

# Revision of the Port State Control Directive

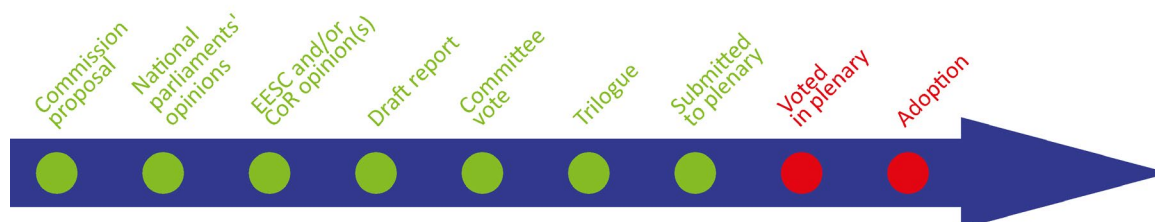
## OVERVIEW

On 1 June 2023, the European Commission presented a legislative package to modernise and reinforce maritime rules on safety and pollution prevention. The package contains proposals to revise five legal acts, including the Port State Control Directive (PSCD). The aim is to update them so that they are in line with the requirements of the International Maritime Organization and the regional organisation for port state control set up under the Paris Memorandum of Understanding (MoU).

The proposal refers to the inspection of foreign ships in national ports, to verify that the ships' condition complies with international regulations, including for crews. The PSCD would be extended to cover additional international rules such as new conventions on ballast water and removal of wrecks, and updated rules under the Paris MoU. It would give more importance to ships' environmental performance in determining their risk profile, and boost Member States' capacity to detect and address cases of non-compliance with standards and rules on safety, environmental protection and pollution prevention. The scope would be extended to fishing vessels.

The European Parliament's Committee on Transport and Tourism (TRAN) adopted its report on 7 December 2023. On 27 February 2024, Parliament and Council reached a provisional agreement, which was endorsed by TRAN on 20 March 2024. Parliament is expected to vote on the text during its April I 2024 session.

<b>Proposal for a directive of the European Parliament and of the Council amending Directive 2009/16/EC on port State Control</b>		
<i>Committee responsible:</i>	Transport and Tourism (TRAN)	COM(2023) 271 1.6.2023
<i>Rapporteur:</i>	Vera Tax (S&D, Netherlands)	2023/0165(COD)
<i>Shadow rapporteurs:</i>	Ljudmila Novak (EPP, Slovenia) Pierre Karleskind (Renew, France) Ignazio Corrao (Greens/EFA, Italy) Johan Van Overtveldt (ECR, Belgium) Marco Campomenosi (ID, Italy) Clare Daly (The Left, Ireland)	Ordinary legislative procedure (COD) (Parliament and Council on equal footing – formerly 'co-decision')
<i>Next steps expected:</i>	First-reading vote in plenary	



## Introduction

With [80 %](#) of the EU's external trade being seaborne, maritime transport is a very important artery for both the EU and the globalised economy. It is also a lifeline for the EU's islands, peripheral and remote maritime regions. Although the level of maritime safety in EU waters is high, more than 2 000 marine accidents and incidents are still reported to be taking place there every year. Within the EU, around 15 000 vessel [inspections](#) are conducted annually, in enforcement of the [rules](#) of the Port Reception Facilities [Directive](#).

On 1 June 2023, the European Commission presented a [maritime safety package](#) with the ambition to modernise maritime safety rules by reinforcing aspects related to safety and pollution, and by aligning practices with technological developments in the sector. This package of five related legal acts includes a [legislative proposal](#) to revise the 2009 Port State Control Directive (PSCD), as had already been announced in the sustainable and smart transport [strategy](#) of December 2020. [Port state control](#) involves the inspection of foreign ships in national ports<sup>1</sup> done with the aim to verify that the condition of the ships and their equipment comply with the requirements of international regulations, and that the ships are manned and operated in compliance with these rules. The inspections were intended to be a backup or second line of defence to [flag state](#) implementation (the duties of flag states to implement and force international standards and regulations).

An important objective of the proposal is to cover additional International Maritime Organization (IMO) rules such as new conventions on [ballast water](#) and sediments, and on the [removal of wrecks](#). Moreover, it updates the way foreign ships are inspected and places greater importance on the environmental performance of ships in determining the ships' risk profile ([SRP](#)) (Article 10 of the PSCD), which can be low, high or standard. It furthermore boosts the Member States' capacity to detect and address cases of non-compliance with rules and standards on safety, environmental protection and pollution prevention. It extends the scope of the directive to fishing vessels and introduces further digitalisation of PSC operations.

Worldwide, there are nine regional PSC agreements, including the Paris Memorandum of Understanding ([Paris MoU](#)) on harmonised port state control, concluded in 1982. As a result of changes in this agreement, the PSCD would need to be adapted, in particular regarding the operational features of the PSC inspection regime ([SWD\(2023\) 148](#), Annex 6). Twenty-two EU Member States with seaports are signatories to the Paris MoU. Russia is currently suspended due to its war against Ukraine. Since the adoption of the PSCD, port state control has been based on the procedures of the Paris MoU. Its mission is to eliminate sub-standard ships by carrying more inspections on board of ships in Paris MoU ports, to ensure that they meet safety, security and environmental standards and that crews have good working conditions. The Paris MoU Committee publishes an annual [performance list](#) assigning ships a white, grey or black flag depending on their performance with regard to those standards. Some ships use a special type of flag – a flag of convenience ([reflagging](#)) – to help them avoid taxes, labour costs or conservation measures.

## Existing situation

The existing PSCD, which resulted from the [Erika III package](#), introduced legislative measures for maritime safety and drastic changes to the system that was in place prior to its adoption, notably in the way ships were selected for inspections. It became applicable on 1 January 2011. The Commission is of the opinion that the current PSCD is well transposed and implemented by the Member States, and contributes to the increased safety of ships calling at EU ports. The PSCD applies to any ship calling at an EU port, and was amended in 2017 to include inspection regimes for roll on-roll off (ro-ro) passenger ships. The inspection regime, as defined by the Paris MoU, introduced a more targeted system for selecting the ships to be inspected (according to a risk-profile in an IT instrument), the Hybrid European Targeting and Inspection System ([THETIS](#)). It is managed by the European Maritime Safety Agency (EMSA).

The issues affecting the current PSCD are that it is not aligned with the new IMO mandatory [rules](#) and new procedures, in particular regarding inspections and recalculations of white, grey and black lists, agreed at the Paris MoU since the PSCD came into existence. In addition, current PSCD requirements do not apply to fishing vessels, and the current design of the ship risk profile (SRP) and targeting mechanism are not up to date. The current certificate system is still paper-based, while PSC skills and training are inadequate.

The Court of Justice of the European Union ([CJEU](#)) has interpreted the rules in relation to port state control on several occasions. For instance, on 1 August 2022, the Administrative Tribunal of Sicily asked the CJEU for a preliminary ruling on the interpretation of the PSCD as amended by Directive (EU) 2017/2110 and the international Convention for the Safety of Life at Sea ([SOLAS](#)). It referred to two detention orders issued in Italian ports to ships known as *Sea Watch 4* and *Sea Watch 3*, operated by German non-governmental organisation Sea Watch.<sup>2</sup>

## Parliament's starting position

On 27 April 2021, Parliament adopted a [resolution](#) on technical and operational measures for more efficient and cleaner maritime transport. This resolution focussed on ports and called on the Commission to draw up a strategy on zero-emission ports. As a concrete measure, it called on the Commission to take swift action to regulate EU port access for the most polluting ships based on the PSCD framework. The resolution made concrete suggestions regarding the revision of the PSCD and called on the Commission to propose this revision by the end of 2021. The objectives of the revision would be to allow for more effective and comprehensive control of ships and simplified procedures, including incentives for compliance. These include environmental, social, and public health aspects, as well as labour law standards, safety on board of ships calling at EU ports for both seafarers and dockworkers, and possibilities for effective, proportionate and dissuasive sanctions.

## Council starting position

The Council has only expressed limited and indirect views on the implementation of the PSCD in recent years.

In its [conclusions](#) of 5 June 2020 on the EU Waterborne Transport Sector, the Council called for digital transformation, a process involving the uptake of digital services, the issuance of electronic certificates for the registration of seagoing ships under EU Member States flags, and the electronic verification of certificates for seagoing ships and seafarers as an option in the context of PSC procedures. Furthermore, it encouraged the uptake of electronic crew and vessel documents and the deployment of digital services for inland navigation. The EU ministers acknowledged that the verification of certificates of competency and endorsements issued to seafarers is essential from the point of view of preventing unlawful practices associated with the issuance of such certificates. This includes supporting activities related to PSC. The ministers also acknowledged EMSA's pivotal role in assisting the Commission and supporting Member States to meet their obligations as flag, port and coastal states. They furthermore encouraged the Commission to consider options to further enhance EMSA's capability in performing its technical and operational tasks related to the safety, security and sustainability of EU shipping.

## Preparation of the proposal

In preparing its proposal for the revision of the PSCD, the Commission conducted an inception impact assessment ([IIA](#)) that remained open to public comments between October and November 2020. The impact assessment (IA) [report](#), which came out in June 2023, concluded that among the several policy options examined in the IA, the preferred one was option PO B, envisaging alignment with the IMO and the Paris MoU. This option also focusses on putting in place a quality management system for the PSC administration and envisages the use of electronic certificates, enhanced EMSA training tools and a voluntary PSC system for fishing vessels. The [respondents](#) to the IA, in particular

the PSC administrations, demanded the development of a voluntary PSC scheme for larger fishing vessels, in conjunction with the Paris MoU. In addition, they voiced support for the introduction and use of electronic legal documents and certificates, including for inspections. The fishing industry was in favour of maintaining safety standards and of an arrangement whereby Member States would ratify the relevant international [conventions](#).

Since only nine entities provided their [feedback](#), the Commission decided not to hold a public consultation on the legislative proposal. On the scope, it supported the possible inclusion of fishing vessels under strict conditions in the revised PSCD. In the meantime, in July 2023, the Regulatory Scrutiny Board (RSB) provided a [positive opinion](#) on the IA ([SEC\(2023\) 202](#)). It nevertheless pointed out that the report had not provided sufficient evidence on the problems it was discussing, such as market distortions caused by non-harmonised inspections and safety issues of large fishing vessels. In addition, the report did not sufficiently justify the choice of the preferred option.

In its European Maritime Safety Report ([EMSAFE](#)) of June 2022, EMSA included an analysis of the EU maritime safety landscape, including the current implementation of the PSC regime. This complements the Commission's ex-post evaluation regarding PSC developments for the period from 2011 to 2016. EMSA reported that PSC officers in some Member States are not sufficient in number and are often overloaded. It recommended introducing more harmonisation in the area of training to improve the effectiveness of the PSC regime. It furthermore suggested making efforts to achieve better harmonised national sanction systems. Besides, EMSA, just like the Paris MoU Committee, demanded that the uptake of fishing vessels be considered. Overall, EMSA mentioned the fact that the number of detentions in the EU Member States had been consistently falling over the (then) past five years, which it believed to be a positive indicator regarding the safety of ships calling at EU ports.

## The changes the proposal would bring

The Commission is proposing anticipated updates, including technical ones, to the PSCD, to bring it into compliance with international rules and to encourage the digitalisation of the shipping industry. The changes the [proposal](#) and its [annexes](#) would bring, cover in particular the following elements:

- **Coverage of developments under international conventions.** The revision of the PSCD updates and aligns EU rules with newly applicable international legal instruments, in particular the IMO [Ballast Water Management Convention](#) and the Nairobi [International Convention](#) on the Removal of Wrecks. The revised PSCD would also be fully aligned with the existing Paris MoU;
- **New requirements for inspections.** The new requirements for inspections include, among others, checks on foreign ships in EU ports in order to make these inspections more efficient. The revision of the PSCD would amend the ship risk profile (SWD(2023) 148, Annex 6) on which the targeting of ships for inspections is currently based, to take greater account of environmental factors. For cargo and passenger vessels over 5 000 gross tonnes, the amended risk profile would take into account the vessel's IMO [carbon intensity indicator](#). For all ships eligible for PSC, it adjusts the weighing factor to attach more importance to previously identified environmental-related deficiencies and detentions relating to ships under inspection.
- **Extended scope to fishing vessels.** The Commission proposes to extend the scope of the PSCD to fishing vessels over 24 metres, where significant safety concerns persist. A voluntary PSC system for these vessels calling at EU ports would be provided for those Member States that wish to carry out these inspections, offering a second line of defence for this type of vessels. This would include guidelines, training and an inspection database for targeting ships and reporting on inspections. It should be noted that the prime responsibility for fishing vessels safety lies with the flag state.

- **Digitalisation of port operations.** The proposal provides for and incentivises a higher uptake of digital solutions. It encourages the use of electronic certificates, (consistency with Article 6 of the Flag State Directive) and provides for a common data tool, a validation tool and a repository at EU level. The issuance of e-certificates by flag states would be incentivised through a new parameter added to the ship risk profile, allowing certified ships to be less frequently targeted by PSC inspections.
- **Member States' capacity.** The proposal aims to improve the administrative capacity of EU Member States, to enable them to better detect safety issues and compliance failings as regards environmental protection and pollution prevention. Member States are thereby to implement a quality system for their PSC authorities, including a 'fair share' inspection commitment.

Under the proposal, **EMSA** would support the implementation of the revised PSCD through a further professional development and training programme for PSC inspectors. EMSA would also play an important role in the reporting and monitoring process, through its existing THETIS system for vessel traffic in EU waters. As part of the maritime safety package, EMSA's [mandate](#) would therefore be updated to reflect its extended responsibilities.

## Advisory committees

Opinions were requested from the European Economic and Social Committee (EESC) and the European Committee of the Regions (CoR). The [EESC](#) adopted its [opinion](#) on the proposal on 20 September 2023.

## National parliaments

The national parliaments do not have the opportunity to submit reasoned opinions under the subsidiarity control mechanism, because the subsidiarity principle does not apply to international instruments or to Union rules implementing those agreements.

## Stakeholder views<sup>3</sup>

During the preparation of the proposal, stakeholders could give their feedback between 9 October and 20 November 2020. Feedback was submitted from three non-governmental organisations, three business associations, one public authority, one trade union and one private citizen. The European Community Shipowners' Association ([ECSA](#)) supports the Commission's initiative, but highlighted that PSC results should not and cannot be used to determine if a ship is well-performing or environmentally friendly. Therefore, the establishment of an incentive scheme for well-performing and/or environmentally friendly ships based on PSC results would be highly problematic. The European Transport Workers' Federation ([ETF](#)) welcomes the initiative, as port state controls are important measures in upholding the basic rights of seafarers to decent working and living conditions, and contribute to seafarers' welfare. ETF highlights that there is a need for more effective and comprehensive control of ships, including compliance with environmental, social, public health and labour law standards, safety on board for seafarers, dock workers and fishers, and possibilities for effective sanctions.

A second feedback period took place after the publication of the Commission proposal, between 1 June and 28 August 2023. Feedback was received from five stakeholders: two business associations, one company, one public authority and one international association. The European International Shipowners' Association of Portugal (EISAP) asks to remove the carbon intensity indicator (CII) as an indicator of the ship risk profile, as CII [does](#) not reflect the actual environmental performance of the ship, but rather the environmental performance of the operational profile in which the ship finds itself. The World Shipping Council ([WSC](#)), while supporting the proposal in general, makes the same request, as the CII indicator is not aligned with standards, goals and legislation in the 'fit for 55' package and as there is no evidence that a low CII score relates to

increased risk of environmental pollution or an incident. In many cases, the indicator reflects the route a given ship is serving and not the inherent emission profile of the ship.

## Legislative process

The European Commission presented its proposal for the revision of the PSCD on 1 June 2023.

In the Council, a [first discussion](#) on the proposal took place in the Working Party on Shipping on 14 June 2023.

In the European Parliament, the TRAN committee has led the work on this legislative file. The [draft report](#) was presented on 19 September 2023. The TRAN committee adopted its report on 7 December 2023 along with a decision to enter into trilogue negotiations on that basis. The committee [report](#) welcomed the Commission proposal, but proposed some adjustments.

- Environmental performance and deficiencies of ships should have more weight in determining their risk profile. More inspections on polluting ships should promote the use of on-shore power supply or any other energy saving technology which reduces greenhouse gas emissions and air pollutants in ports.
- The Committee supports the Commission proposal to give an option for Member States to extend port state control to fishing vessels over 24 metres. The development of guidelines for carrying out port state inspections on fishing vessels are also supported. This will improve the level of safety aboard these ships, which experience a relatively high level of accidents.
- More emphasis on respect for seafarers' and dockers' welfare and fundamental rights to decent working and living conditions, in particular through the systematic verification of the work/rest hour records.
- There is a need for widespread use of digital certificates and the linking of databases, which will contribute to more efficient and targeted inspections. This requires investment, research and innovation in digitalisation and adequate upskilling for seafarers.

The Committee on Fisheries (PECH) submitted an [opinion](#) on 29 November 2023.

On 4 December 2023, the Council presented its [general approach](#). While [retaining](#) the Commission proposal's general aim, the Council proposed several modifications, most of them aiming to ensure clarity and coherence with international rules and procedures, in particular those of the Paris MoU. The provisions regarding landlocked countries are also clarified, to avoid imposing a disproportionate administrative burden on Member States that do not have seaports.

On 11 December 2023, the TRAN committee decided to enter into interinstitutional negotiations. This decision was confirmed by the plenary on 13 December.

On 27 February 2024, Parliament and Council negotiators reached a provisional [agreement](#) on the conditions under which flag and port states check if vessels are safe to sail. The agreement updates the criteria that allow the targeting of ships for inspection at ports, ensuring in particular that ships' environmental deficiencies will have more weight in determining their risk profile. Negotiators agreed to consider the inclusion of the carbon intensity indicator (which determines the annual reduction factor needed to ensure continuous improvement of a ship's operational carbon intensity) in the environmental parameters. Negotiators also agreed on establishing a quality management system and on the possibility for Member States to put in place a voluntary port state control regime for fishing vessels over 24 metres long.

The TRAN committee endorsed the provisional agreement on 20 March 2024. The vote in plenary is scheduled for the April I 2024 part-session.

## EUROPEAN PARLIAMENT SUPPORTING ANALYSIS

Jansen T., [Revision of Directive 2009/16/EC on port state control](#), implementation appraisal, EPRS, European Parliament, May 2023.

## OTHER SOURCES

European Parliament, [Port State control](#), Legislative Observatory (OEIL).

## ENDNOTES

- <sup>1</sup> [Definition](#) of the International Maritime Organization (IMO).
- <sup>2</sup> During the summer of 2020, the ships rescued several hundred persons in danger or distress in the international waters of the Mediterranean Sea, while only being certified as general cargo ships by flag state Germany. The Court [ruled](#) that the PSCD could be applied to ships that, although being classified and certified as commercial cargo ships by the flag state, are in practice being systematically used by a humanitarian organisation for non-commercial activities relating to the search for and rescue of persons in danger or distress at sea. It also clarified that such ships can also be subject to more detailed inspections based on concerns that they do not comply with the requirements that apply to their use as per their certification (cargo), or with the requirements that apply to the activities that they are systematically used for transporting passengers.
- <sup>3</sup> This section aims to provide a flavour of the debate and is not intended to be an exhaustive account of all different views on the proposal. Additional information can be found in related publications listed under 'European Parliament supporting analysis'.

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