

**MINISTRY OF AGRICULTURE, SEA,
ENVIRONMENT AND LAND MANAGEMENT**

Decree-Law No. 51/2012
of 6 March

The safety of maritime transport of goods and passengers as well as environmental protection should be ensured permanently and effectively.

The commitment to this goal reflects the ratification by 164 member states of the International Maritime Organisation (IMO) conventions on maritime safety and the prevention of pollution from ships. However, despite the commitment of states, the actual level of ship safety and prevention of pollution caused by them varies considerably from one flag to another.

Are still sailing around the world ships that do not meet international standards and rules to which they are subject, representing a permanent risk to the oceans, translated into the occurrence of maritime accidents and incidents that lead to loss of life and pollution of the marine environment, resulting in heavy economic losses, environmental damage and public concern. This action contributes, also, negatively and significantly to the development of unfair competition between shipping companies, since ships do not meet or comply defectively; standards and rules are mainly exploited by those who seek a commercial advantage to the operation of such ships.

This fact was evidenced in 2003 by the maritime sector and, above all, by the ministers of 34 states of the Atlantic and Pacific region gathered in Vancouver in late 2004, on the 2nd Ministerial Conference of the Paris MoU and Tokyo on the control of ships by the Port State.

In the joint statement of Vancouver was demonstrated that the operation of ships which do not comply with the rules and regulations continues to be a reality in certain areas, it is necessary to take further measures to combat the actions of owners and companies that continue to develop its activities irresponsibly, without taking into account international rules and practices security established in this context.

The loss of life, loss of ships and pollution that is often associated result largely from the fact that certain maritime administrations of flag States do not take into account their primary responsibility, which is to ensure that ships entitled to fly their flag comply with international conventions.

For this purpose, it was approved under the so called "III Maritime Safety Package", the Directive 2009/21/EC of the European Parliament and of the Council of 23 April 2009 on compliance with flag State obligations.

That Directive aims at improving maritime safety and the prevention of pollution from ships through the effective enforcement by flag States of duties set out in international conventions on maritime safety and pollution prevention, adopted by the IMO, through a set of rules to be followed by those States in various circumstances operation of ships, increasing transparency and the quality of the performance of their maritime administrations and control over ships of their flags.

These rules emphasize the obligation of the national maritime administration implement a quality management system of its operational activities, certified according to international standards, integration of duty in the voluntary scheme of the IMO audits at least every seven years and the continuous review and verification of

the effectiveness of the national maritime administration of its international obligations.

Thus:

In accordance with subparagraph a) of no. 1 of Article 198 of the Constitution, the Government decrees the following:

Article 1

Object

1 - The present decree-law transposes into national law the Directive 2009/21/EC of the European Parliament and the European Council of 23 April 2009 on compliance with flag State obligations.

2 - The present decree-law establishes rules to ensure that the Portuguese State complies effectively and consistently discharge their obligations as flag State, contributing to the enhancement of maritime safety and the prevention of pollution from ships flying the flag national.

Article 2

Definitions

For the purposes of this decree-law, the following definitions apply:

a) "National Maritime Administration", Direcção-Geral de Recursos Naturais, Segurança e Serviços Marítimos (DGRM), who is responsible for ensuring the appropriate application of the provisions of the conventions of the International Maritime Organization (IMO) under Article 3;

b) "IMO audit" means an audit conducted in accordance with the provisions of Resolution A.974 (24) adopted by the IMO Assembly on 1 December 2005, for the purposes of this decree-law, only covers the activities of flag State;

c) "Certificates" means statutory certificates issued in respect of relevant IMO conventions;

d) "Flag State" means the State, through relevant legislation and a national maritime administration, authorizing a ship to fly their flag;

e) "Qualified Flag State Inspector" means a person designated by the National Maritime Administration to carry out surveys and inspections related to the certificates and fulfilling the criteria of qualification and independence specified in Annex I to this decree-law of which it is part integral;

f) "Ship" means a ship or vessel flying flag of a Member State covered by the conventions of the IMO and for which a certificate is required;

g) "Recognized Organization" means an organization recognized in accordance with Regulation (EC) No 391/2009 of the European Parliament and of the Council of 23 April 2009 on common rules for ship inspection and inspection of ships and for the relevant activities of maritime administrations.

Article 3

IMO Conventions

For the purposes of this Decree-Law, is defined as IMO Conventions the following conventions, and the respective protocols and amendments, and mandatory related codes, in its updated version:

- a) The International Convention on Load Lines, 1966 (LL 66);
- b) The International Convention on Tonnage Measurement of Ships, 1969 (ITC 69);
- c) The International Convention for the Prevention of Pollution from Ships, 1973 and its Protocol of 1978 (MARPOL 73/78);
- d) The Convention on the International Regulations for Preventing Collisions at Sea, 1972 (COLREG 72);
- e) The International Convention for the Safety of Life at Sea, 1974 (SOLAS 74);
- f) The International Convention on Standards of Training, Certification and Watch keeping for Seafarers, 1978 (STCW 78/95).

Article 4

Authorization for a vessel to operate

1 - The national maritime administration, before authorizing the operation of a vessel flying the Portuguese flag, take appropriate measures to ensure the ship in question complies with the rules and national and international regulations, including in particular the verification of information on the ship's safety records.

2 - If necessary, the national maritime administration refers to previous flag state administration of the ship to determine whether there are deficiencies or security issues unresolved.

Article 5

Collaboration with other maritime administrations

Whenever another flag State requests information concerning a ship which was previously flying the national flag, the national maritime administration provides, promptly, to that State data on the unresolved deficiencies and any other relevant information related to the safety of the ship, taking into account the provisions of Regulation (EC) No 789/2004 of the European Parliament and of the Council of 21 April 2004.

Article 6

Maintenance of data on national vessels

The national maritime administration is incumbent to ensure that the following data on ships flying the national flag is kept and remains promptly accessible for the purposes of this decree-law:

- a) Vessel identification;
- b) Dates of the surveys, including additional inspections and complementary, if any, and audits;
- c) Identification of the recognized organizations involved in the certification and classification of the ship;
- d) Identification of the competent authority which has inspected the ship under the provisions relating to control by the Port State and dates of the inspections;
- e) Results of inspections carried out under the control by the Port State;
- f) Information on marine casualties;
- g) Identification of ships which have ceased to fly the national flag in the last 12 months.

Article 7

Detention of national flag ships

Whenever you become aware that a vessel flying the national flag has been detained by a Port State, the national maritime administration acts accordingly with the guidelines set out in Annex II to this decree-law of which it is part, thus ensuring that the detained ship was subject to the necessary measures to comply with the national and international rules and regulations.

Article 8

Management quality system

- 1 - The national maritime administration is responsible for developing and operates a management system for the quality of operational activities related to the flag State.
- 2 - The management system referred to above should be operational, with the collaboration of the International Shipping Register of Madeira (CTMAR) in the field of its intervention, until the day 17 June, 2012.
- 3 - The management quality system must be certified according to international quality standards.

Article 9

Voluntary System of the IMO Audits

- 1 - The member of Government responsible for the sea area should request to the Secretary-General of the IMO, until 1 January, 2016, the conducting of an audit of the IMO, the scope of which covers the activities under the present law.
- 2 - Summary of the results of the audit of the IMO is advertised on the website of the national maritime administration.

Article 10

Communication of information and reporting

- 1 - Whenever Portugal, as the flag State, appears on the black list or figure, for two consecutive years, on the gray list, as published in the most recent annual report of the Paris Agreement Memorandum on the control of ships by the Port State, the national maritime administration sends to the European Commission, within four months after the publication of the annual report, a report on their performance as flag State.
- 2 - The report referred to in the preceding paragraph identifies and analyzes the main reasons for failure that led to the detentions and the deficiencies that led to the inclusion of Portugal, as the flag State, on the black list or gray list.
- 3 - The national maritime administration should communicate to the IMO the information required by the provisions of the agreements referred to in Article 3.

Article 11

Entry into force

The present decree-law shall enter into force on the day following to its publication.

Promulgation on 12 January 2012.

ANNEX I
Minimum Criteria for flag State inspectors
[Referred to paragraph e) of Article 2]

PART A

- 1 - Inspectors must have permission from the National Maritime Administration to carry out surveys and inspections under IMO Conventions referred to in Article 3
- 2 - Inspectors must have appropriate theoretical knowledge and practical experience of ships and their operation, as well as the provisions of the relevant national and international regulations. This knowledge and experience must be acquired through documented training programs.
- 3 - Inspectors should, at least, alternatively:
 - a) Have appropriate qualifications from an institution of marine or nautical studies and relevant experience of sea service as an official certified, holder or ex-holder of a certificate of competency STCW II/2 or III/2 certificate without limit to the extent of the area of operations and power propulsion or tonnage;
 - b) Have a naval engineering degree, mechanical engineer or an engineer related to the maritime sector and professional experience of a minimum of five years in that capacity; or
 - c) c) Have a university degree or equivalent and been properly trained and qualified as ship safety inspectors.
- 4 - Inspectors described in the categories mentioned in paragraph a) of paragraph 3 shall have gained a maritime experience of at least five years, including periods of service at sea as officers in the deck or engine department.
- 5 - The inspectors must have the ability to communicate orally and in writing with seafarers in the language most commonly spoken at sea.
- 6 - Inspectors cannot have a commercial interest in the ship surveyed and must not be employed - or undertake work on - non-governmental organizations which carry out mandatory inspections by law or classification or issue certificates for ships.
- 7 - Inspectors not fulfilling the above criteria are also accepted if, on 31 December, 2011, are employed by the national maritime administration and authorized by it to carry out the surveys and inspections provided for in the IMO Conventions referred to in Article 3 or inspections under the Port State Control.

PART B

The identification card of the flag state inspectors must contain the following information:

- a) Name of Issuing Entity;
- b) Full name of the holder of the ID card;
- c) Current photograph of the holder of the ID card;
- d) Signature of the holder of the ID card;
- e) Declaration authorizing the holder to carry out surveys and inspections of vessels flying the national flag;
- f) Translation on the back of the card, in English, of the items referred to above.

ANNEX II
Guidelines for further action to the detention of ships by the port State
(Referred to in Article 7)

1 - Detention by Port State:

1.1 - Where the national maritime administration becomes aware that a ship flying the national flag has been detained by the Port State Control, undertakes to take appropriate corrective measures to bring the ship into compliance with the national and international rules and regulations.

Such measures include those that are described below:

2 - Immediate Actions:

2.1 - As soon as it is informed of the detention of the ship, the national maritime administration comes into contact with the company (the company for the purposes of the International Code for Safety Management (ISM)) and the Port State to determine, as far as possible, the exact circumstances of the detention.

2.2 - Based on this information, the national maritime administration consider what immediate action is necessary to bring the ship into comply with the requirements.

The national maritime administration may consider that some deficiencies can be promptly rectified and their rectification confirmed by the Port State (for example, a Liferaft that needs to be repaired). In such cases, the national maritime administration requests the Port State to confirm that they have been rectified.

2.3 - For more serious deficiencies, particularly structural deficiencies and others covered by certificates issued by a recognized organization on behalf of national maritime administration, the national maritime administration determines an inspection by one of its inspectors or delegates in recognized organization such inspection.

Initially, this inspection should focus on those areas in which deficiencies have been recorded by the Port State. If the inspector of national maritime administration or recognized organization expert deems it necessary, the inspection can then be extended to a full survey for those areas covered by the relevant certificates.

2.4 - Where was the recognized organization to carry out the inspection referred to in the previous paragraph, your surveyor should inform the national maritime administration of actions carried out and the ship's state after the inspection, so that the national maritime administration determine any further measures if necessary.

2.5 - If the inspection by the Port State has been suspended in accordance with paragraph 5 of Article 19 of Directive 2009/16/EC, of the European Parliament and of the Council, of 23 April 2009, in relation to the inspection of ships by the Port State, the national maritime administration is to organize a new survey of the ship in respect of licenses for the areas where deficiencies have been recorded by the Port State, as well as in relation to any other areas where later it is found any other deficiencies.

The national maritime administration conducts directly this survey or delegates in the recognized organization, and in the latter case is required to RO Surveyor a full report and, where applicable, the confirmation of conducting a survey following which all the deficiencies have been rectified. Based on the report prepared by the maritime administration of the inspector or by the recognized organization surveyor, the national maritime administration confirms to the Port State, if it considers satisfactory, that the ship complies with all the requirements of relevant international regulations and conventions.

2.6 - In particularly serious cases of non-compliance with regulations and international conventions, national maritime administration always sends an inspector to conduct or oversee the inspections and surveys mentioned in paragraphs 2.3 to 2.5, not delegating this intervention on the recognized organization.

2.7 - Unless there is apply the provisions of paragraph 2.10, the national maritime administration requires the company to take corrective measures to bring the ship into

compliance with regulations and international conventions before being allowed to leave the port where it was detained (in addition to the corrective action required by the Port State). If such corrective action is not taken, the relevant certificates will be withdrawn by the national maritime administration, and this decision previously communicated to CTMAR, in the case of ships registered in the International Shipping Register of Madeira.

2.8 - The National Maritime Administration should examine the extent of the deficiencies recorded by the Port State and detected after the inspection / survey by the National Maritime Administration or by the recognized organization on its behalf, indicate a failure of the ship's safety management system and of the company. If necessary, the national maritime administration must provide the conduction of a new ship's audit or of the company and, in coordination with the Port State, consider whether this audit should take place before the ship is allowed to leave the port where it was held.

2.9 - The national maritime administration, in all circumstances, shall coordinate and cooperate with the Port State as a way to ensure the rectification of deficiencies found and respond as quickly as possible to all requests for clarification from the Port State.

2.10 - If deficiencies cannot be rectified in the port where the ship was detained and the Port State authorizes the ship under paragraph 1 of Article 21 of Directive 2009/16/EC, of the European Parliament and of the Council, of 23 April 2009, on the inspection of ships by the port State, to follow to a repair yard, the national maritime administration articulates with the port State to determine the conditions under which can be carried out this trip and confirm these conditions in writing.

2.11 - If the ship does not comply with the conditions mentioned in paragraph 2.10 or not appear at the agreed repair yard, the national maritime administration asks without delay explanation from the company and evaluates the possibility of withdrawing the ship's certificates. In addition, the national maritime administration conducts an additional survey of the ship at the first opportunity.

2.12 - If, according to the information available, the national maritime administration considers that the detention is unjustified, makes known its reservations to the Port State and articulate themselves with the company to decide together whether to activate the review procedure provided by the Port State.

3 - Following actions:

3.1 - Depending on the severity of the deficiencies found and the immediate measures taken, national maritime administration must, also, consider the possibility of making an additional survey of the ship after the lifting of detention. This additional survey should include an assessment of the effectiveness of the safety management system. It is advisable that the national maritime administration make additional survey of the ship within 12 weeks of being informed of his detention. The costs of this additional survey are supported by the company. If you have scheduled a mandatory inspection by law to the ship within three months, the national maritime administration may consider delaying the additional survey until that time.

3.2 - In addition, the national maritime administration should consider carrying out a new audit of the company involved. The National Maritime Administration should also review the inspection history of other ships under the responsibility of the same company, to verify if there are common faults throughout that company's fleet.

3.3 - If the ship has been justifiably detained more than once in the last two years, immediate action should be more urgent and, in any case, the national maritime administration should carry out an additional inspection within six weeks after having been informed of the detention.

3.4 - If the detention of the ship also leads to the banning of access under Article 16 of Directive 2009/16/EC, of the European Parliament and of the Council, of 23 April 2009, on the inspection of ships by Port State, the national maritime administration should carry out an additional survey and take all necessary measures to ensure that the company puts the ship in compliance with all relevant conventions and regulations. When the ship's situation is

considered satisfactory, the national maritime administration provides to the company a document to this effect.

3.5 - After making all corrective measures to become the ship into compliance with international rules and conventions, national maritime administration sends a report to IMO in accordance with Rule 19 (d) of Chapter I of SOLAS 74 , as amended, and paragraph 5.2 of Resolution A.787 (19) of the IMO, as amended.

4 - Additional Survey:

4.1 - The additional survey as referred to above should include a sufficiently thorough examination of the following listed elements, to the inspector of the National Maritime Administration may consider that the ship, its equipment and its crew comply with all regulations and international conventions that are them apply:

Certificates and documents;

Hull structure and equipment;

Conditions of assignment of load lines;

Machine and main systems;

Cleanliness of machinery spaces;

Means of salvation;

Fire protection;

Navigation equipment;

Handling of cargo and cargo equipment;

Radio equipment;

Electrical equipment;

Pollution prevention;

Conditions of life and work;

Capacity;

Crew certification;

Passenger safety;

Operational requirements, including communication between crew members, exercises, training, operations of the bridge and the engine room and safety.

4.2 – The Survey should also cover, at least, the particulars for an expanded inspection specified in Annex VII of Directive 2009/16/EC, of the European Parliament and of the Council, of 23 April 2009, on the inspection of ships by the Port State. The inspectors of the national maritime administration should not refrain to include, if deemed necessary, functional tests of items such as liferafts and their launching arrangements, main and auxiliary machinery, hatch covers, main electrical power systems and sewage.