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SPAIN – NEW LEGISLATION ON MEASURES TO IMPROVE THE PROTECTION OF PORTS AND MARITIME TRANSPORT IN FORCE AS FROM 21.12.07

The Royal Decree (RD) 1617/2007 on measures for the improvement of the protection of ports and maritime transport, has come into force on 21st December 2007. This new legislation transposes the European Directive 2005/65/CE, obliging the State members of the EC to develop and apply a port protection plan, in addition to the ISPS Code and SOLAS Convention, based on the results of the analysis of the risks and menaces that may affect the maritime protection in views to create an integral security plan of the whole port area and of the vessels that call to European ports as of the contact zone between vessel – port. This improved protection measures are already applied in German, Dutch, French and Portuguese ports.

RD 1617/2007, applicable to all the Spanish port installations (including shipyards and leisure boats installations) establishes that the competent authority for the coordination, implementation and supervision of the *maritime protection* is the General Secretary of Transports of the Ministry of Development and in matters related to *maritime security* related to the protection of vessels, including foreign flag vessels that call to Spanish Ports, the competent authority is the General Directorate of the Merchant Marine (GDMM), also part of the Ministry of Development.

Important is to note that the RD 1617/2007 has created two new authorities that shall exist in each port: the *Authority of Port Protection*, which functions shall be executed by the Port Authority of each port of general interest (totalling 28 in Spain); and the *Consultative Comity of Port Protection*.

Amongst the control dispositions it is established that every passenger or cargo vessel over 500 GT calling to Spanish Ports shall remit to the respective Authority of Port Protection and Harbour Master the following information:

- Confirmation of the existence of a valid vessel certificate indicating the issuing authority.
- Level of protection in which the vessel is operating at that moment.
- Level of protection in which the vessel has operated in the last 10 port installations where operations of contact
- Special or additional measures of protection adopted by the vessel in the last 10 port installations where operations of contact
- Protection procedures during activities vessel to vessel.
- Any other practical information related to protection, excepting part B of ISPS Code.

The above mentioned information shall be remitted to the competent authorities at least 24 hours before the vessel's call, before leaving the previous port or since the moment that the port of call is known.

The Authority of Port Protection will ***deny the entrance*** to the port of those vessels that do not remit the required information, unless the ship owners have an exemption given by the GDMM.

Besides being the ship denied entrance, the RD also establishes that the Title IV of our Ports Law 1992 which regulates Sanctioning Proceedings, Infractions and Fines is applicable, until a specific law on sanctioning procedure in matters of port protection is approved. This could mean a possible Administrative Sanctioning Procedure against the ship owners / vessel, and the vessel being detained as a precautionary measure to guarantee possible sanction.

In what concerns the ***exemption to provide the required information***, those ship owners whose vessels are serving regular line services between Spanish ports and / or Spanish ports and other European Community ports can request it to the GDMM. In order to obtain this exemption the ship owners shall transmit to the Authority of Port Protection and Harbour Master of each calling port an up dated list of calling vessels and keep available all the information requested in Art. 19. The exemption can also be requested by another Member State, which will require of a previous report from the competent Authority of Port Protection. The conditions of the exemption will be verified by the each Harbour Master and Authority of Port Protection, and in case a condition is not compelled, the GDMM will be informed and will issue a resolution leaving without effect the exemption.

In order to keep a control over the shipping companies / vessels that will benefit from this exemption, the GDMM will keep an updated list of ship companies and vessels which will be transmitted to the General Secretary of Transports of the European Commission and every Member State called by the regular lines.

However, and although the ship company / vessel benefits from the exemption, the Authority of Port Protection and the Harbour Master can, in particular cases for reasons of security and protection, proceed to require the information requested by Art. 19 before the entrance of the vessel.

Finally, it should be mentioned that the RD 1617/2007 establishes three levels of maritime protection depending on the level of risk and menace to the ports and maritime transport, and this level will be determined by the Ministry of Interior, which police are free to enter and act at the port as per this new legislation.

Should ship owners or operators have any queries in respect of any of the subject informed, they should not hesitate to contact us.

Further information can be obtained from INDECO
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