

## Paris MOU New Inspection Regime

On 23 April 2009 the European Parliament published Directive 2009/16/EC which effected changes to the port state control regime within the Union. This was followed by the announcement of the Paris Memorandum of Understanding (MOU) group, after its 43<sup>rd</sup> Committee meeting in Dublin held during May 2010, that it was to adopt the "New Inspection Regime" or "NIR". The directive proposes wide-ranging changes to the system of port state control inspections with effect from 1<sup>st</sup> January 2011, the impact of which is addressed in this issue of Risk Alert.

The inspection regime as currently exists within the Paris MOU has been radically revised and will provide a much stricter inspection policy by Europe and within the Paris MOU region.

As with most European Directives, each Member State will need to enact national legislation to give it the force of law within that jurisdiction; this will provide for an element of discretion by each Member State in its implementation. At the time of writing only Germany and the Czech Republic had notified their National Execution Measures. The specific law therefore remains unclear in each of the member states and caution should be exercised when preparing for the new regime.

This change is considered necessary in order to move further towards an integrated Maritime Transport Policy within the Union.

The system is to be more intelligence based and therefore the old SIRENaC data system has been replaced with the EU system THETIS. This provides for a more centrally held information source. This database will be enhanced by the SeaSafetyNet which will provide accurate information about ship movements within the European Union.

Turning now to the specific changes; the most striking and obvious change is the move to a requirement for all ships to undergo inspection, in contrast to the 25% sample currently used within the Paris MOU and the introduction of a risk profile system to determine the frequency of inspection. The profiling of a ship takes a large number of factors into account. The profile will be based on a ship's flag, company and ship performance regarding historic port state control inspections and will lead to a designation in one of 3 groups: low, standard



and high risk. The basic intervals between inspections being 6 months, annually and every 3 years respectively. The ship and the company will have two separate risk profiles. If there is a poorly performing ship in a company's fleet then this may have an impact on the other ships in that fleet by increasing the company risk profile. A specific risk profile can be calculated by using the links to the EMSA website found at the end of this text.

Dealing first with the company performance: this will be based on the number of ships in the fleet, the number of detentions and the number of ISM/Non-ISM deficiencies recorded at each inspection; with ISM deficiencies being weighted five times more serious than non-ISM deficiencies. For example if a fleet was to undergo 10 inspections and in total have 8 deficiencies recorded, only 3 of which were ISM related then, owing to the statistical weighting of ISM deficiencies, the fleet would fall into the medium risk category for company performance; thus illustrating the comparative difficulty of achieving a low risk profile. If the number of inspections in the fleet was increased to fifty, the company risk profile would remain at medium risk even if there were an average of 1.5 ISM deficiencies per inspection.

It is important to note that any change in ownership of a ship within the three year period over which the risk assessment is determined is ignored. Consequently any ship added to a fleet will carry with it the PSC performance record under its previous ownership.

The performance of the ship's flag state is also a crucial factor in establishing the risk profile and Members may wish to carefully consider any change of flag with this in mind if they intend to trade into the EU and Paris MOU region.

Even if the company risk profile is low, any ship which records more than 5 deficiencies in any of her inspections within the last 36 months is automatically barred from being a low risk ship.

In practical terms a change of risk from low to standard reduces the intervals between inspections from 36 to 12 months and will, to a limited extent, vary the type of inspection that will be carried out. The increased frequency of inspection and the probable difficulty of consistently achieving a deficiency-free outcome would appear to make it very difficult to return a ship to the low risk profile.



The due date of an inspection will have some tolerance. A window in which an inspection can be carried out will open, with regard to high risk ships at month five, and for standard risk ships, month ten; at this point they will be categorised as Priority II ships when a member state may carry out an inspection. At months 6 and 12 respectively they will become designated Priority I ships and the member state must inspect them, but this can be affected by both 'unexpected' and 'overriding factors'. A Member State shall inspect a ship when it is aware of an overriding factor regarding that ship. The definition of Priority I and Priority II ships is not clear and great care should be taken when considering the relevant Annex of the Directive.

Overriding and unexpected factors are defined in that Annex as well. Unsurprisingly overriding factors will include such eventualities as strandings and collisions. Unexpected factors however might be as diverse as the ship being reported by the pilot/port authority for an issue such as not complying with the IMO recommendation on navigation through the entrances to the Baltic Sea.

The survey standard to which the ship will be subject is defined. There are 3 categories of inspection, Initial, More Detailed and Expanded. An Expanded Inspection shall always be carried out on high risk ships and passenger ships, oil tankers, gas tankers, chemical tankers and bulk carriers over the age of 12 years. All ships, not included in the above categories, over the age of 12 years will be subject to a more detailed inspection. Initial and More Detailed Inspections are defined within Article 13 whilst the criteria for an expanded inspection are to be found in Annex VII. One thing worthy of note is that if the Member state has not informed the Master that no Expanded Inspection is to take place, Article 14.2 requires the Master of Ship Operator to provide sufficient time in the schedule in order for the surveyor to carry out the Expanded Inspection.

If the ship is inspected at the basic level of an Initial Inspection, (which is expected to be a limited inspection) then if in the surveyor's professional opinion that there are 'clear grounds', the inspection may become an Expanded Inspection. Examples of 'clear grounds' for doing so are found within Annex V of the Directive and include a wide variety of issues from the oil record book not being properly kept to the absence of a table of

working hours for the ship's company, as required in the ILO convention.

Member States are at liberty to refuse access, to ships which have fallen short of the standards required. The length of ban will depend on how many previous 'transgressions' the ship may be guilty of and where the country of registry appears within the Paris MOU quality list. For a first 'offence' a ship will be banned for a period of at least 3 months, increasing to a 12 month minimum; the ban will take effect from departure from the port or anchorage where a refusal of access order is granted.

Another interesting development is that ships that are anchored and carrying out a ship to port interface are also subject to an inspection. This raises interesting practical matters not least of which is transport to and from the ship. In most cases catching the first launch out to a ship at anchor will be easy for a surveyor, however if the ship intends to remain at anchor for a prolonged period of time then it is quite conceivable that launches will not be all that frequent between the ship and the shore. If it becomes necessary to put on a launch for the surveyor(s) alone, then who will bear the cost of that launch?

This question might be easily answered however where the ship is detained. Should it be necessary to detain a ship due to the number or nature of the deficiencies discovered at the survey then the costs of the inspection will be borne by the ship owner, operator or the agents in that port. Ship owners will also be liable for the costs involved in refusal measures or follow up inspections following a detention. There is no provision within the directive for the rates that might be charged by the Member States and therefore these remain for determination by each Member State. The directive also requires that the detention of the ship will not be lifted until a sufficient guarantee is provided for the reimbursement of the costs.

The Union has provided targets for each of the Member States to meet regarding inspections and it has narrowly prescribed the circumstances in which Member States may defer inspections. If the ship is a Priority I ship, an inspection must be carried out in that Member State, the port is not important, and the ship may sail between ports within that Member State provided that the period of deferment does not exceed 15 days. A ship is allowed to depart a Member State without the

survey having been carried out provided that the Member State has agreed in advance with the Member State to which the ship is heading that it will carry out the survey. In lieu of this agreement a survey must be carried out. It appears that no provision is made in the directive which allows for extenuating circumstances deferring an inspection.

There are some provisions within the directive which afford the ship owner/operator a degree of protection. Article 20 of the directive provides a procedure for appeal. The directive does not go on to define the procedure, and each system in each of the Member States is likely to vary. It is also possible that there may be significant variation in the mechanics of an appeal, due to the differing legal systems, however the remedies are likely to be similar.

As Members can see, the changes will have a significant impact on the way that PSC inspections are conducted on their ships in the Paris MOU region. The Managers strongly urge Members to determine their company and ships' risk profiles prior to the inspection regime being implemented.

Representatives of the company visiting ships should be on the look out for items that may be raised in a PSC inspection that would affect the risk profile of the ships. They should also take the time to train the ship's Master and officers so they are aware of these changes and the potential issues that might be raised so that ships are adequately prepared in advance of any PSC inspections in order to reduce the likelihood of deficiencies being identified. Members are also urged to ensure that the full impact of these changes, both operational and commercial, is fully understood throughout their organisation.

[http://www.emsa.europa.eu/appl/Company\\_Performance\\_Calculator.html](http://www.emsa.europa.eu/appl/Company_Performance_Calculator.html)

[http://www.emsa.europa.eu/appl/SRP\\_Calculator.html](http://www.emsa.europa.eu/appl/SRP_Calculator.html)

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