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

{SWD(2018) 231 final}

Contents

Glossary

Term or acronym	*Meaning or definition*
AIB	Accident Investigation Body
AIS	Automatic Information System
CISE	Common Information-Sharing Environment
COLREG	Convention on International Regulations for Preventing Collisions at Sea
EMCIP	European Marine Casualty Information Database
EMSA	European Maritime Safety Agency
III Code	IMO Implementation of International Instruments Code
IMO	International Maritime Organisation
HAZMAT	Hazardous materials and dangerous goods
HLSG	High Level Steering Group on the Governance of the Digital Maritime System and Service
LL	International Convention on Load Lines
LRIT	Long Range Identification and Tracking system
MARPOL	International Convention for the Prevention of Pollution from Ships
NIR	New Inspection Regime (port State control)
NSW	National Single Window
PCS	Port community systems
PMoU	Paris Memorandum of Understanding on port State control
QMS	Quality Management System
RFD	Reporting Formalities Directive
RO	Recognised organisation
SOLAS	International Convention for the Safety of Life at Sea
SSN	Union Maritime Information and Exchange System (SafeSeaNet)

STCW	International Convention on Standards of Training, Certification and Watchkeeping for Seafarers
UNCLOS	United Nations Convention on the Law of the Sea
VIMSAS	Voluntary IMO audit scheme
VTMIS	Vessel Traffic Monitoring and Information Exchange System

1. INTRODUCTION

Directive 2009/16/EC[1] was implemented as part of the third Maritime Safety Package. It sets the EU regime on Port State Control (PSC).

PSC is the inspection of foreign ships in other national ports by PSC officers for the purpose of verifying 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[2], 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, a third line of defence against substandard shipping operating in EU waters has been developed.

PSC in the European Union is based on the pre-existing 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. 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 (IMO[3] and ILO[4])[5], it is a voluntary organisation. The EU regime goes further by legally requiring the enforcement of the international standards and any EU standards which may also apply.

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[1] Directive 2009/16/EC of the European Parliament and of the Council of 23 April 2009 on port State control, *OJ L 131, 28.5.2009, pp. 57–100*

[2] Directive 2009/21/EC of the European Parliament and of the Council of 23 April 2009 on compliance with flag State requirements, *OJ L 131, 28.5.2009, pp. 132–135*

[3] International Maritime Organization

[4] International Labour Organization

[5] International rules include for example the International Convention for the Safety of Life at Sea (SOLAS 74), International Convention for the Prevention of Pollution from Ships (MARPOL 73/78), Standards of Training, Certification and Watch-keeping (STCW, 1978 revised in 2010), the International Convention on Load Lines (1966), the Convention on the International Regulations for Preventing Collisions at Sea (COLREG 72), etc.

In the EU context particular rules apply to ferries in regular service (Directive 99/35/EC[6]) and the inspection of this particular vessel type can be carried out by means of a port State control inspection in certain circumstances. Furthermore, specific EU legislation related to insurance requirements (Directive 2009/20/EC[7]) and legislation, particularly in the maritime-related environmental protection subjects such as on the reduction of sulphur oxides emissions to air (Directive 1999/32/EC[8]), which allow for enforcement by means of PSC if the Member State so wishes and other legislation on ship recycling (Regulation (EU) No 1257/2013)[9] which provide for enforcement by means of PSC has been adopted. Additional legislation on the monitoring reporting and verification of green house gas emissions (Regulation (EU) 2015/757)[10] which also specifically provide for enforcement by means of PSC is in the pipeline. To the extent that these rules are already in force (insurance, sulphur), they have been included in this evaluation.

PSC is based on the idea of targeted inspections and the Commission assisted by the European Maritime Safety Agency (EMSA)[11] provides all EU and PMoU Member States with the technical support necessary to decide which vessels to inspect and to report the results of PSC inspections via the THETIS database.

2.1 Purpose of the evaluation

The ex-post evaluation of Directive 2009/16/EC on Port State Control has been initiated as a part of the Maritime Fitness Check under the Commission Work Programme 2016[12]. 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 supporting external contractor's 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 as amended.

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[6] Council Directive 1999/35/EC of 29 April 1999 on a system of mandatory surveys for the safe operation of regular ro-ro ferry and high-speed passenger craft services, *OJ L 138, 1.6.1999, pp. 1–19*

[7] Directive 2009/20/EC of the European Parliament and of the Council of 23 April 2009 on the insurance of shipowners for maritime claims, *OJ L 131, 28.5.2009, pp. 128–131*

[8] Council Directive 1999/32/EC of 26 April 1999 relating to a reduction in the sulphur content of certain liquid fuels and amending Directive 93/12/EEC, *OJ L 121, 11.5.1999, pp. 13–18*

[9] Regulation (EU) No 1257/2013 of the European Parliament and of the Council of 20 November 2013 on ship recycling and amending Regulation (EC) No 1013/2006 and Directive 2009/16/EC, OJ L 330, 10.12.2013, pp 1-20

[10] Regulation (EU) 2015/757 of the European Parliament and of the Council of 29 April 2015 on the monitoring, reporting and verification of carbon dioxide emissions from maritime transport, and amending Directive 2009/16/EC, OJ L 123, 19.5.2015, p. 55)

[11] http://www.emsa.europa.eu/

[12] The overall justification of the maritime fitness check is to look more closely at the interaction between the concerned legislative acts and their implementation – including the supportive role the European Maritime Safety Agency (EMSA) can play – to check whether and how the objectives of competitiveness and quality shipping can be better supported and mutually reinforced, while also considering the international rules and conventions on which they are based and that they enforce.

2.2 Scope of the evaluation

The evaluation examines the application and impacts of the PSC Directive (as amended) from the 1st of January 2011, when it entered into force, until the 30th of 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 port State control regime according to its effects and the needs it aims to satisfy.

The evaluation assesses the relevance, effectiveness, efficiency, coherence and EU added-value of the Directive. Attention was also paid more particularly to certain issues identified as recurrent by EMSA in a horizontal analysis of the visits carried out by the Agency to Member States to verify implementation.

2. BACKGROUND TO THE INITIATIVE

3.1 Maritime safety in perspective

Due to its history and international nature maritime transport has developed a rather unusual regulatory structure. At the global level maritime safety and marine environmental protection are promoted through an international legal framework that consists primarily of the United Nations Convention on the Law of the Sea (UNCLOS), 1982, and a number of safety conventions adopted under the auspices of the IMO. These international instruments provide comprehensive standards that serve as bases for the formulation of domestic laws that regulate the design, manning, equipment, operation, management, maintenance, and disposal of ships.

Member States of the IMO implement the international conventions and in order to be able to operate, trade and benefit from the provisions of the IMO conventions all vessels have to have a "nationality", whose laws and regulations apply to the vessel.

The primary responsibility making sure that the vessel complies with the international standards for safety, pollution prevention and on-board living and working conditions lies with the flag State which must ensure that the owner/ operator takes all appropriate action to do so. However as has been noted there are owners and indeed flag States who are unwilling and/or unable to take their responsibilities. However, in line with the principle of customary international law known as "freedom of navigation" all vessels have the right to call at any port and so PSC has been developed as a response to this.

This being said maritime safety in Europe is comparatively one of the safest forms of transport of either goods or persons. During 2016 some 3145 marine casualties and incidents were reported to the European Maritime Casualty Information Platform (EMCIP) operated by EMSA by the maritime accident investigation bodies in the EU/EEA. In total there were 106 reported fatalities, 957 persons injured, 26 ships lost and 123 investigations launched. The reported and recorded figures have remained rather stable over the last seven years. Nevertheless, the numbers of vessels carrying passengers and or dangerous and polluting cargoes means that a single accident could have a disproportionally large impact on society or on the environment.

Given the multi layered aspect of maritime safety regulation with States having responsibilities as Flag States, coastal States and port States it is not always easy to attribute improvements in safety, environmental protection and social conditions solely to one type of legislation taken by states acting in one capacity. The maritime safety regulation picture is a complex and overlapping one. Some of the improvements observed in the picture in Europe since the adoption of the third maritime safety package in 2009 of which the PSC Directive was part may have happened anyway (e.g. as a consequence of IMO compliance, Paris MoU provisions, flag State surveys[13], and shipowner actions).

[13] Flag State Inspections surveys are used by flag states to ensure satisfactory standards are being maintained on board vessels flying their flag. The surveys are carried out by approved Flag State Inspectors (which in many cases can be recognized organizations) and include verification of statutory documentation and an examination of the vessel's structure, machinery and equipment as well as a more thorough inspection and/or operational testing of firefighting equipment, lifesaving appliances and safety equipment.

One element that may have had a positive effect on the safety record in the last ten years is a spike in new vessels just before the world economic slump in 2008. While there is no direct link between the age of a vessel sand its safety record newer tonnage tends to be better maintained and have less deficiencies.

3.2 Description of the initiative and its objectives

The main objectives of the Directive are to 1) improve safety, i.e. increase the protection of passengers and crews, 2) enhance environmental protection, i.e. reduce the risk of environmental pollution, 3) ensure maritime security and 4) improve on-board living and working conditions. The related specific objective of the Directive is to drastically reduce substandard shipping through increased compliance, common criteria and harmonised procedures for controls, and a control system which takes into account the risk profile of ships.

In addition, the Directive also has the general objective to avoid distortions of competition, in the sense that operators who follow good practices are not put at a commercial disadvantage compared to those who are prepared to take short cuts with regard to the international standards. A harmonised approach for enforcement of international standards is hence important in this regard. Article 27 of the Directive and Commission Regulation 802/2010 (as amended) provide for a mechanism whereby the Commission establishes and regularly publishes information relating to companies whose performance in PSC inspections has been consistently poor.

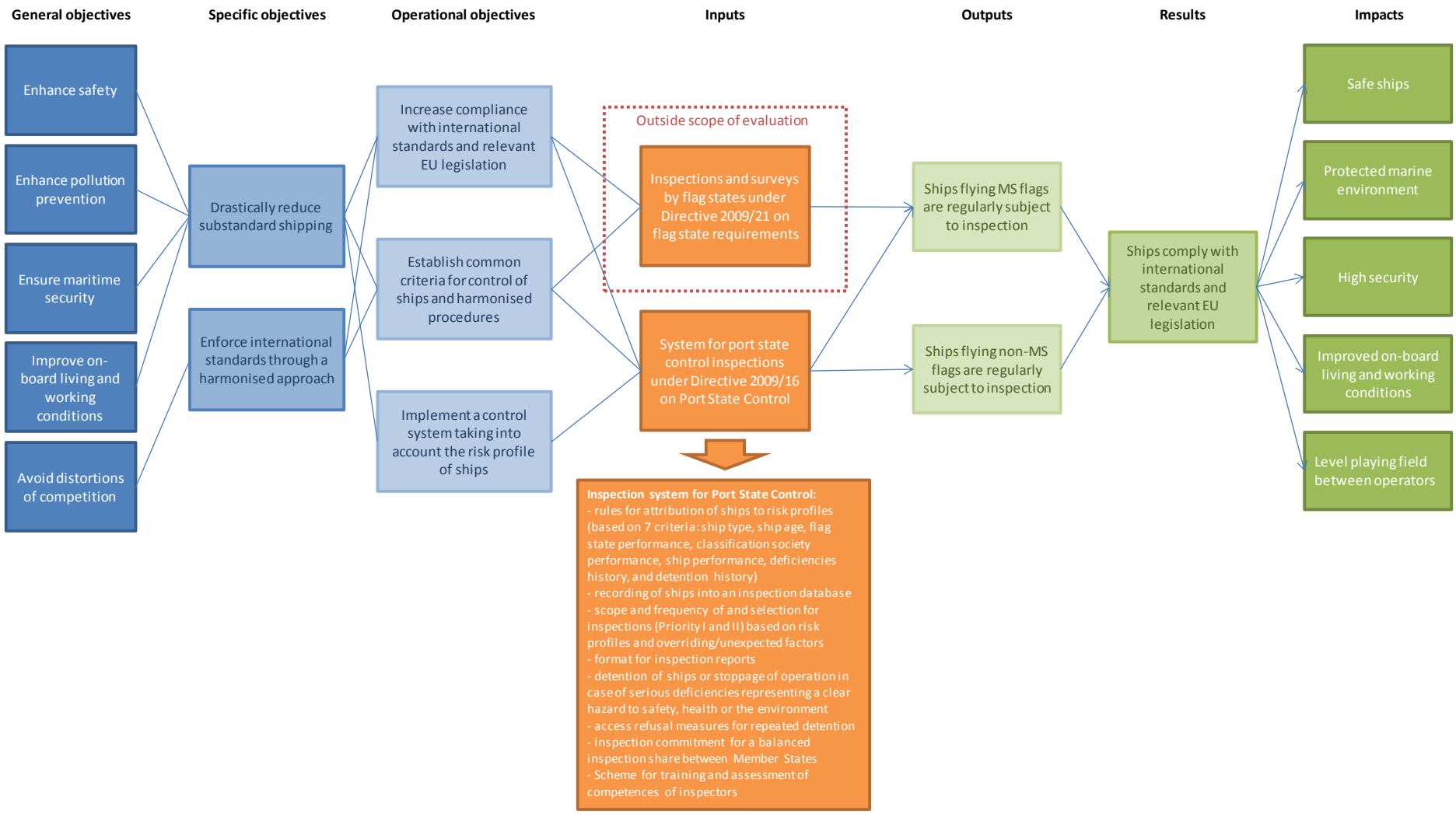
The EU (and PMoU) PSC inspection systems are based on targeted inspections which aim to detect ships which do not comply with the requirements and hence may pose a safety or environmental risk. Inspections vary in frequency depending on the risk the ships pose, with the ships having a higher probability of not compliance with international conventions and EU legislation (based on type, flag, previous inspection history, and owner) being inspected most often, while those vessels which pass inspection without problems are subject to less frequent inspections (thereby incentivising good operators)[14]. The sanctions system is based on the identification of deficiencies with serious deficiencies leading to detention. Vessels which are subject to frequent detentions can be banned from European waters and the system also provides for the listing of persistently substandard shipping companies. The inspection burden is shared between Member States.

The expected output of the PSC inspections is to have all ships navigating in EU waters submitted to regular inspections resulting in a high compliance with international standards and relevant EU legislation in the fields of safety, maritime-related environmental protection, security and on-board living and working conditions.

The intervention logic below provides a graphical representation of how the intervention is designed and expected to work.

[14] Directive 2009/16/EC introduced a new inspection regime (NIR) for PSC from the 1st January 2011. Under the NIR targeting is carried out by means of an elaborate system whereby each individual ship calling at an EU/PMoU port has its own Ship Risk Profile (SRP). Ships can be designated as “high risk”, “low risk” or “standard risk”, and the frequency of inspection depends on the SRP.

ANNEX


General objectives
Specific objectives
Operational objectives
Inputs
Outputs
Results
Impacts
Enhance safety
Enhance pollution prevention
Ensure maritime security
Improve on-board living and working conditions
Avoid distortions of competition
Drastically reduce substandard shipping
Enforce international standards through a harmonised approach
Increase compliance with international standards and relevant EU legislation
Establish common criteria for control of ships and harmonised procedures
Implement a control system taking into account the risk profile of ships
Outside scope of evaluation
Inspections and surveys by flag states under Directive 2009/21 on flag state requirements
System for port state control inspections under Directive 2009/16 on Port State Control
Inspection system for Port State Control:
- rules for attribution of ships to risk profiles (based on 7 criteria: ship type, ship age, flag state performance, classification society performance, ship performance, deficiencies history, and detention history)
- recording of ships into an inspection database
- scope and frequency of and selection for inspections (Priority I and II) based on risk profiles and overriding/unexpected factors
- format for inspection reports
- detention of ships or stoppage of operation in case of serious deficiencies representing a clear hazard to safety, health or the environment
- access refusal measures for repeated detention
- inspection commitment for a balanced inspection share between Member States
- Scheme for training and assessment of competences of inspectors
Ships flying MS flags are regularly subject to inspection
Ships flying non-MS flags are regularly subject to inspection
Ships comply with international standards and relevant EU legislation
Safe ships
Protected marine environment
High security
Improved on-board living and working conditions
Level playing field between operators

3.3 Baseline

Directive 2009/16/EC introduced a new inspection regime (NIR) for Port State Control from 1 January 2011. Prior to the introduction of the NIR in 2011 PSC in the EU was regulated by means of Directive 95/21/EC and by the procedures of the PMoU[15]. Those Member States of the PMoU who were also EU Member States were obliged to carry out inspections on 25% of port State control eligible vessels visiting their ports.

In order to fulfil their inspection commitment the Commission noted that in many cases Member States carried out a disproportionately significant number of inspections in the latter months of the year. This had the result that some vessels were inspected more often than their condition or inspection history might have warranted. It also meant that a certain number of inspections were effectively unnecessary as well as the effort put into these inspections both on the part of the PSC administration and on the part of the owner/operator. In 2009 and 2010 the total annual number of inspections was in the range of 24,000 inspections.

With the introduction of the NIR, the 25% quota for inspections to be performed by each individual Member State was abandoned. As an alternative, a 'fair share' scheme was developed. The fair share scheme takes account of individual ship calls in a Member State versus the individual ship calls of all Member States. The Port call information must be provided by the Member States through SafeSeaNet, and will then be transferred to the information system for Port State Control. In 2015 and 2016 the total annual number of inspections was in the range of 15,000.

While Directive 95/21/EC provided some guidance on how vessels were to be selected for inspection, vessels for inspection were not targeted as such. The NIR provided for a more targeted selection process that takes account of improvements in IT and reporting which means that individual ship can be tracked and the inspection history of ships calling to EU/ PMoU ports can be shared by PSC administrations in the member States in near real time. Under the NIR targeting is done through an elaborate scheme of individual Ship Risk Profiles (SRPs).

The SRP of a ship is made up of seven criteria, these are (i) ship type, (ii) age of ship, (iii) flag (iv) the recognised organisation[16], (v) the PSC performance of the shipowning company, (vi) number of deficiencies recorded in each inspection involving the ship in the previous 36 months and (vii) the number of detentions in each inspection involving the ship in the previous 36 months.

Flag States are classified into black, grey or white lists, adopted by the PMoU on the basis of the total inspections and detentions over a rolling three year period.

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[15] *OJ L 157 of 07.07.1995*

[16] A classification society is a non-governmental organization that establishes and maintains technical standards for the construction and operation of ships and offshore structures. In many cases flag states delegate many of their inspection and survey activities to classification societies, in this regard the classification societies are called recognised organisations.

As originally conceived Directive 95/21/EC did not provide for any banning procedure in respect of vessels which had been subject to repeated detentions, this was revised in 2001 by means of Directive 2001/106[17] which provided for a banning mechanism.

Given the above, in the absence of Directive 2009/16/EC, it is likely that Member States would continue to inspect vessels with little regard to their risk profile; the number of repetitive inspections would be higher. Inspections would be less targeted with the poorer performing ships only being selected for inspection on an ad-hoc basis.

3. METHOD

The evaluation relied to a certain extent on an ex-post evaluation support study undertaken by an external contractor, who submitted its final report in July 2017. A standard triangulation approach was applied to address the evaluation questions, through different angles: desk study, interviews, and surveys.

Most of the desk study was based on data received from EMSA. This PSC data set stored in the THETIS database comprises time series for the number of inspections, deficiencies, and detentions – by Paris MoU member, by age of ship, by ship risk profile, by priority and by type of deficiency.

To put the Paris MoU PSC data (regarding inspections, deficiencies and detentions) in an even wider international perspective, some elements were compared with those of other memoranda of Understanding such as the Mediterranean, Indian Ocean and Tokyo MoUs. This was also done with in view of the pursuance of global PSC harmonisation, as well as the question whether the Paris MoU PSC inspections have pushed 'substandard' shipping elsewhere.

Efforts were focused on interviews with targeted stakeholders. Stakeholders were selected from the major stakeholder groups: maritime authorities, ship-owners, ship agents, third (non-EU) States whose ships call in EU ports, recognised organisations, seafarers and their organisations, other actors involved in maritime transport who can be involved in the application of the Directive, such as pilots, ports and port operators and other national and international bodies involved in PSC.

[17] Directive 2001/106/EC of the European Parliament and of the Council of 19 December 2001 amending Council Directive 95/21/EC concerning the enforcement, in respect of shipping using Community ports and sailing in the waters under the jurisdiction of the Member States, of international standards for ship safety, pollution prevention and shipboard living and working conditions (port State control) OJ L 019 , 22/01/2002 pp. 17 - 31

34 stakeholder interviews have been carried out, where the stakeholders were selected based on a number of criteria, taking into account among other things, their geographical location across sea basins and the number of PSC inspections (for maritime authorities), the types of trade and the rating of the flag on the White-Grey-Black list of the Paris MoU (for ship-owners), the size, location and type of trade involved (for ports), the size of the flag and the position of the flag on the White-Grey-Black list of the Paris MoU (for third States).

Additionally, the contractor who conducted the evaluation participated in a two-day workshop at EMSA premises with the relevant staff from EMSA and the Commission.

A targeted survey of maritime administrations, shipowners and operators, shippers, trade union representatives and other interested parties was launched together with a survey carried out in conjunction with the ex-post evaluation of the flag State/Accident Investigation Directives to mitigate possible stakeholder fatigue and so to improve response rates. Despite these efforts the survey has suffered from a relatively low response rate as regards most groups of stakeholders.

Furthermore, an Open Public Consultation (OPC) on the fitness of EU legislation for maritime transport safety and efficiency including for this Directive was launched on the 7th October 2016 and was closed on the 20th January 2017.

4. IMPLEMENTATION STATE OF PLAY (RESULTS)

The effectiveness of the Directive depends on implementation and enforcement actions by the Member States and the Commission. In this context, Article 4 imposes an obligation on Member States to take all necessary measures to be legally entitled to carry out the inspections referred to in the Directive and to maintain appropriate competent authorities with qualified inspectors performing the inspections required in accordance with the Directive, Member States must also report to the Commission on the measures taken and on progress made in implementing the Directive.

In accordance with Article 38 thereof, Directive 2009/16/EC came into force on 17 June 2009; however, as provided for by Article 36 of the Directive, Member States had until 1 January 2011 to transpose the Directive into their national legislation.

Non-coastal Member States were not obliged to transpose the Directive. While Slovakia implemented the Directive[18], four Member States (Hungary, Luxemburg, Austria and Czech Republic) formally declared that they would not transpose it.

Two Commission Regulations[19] were adopted in respect of the flag State performance and company performance criteria of the Ship Risk Profile. Commission Regulation (EU) 428/2010[20] of 20 May 2010 which provides guidance on the items to be verified during the course of an expanded inspection was also adopted.

This new regime relies heavily on an information support system (THETIS) which not only collects and disseminates PSC-related data but also includes a capability to calculate the criteria necessary to guide PSC targeting in Member States from such data. The SafeSeaNet system provides THETIS with all ship arrival and departure information in all ports and anchorages of EU Member States.

A technical interface between the THETIS and SafeSeaNet systems allowing for the recording of ship call information in THETIS, developed and managed by EMSA was put in place by November 2010. THETIS was also loaded with all existing PSC data from the previous inspection databases as from 13 December 2010 and Member States started using the system from that date.

[18] Although Slovakia has transposed the Directive, since it does not have any maritime ports there is no implementation information on Slovakia.

[19] Commission Regulation (EU) No 801/2010 of 13 September 2010 implementing Article 10(3) of Directive 2009/16/EC of the European Parliament and of the Council as regards the flag State criteria, *OJ L 241, 14.9.2010, pp. 1–3* and Commission Regulation (EU) No 802/2010 of 13 September 2010 implementing Article 10(3) and Article 27 of Directive 2009/16/EC of the European Parliament and of the Council as regards company performance, *OJ L 241, 14.9.2010, pp. 4–7*

[20] Commission Regulation (EU) No 428/2010 of 20 May 2010 implementing Article 14 of Directive 2009/16/EC of the European Parliament and of the Council as regards expanded inspections of ships, *OJ L 125, 21.5.2010, pp. 2–7*

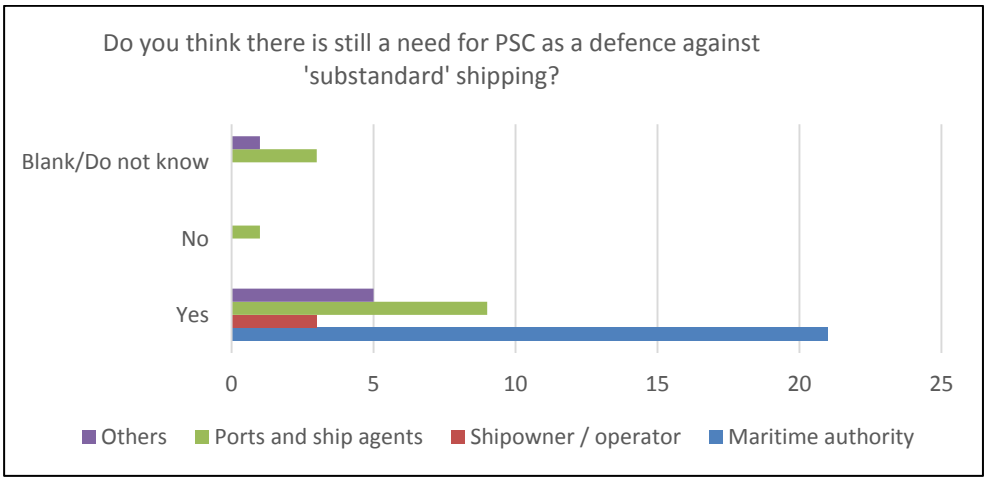
5. ANSWERS TO THE EVALUATION QUESTIONS

Five evaluation criteria were identified using the Commission's Better Regulation framework, on the basis of which ten (10) evaluation questions were defined, listed below under each relevant evaluation criterion.

6.1 Relevance

6.1.1 To what extent is the layer of defence provided by PSC (safety, working conditions, and environmental protection) still required and appropriate?

The evaluation finds that there is a need for PSC as a defence against 'substandard' shipping. As shown in the graph below, the continued need for PSC is overwhelmingly supported by all the interviewed stakeholder groups.



Source: COWI/Ecorys survey – Final evaluation report, *p.23.*

Although deficiencies and detentions have fallen since the introduction of the NIR[21], 'substandard' shipping remains in the Paris MoU areas and in other MoU areas as shown also by the fact that the number of ships on the 'banning list' still is notable[22].

Hence, PSC in the EU (Paris MoU) area will continue to be relevant as long as there are flags on the 'black list' of the Paris MoU – or simply because some flags are not doing a proper job. In other words, the need for PSC will remain for as long as there are differences in the standards and the quality of the controls across between flag States and between different regions around the world.

[21] Over the period 2011-2016, the number of deficiencies in the Paris MoU area has fallen by 16% and the number of detentions by 2%. – *Final evaluation report*, Table 3-1, p.21 (source: EMSA/THETIS).

[22] See the list of ships that have been refused access: https://portal.emsa.europa.eu/web/thetis/refusal-of-access

Finally, in the context of global shipping competition, PSC is perceived as an important tool for ensuring fair competition between shipping companies (i.e. a level playing field). High standard shipping – as evidenced by a good PSC record – is considered by the industry to be an important competitiveness parameter.

PSC inspections are used by several Member States as an enforcement tool. Since the development of PSC and indeed since the entry into force of the NIR in 2011 PSC has been used to carry out enforcement in other primarily environmental areas and in relation to the reduction in the sulphur content of certain liquid fuels regulated at EU level by Directive 2016/802. EU legislation providing for an enforcement role for PSC in relation to ship-recycling and the monitoring reporting and verification of greenhouse gasses in shipping has also been adopted.

6.2 Effectiveness

6.2.1 To what extent is the targeting of what are described as higher risk vessels effective? Would other risk factors contribute to increase target effectiveness?

The evaluation finds that the targeting of high-risk ships using THETIS – via the specific risk profile for each ship and the priority-setting system – is effective in the sense that it leads to the inspection of ships that pose a higher risk of non-compliance with the applicable EU/international standards. The study has found that the targeting of high risk ships using THETIS – via the priority-setting system – is effective in the sense that it leads to the inspection of ships that pose a high risk of noncomplying with the agreed international/EU standards.

Indeed, two thirds (67%) of EEA maritime authorities that were interviewed indicated that they almost solely rely on THETIS for the selection of ships for inspection. Overall, stakeholders also assess that the current design of the ship risk profile applied according to the Paris MoU and Directive 2009/16/EC results in the correct targeting of low-performing ships. This was confirmed by 18 out of the 21 that responded to the COWI/Ecorys survey.

However, those EU administrations who were interviewed expressed the view that there is room for improvements to the design of the ship risk profile and some of these issues have been or are currently being discussed within the PMoU. Among the issues under discussion are

- more weight on individual ship risk factors (rather than generic ones such as the age and the type of ship, the company performance and the RO),
- a revision of the formula for calculation of flag performance,
- the introduction of a provision regarding IMO audits becoming mandatory and
- the inclusion of a 'green focus' in the profile calculation.

The issue of a green focus in in the calculation of the risk profile is also becoming more pertinent given the increased use of PSC inspections for environmentally linked issues (such as sulphur emissions, ship recycling and the monitoring reporting and verification of greenhouse gases).

Problems relating to the SafeSeaNet-THETIS interface have also been identified this relates primarily to the failure on the part of Member States to update actual times of arrival and departure of ships means that it is not always possible to correctly target vessels for inspection. These were identified in particular during the operation of THETIS and during the EMSA inspection visits to Member States, this primarily seems to relate to poor implementation in Member States.

6.2.2 To what extent are all eligible ships being inspected (PSC, flag state, environmental regimes)? Are there any gaps in coverage?

No significant gaps in the PSC inspection coverage have been identified in the evaluation. A clear majority of maritime authorities (59%) indicated that they are not aware of any ships that are not being targeted for PSC inspections. The THETIS database and the opinion of the national authorities demonstrate that PSC is effective in ensuring that all substandard vessels operating within the EU/Paris MoU region are being targeted by the existing PSC system.

The majority of ports and ship agents/ship owners find the frequency of inspections fully or mostly appropriate (75%) in relation to the goal of eliminating 'substandard' shipping. The scope of the inspections is found appropriate by 50% of the respondents, with a minority indicating that the scope was occasionally too wide.

Furthermore, there seems to be little evidence of 'substandard' ships escaping PSC inspections. As an exception to this, two types of ships were mentioned: fishing vessels and smaller ships[23].

Fishing vessels are currently not covered by PSC. However, they are covered by international conventions (e.g. MARPOL, COLREG etc.) and all port States have a right – but not an obligation – to inspect such ships, but only as national inspections. The Work in Fishing Convention of the ILO provides for enforcement provisions but it has only been ratified by three Member States. A number of Member States have indicated that as these vessels have to be inspected to ensure compliance with maritime safety, pollution prevention, living and working conditions legislation and legislation related to IUU fishing[24] there could be some interest and utility in adding fishing vessels to the PSC regime.

Many of these smaller ships trade only domestically and may not ordinarily be subject to PSC but rather flag State control and inspections.

However, these 'gaps' are considered to be of limited scope, likely limited to a relatively small number of Member States. It should nonetheless be noted that the issues were reported to be on the rise in the concerned Member States.

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[23] The NIR was designed for conventional ships above 500GT to which one or more of the relevant international conventions apply. However, interviewed stakeholders suggest that although they typically do not pose a major risk in terms of pollution, smaller ships of less than 500GT were often in bad shape as regards safety. It should however be noted that Directive 2009/16/EC (Article 3(2)) allows a Member State to inspect a vessel the gross tonnage of which is less than 500, Member States shall apply those requirements of a relevant Convention which are applicable and shall, to the extent that a Convention does not apply, take such action as may be necessary to ensure that the ships concerned are not clearly hazardous to safety, health or the environment.

[24] Illegal, unreported and unregulated fishing

6.2.3 To what extent has the Directive contributed to the intended objectives in terms of improvements in safety, environmental protection and social conditions?

It is important to acknowledge that it is not straightforward to attribute improvements in safety, environmental protection and social conditions solely to the PSC Directive. This is because some of the improvements may have happened anyway (e.g. as a consequence of IMO compliance, Paris MoU provisions, flag State surveys, and shipowner actions).

While it is difficult specific improvements to PSC the overall picture shows improvement. The vessels that should be targeted are being selected for inspection and few if any eligible vessels are slipping through the net. The Directive has contributed to the intended objectives of improving maritime safety, security, pollution prevention and working conditions. The Directive has served as a supporting enforcement mechanism that has ensured compliance with agreed international and EU standards in the respective areas. The fact that Member States have taken the required action to ensure compliance with the PSC Directive by all EU Member States, the operation and maintenance of THETIS, and the harmonised training provided by EMSA are perceived by all stakeholders as the three major factors behind the effectiveness of the Directive.

A number of different factors have been identified by which the Directive has contributed to safety, environmental protection and social conditions. These include enforcement of PSC requirements, encouragement of harmonisation across the EU/Paris MoU area, the establishment of the common information and targeting system, THETIS, and EMSA training and distance learning.

The overall finding of the evaluation is that the Directive has contributed to the intended objectives of improving maritime safety, security, pollution prevention and working conditions on-board. Since the implementation of the NIR in 2011 the number of deficiencies by type of deficiency has decreased as follows: -11% for pollution prevention, -17% for safety, -26% for security and -9% for working and living conditions.

The enforcement of the PSC requirements through the constant monitoring to THETIS and the training offered by EMSA is also assessed to have contributed to the harmonisation of the PSC activities across the EU and the removal of the perception that certain ports were weak links in the chain. This is in itself an intended mean in the pursuance of an effective PSC system – i.e. that ships are not encouraged to 'shop around' for the most lenient PSC inspectors.

Furthermore, anecdotal evidence suggests that by providing an effective mechanism for the enforcement of relevant standards, the Directive provides a motivating factor for the industry to invest in quality and thereby improve safety, security, pollution prevention and working conditions on board ships calling at EU ports.

In more details, several PSC administrations acknowledge that the legal provisions of the PSC Directive have forced the ministries of finance in the EU Member States to allocate sufficient funds for carrying out the required PSC activities. Several ship-owners agree that for some types of ships the Directive has pushed ship-owners to have an improved safety system on board. Also, control procedures before arrival in each port are said to have improved.

6.2.4 How does the inspectors' training and qualification perform? How can the (present and future) availability of qualified inspectors be ensured and promoted?

Overall, the evaluation has indicated that inspectors carrying out PSC inspections in EU ports are sufficiently trained and well qualified. Furthermore, Member States do not experience any major difficulties in complying with the training/qualification requirements of the Paris MoU/PSC Directive. The level of training provided at EU and national level is adequate. No major gaps in the training offered have been identified.

EMSA training and distance learning is appreciated by Member State administrations. While in-person training is as a rule more effective, administrations have expressed the view that distance learning modules provide excellent support.

However, notwithstanding training differences in the culture of checking exist, in particular between the Southern and Northern European countries and between countries with civilian vs. military[25] approaches to PSC inspections. In some Member States it is accepted that a deficiency is fixed on the spot and not reported as a deficiency by the PSC inspector. In other Member States all deficiencies are reported no matter whether it can be fixed on the spot. PSC audits have identified a so called 'Nordic approach' that is criticised by some for not registering all observed deficiencies.

Many Member States experience difficulties in recruiting qualified PSC inspector candidates. The economic factor – budget restrictions – is the factor most frequently cited in connection with such challenges. The main issue now and in the future is significantly higher salaries on-board comparing to the salaries that could be offered for PSC inspectors (e.g. in Poland the salary that can be offered to a PSC inspector amounts to approximately 1/10 of the average earnings of a captain).

More generally, there is also an overall shortage of qualified seafarer officers and, as a result, some Member States experience challenges when seeking to recruit candidates with a seagoing background (an issue specifically mentioned in France, Sweden, and the UK). A further problem is the retention of suitably qualified inspectors who after several years' experience can in certain Member States command significantly higher salaries in the private sector. Such problems are less pronounced, or virtually non-existent, in countries in which PSC inspectors form part of the country's military organisation.

6.2.5 How has the publication of company performance in accordance with Article 27 and Commission Regulation 802/2010 (as amended) worked?

Company performance is one of the generic parameters determining the risk profile of a ship, as such it has functioned well. A list of companies with low and very low performance is published and regularly updated by EMSA. The publication of this list was, in a way similar to that in aviation supposed to act to name and shame persistently poorly performing companies. However, there is no conclusive evidence that the publication of this list has had

[25] In Greece and Italy PSC inspections are carried out by the Hellenic Coast Guard and the Corps of the Port Captaincies – Italian Coast Guard Port which are paramilitary or military structures.

an effect in terms of improvements in safety, security, pollution prevention and working conditions.

Most stakeholders interviewed had no or very limited knowledge of and experience with the list of low and very low performing ISM companies. In the survey conducted, only three ship-owners responded to the question whether the publication of the list has an effect on behaviour.

6.3 Efficiency

6.3.1 Administrative costs incurred by stakeholders

Following the introduction of the NIR/PSC Directive, some maritime authorities have experienced an increase in administrative costs, others a decrease, and then again others have seen no perceptible change.

(2011 & 2016 are under Directive 2009/16/EC)	2007	2010	2011	2016
Inspections (number)[26]	**22996**	**23428**	**18814**	**17403**
- Initial inspections (share)			28%	36%
- More detailed inspections (share)			57%	51%
- Expanded inspections (share)			15%	13%
Cost per inspection (Euro)	**189**	**189**	**257**	**248**
Man-hours per inspection (hours)[27]	6.5	6.5	7.8	7.5
- Initial inspection (hours)			5.3	5.3
- More detailed inspections (hours)			8.1	8.1
- Expanded inspections (hours)			11.1	11.1
Cost per man-hour - excl. allowances (Euro)[28]	26.5	26.5	26.5	26.5
Allowances (% of labour costs)[29]	10%	10%	25%	25%
Cost per man-hour - incl. allowances (Euro)	29.2	29.2	33.1	33.1
Total costs (mill Euro)	**4.4**	**4.4**	**4.8**	**4.3**

[26] EMSA/THETIS

[27] 2011/16: EMSA (2016), "Port State Control Cost-Effectiveness - Pilot Study"; 2007/11

[28] Eurostat database, Labour Cost Survey 2012, lc_ncost_r2, "Other professional, scientific and technical activities".

[29] This is an assumption based on stakeholder interviews.

The evaluation overall estimates that the average costs across the Member States have remained almost unchanged both prior to and after the introduction of the NIR – i.e. the higher cost per inspection is offset by fewer inspections[30]. While the total number of inspections has decreased by almost 25% the total costs of the inspection regime as a whole has remained the same. The increase in administrative costs per inspection incurred by some maritime authorities results potentially from a number of factors: payment for work outside of normal working hours (e.g. in France an additional payment of 200/250 EUR is provided for inspections carried out during a Saturday or a Sunday), transportation and accommodation costs, administrative work connected with monitoring of incoming ships, but also an increase in the number of inspectors and the associated training needs, etc.

The current – risk-based – PSC regime is generally perceived as an improvement by all categories of stakeholders and most (13 out of 25) maritime authorities indicate that the inspection regime is sufficiently flexible. An example of this is that Member State have the possibility to postpone inspections, as 16 out of the 25 maritime authorities consulted indicated that they make use of this option. Furthermore it is generally accepted that the correct ships are being targeted for inspection, are being inspected and that this is occurring with the correct frequency to ensure safety.

However, room for additional improvement in order to increase cost-efficiency has been identified. As mentioned above, in particular for authorities that do not normally operate on a 24/7 basis – e.g. typically civilian authorities – it is considered administratively very heavy and expensive to have staff available and/or on-call 24/7. Notifications are sometimes received with very short notice (a couple of hours). Moreover, risk profiles are recalculated every day and sometimes a ship can change priority (e.g. to Priority I) overnight when it is in the port. It may therefore be necessary to foresee a system of early warning for those administrations that do not ordinarily provide 24/7 PSC coverage so that when such an occurrence takes place they have sufficient time to either make provision for an inspector to be present or if possible to trigger the possibility of postponement.

Geographical conditions are in this context also a challenge, and occasions have been reported where PSC inspectors had to be relocated in order to comply with the qualification requirements regarding the number of PSC inspections that an inspector must carry out during a year to retain their certification.

Some administrations have expressed the view that the annual inspection commitment does not consider geographic aspects in the sense that some locations in Europe are more in the frontline and face more risks than others: some countries have geographical challenges in fulfilling their inspection shares while others are doing more inspections than their fair share. As a result, it can arise that some Member States need to inspect all Priority II ships as there are too few Priority I ships.

[30] The estimate is based on inspection data from EMSA/THETIS. Furthermore, use was made of labour cost data provided by Eurostat, and it was assumed that allowances have increased with the NIR as requirements to geographical coverage have increased

The large majority of the ship-owners interviewed generally perceive the administrative costs and the frequency and scope of PSC inspections as proportional to the goal of eliminating 'substandard' shipping and have not reported any significant delays associated with undergoing PSC inspections in EU ports. As far as costs of PSC inspections are concerned, for ship-owners the main issue revolves around the resources needed to assist PSC inspectors when they conduct inspections on board. Ship-owners report that it is difficult for the captain/crew to be part of PSC at the same time as undertaking loading/unloading or other activities. Moreover, PSC inspections were said to often interfere with the crews' rest periods.

Fewer inspections are carried out in the Paris MoU today compared with 2011. At the same time, the share of Priority I inspections have increased (59.7% of all inspections in 2016, compared to 52.4% in 2011), which means that less resources are used for Priority II inspections[31].

Finally, the evaluation finds that the number of inspections not required by THETIS carried out has increased since 2011. These are inspections which the Member State is fully entitled to carry out but where the THETIS system has not targeted the vessel for inspection. Member States who inspect these vessels do not have them counted as part of their inspection commitment. In carrying out these inspections, they also incur costs.

In 2011, the number of inspections carried out compared with the commitment figure showed that only 88% of the committed inspections were undertaken – i.e. too few inspections were carried out. This tendency has reversed in 2016 where inspections undertaken exceed commitments by 21%. This means that some Member States exceed their fair share significantly. Several Member States particularly in the Mediterranean and the Black Sea inspect too many Priority I ships. Additionally, as EMSA pointed out in a recent study[32], "considering the rationale of the New Inspection Regime, the more priority inspections that are carried out by one Member State (well above its fair share), the more difficult it will be for another Member State to comply with its own fair share requirement of inspecting its national commitment. Furthermore, this excess of priority inspections would also cause a disruption of fair share calculations in the following years." (p. 9).

6.3.2 Efficiency of the THETIS database, interaction with SafeSeaNet

As the system is being constantly monitored by EMSA it can be said that the THETIS database is used efficiently by maritime authorities responsible for PSC. The vast majority of administrations interviewed perceive it to be a useful tool – and a significant improvement compared to the former database (called SIReNaC) – to plan PSC activities, but also to monitor the work of PSC inspectors. Moreover, the vast majority of the maritime authorities interviewed make use of THETIS to regularly monitor their progress towards achieving their annual inspection commitment (fair share).

[31] Overall, Priority II inspections have been reduced by 21% over the period 2011-2016.

[32] European Maritime Safety Agency (2016), PSC Cost-effectiveness Pilot Study – Summary Report, EMSA.2016.017458.

The role of EMSA in managing the system, working on continuous improvements and updates and providing day-to-day assistance is appreciated by administrations. A number of issues with a potential room for improvement have nonetheless been identified. For example, some Member States (e.g. Germany) reported difficulties when entering data in the recently updated version of THETIS. There is a potential to improve the efficiency of some of the more advanced tools of THETIS, such as the Jasper Business Intelligence Model, e.g. by improving the user-friendliness of the system or by providing additional training.

Finally, stakeholders overall find the interface between THETIS and SafeSeaNet works well but suggest a number of areas in which the interface could be further improved to enhance its efficiency, e.g. by the implementation of better data input control, a transmission of information between the two systems in real time or within some minutes, the inclusion of ships above 100GT, the identification of ships based on IMO number, or the introduction of direct access to reporting of ship incidents in SafeSeaNet (and CleanSeaNet).

The issue of the THETIS SafeSeaNet interface has however been shown over the life of the implementation of the Directive to be one of the most troublesome aspects of the NIR which can inhibit the efficient operation of the PSC overall. The targeting of vessels for inspection is dependent on knowing what vessel will be where at a precise time. The failure on the part of Member States to update actual times of arrival and departure of ships means that it is not always possible to correctly target vessels for inspection. The Commission/EMSA has sought to identify these issues and bring them to the attention of the competent authorities in the Member States but negative findings in this regard remain one of the most widespread and persistent issues identified by EMSA during its inspection visits to the Member States.

6.4 Coherence

6.4.1 Coherence of the Directive with regards to other legislation applicable in the area

Based on the Commission's analysis of provisions and its implementation as well s the support study, no significant issues regarding the internal coherence of the Directive or the PSC regime in general were identified.

As regards other EU legislation in the field the majority of stakeholders who replied to the questionnaire find that there is a need for better coordination with the Directive which provides for a system of specific inspections of ro-ro ferries and high speed passenger craft[33]. This has been addressed in the 2017 passenger ship safety legislative package whereby almost 70% of such ro-pax vessels currently inspected in accordance with directive 99/35/EC will be brought within the PSC regime thereby increasing efficient and synergies.

However, since it is planned to address the issue of incorporating a large part of these specific inspections within the PSC regime in the context of the revision of the ro-pax Directive, no specific recommendations to improve the coordination were made in the evaluation at this stage.

[33] Directive 99/35/EC – please refer to footnote 5, p.1.

With regard to other EU legislation for which PSC is being (or will be) used for enforcement purposes it should be noted that in some Member States PSC inspectors already carry inspections related to Directive 2016/802 on reduction in the sulphur content of certain liquid fuels and ii is planned and legislated that in due course PSC will also provide some of the enforcement at EU level in respect of Regulation 1257/2013 on ship recycling and Regulation (EU) 2015/757 on the monitoring, reporting and verification of carbon dioxide emissions from maritime transport. Several administrations expressed the view that this will increase the workload and complexity of the work carried out by PSC inspectors. Mixed views have been expressed by Member States administrations regarding the possible broadening of the scope of PSC with some in favour of it and others of the opinion that it risks diluting the primary aim.

Several administrations do, however, not see an obvious need for more coherence and coordination with the flag State Directive. In several Member States, PSC inspectors are also responsible for carrying out the flag State surveys.

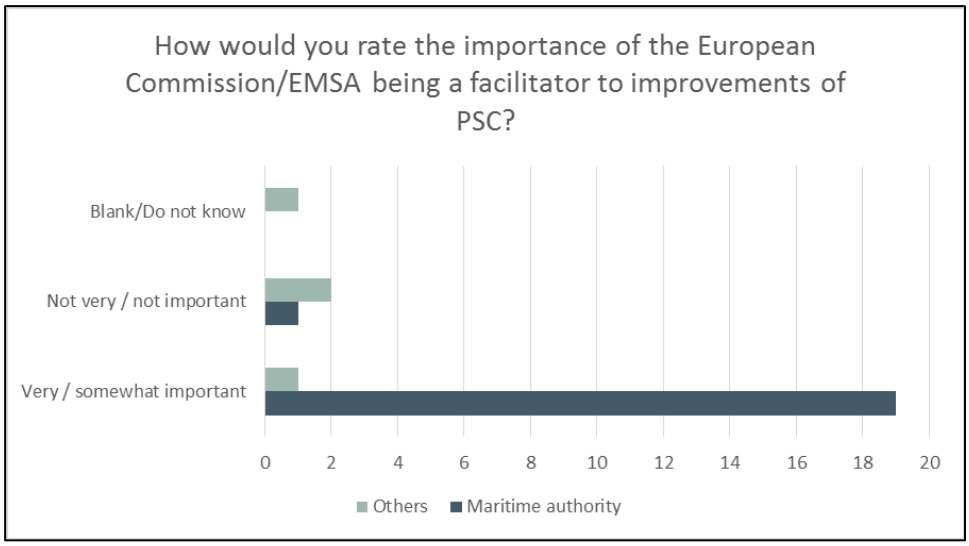
6.5 EU added value compared to international and national rules

6.5.1 Added-value to the work done by Member States and/or the PMoU

The key finding is that the PSC Directive adds value compared to the PMoU, mainly by providing a legally binding regime – which results in the commitment of the necessary resources – that can be effectively enforced vis-à-vis Member States by the Commission[34]. The Directive allows for the implantation of a harmonised approach to inspections and creation and imposition of the use of the THETIS database and the SafeSeaNet system allowing for the sharing of information between Member States.

The strengthening of the banning provision is mentioned as a specific example of achievement by the Directive. Ship-owners across the EU see the value of applying the same rules/procedures to inspections. Likewise, stakeholders recognise THETIS and the training and other assistance (including IT support) provided by EMSA to be of great 'added' value.

[34] See sub-section 2.3 on the effective contribution of the Directive to the objectives of improving safety, environmental protection and social conditions.



Source: COWI/Ecorys survey – Final evaluation report, *p.69.*

On the other hand, a small number of administrations have expressed the view that the PSC Directive, by adding an additional regulatory layer, removes the flexibility of the Paris MoU and has the 'unintended' effect of slowing down the progress made within the Paris MoU [35].

[35] Member States pointed out that the decision procedure – in case something needs to be changed in the Directive – is significantly different and slower compared to the Paris MoU procedure.

6. CONCLUSIONS AND RECOMMENDATIONS

7.1 Conclusions

7.2.1 Relevance

The overall conclusion of this evaluation is that the PSC Directive is relevant in that the PSC Directive continues to play a key role in the defence against 'substandard' shipping operating in EU waters. In fact, the relevance of PSC remains as long as there are differences in the standards and the quality of the controls across the different regions and PSC regimes around the world..

7.2.2 Effectiveness

PSC is effective in that it contributes to the objectives of maritime safety, environmental protection as well as working and living conditions.

The use of the THETIS system and the targeting of high-risk ships through a risk-based approach – i.e. the NIR –, the PSC regime 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 working conditions

At the same time PSC reduced the inspection burden on shipowners and ships that are compliant and provide quality services. The evaluation finds that 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, which means that PSC inspections are carried out in a harmonised way throughout the EU.

7.2.3 Efficiency

With the introduction of the NIR, the total number of inspections has fallen and there are more ‘initial inspections’. However, some Member States continue to inspect more Priority I ships than they are supposed to according to their fair share commitment. This conduct affects other Member States negatively as it leads to more inspections than required.

The THETIS database which allows for the targeting of individual ships for inspection and its use with SafeSeaNet which allows Member State authorities to know which vessels are coming to their ports means that member States can plan and allocate inspection resources efficiently .

While some Member States claim that administrative costs have increased since the introduction of the NIR, others claim that they have decreased or remained unchanged. Data

on the cost of inspections across Member States shows that the costs in 2016 are more or less the same as in 2011. While there are fewer inspections, the average cost per inspection has increased primarily as more inspections have to take place outside working hours. However, increased operational flexibility may decrease 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.

7.2.4 Coherence

In general, PSC is seen as being coherent with other EU legislation and policy. That being viewed mixed views have been expressed by Member States administrations regarding the possible broadening of the scope of PSC to use PSC as the enforcement tool in other ship related areas with some in favour of it and others of the opinion that it risks diluting the primary aim..

7.2.5 EU added value

The added value of the THETIS database has been underlined by stakeholders over two thirds only use THETIS is deciding which vessels to inspect. The use of SafeSeaNet to know which vessels are going where and the fact that it feeds this information to THETIS and the role of EMSA in managing and updating THETIS and SafeSeaNet as well the provision by the Agency of training to harmonise the implementation of PSC inspections throughout the PMoU region has been highlighted. A not insignificant aspect of EU added value is that the Directive 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.

7.2 Recommendations

7.2.1 Relevance

The Directive should remain in place as there continues to be a need for PSC as a defence against 'substandard' vessels calling to EU/Paris MoU ports.

the Commission and EMSA could together with the Member States explore the need for more flexibility to increase effectiveness and efficiency.

7.2.2 Effectiveness

With regard to effectiveness, the evaluation recommends that EMSA continues its provision of common training, in pursuance of high-quality and harmonised PSC inspections.

The evaluation has suggested that the Member States and Paris MoU should continue the process of improving the design of the ship risk profile by looking at issues such as the weighting of generic and individual risk factors, the formula for calculating flag State performance (the white-grey-black list) and the taking into account of an environmental focus.

7.2.3 Efficiency

Considering efficiency, it has been recommended that the Commission/EMSA assess the need for increased operational flexibility: justification for a missed inspection should for example be made more flexible. Member States should respect the agreed inspection commitments and not exceed the number of inspections significantly.

The study finds that the interface between SafeSeaNet and THETIS should continuously be developed in response to user feedback. Issues related to the failure of certain member State authorities to update SafeSeaNet also need to be followed up.

Maritime authorities pointed at better data input control, transmission of data in real time (or with some minutes delay), inclusion of ships above 100 GT (currently the limit is vessels above 300GT), the identification of ships based on IMO number, and direct access to reporting of ship incidents in SafeSeaNet (and CleanSeaNet). For their part the Member States should continue to provide feedback to EMSA on the functioning of THETIS, SafeSeaNet, Jasper Business Intelligence Tool.

7.2.4 Coherence

There should be more account taken of the role of flag state surveys and more coherence between this role and PSC. Account should also be taken of all of the other demands placed on PSC inspectors by recently adopted EU legislation or by legislation that is planned.

7.2.5 EU added value

With regard to training the study finds that EMSA should continue its provision of common training – in pursuance of high-quality and harmonised PSC inspections.

ANNEXES TO THE FINAL REPORT

Annex 1: Procedural information concerning the process to prepare the evaluation

1. *Identification of the lead DG; Agenda planning/Work Programme references*

   - DG MOVE is the lead DG
   - Agenda Planning Reference 2016/MOVE/058:

2. *Organisation and timing*

   - The Evaluation began in April 2016 with the first meeting of the Inter-Service Steering Group (ISG), which discussed the draft Roadmap and Consultation Strategy for this evaluation. The Roadmap was published for public feedback on 10 May 2016. The Commission subsequently proceeded with the call for expression of interest for the support study, which was assigned to ECORYS Nederland B.V. (consortium leader) through Specific Contract Specific Contract No MOVE/D2/SER/2016-18 Implementing Framework contract No MOVE/A3/119-2013.
   - The contractor started work on the support study in October 2016 and delivered the final report, after all comments by the Commission had been taken on board, in July 2017.
   - The ISG held another 4 meetings after the first meeting in April 2016, on the different steps of the evaluation process. The Commission Services participating in the ISG are: Secretariat-General, DG Maritime Affairs and Fisheries, DG Taxation and Customs Union, DG for Communications Networks, Content and Technology, DG European Commission Humanitarian Aid & Civil Protection (ECHO), DG Migration and Home Affairs, DG for Employment, Social Affairs and Inclusion, DG Industry, Entrepreneurship and SMEs, DG Environment, DG Health and Food Safety and the European Maritime Safety Agency (EMSA).

3. *Evidence used*

   The evaluation relies mostly on the "Ex-post evaluation of Directive 2009/16/EC on port State control"[36] carried out by an external consultant.

[36] Link to bookshop

Annex 2: **Synopsis report**
Evaluation of Directive 2009/16/EC on port State control

Consultation activities

Open Public Consultation

The 'Public consultation on the fitness of EU legislation for maritime transport safety and efficiency' lasted from 7 October 2016 until 20 January 2017 and covered the following topics:

- Fitness check of maritime transport legislation for better safety and efficiency ;
- Flag State responsibilities ;
- Accident investigation ;
- **Port State Control** ;
- Reporting formalities ;
- VTMIS ;
- Maritime transport legislation for the training and mutual recognition of seafarers ;

The OPC collected 53 responses in total. For the purpose of this report, OPC respondents have been categorized in 5 categories:

- **Ship owners & operators (11 respondents)**: containing 5 respondents replying on behalf of private shipping companies and 6 respondents replying on behalf of shipping industry associations (National and European) ;
- **National Maritime Authorities (13 respondents)**: containing 11 national maritime authorities and 2 regional public authorities with a role in maritime transport affairs ;
- **Port Authorities (5 respondents)**: containing 4 port authorities and 1 European port association ;
- **Other - Individuals (15 respondents)**: containing citizens replying in their personal capacity such as seafarers and other interested citizens ;
- **Other - Organisations (9 respondents)**: containing all respondents replying on behalf of entities that did not fit in the above categories, such as industry associations, private companies and NGOs.

No responses were received from national accident investigation bodies.

The collected responses originate from 13 EU MSs and 2 non-EU countries (Norway and Montenegro). Most responses are from Belgium (23%, i.e. 12 responses), 5 of which are European and international associations. France and UK are next with 13% (7 responses) and 10% (5 responses) out of the total responses respectively.

Targeted Stakeholder Consultation

In the course of this study six main stakeholder groups have been identified and consulted:

1. Maritime authorities: Authorities of the 23 EU coastal Member States in their capacity of implementing and enforcing PSC legislation. In most countries, this is the national maritime administration or similar bodies.
2. Ship owners: Ship owners engaged in various activities. This stakeholder group encompasses various players with strong interests in quality shipping and maritime safety.
3. Ports, ship agents operating in ports and pilots: Ports, ship agents and pilots are involved in various aspects of port State control inspections and the potential detention of vessels.
4. Third (non-EU) States whose ships call in EU ports: Non-EU flags with vessels calling EU ports need to provide relevant certificates according to international standards. Third States are equally consulted on the quality of European flags versus non-EU flags.
5. Classification societies/Recognised organisations: developing and applying technical standards for the design, construction and survey of ships and which carry out surveys and inspections on board ships: Recognised organisations are questioned based on their involvement in inspections and experiences with flag State administrations and accident investigations.
6. EU, regional and international bodies: European Maritime Safety Agency (EMSA), the Secretariat of the Paris Memorandum of Understanding, the International Maritime Organisation (IMO).

An invitation to participate in the targeted survey was send to 308 stakeholders from all relevant stakeholder groups. The survey included questions on flag State administrations and accident investigations of an evaluation study that runs in parallel. The survey was open from 11 January until 16 February 2017. A further two reminders were sent to boost participation. A total of 51 responses were collected. To avoid stakeholder fatigue and boost participation, the questions were tailored per stakeholder group. Consequently not all questions have been answered by all 51 respondents.

Results of consultation activities

Results of Open Public Consultation

<u>The inspection of foreign vessels in EU ports is essential for ensuring maritime safety and the prevention of maritime accidents and pollution</u>

All national maritime authorities, port authorities and other stakeholder do believe that the inspection of foreign vessels has an impact on maritime safety and accident and pollution prevention. Specifically, all (9) national maritime authorities, all (4) port authorities, all (15) other individual stakeholders and all (8) other organisations agree or agree strongly with this statement. Ship owners and operators also agree by a vast majority (8 respondents or 89%). Only 1 (11%) ship owner expressed that they do not have a strong view on the topic.

Across the board, the responses thus emphasise the importance of port State control to ensure maritime safety and prevent maritime accidents and pollution.

The extent to which the EU provides administrative support and expertise to the Member States in carrying out these inspections

Seven (87%) of other organisations, 13 (86%) of other individuals, 7 (78%) ship owners and operators and 7 (77%) maritime authorities believe that the EU should provide support and expertise to some or to a great extent. From the 2 port authorities that responded to this question, one indicated to some extent and another indicated to have no opinion on the issue.

Two (23%) of maritime authorities replied to a limited extent, while for ship owners and operators the remaining two (22%) respondents were split between the responses to a limited extent and not at all. Other individual stakeholders think the EU should provide support and expertise to a limited extent by 7% (1 respondent), also only 7% (1 respondent) of other individuals and 13% (1 respondent) of other organisations believe that they should not provide at all.

Level of importance that the EU verifies that Member States carry out port State control inspections

Fourteen (93%) of other individual stakeholders, 7 (87%) of ship owners and operators, 7 (87%) of other organisations and 7 (78%) of national maritime authorities consider it important or very important that the EU verifies that Member States carry out port State control inspections. Of the port authorities only 2 responded to this question, one of which indicated it as important and another that indicated to have no opinion.

On the other side, 2 (22%) of national maritime authorities, 1 (13%) of ship owners and operators, 1 (13%) of other organisations and 1 (7%) of other individual stakeholders consider it as less or not important that the EU verifies that these inspections are being carried out.

Hence, on the whole, respondents support that the EU has an important role to play in verifying the proper execution of port State control inspections. At the same time, comments equally refer to the role that the Paris MoU plays in the field.

Level of importance that the EU verifies that Member States carry out port State control in a harmonised manner

All 9 maritime authorities, 8 (89%) of ship owners and operators, 13 (86%) of other individual stakeholders and 7 (77%) of other organisations believe that it is important or very important that the EU verifies the harmonised implementation of port State controls through the Member States. Only 2 port authorities responded to this question, one of which indicated it as important and another that indicated having no opinion.

Lastly, only 1 (11%) of ship owners and operators, 2 (14%) of other individual stakeholders and 1 (13%) of other organisations believe that it is less important or not important at all to verify the harmonised implementation.

One academic respondent commented that in order to ensure harmonisation the EU should look into a) the background of the port State control officer; b) training of the port State control officer; and c) the financial and personal resources of the Member States. The need to focus on port State control officers to ensure harmonised inspections is emphasised by various other stakeholders too.

One respondent also stated that harmonisation is equally pursued by the PMoU, whilst another comment states that harmonisation should not prevent Member States from conducting inspections based on the expertise of a port State control officer.

Finally, there are some concerns expressed regarding the (lack of) harmonisation between EU regulations and between the regulations by the EU and IMO. Two associations noted that too often there are differences in interpretation of EU and IMO regulations on port State control. Two other associations emphasised that the port State control Directive should not be seen in isolation but in relation to the revised proposed Directive on a system of inspections for the safe operation of Ro-Ro ferry and high-speed passenger craft in regular service. The respondents noted that the harmonisation of port State control inspections is of particular importance for ship owners.

Results of targeted stakeholder consultation

Overall, the results of the survey confirm the preliminary findings from the targeted interviews to the effect that the port State control Directive has been relevant given the needs and the Directive's objective, and that it has been effective and efficient. A number of areas with a potential room for improvement have nonetheless been identified by the points raised by the survey respondents.

Relevance

The study clearly finds that there continues to be a need for PSC as a defence against 'substandard' shipping. Although deficiencies and detentions have fallen with the introduction of the NIR, 'substandard' shipping remains in the Paris MoU area and in other MoU areas. Furthermore, it is a global problem and PSC is often considered as the only line of defence against ships from low-performing flag States.

Data shows that the number of deficiencies and detentions have fallen since before the NIR. However PSC in the EU (Paris MoU) area will continue to be relevant as long as there are flags on the 'black list' of the Paris MoU – or simply because some flags are not doing a proper job. In other words, the need for PSC remains as long as there are differences in the standards and the quality of the controls between flag States and across the different regions around the world.

Stakeholders particularly emphasise that PSC inspection is independent from the shipping industry (unlike ROs to whom a number of flags delegated their survey tasks and who are linked to the owner), and that PSC is not announced beforehand (unlike vetting, RO inspections and other inspections) as key features that makes it very important.

With the introduction of the NIR, the total number of inspections has fallen and there are more ‘initial inspections’. However, some Member States continue to inspect more Priority I ships than they are supposed to according to their fair share commitment. This conduct affects other Member States negatively as it leads to more inspections than required (unless called for by safety reasons). While some Member States claim that administrative costs have increased since the introduction of the NIR, others claim that they have decreased or remained unchanged. Data on the cost of inspections across Member States shows that the costs in 2016 are more or less the same as in 2011. However, increased operational flexibility may decrease costs for some Member States. From a shipowner perspective, however, costs related to PSC

are viewed as proportional to the objective and that a good PSC record is important as it is seen as a competitive factor.

Effectiveness

The evaluation of the effectiveness of the PSC Directive is based on five evaluation criteria/questions that focus on the extent to which its objectives have been achieved:

- Is the targeting of what are described as higher risk vessels effective?

The answer to this question is primarily based on views gathered from stakeholders – with much focus on the way the ship risk profile is calculated, and so on whether the design of the ship risk profile could be improved – e.g. by including additional risk parameters or discarding parameters that are no longer relevant.

The study has found that the targeting of high risk ships using THETIS – via the priority-setting system – is effective in the sense that it leads to the inspection of ships that pose a high risk of noncomplying with the agreed international/EU standards. However, there is room for improvements to the design of the ship risk profile – e.g. via more weight on individual ship risk factors.

The majority of maritime authorities performing PSC indicated that they almost solely rely on THETIS for the selection of ships for inspection – i.e. the priority of the ship that again is based on the ship risk profile and on the time since last inspection of the given ship. Only a small proportion of the inspected ships are selected on the basis of overriding or unexpected factors. Approximately two-third (67%) of maritime authorities in the EU relies solely on the targeting system of the port State control Directive, while 33% uses other factors as well.

18 of the 21 respondents (83%) confirmed that the current design of the ship risk profile applied according to the Paris MoU and the PSC Directive results in the targeting of low-performing ships. There is, however a perception that there is room for improvement to the design of the risk profile. MLC, 2006 was mentioned as a particular area for improvement.

This being said the view was expressed that it may be considered a weakness that the ship risk profile primarily includes generic parameters – such as the age and the type of ship, and to some extent the company performance and the RO – that may have a less direct impact on the safety performance of a specific ship. More than half of EU maritime authorities and approximately 50% of ports and ship agents/ship owners indicated that there was room for improvement. Several maritime authorities suggested redistributing the weighting points to give more weight to individual factors – such as the number of deficiencies and detentions – compared to generic parameters.

Another aspect frequently mentioned during the interviews – primarily with maritime authorities and third flag States – was the formula for calculation of flag performance, where there was a general consensus that the current statistical 'yardstick' formula needs to be revised.

- To what extent are all eligible ships covered by inspections, are there gaps?

The study has not identified any significant gaps in the PSC inspection coverage. More than half (59%) of maritime authorities of EU Member States indicated that the annual inspection commitment secures that 'substandard' ships are being inspected and the vast majority of maritime authorities indicated that they are not aware of any ships that are not being targeted for PSC inspections. Furthermore, there seems to be very little evidence of 'substandard' ships

that escape PSC inspections. As an exception to this, two types of ships were mentioned: fishing vessels and smaller ships.

The majority of ports and ship agents/ship owners find the frequency of inspections fully or mostly appropriate (75%) in relation to the goal of eliminating 'substandard' shipping. The scope of the inspections is found appropriate by 50% of the respondents, while 25% indicated that the scope was occasionally too wide.

Fishing vessels are currently not covered by PSC. However, they are covered by MARPOL, COLREG etc. and all port States have a right – but not an obligation – to inspect such ships. From such inspections working conditions – and in particular on the larger fishing vessels – were often reported to be very poor.

- Has the Directive contributed to the intended objectives in terms of improvements in safety, environmental protection and social conditions?

It is important to acknowledge in assessing this criteria that it is not straightforward to attribute improvements in safety, environmental protection and social conditions to the PSC Directive. This is because some of the improvements may have happened anyway (e.g. as a consequence of IMO compliance, Paris MoU provisions, flag State surveys, and shipowner actions).

However the overall finding of the assessment is that the Directive has contributed to the intended objectives of improving maritime safety, security, pollution prevention and working and living conditions. The Directive has served as a supporting enforcement mechanism that has ensured compliance with agreed international and EU standards in the respective areas. The fact that effective measures are in place to ensure compliance with the PSC Directive by all EU Member States, the operation and maintenance of THETIS, and the harmonised training provided by EMSA are perceived by stakeholders as the three major factors behind the effectiveness of the Directive.

A number of different factors have been identified by which the Directive has contributed to safety, environmental protection and social conditions. These include enforcement of PSC requirements, encouragement of harmonisation across the EU/Paris MoU area, the establishment of the common information and targeting system, THETIS, and EMSA training and distance learning.

The enforcement of the PSC requirements is also assessed to have contributed to the harmonisation of the PSC activities across the EU. This is in itself an intended mean in the pursuance of an effective PSC system – i.e. that ships are not encouraged to 'shop around' for the most lenient PSC inspectors.

Furthermore, by providing an effective mechanism for the enforcement of relevant standards, the Directive provides a motivating factor for the industry to invest in quality and thereby improve safety, security, pollution prevention and working and living conditions on board ships calling at EU ports.

As regards unintended impacts: 58% of maritime authorities pointed out that the Directive has had unintended impacts. As far as positive unintended impacts are concerned, the respondents mention the reliability of the inspection system (resulting from the elimination of human factor in selecting ships for inspections) and generally more effective targeting.

As for negative impacts, the formula for calculating flag performance, the lack of human resources/fatigue of personnel to achieve the annual commitment and the additional financial burden to carry out inspections during weekends and holidays were mentioned.

- How does the inspectors' training and qualification perform? How can the availability of qualified inspectors be ensured and promoted?

The study has found overall that inspectors carrying out PSC inspections in EU ports are sufficiently trained and well qualified. Most Member States (92%) do not experience any major difficulties in complying with the training/qualification requirements of the Paris MoU/PSC Directive. The level of training provided at EU and national level is adequate. Only minor gaps in the training offered have been identified.

Many Member States experience difficulties in recruiting qualified PSC inspector candidates. Such problems are less pronounced, or virtually non-existent, in countries in which PSC inspectors form part of the country's military organisation.

Overall, PSC inspectors inspecting ships at EU ports are by the shipowners and the ROs considered to be qualified. PSC inspectors in the EU use the same approach and the quality of inspections is fairly similar. However, even in Europe there are differences in the culture of checking – e.g. whether the aim of the inspection is to find something or it is to find the most important deficiencies.

Overall, stakeholders assess that the PSC inspectors' education and training have improved in recent years, but that there is still work to do to achieve a more harmonised inspection approach. No specific issues in relation to complying with the training requirements of the PSC Directive have been identified. As the requirements are formulated, Member States are in general able to find candidates for the PSC inspections. However, the total number of inspectors in the EU with a seagoing background has been decreasing.

Occasions have been reported when inspectors had to be relocated in order to comply with the qualification requirements regarding the number of PSC inspections that a PSC inspector must carry out during a certain period of time. Therefore it has been suggested that to make the requirements more flexible, e.g. by having a more qualitative approach to determine 'qualifications' and training needs.

EMSA training and distance learning is appreciated by all stakeholders. The need for a harmonised training was highlighted but it was also suggested that the EMSA training is made needs-based, rather than mandatory. Other Member States suggested making the training more comprehensive, so that (some) Member States do not need to set up their own training systems.

A number of EU Member States – i.e. those in which PSC inspectors are recruited from among civilians – face challenges in recruiting and retaining qualified PSC inspectors. Budget restrictions are the factors most frequently cited in connection with such challenges.

- How has the publication of company performance worked?

Company performance is one of the generic parameters determining the risk profile of a ship, and a list of companies with low and very low performance is published and regularly updated by EMSA. There is no conclusive evidence that the publication of the list of companies with low and very low performance has had an effect in terms of improvements in safety, security, pollution prevention and working conditions.

Most stakeholders interviewed had no or very limited knowledge of and experience with the list of low and very low performing ISM companies.

Efficiency

Neither ports nor ship agents/ship owners have identified any costs incurred in connection with port State control inspections that are not proportional to the goal of eliminating substandard shipping. The vast majority of the ports (86%) reported no negative effect of port State control inspections on their day-to-day business.

Approximately equal amount of ports and ship agents/ship owners (20%) experienced an increase, decrease and no changes in their administrative costs since the introduction of the NIR. Similarly, while some maritime authorities report an increase in their administrative costs following the introduction of NIR, approximately the same amount reports a decrease or no change.

The major factors contributing to an increase in costs incurred by maritime authorities are said to include additional costs connected with inspections being carried out during weekends, national and public holidays (3 respondents), travel costs incurred due to Priority I inspections (1 respondent) and the overall increase in duration of port State control inspections as a result of the introduction new legislative requirements (e.g. MLC, 2006, ship – recycling, ballast water management etc.).

75% of maritime authorities in the EU indicate that the inspection regime under the port State control Directive is sufficiently flexible to adapt to the geographical conditions and way of working, while 25% find room for improvement in this respect. Specific comments relate to a need for an improvement in the justification procedure in order to accommodate geographical conditions (e.g. many islands located far away from the coastline) and other circumstances that the local administration has no influence upon (e.g. bad weather, icing in the anchorage).

Most maritime authorities use THETIS to monitor the work of their PSC officers. They also use the information contained in THETIS on the progress towards achieving the annual inspection commitment when planning for inspections.

75% of maritime authorities indicated that there is a room for improvement in the interface between THETIS and SafeSeaNet. The following issues were mentioned by the stakeholders: missing port calls, information presented in THETIS is not real time information, occasions when THETIS shows a ship that is not in the port or even the region, PT without national SSN from 25/8/2016, ISPS pre-announcement/regulation 1257/2013 not being integrated.

While ports and ship agents and ship owners are generally aware of THETIS, only 50% uses the public part of the database on a regular basis.

Coherence

The Directive itself is regarded as internally coherent and no internal incoherencies have been signalled.

As regards coherence with other Directives approximately half of the stakeholders indicated that there is a need for better coordination between the port State control Directive, Flag State Directive and Directive on roro-ferries. Specifically, stakeholders highlighted a need to ensure better coordination between the port State control Directive and the Directive on ro-ro ferries.

With respect to coherence with other EU legislation a number of other inspections are carried out under a number of different legal instruments: Directive 2016/802 on reduction in the

sulphur content of certain liquid fuels, Regulation 1257/2013 on ship recycling and Directive 2000/59/EC on port reception facilities for ship-generated waste and cargo residues. Such inspections are to a varying extent coordinated in the Member States with PSC inspections.

While shipowners generally tend to have a preference for a more coordinated approach, the approach of Member States authorities is more reserved given the complexity of cross-sector coordination and division of tasks beyond PSC. Some Member States reported efficiency gains from such coordination while others do not. The majority of maritime authorities (59%) do not find an added value in including additional inspections within the port State control Directive. Overall, stakeholders highlight that the inclusion of additional inspection requirements in the port State control Directive will create too big of a burden for the port State control inspectors. At the same time stakeholders indicate that there may be room for simplification and better coordination. As far as the latter is concerned, it was suggested that this is left entirely in the hands of the Member States, i.e. that each Member State should have the opportunity to explore how to best utilise the available port State control inspectors. Need for additional training in other Directives was also mentioned in this context.

EU added-value

The key finding of the evaluation in this regard is that the PSC Directive adds value, mainly by providing a legally binding regime – which results in the commitment of the necessary resources – that can be effectively enforced vis-à-vis Member States by the Commission. There is a firm belief among stakeholders that the legal force behind the Directive is a strong driver for compliance with the standards of the Directive. Compared to the Paris MoU where there is no enforcement of legal compliance and harmonisation with the agreed PSC standards.

The strengthening of the banning provision following repeated detentions is seen as a specific example of an achievement of the Directive. Shipowners across the EU see the value of applying the same rules/procedures to inspections. Likewise, stakeholders recognise THETIS and the training and other assistance (including IT support) provided by EMSA to be of great 'added' value.

The majority (75%) of ports and ship agents/ship owners does not experience significant differences between inspections carried out at EU ports and ports of non-EU members of the Paris MoU.

The majority of maritime authorities in EU Member States (58%) find the role of the European Commission/EMSA as a facilitator to the improvements of port State control very important, 33% "somewhat important". EMSA visits to the Member States have specifically been mentioned in this context.