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Port control of the ship as a special case of control of the entrepreneur's business

ABSTRACT

The issue of controlling business activities of entrepreneurs is an extremely broad one. Due to the limited framework of this study, port control of ships has been made the subject of this paper. The development of the existing system for controlling compliance with shipping safety standards has been analysed in depth. International, EU, and Polish legal solutions concerning port control of ships have been presented, analysed, and evaluated. The aim of this study is to demonstrate the effectiveness of the analysed system of ship control. The research method used in this paper is dogmatic and legal.

KEYWORDS

control, Paris MoU, New Inspection Regime, THETIS, Port State Control (PSC), maritime safety, maritime security

The concept of control

An entrepreneur and their business activities are subject to public control carried out under the provisions of the Act of 6 March 2018 on the Entrepreneurs' Law.¹ The issue of control is a complex one, and its discussion should begin from clarifying the very concept of it. According to the definition given by K. Strzyczkowski,² control shall be understood as checking the correctness of certain phenomena or actions, analysing, and evaluating them, establishing the results, and drawing appropriate conclusions. In specialist literature, control is also defined as a set of activities aimed at checking a given entity.³ In this respect, the inspector is entitled to collect information concerning the controlled entity in order to compare it with the model resulting from the applicable legislation. The controlling authority,

1 Dz.U. (Journal of Laws) of 2019, item 1292, as amended, hereinafter referred to as the "Entrepreneurs' Law".

2 K. Strzyczkowski, *Prawo gospodarcze publiczne*, Warszawa 2011, p. 165, based on: T. Bigo, F. Longchamp, *Kontrola administracji*, "Studia Prawnicze" 1963, no. 4, p. 51.

3 Z. Snażyk, A. Szafrąński, *Prawo gospodarcze publiczne*, Warszawa 2018, p. 150.

however, shall be duly authorised to check the facts and must be thoroughly familiar with the current legal situation. Meeting these two conditions gives the controlling authority the opportunity to seek an answer to the question “Is this the way it should be?”. If differences between the existing state and the desired state are found, the reasons for these differences shall be established and comments, conclusions, and recommendations formulated.⁴

According to the Glossary of terms concerning control and audit in public administration,⁵ the concept of control can have two meanings: functional and managerial. Control in the functional sense means an examination or review, consisting of establishing facts, comparing them with the required state, and evaluating them. Management control is, on the other hand, an established governance system designed to provide reasonable assurance that management objectives will be achieved.

When discussing the concept of control, it is impossible not to refer to the concept of supervision, which, although close to the former, is a broader concept, linked to certain governing means of influencing the supervised entity. There can be no sign of equality between control and supervision as concepts, not least because the purpose of control is to indicate to the controlled entity the irregularities that have been identified, while leaving it relative freedom to choose how to remedy them. The essence of supervision, on the other hand, includes both the right of control and the power to govern the controlled (supervised) entity. At this point, attention should be drawn to the principle of legalism (Article 7 of the Constitution of the Republic of Poland of 2 April 1997⁶),⁷ which states that both controlling and supervisory authorities shall act on the basis of and within the limits of law, and therefore the presumption of competence of the bodies in question is unacceptable. In other words, every action of the controlling bodies must have a legal basis in the form of statutory provisions, and what is connected with it, the illegal action of public authorities gives rise to the State’s liability for damages to the entrepreneur.⁸

Here, attention should also be paid to the concept of audit and inspection. According to the Glossary of terms relating to control and audit in public administration,⁹ audit means the same as control, in a functional sense. Inspection, in turn, means one of the control procedures consisting of review and examination of the results of activities and the elimination of existing deficiencies and shortcomings following immediate orders, examination

4 G. Kozieł, *Prawo przedsiębiorców*, in: *Prawo przedsiębiorców. Przepisy wprowadzające do Konstytucji Biznesu. Komentarz*, G. Kozieł (ed.), Warszawa 2019.

5 Supreme Audit Office (NIK), Chancellery of the Prime Minister, Ministry of Finance, Ministry of Internal Affairs and Administration (2005), *Glossary of deadlines concerning control and audit in public administration*, NIK, 1 ed., Warszawa.

6 Dz.U. (Journal of Laws), No. 78, item 483, as amended and corrected, hereinafter referred to as the “Constitution of the Republic of Poland”.

7 Article 7 of the Constitution of the Republic of Poland: “The organs of public authority shall function on the basis of, and within the limits of, the law”.

8 Article 77(1) of the Constitution of the Republic of Poland: “Everyone shall have the right to compensation for any harm done to him by any action of an organ of public authority contrary to law”.

9 Supreme Audit Office (NIK), Chancellery of the Prime Minister, Ministry of Finance, Ministry of Internal Affairs and Administration (2005), *Glossary of deadlines concerning control and audit in public administration*, NIK, 1 ed., Warszawa.

of records, documents or fixed assets.¹⁰ In this study, inspection does not exist in an institutional sense, which means that it is not understood as one type of administrative police with control competences and the power to impose penalties and sanctions directly.

The area of legal regulations under examination is characterised by specific and diverse terminology. However, taking into account that the concept of control in this study is only functional, it is possible to put an equality mark between control and audit. Inspections, on the other hand, should be treated as a control procedure, i.e., a method, specific for a given activity, of obtaining control evidence and analysing it. This method, often preceded by a series of other steps, is taken to ensure that ships meet the legal requirements. In maritime legislation, however, the concept of inspection is very often associated with the concept of control and they are used interchangeably.

Inspection entities

Every entrepreneur can expect control activities to confirm that they are acting in accordance with the applicable law. Controls may be carried out based on the general principles set out in the Entrepreneurs' Law or pursuant to separate provisions (*lex specialis*). As a result, it is primarily public administration authorities, whose jurisdiction and powers are determined by specific regulations, that are entitled to carry out controls. Depending on the type of business activity,¹¹ the control may be carried out by:

- National Labour Inspectorate,
- Social Insurance Institution (ZUS),
- sAgricultural Social Insurance Fund (KRUS),
- Tax Office,
- Customs and Fiscal Office,
- State Sanitary Inspectorate (Sanepid),
- General Veterinary Inspectorate,
- Trade Inspection,
- State Fund for Rehabilitation of Disabled People (PFRON),
- the concession granting authority,
- the authority maintaining the register of regulated activities,
- Border Guard,
- Personal Data Protection Office,
- Inspection for Environmental Protection,
- State Fire Service, or
- Port State Control (discussed in more detail later).

10 Supreme Audit Office (NIK), Chancellery of the Prime Minister, Ministry of Finance, Ministry of Internal Affairs and Administration (2005), Glossary of deadlines concerning control and audit in public administration, NIK, 1 ed., Warszawa.

11 Source: <https://www.biznes.gov.pl/pl/firma/obowiazki-przedsiębiorcy/chce-przygotowac-sie-do-kontroli-w-firmie/kontrola-w-firmie/jakie-urzedzy-moga-kontrolowac-przedsiębiorce>. Accessed 04.05.2020.

System for monitoring compliance with shipping safety standards

Further consideration should be given to the fact that one of the basic objectives of monitoring compliance with maritime safety standards is to ensure maritime safety in the broadest sense. Despite the lack of a legal definition, there are many proposals to define the concept of maritime safety in specialist literature. In one sense, this concept is defined as the safety of human activities at sea, including the prevention and minimisation of incidents and accidents at sea.¹² In another sense, it is stated that maritime safety is the safety of life, health, and property from the environmental and operational hazards that shipping brings with it.¹³

In addition to English *maritime safety*, there is also the concept of *maritime security*. In European legislation,¹⁴ *maritime security* means a combination of preventive measures to protect shipping and port facilities against threats of intentional unlawful acts (i.e., terrorist attack).¹⁵

These concepts, although of different meaning, are interconnected. In the author's opinion, there is a subordinate relationship between the term *maritime security* and *maritime safety* – the former is subordinate to the latter.¹⁶ It seems appropriate that the concept of *maritime safety* includes:

- the safety of the ship – all aspects of maritime safety covered by the International Convention for the Safety of Life at Sea (hereinafter referred to as the “SOLAS Convention”), as well as incident & accident prevention, health, and safety at work, etc.,
- environmental protection (prevention, response, and crisis management of ship-source pollution), and
- maritime security (protection of shipping and port facilities).¹⁷

This seems to be confirmed by the fact that on 12 December 2002 the Diplomatic Conference of the International Maritime Organisation (IMO) adopted amendments to the 1974 SOLAS Convention and the International Ship and Port Facility Security Code (hereinafter referred to as the “ISPS Code”). At this point it should be stressed that the SOLAS Convention is recognised as the most important international convention on maritime safety,¹⁸ and therefore the introduction of provisions on maritime security in Chapter XI-2 of the SOLAS

12 J. Nawrot, *Międzynarodowe prawo bezpieczeństwa morskiego*, Warszawa 2019.

13 K. Formela, T. Neumann, A. Weinrit, *Overview of definitions of maritime safety, safety at sea, navigational safety, and safety in general*, “The International Journal on Marine Navigation and Safety of Sea Transportation” 2019, Vol. 13, no. 2, pp. 285-290.

14 Neither the SOLAS Convention nor the ISPS Code provide a definition of the legal concept of maritime security. This definition at least has been included in Regulation (EC) No 725/2004 of the European Parliament and of the Council of 31 March 2004 on enhancing ship and port facility security (OJ L 129, 09.4.2004, p. 6). See J. Nawrot, *Międzynarodowe prawo...*; J. Nawrot, *Koncepcja nadzoru w zintegrowanej polityce morskiej UE*, “Prawo Morskie” 2011, Vol. XXVII, pp. 166-167.

15 Source: <https://eur-lex.europa.eu/legal-content/PL/TXT/PDF/?uri=CELEX:32004R0725&from=En>. Accessed 12.12.2020.

16 See J. Nawrot, *Międzynarodowe prawo...*; S.H. Jore, *The conceptual and scientific demarcation of security in contrast to safety*, “European Journal for Security Research” 2019, no. 4, pp. 157-174.

17 Source: <https://ec.europa.eu/transparency/regdoc/rep/2/2006/EN/2-2006-689-EN-1-7.Pdf>. Accessed 12.12.2020.

18 W. Adamczak, J. Nawrot, *Bezpieczeństwo morskie. Uwagi na tle anglosaskiego rozróżnienia maritime safety i maritime security*, “Gdańskie Studia Prawnicze” 2015, Vol. XXXIII, pp. 19-31.

Convention seems to confirm the validity of the above-mentioned thesis. It is not possible to ensure the safety of a ship in the broadest sense of the word without protecting it against threats of intentional illegal acts.

It should be stressed that the monitoring of compliance of ships' parameters with international safety standards, the qualifications of the crew, the prevention of maritime pollution as well as living and working conditions on board the ship is the responsibility of the Flag State. The responsibility for maintaining the good condition of the ship and its equipment, and for the compliance of the crew's qualifications with the requirements of the international conventions, lies with the company (ship owner/ship operator – depending on agreement).¹⁹ The system for monitoring compliance with maritime safety standards currently operates at three levels: national, regional, and global.²⁰ This system is not incidental, because it is at national level that maritime safety standards are implemented and enforced. At regional level, however, actions are of a coordinating nature and are complementary to national processes. The aim of activities undertaken at global level is to create unified safety standards, and therefore appropriate legal standards. The main role in their creation is played by the International Maritime Organization (hereinafter referred to as the “IMO”), based in London. As a United Nations specialised agency, the IMO is an international body that sets standards for shipping safety, environmental protection, and the development of maritime trade. The primary objective of the IMO is to create a fair, effective, generally accepted, and widely implemented legal framework for the shipping industry.²¹ To date, the IMO is responsible for more than 50 agreements and conventions and has adopted a number of protocols and amendments. The Republic of Poland is a founding member of this organisation. Another body playing an important role in creating uniform maritime safety standards is the International Labour Organization (hereinafter referred to as the “ILO”), based in Geneva. The main objective of the ILO is to promote employment and job creation, to strengthen the protection of labour rights, social security, and social dialogue and to develop international labour standards (e.g., the Maritime Labour Convention, 2006). Other important maritime organisations include:

- Baltic and International Maritime Conference (BIMCO),
- International Chamber of Shipping (ICS),
- International Association of Classification Societies (IACS),
- International Association of Lighthouse Authorities (IALA),
- International Marine Pilots' Association (IMPA),
- International Hydrographic Organisation (IHO),
- Baltic Marine Environment Protection Commission (BMEPC), and
Committee of Paris Memorandum of Understanding on Port State Control. This is a non-governmental organisation, bringing together the maritime administrations of the

19 Source: <https://eur-lex.europa.eu/legal-content/PL/TXT/PDF/?uri=CELEX:52008AP0446&from=ES>. Accessed 07.05.2020.

20 R. Molski, *Kontrola portowa statków o obcej przynależności (problematyka prawna)*, “Studia Prawnicze” 2001, no. 2, p. 55.

21 Source: <http://www.imo.org/en/About/Pages/Default.aspx>. Accessed 07.05.2020.

participating States, with the aim of international cooperation in the field of inspection of ships with regard to their compliance with the basic rules on maritime safety.²²

The system for monitoring compliance with maritime safety standards includes the following controls carried out by maritime administrations:²³

- control of ships by the Flag State, also known as Flag State Control (hereinafter referred to as the “FSC”), its frequency varies according to the rules of the Flag State,
- Coastal State Control (hereinafter referred to as the “CSC”),²⁴
- Port State Control of Ships, also known as Port State Control or simply Port Inspection (hereinafter referred to as the “PSC”), as further elaborated in this paper, as well as controls by NGOs, which are of great importance for the commercial operation of a ship. In order to obtain a charter and maintain the employment of a ship (“No approval, no hire!”), it is often necessary, as a rule, to be affiliated to recognised NGOs that ensure compliance with maritime safety standards and are approved by the charterer’s representative for maritime safety. Quite frequently, a charterer, before hiring a ship, will commission an external company specialising in shipping safety audits to inspect it. The most important of the non-governmental organisations’ inspections are:²⁵
- ISM (International Safety Management) and ISPS (International Ship and Port Facility Security) audits – increasingly Flag State maritime administrations are delegating their execution to approved classification societies,
- periodical Class Surveys carried out on behalf of the Flag State maritime administration by approved classification societies such as DNV-GL (Det Norske Veritas Germanischer Lloyd) or PRS (Polish Register of Shipping),
- industry inspections, such as *vetting inspections* of the ship, carried out on oil tankers, chemical tankers, and offshore vessels,²⁶ on behalf of oil companies or other cargo owners with a significant market share or on behalf of the ship owner/ship operator (such as CDI, OCIMF / SIRE, Rightship, etc.) – as a general rule, these inspections are carried out at the request of the ship owner/ship operator in order to obtain a quality certificate which will help to get a charter,
- inspections by insurance companies, such as P&I Clubs, for insurance purposes.

It would appear that this control should be secondary to that carried out by the maritime administration, however, from a commercial perspective no charterer, particularly in the offshore sector, will currently employ a vessel solely based on positive inspection reports carried out by or on behalf of the authorities. This is a consequence of the fact that the inspections of non-governmental bodies are, in principle, more detailed and more authorita-

22 M.H. Koziński, *Morskie prawo publiczne*, Gdynia 2010, p. 32.

23 R. Molski, op. cit., pp. 56-57.

24 During his 15 years at sea, the author has not encountered this type of inspection, which may indicate its marginal role in the system for monitoring compliance with maritime safety standards.

25 S. Knapp, Ph.H.B.F. Franses, *Analysis of the Maritime Inspection Regimes: Are ships over-inspected?*, “Econometric Institute Research Papers” 2006, no. 30, <http://hdl.handle.net/1765/7895>. Accessed 12.12.2020.

26 The offshore industry is a business activity offering production solutions related to the exploitation of raw materials (mainly energy ones – crude oil and natural gas) and obtaining renewable energy at sea. See P. Czaplinski, *Przemysł offshore w Polsce – próba definicji, stan i możliwości rozwoju*, “Prace Komisji Geografii Przemysłu Polskiego Towarzystwa Geograficznego” 2015, Vol. 29, no. 4, pp. 103-111.

tive. They make it possible to identify a greater number of potential non-compliance with the maritime safety standards,²⁷ which is crucial from the charterer's point of view.

Port State Control (PSC)

One of the most important elements of maritime safety is Port State Control, which concerns the inspection of foreign-flagged ships by Port State Control Inspectors²⁸ employed by the maritime administration of the port called on by the ships in question. The mechanism of this control is a kind of exception to the principle that a ship is subject to the law of the Flag State.²⁹ The overriding objective of the PSC is to ensure that companies, ships, and their crews comply with internationally accepted safety standards.³⁰ This is achieved by verifying: standards of maritime safety, protection of the marine environment and working conditions of the crew.³¹ The legal and international bases for PSC inspections derive from the 1982 United Nations Convention on the Law of the Sea (UNCLOS),³² as well as other conventions on the safety of navigation such as:

- the International Convention for the Safety of Life at Sea (SOLAS 74/78),
- the International Convention for the Prevention of Pollution from Ships (MARPOL 73/78),
- the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW 78).

In 1978 the maritime administrations of Western European countries developed the so-called “Hague Memorandum”. The aim of this memorandum was to enforce living and working conditions on board the ship, as required by ILO Convention 147.³³ Unexpectedly, in March 1978, just before the memorandum came into force, there was an oil spill off the coast of Brittany (France) due to the grounding of the oil tanker “Amoco Cadiz”. This incident has led to stricter rules on maritime safety. It was a contributory factor in setting stricter rules on maritime safety and resulted in the drafting of the Paris Memorandum of Understanding on Port State Control (hereinafter referred to as the “Paris MoU”), which is primarily aimed at eliminating the substandard ships from operation, through a unified port control system. This memorandum, as has already been mentioned, covers the following issues: safety of life at sea, prevention of pollution from ships, and living and working conditions on board the ships. Initially, only 14 European countries participated in this memorandum, but over the years, the organisation has grown up to 27 Member States. The

27 It is this author's position based on 15 years of experience at sea.

28 See J. Pawełkiewicz, *System Szkolenia oficerów PSC*, “The Maritime Worker” 2012, no. 2.

29 W. Adamczak, J. Nawrot, *op. cit.*, pp. 19-31.

30 R. Molski, *op. cit.*, p. 57.

31 A. Walczak, *Methods of port state control assessment of ships flying a specific flag*, “Zeszyty Naukowe Akademii Morskiej w Szczecinie” 2014, no. 39, pp. 156-160.

32 Dz.U. (Journal of Laws) of 2002, No. 59, item 543.

33 Source: <https://www.parimou.org/about-us/history>. Accessed 08.05.2020.

positive impact of the Paris MoU on maritime safety has resulted in the creation, under the auspices of the IMO, of nine similar regional agreements worldwide.³⁴

PSC in the European law

To effectively implement the provisions of the Paris MoU, it was necessary to strengthen them through EU legislation. As J. Nawrot rightly points out: “The establishment of regional PSC authorities does not, however, mean that the degree of effectiveness of inspections is the same worldwide. There are still significant differences in their operation, due to the application of different rules and the scale of inspections”.³⁵

The EU PSC was established by Directive 2009/16/EC of the European Parliament and of the Council of 23 April 2009 on Port State Control.³⁶ The EU PSC system draws its foundations from the Paris MoU. It is worth noting that all coastal states of the European Union are members of the Paris MoU. The aim of Directive 2009/16/EC is to reduce the number of substandard ships operating within EU waters by ensuring that ships comply with EU and international rules on maritime safety and the environmental protection, and by establishing common criteria for the inspection of the ships.³⁷ This Directive amended and replaced Directive 95/21/EC of 19 June 1995 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).³⁸ Successive amendments to Directive 2009/16/EC resulting for example from Directive 2017/2110 of the European Parliament and of the Council of 15 November 2017 have been incorporated into the basic text.³⁹

Since 1 January 2011 in the European Union and within the framework of the Paris MoU a New Inspection Regime (hereinafter referred to as the “NIR”) on port state control is in force. The frequency of this inspection depends on the risk profile of the ship. Each ship in the system has a risk profile assigned to it which determines, inter alia, the priority of a possible inspection, the maximum period between inspections, and the scope of inspections. All ships under the scheme are classified as high, normal, or low risk ships, based on their overall and historical parameters. The risk profile of the ship is updated daily based on dynamically changing parameters such as the age of the ship, 36 months’ inspection history and the performance of the company. It is also updated after each inspection of the ship and

34 Source: <http://www.imo.org/en/OurWork/MSAS/Pages/PortStateControl.aspx>. Accessed 08.05.2020.

35 J. Nawrot, *Międzynarodowe prawo...*

36 OJ L 218, 14.08.2013, p. 1, hereinafter referred to as the “Directive 2009/16/EC”.

37 Source: <https://eur-lex.europa.eu/legal-content/PL/TXT/HTML/?uri=LEGISSUM:tr0022&from=EN>. Accessed 08.08.2020.

38 OJ L 157, 7.7.1995, p. 1.

39 OJ L 315, 30.11.2017, pp. 61-77. This Directive amended the requirements for ro-ro passenger ships (roll on/roll off) and high-speed passenger ships operating on a regular service. The essence of the amendment is the requirement that these ships must be inspected by a PSC before they can commence operation on a regular service to ensure that they meet the requirements for safe navigation on such service.

after a change in the parameters of the flag States or recognised organisations. Thanks to this, based on the ship risk profile, the scope (level of detail), frequency and priority of PSC inspections is determined.⁴⁰

Particular attention needs to be paid to the most important principles of Directive 2009/16/EC.⁴¹ The Directive applies to any ship – and its crew – calling at an EU port or anchorage. High risk ships are subject to periodic inspections every 5-6 months, normal risk ships every 10-12 months and low risk ships every 24-36 months. In addition, EU governments shall ensure that they have a sufficient number of qualified inspectors with the required resources to carry out the inspections.⁴² All ships calling at EU port are assigned a risk profile in the THETIS⁴³ inspection database. It is based on criteria such as the type and age of the ship and is also used to determine the level of detail and frequency of inspections. In order to facilitate the planning of inspections, the THETIS database has been linked to the SafeSeaNet system, which is used to monitor maritime traffic and exchange information. This system has been developed with the aim of strengthening navigational safety, security of ports and coastal states, protecting the marine environment and improving maritime transport in the ports of EU Member States.⁴⁴

When analysing the key points of Directive 2009/16/EC, it should be noted that annual inspections are mandatory for ships with a high-risk profile and optional for other ships. Priority is given to inspections of ships that rarely call at EU ports. During the initial inspection, the ship's certificates and documents are examined and its overall condition is verified. Importantly, where deficiencies are found, the ship is subject to a more detailed inspection. More detailed inspections are carried out on ships with a high-risk profile and on passenger ships, oil tankers, gas or chemical tankers or bulk carriers more than 12 years old. Any deficiencies found must be remedied. In the case of a high risk to safety, health or the environment, the ship shall be detained until the deficiencies are rectified. National authorities may refuse access to the port for ships which have been detained more than twice during the previous two to three years. Owners or operators have the right to appeal against a detention or refusal to access. It is also worth adding that the European Commission maintains and updates the inspection database. It regularly publishes information on the THETIS website on companies whose compliance rates with regulations are low or extremely low.

The ship's New Inspection Regime introduced by Directive 2009/16/EC aims to eliminate substandard ships. This is done by increasing the frequency of inspections of substand-

40 E.J. Ravira, F. Piniella, *Evaluating the impact of PSC inspectors' professional profile: A case study of the Spanish Maritime Administration*, "WMU Journal of Maritime Affairs" 2016, no. 15, pp. 221–236.

41 Source: <https://eur-lex.europa.eu/legal-content/PL/TXT/HTML/?uri=LEGISSUM:tr0022&from=EN>. Accessed 08.05.2020.

42 The directive provides for three types of inspections: an initial inspection, a more detailed inspection, and an expanded inspection.

43 The ship risk profile is determined based on seven criteria: type of ship, age of ship, flag, recognised organisation, company performance, number of deficiencies recorded during the last 36 months and number of detentions during the last 36 months.

44 Nawrot J., *SafeSeaNet*, in: *Wielka encyklopedia prawa*, B. Hołyst, R. Hauser (eds.), Vol. 19, *Prawo komunikacyjne* 2020, <http://wikiprawna.com.pl/index.php?title=SAFESEANET>. Accessed 12.12.2020.

ard ships while reducing the frequency of inspections of ships with a low risk profile. One of the instruments for achieving this is the use of the IT support system THETIS, already mentioned, which collects and makes available data on Port State Control. This system makes it possible to calculate, based on the data collected, the criteria necessary for targeting inspections in the Member States.

PSC in Poland

The system and competences of maritime administration in Poland are defined in the Act of 21 March 1991 on the Marine Areas of the Republic of Poland and Maritime Administration.⁴⁵ The maritime administration together with other states, members of the Paris MoU, protects marine areas against threats resulting from the operation of ships which do not comply with basic maritime safety regulations. The instrument to ensure that these objectives are met is the Paris MoU port inspection. The supervision of compliance with the provisions of the Act is carried out within the area of their activity by directors of maritime offices who, through separate organisational units, act for the safety of navigation. One of such unit is a port inspection which inspects foreign ships calling at Polish ports (and since the implementation of Directive 2009/16/EC also anchorages).⁴⁶ The legal basis for the functioning of the PSC in Poland can be found in various normative acts. The most important of these are:

- the Act of 18 August 2011 on Maritime Safety,⁴⁷
- Ordinance of the Minister of Maritime Economy and Inland Navigation of 20 December 2019 on the Port State Control,⁴⁸
- Directive 2009/16/EC of the European Parliament and of the Council of 23 April 2009 on Port State Control,⁴⁹
- 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,⁵⁰
- 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,⁵¹ 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.⁵²

45 Dz.U. (Journal of Laws) of 2019, item 2169, as amended.

46 M.H. Koziński, *op. cit.*, p. 84.

47 Dz.U. (Journal of Laws) of 2020, item 680.

48 Dz.U. (Journal of Laws) of 2020, item 90, hereinafter referred to as the “PSC Ordinance”.

49 OJ L 131, 28.5.2009, p. 57.

50 OJ L 125, 21.5.2010, p. 2.

51 OJ L 241, 14.9.2010, p. 1.

52 OJ L 241, 14.9.2010, p. 4.

Tasks in the field of shipping safety are carried out in Poland by PSC, as a rule, in accordance with procedures developed by Paris MoU. The main task of port inspections is to carry out port state control of maritime safety. This inspection consists of checking the ship's documents, the qualifications and composition of the crews, the safety condition of the ship's construction, its fixed installations and equipment. The results of the controls are transmitted to the THETIS database and the relevant notifications are sent to the flag State, the recognised organisation, as well as the PSC of the next port of call.⁵³ Other factual activities undertaken by the PSC include:

- participating on an expert basis in the investigations of violations of safety of navigation and pollution regulations,
- participation on an expert basis in the investigation of maritime incidents and accidents,
- providing training for PSC and FSC officers in ship inspection procedures,
- cooperation with classification societies and other national institutions within the scope of the Inspectorate's activities,
- drafting and giving an opinion on draft legislation on the safety of shipping and human life at sea,
- cooperation with the national IMO Centre and participation in the work of the national sections of the IMO, cooperation with the maritime chambers, the Border Guard and the Navy, as regards the Inspectorate's activities.

The PSC also undertakes certain legal actions in the form of issuing administrative decisions of a supervisory nature. The most important of these include:

- issuing post-control recommendations to the captain and ship owner/ship operator,
- the detention of the ship (e.g., arrest),
- the ban on exploitation of the ship,
- a ban on the ship's entry into or exit from port,
- release of the ship.

The required competence and experience to carry out PSC inspections have been defined in PSC Ordinance. In the light of this regulation, the persons considered competent are those holding a certificate of so-called management level, i.e., master mariner or chief mate (chief officer) certificates on ships of 3000 gross tonnage and more, as well as chief engineer officer or second engineer officer certificates on ships of the main propulsion power of 3000 kW and more. Both deck and engine officers are required to have a minimum of five years' service experience as officer on board the seagoing ships, assistant inspector, or Flag State Control officer. The provisions of the regulation also make it possible to carry out port inspections by persons who do not have a maritime degree. However, these persons must have:

- a degree as a marine engineer, mechanical engineer or an engineer in the maritime profession and a minimum of five years' service experience in such profession, or
- a bachelor's, engineer's, Master of Science or equivalent degree and evidence of training in ship safety requirements and inspection procedures.

⁵³ Source: <http://www.ums.gov.pl/sch/PSC.pdf>. Accessed 09.05.2020.

Inspectors are also required to have knowledge of English or any other language commonly used on board the ships. Prior employment as a Flag State inspector or assistant inspector, knowledge of the relevant inspection procedures under the Conventions is also required. At this point, it is worth adding that the inspector must not be associated with the port, the ship being inspected or the recognised organisation in such a way as to raise doubts about his/her impartiality.

Conclusions

Control understood as the examination of compliance of a given entity with the assumed pattern is a significant manifestation of interference in the sphere of entrepreneurs' activity. Confrontation of the established factual state with the model state should lead to conclusions that may constitute a basis for the possible application of appropriate supervisory measures. This constitutes a stimulus for entrepreneurs to comply with generally applicable law.

The control of business activity is devoted to Chapter 5 of the Entrepreneurs' Law, but not every control is based on this Act. This legislation contains general provisions on the control of business activity, which are subject to further clarification in specific acts. Among the legal solutions discussed, some are aimed at ensuring the sense of safety of the entrepreneur during the control proceedings, but their primary objective is to check and evaluate the existing situation.

The paper pays particular attention to monitoring compliance with maritime safety standards. Port State Control in the field of maritime safety is the primary task of port inspections. This inspection consists of checking the ship's documents, the qualifications and composition of the crews, the safety condition of the ship's construction, its fixed installations and equipment. It should be stressed that, in order to be effective, the control system should aim to ensure that all ships entering European Union ports and anchorages are regularly inspected. The system for selecting ships for inspection, which is based on the ship's risk profile, should also be welcomed.

Moreover, it is not only national rules, but also EU regulations that apply to controls in this area. An important tool for the proper functioning of the entire system is the use of the THETIS IT support system, which collects and makes available data of PSC inspections and allows, on their basis, the criteria necessary for targeting such controls in the Member States to be calculated.

Full conceptual consistency and clear safety rules would further strengthen the effectiveness of the system for monitoring compliance with maritime safety standards. It is worth noting the shortcomings of the legislation on the control of compliance with maritime safety standards in the form of inconsistent application of the concept of inspection and the concept of control. Although, when interpreting the rules, it seems that inspection is treated as a form of control, and these terms are often used interchangeably. It would therefore be appropriate to propose that the concepts in this area shall be harmonised by consistently using the concept of inspection as a control, its form or method. As part of the

proposed demands, attention should also be paid to the shortcomings in terminological arrangements in the area of safety, which have been signalled in this paper. It also seems appropriate to introduce into the system of Polish domestic law a definition of the legal English terms “maritime safety” and “maritime security”.

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