

# PORT STATE CONTROL INSPECTIONS, DETENTIONS, PROCEEDINGS AND FINES – NEW REGULATIONS ON SHIP INSPECTIONS AT SPANISH PORTS



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The aim of this article is to briefly summarise the new regulations that apply to Spanish ports, to comment on the use of guarantees and the typical procedure following a deficiency being found.

On 23 December 2010, the Spanish Government enacted Royal Decree 1737/2010, which incorporates EU Directive 2009/16/CE into domestic law. The aim of the new regulation is to ensure that all ships entering Spanish waters and ports comply with the minimum safety and security requirements set out in the EU Directive.

Below is a brief summary of the main provisions:

## APPLICATION

- The regulations apply to all ships calling at Spanish ports and/or anchoring zones and their crew. Ship inspections are not limited to the port area and can also be performed in Spanish waters.

## RISK PROFILES

- The harbour master will inspect a ship based on its risk profile, which is determined according to the following criteria: type and age of ship, inspections record of the flag country, classification societies and the inspection record of the shipowner in question. Following the application of these criteria, a high, normal or low risk profile will be attributed to the ship.
- The harbour master will determine which ships must be subject to an inspection (high-risk ships) and will select other ships that may be subject to an inspection (low and normal-risk ships). Priority will be given to inspect ships that do not call frequently in EU ports.

## FREQUENCY OF INSPECTIONS

- The frequency of inspections will be influenced by the risk profile of the ship. A harbour master will inspect all high-risk ships if they have not been inspected within the previous six months; all normal-risk ships if they have not been inspected within the past 12 months; and all low-risk ships if they have not been inspected within the previous 36 months.
- Additional inspections can be carried out regardless of the time elapsed since the last inspection. A harbour master may inspect any ship taking into account the priority factors such as classification issues, information from another member state, or any form of non-compliance with applicable regulations. Alternatively, factors such as previous detentions, cargo problems or other deficiencies can be taken into account.

## DENIAL OF ENTRY INTO SPANISH PORTS

The harbour master has the power to refuse entry to any anchorage in Spanish waters to ships black-listed under the Paris Memorandum of Understanding (MOU) and arrested on two occasions during the last 36 months, or ships grey-listed under the Paris MOU and arrested on two occasions during the last 24 months.



## APPEAL

The denial of entry to a port or a detention may be appealed to the General Directorate of the Merchant Navy (GDMN) in Madrid. However, the appeal will not suspend the detention of the ship.

## GUARANTEES

A guarantee will be required to allow a ship to sail once detained. The guarantee must be provided in the form of cash, a bank guarantee or an insurance bond. The form and wording of the guarantee is not negotiable, as it is determined by local law. The procedures are overly bureaucratic. However, a detention can be lifted quickly if cash security is given. The procedure is usually slower when the security is to be provided via a bank guarantee, as the banking procedures and especially the Spanish administration's system for the verification of signatures is slow. Shipowners often put up cash security for speed. However, this can be substituted for a bank guarantee or insurance bond at a later date.

## PROCEEDINGS BY THE MARITIME ADMINISTRATION

Briefly the procedure is as follows:

- Upon receipt of the formal notification of the commencement of the proceedings, the harbour master grants the shipowner 15 days to submit a defence.
- After a period that may take several months, the Harbour Master Office will issue a proposed resolution, usually a fine, and sometimes clean-up or other costs. At this stage, further defence allegations may be submitted.
- The proceedings will then be forwarded to the GDMN in Madrid, which will issue the final resolution. In the majority of cases, the GDMN will confirm the fine proposed by the harbour master. This process is usually concluded within 12 months of commencing proceedings.
- On issuing the final resolution, the GDMN will grant a period for voluntary payment. If payment is not received then the security may be enforced. The time taken for enforcement is unpredictable, but it usually takes several months.
- Any appeal of the final resolution first has to be made to the state's General Secretariat for Transport, prior to a further appeal being possible through the Spanish courts.

The above is a brief summary of the inspection regime in Spain. There has been recent publicity suggesting the Spanish authorities have increased the number and magnitude of fines. Spain is perceived to be stricter for inspections, detentions and fines than other European ports and it is one of the few European nations that impose fines for Paris MOU breaches rather than simply insisting on rectification or repair prior to departure.

However, despite a stricter inspection regime, the number of inspections in Spain has actually been decreasing since 2006. Details of inspections, detentions and bannings are published publicly and can be found on [www.parismou.org](http://www.parismou.org). The fines imposed can be high, especially in cases relating to pollution and shipowners should be aware of this and always co-operate when inspectors come on board.

