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MEDIA FACT SHEET 02/2010

A New Inspection Regime for port State control in all Paris MoU countries

17/11/2010 - Note to editors: as part of its communication programme for 2010, EMSA has prepared this information article about the New Inspection Regime for port State control in the Paris MoU region. Publications, particularly in the maritime media, are encouraged to use the content of this article in the course of the last few weeks of 2010.

Significant changes in the port State control system will take effect on 1 January 2011 in the European Union, and by extension the Paris MoU region. The new initiative is aimed at rewarding good-performing ships, and targeting poor-performing ships. It forms part of the 'third maritime safety package' adopted by the European Parliament in March 2009.

The countdown is on. There are only weeks until the *New Inspection Regime* (NIR) of the Paris Memorandum of Understanding (PMoU), which has considerable consequences for ship operators and owners, starts being applied on 1 January 2011. The legislation behind the new scheme, Directive 2009/16/EC on port State control, entered into force on 17 June 2009, and applies to all Member States of the European Union, plus Norway and Iceland as part of the European Free Trade Agreement. The text of the Memorandum has been revised accordingly, allowing the same Regime to be applied by all members of the Paris MoU

The process: why a *New Inspection Regime*?

The existing regime on Port State Control allows the Member State considerable freedom in selecting ships for inspection. This causes ships being over inspected without clear reason and other ships slipping the net. The new Directive makes the application of the NIR legally binding on all the EU Member States, including a new commitment to cyclically inspect all the ships visiting the ports and anchorage areas in the Paris MoU region. The idea to retain a harmonised and fair approach was essential when drafting the Directive. The European Maritime Safety Agency (EMSA), representing the European Commission, played the role of task force leader within the Paris MoU in charge of developing the NIR. EMSA's insight into the day-to-day practicalities of port State control, in providing technical assistance to the European

Commission, made it possible for most provisions in the NIR and in the Directive to be identical. In short, common standards, Paris MoU-wide.



Photo: EMSA's headquarters on the Tagus estuary in central Lisbon

The rationale: targeting poor performers

As those in the shipping industry know, the majority of shipping is carried out in a professional, safe and secure manner, yet problems can be caused by a minority which may seek to cut corners, and disrespect standards. A correct balance is to ensure safety, while subjecting ships to an appropriate level of inspections, which can be time-consuming and costly. So the NIR contains improved mechanisms for targeting such substandard ships. While all ships visiting the region will be inspected, the inspection frequency depends on a 'risk profile' assigned to each ship. While this is bad news for poor-performers, there is good news for the majority who perform well: the NIR also recognises the need to pose a lesser burden on good operators who, under the new regime (and provided that a number of other conditions are met), can enjoy a time window of up to 36 months without inspections. Conversely, it imposes tougher enforcement on substandard ships that, in the worst case scenario, may be forced to leave the region. A ship's risk profile will be based on criteria such as its type, age, flag, class society, inspection history and notably, managing company (the ISM manager).

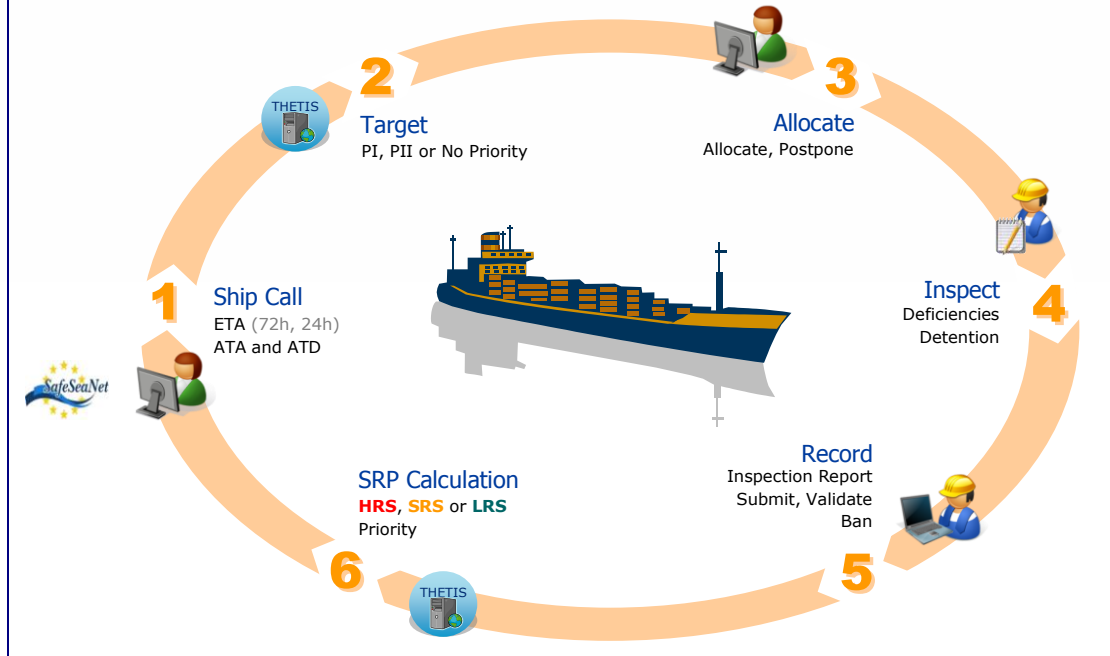
Tools to aid port State control officers, and ensure a standardised approach

In addition to the development of the NIR, EMSA is also engaged in facilitating the regime's correct introduction and smooth functioning. In particular, the Agency has developed a new supporting information system, and is providing training to users in the national administrations and the PMoU Secretariat. It is also developing other tools to support the daily work of the port State control officers (PSCOs) across the PMoU region.

The PSC Targeting and Information System ('THETIS') is the new information system to support the NIR. The system, currently at the latest stages of development, contains all the functionalities stemming from the NIR requirements. EMSA is the project manager of THETIS, and the Agency has made substantial investment in the tool. THETIS is the most advanced system of its kind. It is capable of calculating and attributing to each ship in the database a risk profile which is continuously updated. Furthermore, it calculates the 'achievement level' of the inspection commitment of each Member State (i.e. ensuring that promises to inspect are kept). THETIS also monitors missed inspections, and at the same time allows for recording of the reasons for missed inspections.

An important new feature of THETIS is the direct processing of ship call information. The system receives ship arrival and departure information from the Member States through SafeSeaNet, the EU's vessel traffic monitoring and information system. THETIS will then use the ship call information received from SafeSeaNet to automatically indicate the ships due for inspection in all ports and anchorage areas of the PMoU region. All EU Member States are required through the Directive to have in place the necessary arrangements to facilitate the collection and reporting of ship arrival and departure information through their own national systems. Shipowners, masters, agents or operators of ships calling at ports of members of the PMOU will have an important role as initiators of ship call information.

Basic PSC Process



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Image: With the New Inspection Regime, a vessel's Ship Risk Profile is continuously updated, based on inspection results. PSCOs are alerted about when to inspect a vessel, based on ship call information.

The information stipulated by the NIR

The NIR requires the following information for any ship arriving and leaving ports or anchorages in the PMOU region to be made available to THETIS:

- Pre-arrival notification, at least 72 hours in advance for ships eligible for expanded inspection¹
- Pre-arrival notification at least 24 hours in advance
- Actual Time of Arrival
- Actual Time of Departure

Failing to report the above information may cause a ship to be targeted for inspection or be subject to the imposition of penalties. Bearing this in mind, the Agency has cooperated with the Member States in informing the industry about the new requirements. In particular, the Agency has been engaged in

¹ The content of an Expanded Inspection is regulated in the EU through Commission Regulation (EU) No 428/2010 of 20 May 2010 (OJ L125, 21.05.2010, p.2)

dedicated information campaigns, distribution of leaflets, meetings with industry associations and updating of the websites. These activities will increase towards the end of 2010.

Timelines for the NIR

Although, the Directive's transposition period expires on 1 January 2011, it is important to note that the Directive officially entered into force on 17 June 2009. Therefore, application of the new Directive's



Image: The collection of information for the NIR began in June 2009, while application of the rules begins in January 2011.

As mentioned above, the ship risk profile includes a company performance criterion as a new parameter. The company is defined as the organisation taking the responsibilities resulting from the International Safety Management Code, or simply the "ISM manager". The company performance calculation will take only inspection results in the Paris MoU region into account. Company performance will also have consequences for publications. In the EU context, this is regulated through Commission Regulation (EU) No 802/2010 of 13 September 2010 (OJ L 241, 14.09.2010, p.4). Through this Regulation, EMSA is required to publish, through its website, the list of companies having a low or very low performance on the basis of the preceding 36 months. Publication will commence on 17 June 2012, when complete data will

be available for a continuous period of 36 months. However it is important to note that the company performance criterion will be used as a parameter in the ship risk profiles from 1 January 2011, on the basis of the available data.

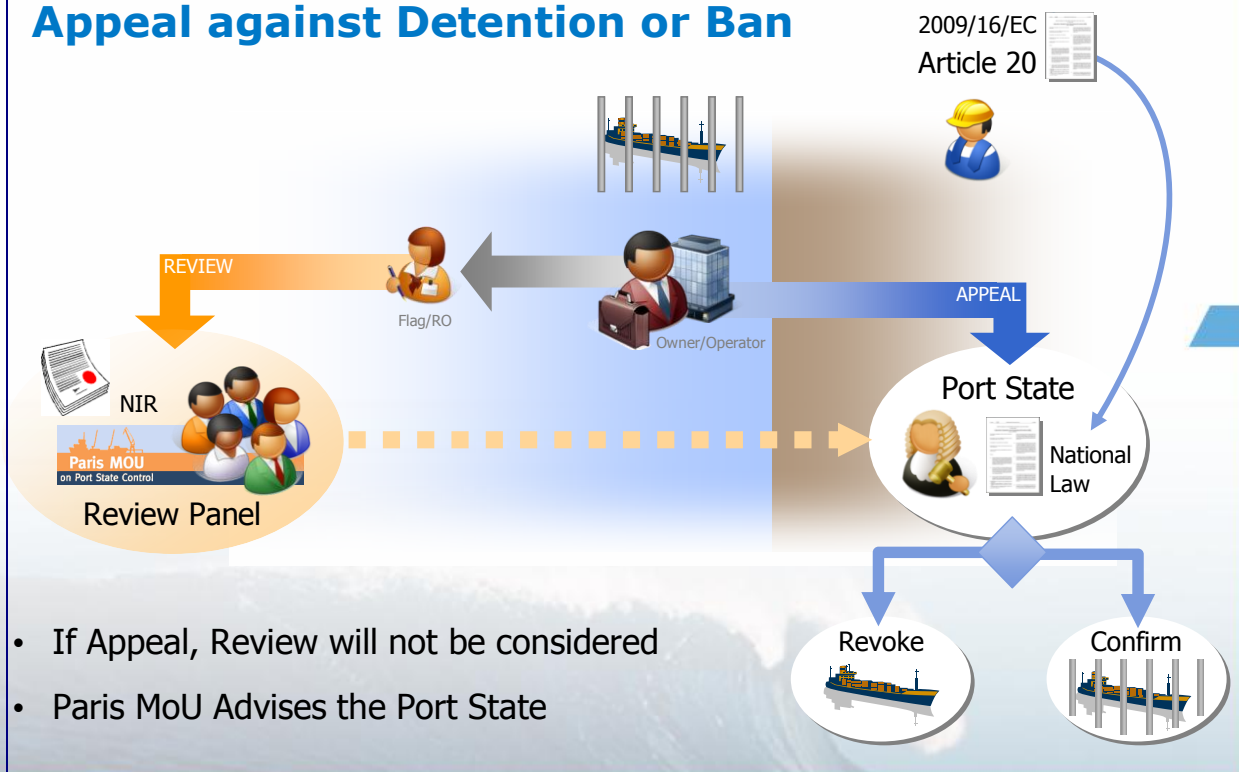
As regards the new refusal of access (banning) provisions within the NIR, these will now apply to all ship types and may be imposed on ships flying flags on both the black and grey lists². Furthermore, the provisions introduce a minimum ban period before a refusal of access order can be lifted. This minimum period increases with any subsequent ban, and could eventually be permanent after the third or fourth ban, depending on the case. The practical implementation of these provisions means that, as from 1 January 2011, any ship flying a black or grey listed flag and having two or more detentions since 17 June 2009, will be particularly susceptible to banning; if such ship is detained again after 1 January 2011, the ship will be banned from all ports in the PMoU region and for a period of at least three months.

Ensuring continuity in port State control, alongside innovation

Although the Directive introduces new port State control requirements, it maintains and reinforces some of the requirements of the current regime. In particular, the Directive recognises the need for mechanisms allowing ship owners to appeal against a detention or a refusal of access issued by a Member State. The respective competent authorities are required to establish and maintain appropriate procedures for this purpose. It is important to note that an appeal does not suspend a detention or a refusal of access. Should the appeal result in the competent authority upholding a ship owner or operator's appeal, this will mean an automatic rectification, including any necessary amendments in the information recorded in THETIS. This provides a more solid alternative to the existing remedy of the PMoU Review Panel, which, although probably quicker and easier as a process, is still limited to an essentially advisory function vis-à-vis the sanctioning port State.

² Information on the categorization of flag States can be found in Commission Regulation (EU) No 801/2010 of 13 September 2010 (OJ L 241, 14.9.2010, p.1)

Appeal against Detention or Ban



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Image: An appeal process accompanies the NIR, to help resolve disputes between owners/operators and the Port State.

2010: a year of training and preparation

The need for appropriate professional competency and training of the port State Control Officers (PSCOs) carrying inspections in the PMoU region is also reflected in the Directive. These qualifications and training should be harmonised as much as possible. EMSA greatly supports this long-term goal. The development of harmonised training tools for PSCOs is an important task for the Agency. A harmonized training scheme is offered for the training and qualification of PSCOs of all member States participating in the PMoU. In particular, EMSA organises several training weeks every year, dedicated to sessions focusing separately on new, and on experienced, PSCOs. Since the foundation of EMSA, around 700 PSCOs from all PMoU members have participated in these dedicated training courses.

2010 is turning out to be a particular challenging year for EMSA in terms of training. With the introduction of the NIR and the new information system, the Agency has doubled efforts by delivering additional tailor-made 'train-the-trainer' courses about NIR and THETIS. These sessions have allowed ample participation of representatives from all member States and the PMoU Secretariat, to ensure a smooth introduction of the new regime.

EMSA's wider activities in the PSC field: increasing efficiency, enforcing fair play

But the activities of EMSA in the area of port State control are not limited to the NIR and THETIS. The Agency is committed to the long-term goal of making the port State control system increasingly more efficient and robust. To achieve this goal, it is paramount that PSCOs have tools available that facilitate their daily work. EMSA is again playing an important role on this. In 2009 the Agency developed Rulecheck, a database that facilitates access to relevant regulations and port State control procedures. This allows the PSCOs to, for example, quickly identify Convention references related to the deficiencies found on board and thereby deliver to the master a complete inspection report. At the same time, the Agency is developing a comprehensive distance learning package for PSCOs which will be the biggest ever e-learning development in the area of port State control.

In summary, EMSA is nowadays playing a leading role in keeping the port State control system in the PMoU region abreast of the latest developments. The Agency's pivotal role in the development of the NIR, THETIS, the provision of training and supporting tools, have made EMSA a primary knowledge centre for the new changes. The Agency will continue supporting the port State control system as part of its strategy plan and in line with its founding principles. In order to ensure a level playing field for shipping, we need to ensure that everyone has access to the rules, and that the PSCOs enforce them in an even-handed manner. In short: fair play from ship operators and crew, with fair treatment from maritime authorities.

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