

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****(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 10(3) and Article 27 thereof,

Whereas:

- (1) Company performance is one of the generic parameters determining the risk profile of a ship.
- (2) With a view to determining the performance of companies within the meaning of Directive 2009/16/EC, it is necessary that, when inspecting a ship, inspectors record the IMO number assigned to a company.
- (3) 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.
- (4) It is necessary to build upon the expertise acquired through the application of the Paris MoU with regard to the methodology used for assessing company performance.
- (5) The Commission should rely on the European Maritime Safety Agency established by Regulation (EC) No 1406/2002 of the European Parliament and of the Council ⁽²⁾ for the publication on a public website of the list of companies with a low or very low performance.
- (6) 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***Identification of companies**

Member States shall ensure that the company as defined in Article 2(18) of Directive 2009/16/EC is identified through

the IMO number where the ship has to comply with the International Safety Management Code (ISM Code) as referred to in Chapter IX of the International Convention for the Safety of Life at Sea (SOLAS Convention).

*Article 2***Criteria for assessing the company performance**

1. With a view to assessing the company performance referred to in point (e) of Part I.1 of Annex I to Directive 2009/16/EC, the criteria set out in the Annex to this Regulation shall be used.
2. The level of company performance shall be updated daily and calculated on the basis of the 36 months preceding the assessment. For that purpose the calculation shall be made on the basis of data collected from 17 June 2009. Where less than 36 months have elapsed since 17 June 2009, the calculation shall be made on the basis of the available data.
3. The companies shall be ranked as having a very low, low, medium or high performance as listed in point 3 of the Annex.

*Article 3***Publication of lists of companies with a low and very low performance**

1. The Commission shall be assisted by the European Maritime Safety Agency (EMSA) with a view to the regular publication on a public website of information on companies with a low and very low performance in accordance with Article 27 of Directive 2009/16/EC.
2. EMSA shall publish and update on a daily basis on its public website the following information:
 - (a) the list of companies whose performance during the previous 36 months has been very low, for a period of at least 3 months on a continuous basis;
 - (b) the list of companies whose performance during the previous 36 months has been low or very low, for a period of at least 3 months on a continuous basis;
 - (c) the list of companies whose performance during the previous 36 months has been low for a period of at least 6 months on a continuous basis.

⁽¹⁾ OJ L 131, 28.5.2009, p. 57.

⁽²⁾ OJ L 208, 5.8.2002, p. 1.

*Article 4***Entry into force and application**

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

It shall apply from 1 January 2011.

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

Done at Brussels, 13 September 2010.

For the Commission
The President
José Manuel BARROSO

ANNEX

COMPANY PERFORMANCE CRITERIA

(referred to in Article 10(3) of Directive 2009/16/EC)

1. Detention index of a company

The detention index is the ratio of the number of detentions of all ships in a company's fleet to the number of inspections of all the ships in the company's fleet within the previous 36 months, compared with the average detention ratio for all ships inspected in the region covered by the Paris MoU over the previous 36 months.

The detention index shall be considered average if it is within a margin of 2 percentage points above or below the average detention ratio for all ships inspected in the region covered by the Paris MoU during the previous 36 months.

The detention index shall be considered above average if it is more than 2 percentage points above the average detention ratio for all ships inspected in the region covered by the Paris MoU during the previous 36 months.

The detention index shall be considered below average if it is more than 2 percentage points below the average detention ratio for all ships inspected in the region covered by the Paris MoU during the previous 36 months.

The detention index of a company shall be considered above average irrespective of all other inspection results if a refusal of access order in accordance with Directive 2009/16/EC is issued within the previous 36 months to any ship in the fleet of that company.

2. Deficiency index of a company

The deficiency index is the ratio of the total points of all deficiencies of all ships in a company's fleet to the number of inspections of all ships in the company's fleet during the previous 36 months, compared with the average deficiency ratio for all ships inspected in the region covered by the Paris MoU over the previous 36 months.

For the purposes of the first subparagraph ISM Code related deficiencies shall be weighted at 5 points while any other deficiencies shall be weighted at 1 point. The average deficiency ratio within the region covered by the Paris MoU shall be weighted taking into account the average occurrence of ISM Code related deficiencies and any other deficiencies per inspection.

The deficiency index shall be considered average if it is within a margin of 2 percentage points above or below the weighted average of deficiencies in the region covered by the Paris MoU during the previous 36 months.

The deficiency index shall be considered above average if it is more than 2 percentage points above the weighted average of deficiencies in the region covered by the Paris MoU during the previous 36 months.

The deficiency index shall be considered below average if it is more than 2 percentage points below the weighted average of deficiencies in the region covered by the Paris MoU during the previous 36 months.

3. Company performance matrix

Company performance shall be ranked as follows:

Detention index	Deficiency index	Company performance
above average	above average	very low
above average	average	low
above average	below average	
average	above average	
below average	above average	

Detention index	Deficiency index	Company performance
average	average	medium
average	below average	
below average	average	
below average	below average	high

However, if a company has no previous records of inspections carried on its fleet or is not required to have an IMO number, it shall be considered as having medium performance.
