enjoys establishment of strong regulatory framework in the area of maritime industry. However, no regularity system would be implemented effectively without existence of monitoring and compliance systems. Importance of access to monitoring and compliance system is much more evident in maritime industry due to its international nature, multiplicity of jurisdiction, dealing with long distance trips and difficulties on the way of inspections in international waters. There is no doubt that monitoring compliance at level of the EU ports is a huge challenge. However, use of effective monitoring and enforcement systems can be among the choices of authorities for the purpose of ensuring compliance of maritime industry with safety regulations. Therefore, paper tries to answer the question of what is the legal basis for monitoring and enforcement of compliance of ships during port state controls at the EU level and what are the tools used for this purpose? Towards achieving its goal, paper continues with providing a short overview on EMSA in second chapter. Third part will discuss Port State Control System and its Legal framework in the EU. Forth part explains the Paris Memorandum of Understanding on Port State Control while fifth part describes THETIS system as the operational arm used for enforcement of maritime regulations by EU authorities. At the end, final part will provide concluding remarks on the subject matter

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1. Introduction

The fact that Europe is surrounded by water has always been a key factor in the history of this continent. From Vikings time to Empirical era and now in modern times, sea plays a significant role in relations between Europe and other parts of the globe. This can be seen in evaluation of gross added value of maritime sector in the EU equal to 500 billion Euros with capability to employ 5 million people¹. According to official statistics, more than 90% of external and 40% of internal trade at the EU level are done via maritime transport.² This provides a perfect picture from level of wealth and number European Lives which float at any given moment of time and raises critical importance of safety, efficiency and security in management of maritime transport and trade.

Development of international maritime safety and security regulations are well reflected in the European legal acquis with due transposition of relevant laws to the national legal system of member states. Therefore, the EU enjoys establishment of strong regulatory framework in the area of maritime industry. However, no regularity system would be implemented effectively without existence of monitoring and compliance systems³. Importance of access to monitoring and compliance system is much more evident in maritime industry due to its international nature, multiplicity of jurisdiction, dealing with long distance trips and difficulties on the way of inspections in international waters. There is no doubt the monitoring compliance at level of the EU ports is a huge challenge, however, use of effective monitoring and enforcement systems can be among the choices of authorities for the purpose of ensuring compliance of maritime industry with safety regulations.

As a result, the European Maritime Safety Agency (EMSA) is formed to monitor compliance and enforces maritime regulations regulation within the framework of the EU legal system. Current assignment will focus on monitoring and enforcement aspects of EMSA mandate by discussing the subject matter in next sections.

Therefore, paper tries to answer the question of what is the legal basis for monitoring and enforcement of compliance of ships during port state controls at the EU level and what are the tools used for this purpose?

¹ European commission & HR of the EU *For an open and secure global maritime domain: elements for a European Union maritime security strategy*, 6 March 2014, p. 2.

² Ibid

³ Đorđeska, Marija. "The Process of International Law-Making: The Relationship between the International Court of Justice and the International Law Commission." *International and Comparative Law Review (ICLR)*, 2014, pp. 7–58.

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2. European Maritime Safety Agency

Based in Lisbon, EMSA was established in 2002 on the basis of regulation (EC) No 1406/2002 as one of decentralized EU agencies. The main tasks of EMSA can be summarized in providing assistance to the European Commission and EU Member States towards further development and implementation of maritime safety and security, taking preventive action as well as responding to pollution caused by ships and hydrocarbon extracting installations.⁴ EMSA is also responsible for pollution response as well as vessel monitoring and tracking⁵. In order to perform respective duties, EMSA has established different information systems which provide support to port state control activities (PSC) including:

- CleanSeaNet : Europe wide satellite vessel and oil spill detection service;
- Safe Sea Net , Europe wide information system used for the purpose of vessel trafficking and monitoring activities;
- THETIS , data base supporting the Port State Control system;
- EU LRIT CDC, the EU Long Range Identification and Tracking Cooperative Data Centre.

Obtained information from above mentioned systems can be used by authorities to ensure compliance of maritime activities with EU and international regulations. Synchronization of data collected from these sources with other systems would add substantial value to users by providing them with a comprehensive view of maritime activities.

⁴ Markku Mylly, EMMA's role in making the maritime regulatory system work, in *Maritime Safety and Environment Protection*, 2015, pp 194–206.

⁵ Ibid

3. Port State Control and its Legal Framework in the EU

Control and jurisdiction in Maritime industry has a multi-level structure which evidences the efforts of different actors in imposing different regulations and compliance regimes⁶. As a general rule, in maritime industry, safety and security issues are under the auspicious of flag states and port states through flag state and port state controls regulated by national and international law. Active international originations in this field are different UN agencies like International Labour organization and International Maritime Organization. Additionally, regional inspections schemes in the format of non-binding MoUs (like Paris MOU of European Union) contribute to this regulatory system.

According to United Nations Law of the Sea, controlling measures for merchant ships should be implemented by flag states and coastal states accordingly.⁷ Also, the United Nations General Assembly Resolution 58/240 recognizes significance of port state control in improving the level of maritime compliance with international standards of safety, Pollution security and labour.⁸ Before 1980s, on the basis of fundamental rule that only flag states has jurisdiction of vessel in high seas, control was more the responsibility of flag states. However, during last 40 years, with changing the scope of maritime activities and increasing accidents, pollution incidents and increasing the use of flags of convenience the role of port state control became more evident. The legal basis of port state control is right of coastal states conferred to them by UNCLOS via exercising power in their national waters. Therefore, as national waters are under jurisdiction of coastal state, a visiting ship should comply with regulations of coastal states⁹.

Article 218 of the UNCLOS is considered as the intentional basis of the Port State Control it provides:

“1. When a vessel is voluntarily within a port or at an off-shore terminal of a State, that State may undertake investigations and, where the evidence so warrants, institute proceedings in respect of any discharge from that vessel outside

⁶ Roe, Michae. Multi-level and polycentric governance: effective policymaking for shipping. *Maritime Policy & Management*, 36(1), 2009, 39–56.

⁷ UNCLOS, United Nations, (UN), (1982)

⁸ UN Doc. a /Res/58/240. Oceans and law of the Sea, Mar. 5, 2004, p. 33.

⁹ Anderson, D. Roles of Flag States, Port States, Coastal States and International Organisations in the Enforcement of International Rules and Standards Governing the Safety of Navigation and the Prevention of Pollution from Ships under the UN Convention on the Law of the Sea and Other International Agreements, *The. Sing. J. Int'l & Comp. L* 1998, 2, 557.

the internal waters, territorial sea or exclusive economic zone of that State in violation of applicable international rules and standards established through the competent international organization or general diplomatic conference.”

The right for PSC has been confirmed in all other international maritime conventions including SOLAS¹⁰, MAERPOL 73/78¹¹, STCW¹² and MLC¹³. Chapter 1 regulation 19(a) of SOLAS provides that : “Every ship when in a port of another Contracting Government is subject to control by officers dully authorized by such Government...”

At the same time invitation of the General Assembly to conjunct port state control functions of IMO together with International Labour Organization and Food and Agriculture Organization of the UN resulted in negotiations to harmonize port state controls at regional level. Regional PSC actions might be conducted through regional agreements recognized as Memorandum of Understanding (MoU). Such MoUs do not have legal binding effect, but respected by authorities of participating states as a political commitment. At present, nine MoUs provide coverage to all seas and oceans around the world¹⁴. Namely, Paris MoU (Europe and Canada), Tokyo MoU (Pacific Ocean), Acuerdo Latino or Acuerdo de Viña del Mar (South and Central America), the Caribbean MoU, the Mediterranean MoU, the Indian Ocean MoU, the Abuja MoU (West and Central Atlantic Africa), the Black Sea MoU and the Riyadh MoU (Persian Gulf). PSC measures are applied in the USA, Europe and Canada in more effective manner than other parts of the world. In the EU, MOU in place regarding PSC is known as Paris Memorandum of Understanding on Port State Control (PMoU) and legal basis of its application is Directive 2009/16/ EC on Port State Control. According to the directive, provisions of PSC inspections apply to any vessel and its crew which calls at a port or anchorage of Member State. Such inspections follow the goal of enforcing compliance with international standards of safety, pollution prevention and working – living conditions on-board.

¹⁰ International Convention of Safety of Life at Sea of 1 November 1974

¹¹ The International Convention for the Prevention of Pollution from Ships (MARPOL)

¹² International Convention on Standards of Training , Certification and Watch-Keeping for Seafarers of 1 December 1978 (1361 UNTS 190 , as Amended)

¹³ Maritime Labour Convention of 23 February 2006 (45 ILM 792)

¹⁴ Kraska, James , & Pedrozo, Raul . *International maritime security law*. Martinus Nijhoff Publishers.2013, 420

4. Paris Memorandum of Understanding on Port State Control

Principle basis for PSC legislation at the EU level was provided by articles 75-84 of the Treaty of Rome in 1957. Further developments included the agreement of Member States on a memorandum on controlling the labour condition on board of vessels to be in accordance with ILO rules in the Hague in 1978. However, beginning of the PSC was conclusion of Paris Memorandum of Understanding (Paris MoU) and covering larger scopes of conventions and regulation. In fact, the Paris MoU was the outcome of Amoco Kadiz disaster which resulted in meeting of IMO, ILO and European States in Paris in 1980 for the purpose of discontinuing sail of substandard vessels in European waters. Since existing North Sea Agreement of 1978 (which was also known as Hague MoU) did not seem to be effective for this purpose, meetings resulted in adoption of Paris MoU during the second ministerial conference in 1982¹⁵. Originally, it had 14 European States including Belgium, Denmark, Finland, France, Federal Republic of Germany, Greece, Ireland, Italy, The Netherlands, Norway, Portugal, Spain, Sweden and the United Kingdom which later increases to 27 after joining Bulgaria, Canada, Croatia, Cyprus, Estonia, Finland, Iceland, Latvia, Lithuania, Malta, Poland, Romania, The Russian Federation, and Slovenia.¹⁶ Its target inspection rate was set on the basis of ship risk profile¹⁷. In fact, Paris MoU was the first major agreement in harmonization of port state control measures at national level.¹⁸ At present, legal basis of PSC in the Paris MoU is upon Directive 2009/16/EC of the European Council and European Parliament on 23 April 2009. PMoU consists of 27 authorities¹⁹ including EU coastal Member States, Canada, Iceland, Norway and the Russian Federation.

PMoU provides that with no discrimination, all authorities will maintain effective system for PSC in order to ensure that merchant ships anchoring off its ports or calling for a port would comply with standards available in relevant instruments.²⁰ In case of detecting deficiency during the inspection (which has

¹⁵ Özçayir, Z. Oya. The Use of Port State Control in Maritime Industry and Application of the Paris MoU' (2009). *OCLJ*, 14, 208.

¹⁶ Kraska, James, & Pedrozo, Raul. (2013). 424

¹⁷ Kiehne, Gerhard, Investigation, detention and release of ships under the Paris Memorandum of Understanding on Port State Control: a view from practice. *The International Journal of Marine and Coastal Law*, 11(2), 1996, 217-224.

¹⁸ Lowe, A. V. a move against substandard shipping. *Marine Policy*, 6(4), 1982, 326-330.

¹⁹ Amendmet 37th of the PMoU in effect from 1 July 2014 is using the term authority, maritime authority and Member State

²⁰ Paris Memorandum of Understanding (2014)

negative effect on safety, health or maritime environment), port state authorities would make sure about removal of the deficiency before allowing the vessel to get back to the sea. In order to ensure removal of deficiency, PS authorities may even detain the vessel²¹.

Directive 2009/16/EC has introduced the New Inspection Regime (NIR) in the PMoU which came into force as of January 2011.²² In the frame work of the NIR, initiatives which could help overcoming problems with previous PSC regime have been introduced. Among others, freedom of authorities in selecting the ship, enhanced mechanisms in defining sub-standard vessels and implementation of the new information system named TETIS (The Hybrid European Targeting and Inspection System) can be mentioned. Periodicity of the inspection would be determined by Ship Risk Profile (SRP). As a result of violating relevant regulations to safety which is noted by a member authority in THETIS, the interval between inspections might be reduced. Another new aspect of PSC is possibility to include Concentrated Inspection Campaign (CIC) related to one topic in a relevant instrument. CIC has a periodical nature and will be held once a year for a period of three months and follows the objective of, preventing marine pollution, increasing the safety at sea, and enhancing condition for maritime labour.²³ Therefore, CIC aims at increasing awareness among ship owners, crew and operators on issues discussed during the particular campaign for the purpose of building safety attitude and improving the environment of marine industry.

5. The Hybrid European Targeting and Inspection System (THETIS)

In order to facilitate implementation of NIR, European Maritime Safety Agency has developed an information system called The Hybrid European Targeting and Inspection System. THETIS which is hosted and operated by the Agency provides access to all requirements of the PMoU and Directive 2009/16/EC.

In short, its functions can be listed as following:

Firstly, it processed ship information to be used for PSC operation. Secondly, it defines the Ship Risk Profile and ship priorities available in the data base. Thirdly, it organizes the information from different steps of call, inspection,

²¹ Ibid

²² The NIR is covered by Directive 2009/16/EC amended by Directive 2013/38 and applies to all Member States of the EU as well as Norway and Iceland. The NIR is used by Russia and Canada with minor changes in cooperation with what is applied by the EU Directive.

²³ Markku Mylly (2015)

report as well as follow up action by using one single source and finally, it publishes inspection reports and information on behalf of the European Commission.

THETIS is capable of calculating risk profile for each ship in the data base and update it on the daily basis. Ship Risk Profiles divide ships into Low Risk Ships (LRS), Standard Risk Ships (SRS) and High Risk Ships (HRS). Criteria for risk calculations include: Ship type, flag, recognized organization, age, management company and inspection history. On the bases of above mentioned criteria, SRP will define periods in which ship inspection should be conducted.²⁴ In case of facing with “overriding” or “unexpected factors” which depend on severity of deficiency additional inspection might be necessary besides periodic inspection.²⁵

THETIS is also synchronized with SafeSeaNet system which provides it with capability to process ship call information. This information will be used in defining ships which are due for inspection.²⁶ Since Directive 2009 /16/EC and Directive 2002/59/EC on Vessel Traffic Monitoring require all EU Member States to establish system for estimation of arrival and departure time of ships in addition to register their actual time of their arrival and departure, such capability of THETIS would help in timely recognition of hazardous vessels.

While considering THETIS for enforcement purposes, indication of “overriding factor” (only authorities are capable of entering such data) will make the inspection mandatory with no regard to time and date of previous inspection. Indication of facts on safety or environmental problems will make the inspection in next port located within the PMoU territory mandatory.

Violations recorded during the inspection, would be shared with authorities for the purpose of criminal prosecution which will be subject to the national law of the port state, flag state of the ship and costal state reporting the violation.

6. Conclusion

Current paper focused on THETIS as the information system used by European Maritime Safety Agency for the purpose of improving surveillance, monitoring and systematic inspection in the process of Port State Control within the framework of Paris Memorandum of Understanding. Study of information systems used by EMSA clearly show that how authorities may have access to information

²⁴ Markku Mylly (2015)

²⁵ Ibid

²⁶ It worth to mention the linkage with SafeSeaNet of Russia and Canada provides THETIS with position of central system among whole PMoU countries.

data which require in order to monitor compliance of maritime actors with existing international regulations. As a result of access to reliable data, it is possible to detect violations more than before in more efficient manner. However, it should not be forgotten that Compliance with maritime regulations is not only monitoring and enforcement. It is important to update regulations in the same pace with technology change and increase knowledge of maritime stockholders about requirements and its effect of their own safety and security.