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From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	1 June 2023
To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union

Subject:	REGULATORY SCRUTINY BOARD OPINION Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directive 2009/16/EC on port State control
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Delegations will find attached document SEC (2023) 202 final.

Encl.: SEC (2023) 202 final



EUROPEAN COMMISSION

Brussels, 22.7.2022
SEC(2023) 202 final

REGULATORY SCRUTINY BOARD OPINION

Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE
COUNCIL amending Directive 2009/16/EC on port State control

{COM(2023) 271}
{SWD(2023) 148 }
{SWD(2023) 149 }



EUROPEAN COMMISSION
Regulatory Scrutiny Board

Brussels,
RSB/

Opinion

Title: Impact assessment / Port State control

Overall opinion: POSITIVE

(A) Policy context

Port State Control (PSC) is the inspection of foreign ships in ports of States other than the flag state to verify that the condition of the ship and its equipment comply with the requirements of international and EU regulations, and that the ship is manned and operated in compliance with these rules.

In the EU, PSC is regulated by the Port State Control Directive 2009/16. Its revision runs in parallel to the revisions of the Flag State Directive (Directive 2009/21) and the Maritime Accident Investigation Directive (Directive 2009/18). These revisions were announced in the Sustainable and Smart Mobility Strategy (2020).

The evaluation, carried out in 2018 in the context of the Maritime Transport Fitness Check, found that the Directive is still fit for purpose, but it has also identified scope for targeted improvements and recent changes to international requirements that have not yet been transposed into the Directive.

(B) Summary of findings

The Board notes the additional information provided by the DG and commitments to make changes to the report.

The Board gives a positive opinion. The Board also considers that the report should further improve with respect to the following aspects:

- (1) The report does not provide sufficient evidence of the problems that the initiative seeks to address. It does not sufficiently demonstrate the market distortions generated by non-harmonised inspections, and the safety issues of large fishing vessels.
- (2) The report does not sufficiently justify the choice of the preferred policy option given that is not the best performing option in terms of the highest net benefit and the Benefit Cost Ratio. It does not well explain the factors determining this choice, such as international constraints or the role of the white/grey/black list.

This opinion concerns a draft impact assessment which may differ from the final version.

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(C) What to improve

(1) The report should better explain the international conventions that are relevant for the PSC Directive, in particular the Paris Memorandum of Understanding (MoU), and the added-value of the PSC Directive. It should explain from the outset the voluntary character of these arrangements and the role of the PSC Directive in their implementation in the EU.

(2) The report should better present the evidence of the problems it addresses and of the need for the EU to act. The evidence should demonstrate the inefficient and non-harmonised approach to PSC inspections. The report should clarify the notion of 'efficient inspection rate' and show to what extent over-inspections present a problem, not only in terms of market distortions but also in terms of efficiency. For larger fishing vessels, the report should establish a clear link between the poorer safety record and lack of inspections (or reporting thereof). It should clarify whether the market failure relates to the lower level of inspections, the low quality of inspections (when carried out by only one inspector) or on both and explain why.

(3) In presenting the policy options and their impacts, the report should focus on those issues that involve policy choices (i.e. electronic certificates, large fishing vessels and new international conventions). Policy measures, which are common to all policy options, should still be assessed but their impacts should be presented also in disaggregated form in order not to obscure the impact of the main policy choices. Where the report uses packages of policy measures, it should explain the underlying rationale of each of the packages.

(4) The main report should give an indication of the main assumptions underpinning the impact analysis, in particular for the uptake and expected effectiveness of voluntary non-legislative measures (e.g. inspections of fishing vessels). In terms of the administrative costs, it should explain the origin of the 72-hour advance notice and why it can be abolished now.

(5) The report needs to justify better the choice of the preferred policy option (B) given that the analysis indicates that this option does not produce the highest net benefit and The Benefit Cost Ratio. It should clarify the role of the international acceptance of electronic certificates and the role of the white/grey/black list in the choice of the preferred policy option. It should also explain this list, its content and its consequences, and clarify how it is set up and adapted over time.

The Board notes the estimated costs and benefits of the preferred option(s) in this initiative, as summarised in the attached quantification tables.

Some more technical comments have been sent directly to the author DG.

(D) Conclusion

The DG must take these recommendations into account before launching the interservice consultation.

If there are any changes in the choice or design of the preferred option in the final version of the report, the DG may need to further adjust the attached quantification tables to reflect this.

Full title	Revision of Directive 2009/16/EC on Port State control
Reference number	PLAN/2019/5430
Submitted to RSB on	22 June 2022
Date of RSB meeting	Written procedure

ANNEX – Quantification tables extracted from the draft impact assessment report

The following tables contain information on the costs and benefits of the initiative on which the Board has given its opinion, as presented above.

If the draft report has been revised in line with the Board's recommendations, the content of these tables may be different from those in the final version of the impact assessment report, as published by the Commission.

I. Overview of Benefits (total for all provisions) – Preferred Option (Policy option B)		
<i>Description</i>	<i>Amount</i>	<i>Comments</i>
Direct benefits		
Improvement in the functioning of the internal market		Positive impact on the functioning of the internal market, both by improving overall maritime safety for the benefit of freight customers and passengers throughout the Union as well as by ensuring that the same safety level applies throughout the Union. The path towards digitalisation and the voluntary creation of a PSC regime for larger fishing vessels results in a high degree of harmonisation between Member States.
Enforcement costs savings relative to the baseline (i.e. present value over 2025-2050)	EUR 8.406 million	Enforcement costs savings for port State authorities are mainly driven by measures related to the use of electronic certificates. In terms of present value over 2025-2050, the enforcement costs savings are estimated at EUR 8.406 million.
Indirect benefits		
Reduction of external costs related to accidents relative to the baseline (i.e. present value over 2025-2050)	EUR 35.048 million	Indirect benefit to ships' crews, including those of fishing vessels, and to society at large, due to the lives saved and injuries avoided. As deficiencies identified during PSC inspections typically have to be rectified before the vessel leaves the port or shortly thereafter, PSC inspections are expected to lead to a reduction in the number of ship deficiencies over time and thereby to improve safety. The impacts are estimated at 6 lives saved and 61 injuries avoided (i.e. 3 lives saved and 27 injuries avoided for marine casualties in which commercial vessels are involved and 3 lives

		saved and 34 injuries avoided for marine casualties in which fishing vessels are involved).
Reduction in the bunker fuel lost at sea, relative to the baseline over 2025-2050 (in tonnes)	75 tonnes of bunker fuel lost avoided	Indirect benefit to society at large. Preventing accidents from occurring in the future is projected to avoid 75 tonnes of bunker fuel lost at sea relative to the baseline. This is expected to have a positive impact on the quality of marine water and biodiversity.
Administrative cost savings related to the 'one in, one out' approach*		
Reduction in the administrative costs for ship operators relative to the baseline (i.e. present value over 2025-2050)	EUR 5.53 million (or EUR 0.221 million on average per year)	Administrative costs savings stem from the abolition of the 72-hour advance reporting obligation for the operator, agent or master of a ship eligible for an expanded inspection. Taking into account the projected evolution of the number of port calls over time, removing the restriction could result in administrative cost savings of EUR 0.286 million in 2030 and EUR 0.339 million in 2050 relative to the baseline. Expressed as present value over 2025-2050 the total costs savings relative to the baseline are estimated at EUR 5.53 million.

II. Overview of costs – Preferred option (Policy option B)						
	Citizens/Consumers		Businesses		Administrations	
	One-off	Recurrent	One-off	Recurrent	One-off	Recurrent
Direct adjustment costs relative to the baseline (i.e. present value over 2025-2050)	-	-	-	-	For Port State Control authorities: EUR 0.100 million For Flag State authorities: EUR 1 million	For Port State Control authorities: EUR 2.470 million For Flag State authorities: EUR 3.831 million

					For EMSA: EUR 0.650 million	For EMSA: EUR 5.829 million
Direct administrative costs relative to the baseline (i.e. present value over 2025-2050)	-	-	-	-	-	For Port State Control authorities: EUR 8.595 million
Direct enforcement costs relative to the baseline (i.e. present value over 2025-2050)	-	-	-	For ship operators: EUR 0.715 million	-	For Port State Control authorities: EUR 6.697 million
<i>Costs related to the 'one in, one out' approach</i>						
Total	Direct adjustment costs	-	-	-	-	
	Indirect adjustment costs	-	-	-	-	
	Administrative costs (for offsetting) relative to the baseline (i.e. present value over 2025-2050)	-	-	-	For ship operators: EUR 5.53 million (or EUR 0.221 million on average per year)	