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EXECUTIVE SUMMARY

Ex-post Evaluation of Directive 2009/16/EC on port state control

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Directive 2009/16/EC establishes the EU regime on Port State Control (PSC). PSC is the inspection of foreign ships in other national ports by PSC officers to verify that the competency of the master, officers and crew on board, the condition of a ship and its equipment comply with the requirements of international conventions and that the vessel is manned and operated in compliance with applicable international law. As such, PSC is an important aspect of ensuring maritime safety.

The primary responsibility for monitoring the compliance of ships with the international standards for safety, pollution prevention and on-board living and working conditions lies with the flag State, while the responsibility for maintenance of the condition of the ship and its equipment after survey to comply with the requirements of Conventions applicable to the ship lies with the shipping company. However, over time it has been observed within the EU and globally that there is a serious failure on the part of a number of flag States to implement and enforce international standards. A similar failure is observed on the part of some owners.

As EU flag State rules cannot apply extra-territorially to third country flagged vessels or to their owners, who in line with the principle of customary international law known as "freedom of navigation" have the right to call at any port.

PSC in the European Union is based on the pre-existing intergovernmental structure of the Paris Memorandum of Understanding (PMoU). All EU Member States with ports as well as Canada, the Russian Federation, Iceland and Norway are members of the PMoU. The European Maritime Safety Agency (EMSA) plays an essential supportive role on the implementation of PSC. While the PMoU expects its Member States to enforce the international rules relating to vessel safety, pollution prevention and working and living conditions developed by the relevant UN bodies (International Maritime Organization and International Labour Office) it is a voluntary body. The EU regime goes further by legally requiring the enforcement of the international standards and any EU standards which may also apply.

This ex-post evaluation of Directive 2009/16/EC on Port State Control has been initiated as a part of the Maritime Transport Fitness Check under the Commission Work Programme 2016. Hence, the evaluation forms part of the Commission's REFIT programme and pays particular attention to potential areas for administrative burden reduction and simplification.

The evaluation was initiated in October 2016 and the external contractor's support study was finalised in June 2017. Its purpose is to assess the relevance, effectiveness, efficiency, coherence and EU added-value of the PSC regime as provided for in Directive 2009/16/EC. Attention was paid more particularly to certain issues which have been identified as recurrent by EMSA in a horizontal analysis of the visits carried out by the Agency to Member States to verify implementation.

The evaluation examines the application and impacts of the PSC Directive from January 2011, when it entered into force, until June 2016 in the 23 EU Member States in which it is implemented. The evaluation report conducted by an external contractor provides the Commission with an independent evidence-based assessment of the implementation of the EU PSC regime according to its effects and the needs it aims to satisfy.

The most important finding of this evaluation is that Directive 2009/16/EC although to some extent removing the flexibility of the Paris MoU, adds value by combining a PSC control framework with a legal enforcement mechanism to ensure that it is implemented in Member States. The assistance of EMSA has supported the EU PSC regime in important ways, primarily through encouraging a harmonised European PSC approach. The importance of the THETIS database has been underlined by stakeholders. Over two thirds only use THETIS in deciding which vessels to inspect. The role of EMSA in managing and updating THETIS as well as the provision by the Agency of training of inspectors to harmonise the implementation of PSC inspections throughout the PMoU region has been highlighted. A significant aspect of the Directive is that it makes obligatory those undertakings previously undertaken on a "best efforts" basis by Paris MoU Member States. This has resulted in pressure to perform and continuously improve and has led to better resource allocation at Member State level for PSC.

The evaluation shows that the PSC Directive continues to play a key role in the defence against 'substandard' shipping operating in EU waters. The targeting system for PSC is effective as it catches those ships with the highest risk of noncompliance with the agreed international/EU standards. In this way, PSC has contributed to the intended objectives to improve maritime safety, security, pollution prevention and ensuring working conditions.

As regards effectiveness, because it is based on the sharing of information from inspection and each ship has its own ship risk profile it can target ships which already have a poor PSC history. PSC thereby reduces the inspection burden on shipowners and ships that have shown themselves to be compliant and provide quality services, who are less likely to be subject to inspection. While several Member States have difficulties in recruiting or retaining qualified PSC inspector candidates, those inspectors that carry out PSC inspections in EU ports are adequately qualified and PSC inspections are carried out in a harmonised way throughout the EU.

The evaluation finds that the PSC training provided by EMSA to Member State authorities to ensure a uniform approach to inspections has been very effective and it is recommended that EMSA continues its provision of common training. Member States should provide EMSA with their wishes to needs-based training, try to learn from the strengths of existing approaches to training/background/recruitment, and work actively towards a harmonised training approach.

With respect to efficiency, data on the cost of inspections across Member States shows that costs in 2016 are more or less the same as in 2011. Increased operational flexibility may have decreased costs for some Member States. From a ship-owner perspective, however, costs related to PSC are viewed as proportional to the objective, and a good PSC record is considered as an important quality and competitive factor.

The evaluation pointed to the need for increased operational flexibility (for example for missed inspections). Moreover, the findings show that overall the interface between SafeSeaNet and the THETIS database seems to work, while some continuous development in response to user feedback could be considered, however there is in some cases a failure by Member States to provide the necessary data to SafeSeaNet which might impact the effectiveness of the system.

The PSC regime in the EU is seen as coherent internally and with other legislation. Several Member State have expressed concern that PSC is moving too far from its original goals and risks overburdening the PSC system with too many tasks thereby diluting its core task. This argument is slightly countered by a wish expressed by some Member States that PSC be broadened in its scope to allow for the inspection of foreign fishing vessels for safety, environmental and working conditions related issues.