Commission Implementing Regulation (EU) No 1205/2012 of 14 December 2012 amending Regulation (EU) No 802/2010 as regards the company performance (Text with EEA relevance)

COMMISSION IMPLEMENTING REGULATION (EU) No 1205/2012

of 14 December 2012

amending Regulation (EU) No 802/2010 as regards the company performance

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Directive 2009/16/EC of the European Parliament and of the Council of 23 April 2009 on port State control[(1)], and in particular Article 27 thereof,

Whereas:

(1) Company performance is one of the generic parameters determining the risk profile of a ship.

(2) In order to assess company performance, the deficiency and detention rates of all ships in a company's fleet, which have been subject to an inspection within the Union and within the region covered by the Paris Memorandum of Understanding on port State control (Paris MoU), should be taken into account.

(3) The implementing rules to calculate the company performance criteria for the ship risk profile as well as the methodology for drawing up the lists for publication are set out in 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[(2)].

(4) Simulations of the publication of the lists based on the information recorded in the inspection database demonstrate that the methodology for publication set out in Regulation (EU) No 802/2010 should be more targeted.

(5) Therefore in order to make the lists of companies with a low or very low performance relevant it is necessary to amend the criteria used for drawing these lists to focus publication on the poorest performing companies. This should not change the computation of the company performance calculation for the ship risk profile.

(6) To be listed on the lists of low and very low performing companies the company should have demonstrated a level of poor performance for a continuous period of 36 months directly preceding the publication. A consistently poor performance for such an extended period demonstrates an unwillingness or inability on the part of the company to improve performance. As publication on the lists is based on the processing of the data corresponding to the performance of the companies for 36 months, sufficient time

Changes to legislation: *There are currently no known outstanding effects for the Commission Implementing Regulation (EU) No 1205/2012. (See end of Document for details)*

should be provided before the first publication in order to gather in the THETIS database sufficient data reported by the Member States in accordance with Directive 2009/16/EC.

(7) The companies to be listed are exclusively determined on the basis of the information transferred and validated by the Member States in the inspection database, in conformity with Article 24(3) of Directive 2009/16/EC. This information includes inspections of the ships, deficiencies identified during the inspections and detentions. It also includes the ship information (name, IMO identification number, call sign and flag) as well as the name of the owner or person such as the manager or bareboat charterer, who has assumed the responsibility for the operation of the ship as well as the duties and responsibilities imposed by the International Safety Management (ISM) Code. In this way the performance of a company and of the vessels for which it is responsible can be automatically monitored in the inspection database and the lists can be updated on a daily basis.

(8) The Commission should be able to retrieve from the inspection database, using its automatic functionalities, the relevant data in order to determine the companies to be included on the list of companies with a low and very low performance.

(9) The methodology for determining the company performance matrix is based on the processing of the detention index and the deficiency index of the company as provided for in the Annex to Regulation (EU) No 802/2010.

(10) The measures provided for in this Regulation are in accordance with the opinion of the Committee on Safe Seas and the Prevention of Pollution from Ships,

HAS ADOPTED THIS REGULATION:

Article 1

Article 3(2) of Regulation (EU) No 802/2010 is replaced by the following:

2. EMSA shall publish, from 1 January 2014, and update on a daily basis on its public website the following information:

a the list of companies whose performance has been very low for a continuous period of 36 months;

b the list of companies whose performance has been low or very low for a continuous period of 36 months;

c the list of companies whose performance has been low for a continuous period of 36 months..

Article 2

This Regulation shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.