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SHIP REPORTING FACILITATION UNDER EU REGULATION. THE POLISH PATH.¹

Abstract

The article presents reviews of the European Union regulation on reporting formalities for ships entering the EU ports. It also analyses IMO regulation concerning that matter. Finally, the author exposes the differences between both legal systems and weaknesses of the solutions adopted. In the second part of the article the author discusses the Polish way of the reporting formalities system's implementation. On the basis of a legal analysis as well as practice of the maritime authorities in Poland, the author finds that the Polish regulations seem to be exemplary.

Key words: FAL convention, ship reporting formalities, single window, EU maritime law.

INTRODUCTION

Maritime transport represents an important element in the EU Member States' economies, basically because of the significant volume of goods transported in this manner and the carriage of passengers by sea. The Member States must,

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however, manage to balance the economic interests of ports with the need to ensure maritime safety and security. For this reason, ships entering the EU Member States' ports must meet numerous reporting obligations, such as requirements on safety and security, customs, tax, immigration and healthcare. Maritime transport should therefore not only be seen in the context of the economy and economics in general, but also as a matter subject to restrictions as far as the State port's policy is concerned. Due to the barriers established by national law, there is an overlap of international regulations with the EU regulations. They are these puzzles alone which can provide us with a full picture of formalities which must be met by the shipowners of vessels entering EU ports.

The reporting formalities generate the cost for the shipping world but, as it was mentioned before, they are required because of the safety and security reasons as well as the maritime protection grounds. The diversity of interest and specificity of every coastal state, cause the variety of national requirements of reporting formalities. The above mentioned variety of national requirements generates additional costs for shipping companies, which must comply with the requirements separately set out by each state, relating to the form and content of the reporting formalities. The less differences of the ship formalities requirement occur across the world, the better, since that entails less cost for the shipping companies. Preventing unnecessary delays and, in consequence, reducing the costs for the shipping companies, was the basic reason for adopting the Convention on Facilitation of International Maritime Traffic (FAL Convention) in 1965². The convention still remains the basic global legal act concerning the relaxation of reporting formalities for ships entering or departing ports.³

1. FAL CONVENTION AS A GLOBAL BASIC LEGAL TOOL

The Convention on the Facilitation of International Maritime Traffic is based on the concept of introducing the facilitating factors [to] the obligation of

² Convention on Facilitation of International Maritime Traffic (FAL Convention), adopted on 9 April 1965, as amended.

³ The FAL Convention is of a technical nature and the changes to any forms are introduced in accordance with the procedure of tacit acceptance. IMO (formerly the IMCO), in introducing this mechanism of change, was actually modelling itself on the experience of the International Civil Aviation Organization (ICAO). The standard, put in place by the ICAO in Article 37 of the Convention on International Civil Aviation (Chicago Convention), signed in 1944, assumed that ICAO, in order to facilitate trade in air shipping, would, at intervals, adopt standards and recommended practices and rules of conduct relating to technical issues.

cooperation between the State Parties in order to obtain the greatest uniformity possible in reporting in international maritime trade. However, it has not provided for either reciprocity requirements between the States, nor for the alignment of facilitation measures introduced for foreign ships with those measures applicable to the ships of their own flag. The Convention is applied to the ships engaged in international voyages, which is a consequence of the Convention's basic aim – to establish the facilitating measures in international maritime trade. The Convention, however, has not solved all the national obstacles causing ship' delays. The provisions of the FAL Convention consist of standards and recommended practices. According to the Convention, the states retain their competence to apply differing practices in the facilitation of international maritime trade, basing this on the provisions of national law, and not on the standards of the FAL Convention, in those cases where they recognise that the adaptation of national practices to those of the Convention's standards is impracticable. That means that the states, after notification of an objection to the use of conventional standards, may avoid their implementation. The recommended practices are, from their legal nature, not binding upon the states. In addition, and in accordance with Article V § 2 and section B (the general provisions) of Annex, the State Parties retain the general possibility of applying provisional measures which are deemed necessary in the protection of the public order, public morality, and safety, or for the prevention of diseases appearing or even spreading, and which could threaten the public, animal life, or plant life. Such a solution, adopted in the Convention, lead to significant discrepancies between the formalities required by the State Parties across the world, yet does allow for the existence of a flexible common reference point, globally.

The essential means of introducing the facilitating measures are specified in Section 2 of the Annex to the Convention in the model documents, whose fulfilment of the powers of the State authorities could also be required of the shipowner, during either entry or departure from the port. The provisions of the Annex led to the reduction and uniformity of a large number of documents, which had previously been required by the State authorities in their ports, to currently merely nine of the said documents - relating to an entry into and exit of a ship from a port⁴.

⁴ 1) IMO General Declaration – FAL form 1, 2) Cargo Declaration – FAL form 2, 3) Ship's Stores Declaration – FAL form 3, 4) Crew's Effects Declaration – FAL form 4, 5) Crew List – FAL form 5, 6) Passenger List – FAL form 6, 7) Dangerous Goods Manifest – FAL form 7, 8) document required under the International Health Regulations, 9) documents required under the Universal Postal Convention.

2. FAL CONVENTION IN EU LAW

The FAL Convention has also become a part of EU law on the basis of Directive 2002/6/EC on reporting formalities for ships arriving in and/or departing from ports of the Member States of the Community⁵. Directive 2002/6 adopted the FAL forms by introducing the recognition of the IMO facilitation forms (hereinafter “IMO FAL forms”) by Member States at the Community level. In 2010 Directive 2002/6 was repealed by Directive 2010/65 on reporting formalities for ships arriving in and/or departing from ports of the Member States and repealing Directive 2002/6/EC⁶. The reasons for repealing Directive 2002/6 were well justified by the dynamic technical changes, for example the electronic data exchange. Additionally, information required by the FAL forms is regularly updated and EU law should refer to the version of these forms that is currently in force. A new directive has also introduced an obligation of using the electronic data transmission systems for the ship formalities by the Member States. That was supposed to lead to eliminating repetitive work by the shipping companies as well as by the State’s various authorities (sanitary, custom, maritime administration etc.) and reducing slowness or errors at the EU ports. A single entry point was also required under Directive 2010/65, run by a competent State authority, to which all the reporting data should be sent electronically and *via* the SafeSeaNet system. Those were the significant changes, therefore, even if a large volume of FAL convention obligations existed in former EU law, the implementation process required a lot of work from the Member States⁷.

It is also worth to notice that the obligation of developing, by the EU Member States, by the year 2015, a system of reception of electronic documents through a single entry point, amends the FAL Convention. Pursuant to Article 7 of Directive 2010/65 of 1st June 2015, an electronic form is the only one used for completion of reporting formalities for ships in the EU, whilst the FAL Convention imposes no such obligation. According to the recent changes introduced into the FAL Convention (FAL 12 (40)), electronic and non-paper reporting of single entry points is recommended (yet not required) until the year 2019. In addition, other differences result from separate regulations to Directive 2010/65, and also stem from the contents set out in Annex A⁸ and Annex C of Directive 2010/65.

⁵ OJ L 67, 9th March 2002, pp. 31-45.

⁶ OJ L 283, 29th October 2010, pp. 1-10.

⁷ On the former EU regulation relating to facilitation of maritime transport see also: B. Rukavina, L. Rak, S. Buneta, *Legal framework for establishing a single maritime transport space without barriers*, [in]: *Annals of Maritime Studies / Pomorski Zbornik*, 2016, vol. 52 Issue 1, p. 165-182.

⁸ An example presented in the table below, in relation to FAL form 5 and FAL form 6 compares to Article 7 of Regulation (EC) No 562/2006, repealed by Regulation 2016/399.

The differences between the EU formalities requirement and that of the FAL Convention are derived from the EU legal acts concerning mainly maritime safety and security. The rapid development of EU regulations on maritime safety, security as well as maritime environmental protection, was also one of the reasons of repealing Directive 2002/6 and Directive 2010/65. The EU regional regulation relating to the above mentioned public aspects of maritime law, leads to growing discrepancies between international maritime law and the EU requirements. The amount of the regional EU regulations can also be seen in relation to the FAL Convention forms. The following table⁹ presents a correlation between the FAL Convention forms and the formalities required under overlapping EU law.¹⁰

IMO FAL Convention forms	Specific Community or international legislation providing equivalent information
IMO General Declaration (FAL Form 1)	Notification prior to entry into ports of the Member States (Article 4 of Directive 2002/59/EC)
IMO Crew List (FAL form 5) and IMO Passenger List (FAL form 6)	Border checks on persons (Article 7 of Regulation (EC) No 562/2006, repealed by Regulation 2016/399, OJ. 2016, L 77, p.1) For example - according to Annex A of Directive, the numbers of visas in the passengers and crew lists are required, whereas the FAL Convention requires only a passenger's visa number.
IMO Dangerous Goods Manifest (FAL form No 7) IMDG multimodal dangerous goods form	Notification of dangerous or polluting goods carried on board (Article 13 of Directive 2002/59/EC) Declaration of dangerous goods (IMDG Code chapter 5.4)
Declaration of security described in Annex III until the adoption of a security form by the FAL committee (which will take place on 1 st January 2018 – according to FAL 40 amendments and in accordance with security information required under the SOLAS convention ¹¹).	Provision of security information prior to entry into a port of a Member State (Article 6 of Regulation (EC) No 725/2004)

⁹ Information based and modified in table contained in *Proposal for a Directive of the European Parliament and of the Council on reporting formalities for ships arriving in and/or departing from ports of the Member States of the Community and repealing Directive 2002/6/EC* {SEC(2009) 46} {SEC(2008) 47}, COM/(2009) 0011 final.

¹⁰ According to the latest amendments of Directive 2010/65 also an entry summary declaration is required, as stated in Article 36a of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code and Article 87 of Regulation (EC) No 450/2008 of the European Parliament and of the Council of 23 April 2008 laying down the Community Customs Code (Modernised Customs Code).

A relevant annex to the IMO General Declaration	Maritime declaration of health
Relevant box in the IMO General Declaration. As of 1 st January also declaration concerning an advance notification form for waste delivery to port reception facilities will enter into force.	Notification [of waste] (Article 6 of Directive 2000/59/EC)

The new Directive 2010/65 has not solved all the problems of international voyages raised by the shipowners lobby. First of all, the directive does not establish a new substantive facilitation for shipping but only confirms and orders the existing regulations of EU law. According to the EU internal market concept, cargo ships operating between ports located in the EU customs territory are treated under EU law like the ships not engaged in international voyage and, as such, they have already been exempted from the obligation to provide information contained in the FAL forms. Such an exception is applicable also to passenger ships¹². In other words, the directive does not solve the problems of facilitation for ships navigating both between EU and third-country ports and those ships constitute a majority of ships entering or departing from EU ports.

Secondly, the directive leaves outside the scope of alignment within the directive, certain reporting requirements derived from other legal acts of EU law (specified in the Annex A of the directive) and national law (according to the Annex C of the directive). Those additional requirements, comparing to the FAL forms, result from the need to safeguard an internal order and safety and to enforce customs, tax, immigration, environmental and sanitary facilities, and also from the *public order clause*¹³. However, they also cause that shipowners still need to meet many of the different requirements of the country concerned. Thirdly, also the lack of uniformity of the technical and functional matters relating to operating a single window system, is a weakness of the directive. The directive states only that the single entry point should be “*linking SafeSeaNet, e-Customs and other electronic systems*” and “*shall be the place where (...) all information is reported once*”

¹¹ Three additional declarations will enter into force as of 1 January 2018 which will bring the number of documents to twelve. These are: security-related information as required under SOLAS (International Convention for the Safety of Life at Sea, 1974), advance electronic cargo information for customs risk assessment purposes and an advance notification form for waste delivery to port reception facilities.

¹² Under Regulation 562/2006 as amended by Regulation 2016/399, OJ. 2016, L 77, p.1

¹³ *Ordre public* clause contained in Article 36 of the Treaty of Functioning of the European Union.

and made available to various competent authorities and the Member States". The important functional requirement is contained in Article 5 of the directive and states that a single window must be interoperable, accessible and compatible with the SafeSeaNet system. The lack of uniform technical model of a single window means that shipowners still need to be prepared to meet different technical requirements, upon which the system is used in any given country. Nevertheless, the requirement of interoperability and information exchange relating to the ship formalities among the authorities of the Member States and via SafeSeaNet, is a substantial added value of Directive 2010/65. It allows shipowners to modify the prepared set of documents for other authorities or the Member States (Article 5 (3) of Directive 2010/65) and somehow relaxes the lack of uniform national requirements as stated in Annex C of the directive.

However, it has to be appreciated that regardless of the weaknesses, the EU directive is an added value in comparison with the international regime. Firstly, it introduces an electronic transmission of documents and secondly, it establishes a single window, which is a significant simplification for shipowners and allows them to send one set of documents to the port state, rather than multiple sets to different authorities. Furthermore, the existence of the single window means that a ship entering two ports of the same Member State does not need to repeat reporting, and the reporting data remains visible within the single window for all the authorities of that country as well as their counterparts in other Member States.

3. IMPLEMENTATION OF DIRECTIVE 2010/65 INTO POLISH LAW

In Poland, the major obligations concerning the implementation of Directive 2010/65 are imposed on the maritime administration' authorities. Maritime administrative law is regulated mainly outside the Maritime Code in various legal acts. The basic relevant act is *The Marine Areas of the Republic of Poland and Maritime Administration Act*¹⁴. The obligation and competences conferred upon maritime administration authorities are distributed in a few others legal acts, among which the most important are: *The Maritime Safety Act*¹⁵, *The Shipping and Port's*

¹⁴ *Ustawa o obszarach morskich Rzeczypospolitej Polskiej i administracji morskiej*, dated 21st March 1995, Journal of Laws of 1991 No 32, item 131.

¹⁵ *Ustawa o bezpieczeństwie morskim*, dated 18th of August 2011, Journal of Laws of 2011 No 228, item 1368.

*Security Act*¹⁶, *The Prevention of Pollution from Ships Act*¹⁷. The maritime administration in Poland is organized as a two level administration: the central authority is the ministry competent for maritime economy¹⁸, while a director of the Maritime Office is the local authority. There are three maritime offices in Poland: in Szczecin, Gdynia and Słupsk.

The *Maritime Safety Act* has a fundamental importance for the implementation of Directive 2010/65. Under Article 91 of the above mentioned act, the National SafeSeaNet¹⁹ system has been established. Under the act in question also the National Coordinator of the National SafeSeaNet System has been established, who is assigned as the National Competent Authority (NCA), under the Interface and Functionalities Control Document (IFCD). The National Coordinator is supported by three local maritime authorities in fulfilment of his duties derived from EU law, including Directive 2010/65. What is more, according to Article 108 of *Maritime Safety Act*, the local maritime authorities are basically the competent authorities to whom the required reporting documents should be lodged by the shipmaster or any other person assigned by the ship operator.

The Polish SafeSeaNet contains two technical subsystems: the first one of monitoring maritime traffic (AIS, LRIT and data from radars). The second subsystem is designated to transfer information and consists of two elements: the Polish Harbours Information & Control System (PHICS) and the Maritime Safety and Security exchange information System (SWIBŻ²⁰).

According to Polish regulation, the FAL forms and the data required under the EU Directive are forwarded through PHICS. According to the concept of a national single window, as regulated in Directive 2010/65, the Polish regulator assumed that implementing of the functional single window is based on the two subsystems of national SafeSeaNet mentioned above, namely: PHICS and SWIBŻ.

SWIBŻ was designed in 2003, long before adopting Directive 2010/65 and it is one of the oldest among such systems in the EU. At the beginning, it was designed for the local Maritime Authority in Gdynia only, but now is a national system of distributing information between various Polish authorities, such and other local maritime authorities in Poland, the Polish Navy, SAR, the Meteorology Institute, the Hydrographical Office of the Polish Navy, the Polish Coast Guard,

¹⁶ *Ustawa o ochronie żeglugi i portów morskich*, dated 4th of September 2008, Journal of Laws of 2008 No 171, item 1055.

¹⁷ *Ustawa o zapobieganiu zanieczyszczeniu morza przez statki*, dated 16th of March 1995, Journal of Laws of 1995 No 47, item 243.

¹⁸ Since 2015 the Minister of Maritime Economy and Inland Navigation.

¹⁹ According to Directive 2002/59.

²⁰ *System Wymiany Informacji Bezpieczeństwa Żeglugi*.

the National Emergency Centre, the Customs Chamber, the Police as well as port managements and the European Agency of Maritime Safety (EMSA) and NATO's Allied Maritime Command in Northwood, UK. The main function of SWIBŻ is gathering information important for classification and distributing the maritime safety and security.

PHICS was launched in 2004 in the Maritime Office in Szczecin and since then it has been the basic exchange information system about cargo and passengers ships entering or departing from the Polish ports. PHICS has also become the Polish single window, fulfilling the requirement imposed in Article 5 of Directive 2010/65. As a single window, PHICS is a system through which the shipmaster or the ship operator can fulfil all the reporting obligations in relation to the State authorities and other entities (the port authorities for example). After fulfilment of the required formalities into PHICS, all the interested entities are able to get access to the data gathered as a participant of a PHICS system. Access to the PHICS and SWIBŻ is regulated under the Regulation of the Ministry of Transport, Architecture and Maritime Economy on the National Vessel Traffic Monitoring and Information System²¹. PHICS is a system operating in the relation: ship-port-State authorities, compatible with the National Maritime Safety and Security exchanges information System (SWIŻB) and SafeSeaNet. The system mentioned covers also all the maritime universities and schools²².

The data required by the Polish law is fully complied with the FAL Convention and Directive 2010/65, both as to the content of the required data and as to the deadlines of providing thereof. According to the Polish regulations the documents required are: the pre-notification formalities for extended PSC control according to Directive 2009/16²³ on port State control, pre – notification, General Declaration (FAL form 1), Cargo Declaration (FAL form 2), Ship's Stores Declaration (FAL form 3), Crew's Effects Declaration (FAL form 4), Crew List (FAL form 5), Passenger List (FAL form 6), Dangerous Goods (FAL form 7), Maritime Declaration of Health²⁴ and Notification of waste, according to Article 6 of Directive 2000/59/

²¹ *Rozporządzenie Ministra Transportu, Budownictwa i Gospodarki Morskiej* dated 4th December 2012 w sprawie Narodowego Systemu Monitorowania Ruchu Statków i Przekazywania Informacji, Journal of Laws of 2012, item 1412.

²² Since 1st January 2017 they have been obliged to register all the courses and trainings in PHICS.

²³ OJ L 131, 28th of May 2009, pp. 57–100.

²⁴ The basic Polish regulation for the mentioned forms are the Maritime Safety Act and delegated acts: a) Regulation of the Minister of Transport, Construction and Maritime Economy dated 22nd June 2012 on general information form and ship reporting forms (*Rozporządzenie Ministra Transportu, Budownictwa i Gospodarki Morskiej w sprawie formularza ewidencyjnego oraz formularzy sprawozdawczych dla statków morskich*, Journal of Laws of 2012 item 761). The regulations mentioned cover the FAL form 1-7 and Maritime Declaration of Health; b) Regulation of the Minister

EC on port reception facilities for ship-generated waste and cargo residues²⁵. FAL form 1 should be notified immediately after entering the port by a ship, the remaining of the above mentioned documents have to be notified (according to EU law), at least 24 hours in advance, or at the latest, at the time the ship leaves the previous port, if the voyage time is less than 24 hours; or if the port of call is not known or it is changed during the voyage, as soon as this information is available. According to the Polish regulations, the security notification is a part of the pre-notification form and as such, has to be notified at least 24 hours in advance on the ship prearrival security information form²⁶.

CONCLUSION

The Polish regulation is fully in compliance with both, the FAL Convention and more strict EU regulations contained in the EU directives (Directive 2010/65 and the regulations indicated in Annex A and Annex C of Directive 2010/65. The Polish regulation fulfils also the requirement contained in Article 5 (3) of Directive 2010/65) concerning the editing requirements of a national single window. The information sent to PHICS can be edited and subsequently transmitted and modified for other Polish authorities. Information sent is also resent to them directly, without any additional requirements imposed on a ship master/ship operator or any other person appointed by the ship operator. This seems to be the best response to the above mentioned weakness of the directive concerning the lack of

of Infrastructure dated 19th of February 2009 on prearrival notification (*Rozporządzenie Ministra Infrastruktury w sprawie wzoru formularza zgłoszenia wstępnego*, dated 19th of February 2009, Journal of Laws of 2009 No 34, item 268), which includes a ship prearrival security information form, as it is mentioned below in footnote 24; c) waste notification under Regulation of the Minister of Maritime Economy and Inland Navigation, dated 4th November 2016 and implements Article 4 of Directive 2010/65.

²⁵ OJ L 332, 28th December 2000, pp. 81-90.

According to the Prevention of Pollution from Ships Act and delegated Regulation of the Minister of Maritime Economy and Inland Navigation, dated 4th November 2016 (*Rozporządzenie Ministra Gospodarki Morskiej i Żeglugi Śródlądowej w sprawie przekazywania informacji o odpadach znajdujących się na statku* (Journal of Laws 2016 item 1851).

²⁶ According to the Shipping and Port's Security Act and delegated regulation of the Minister of Infrastructure dated 19th February 2009 on ship prearrival security information form (*Rozporządzenie Ministra Infrastruktury w sprawie wzoru formularza zgłoszenia wstępnego* dated 19th February 2009), Journal of Laws of 2009 No 34, item 268. Polish regulation implements Article 6 of Regulation (EC) No 725/2004).

uniform requirements on the technical model of a single window and makes the Polish solutions exemplary.

Another issue, irrespective of meeting, by Poland, the international and EU regulations, is the lack of development of the Port Community System (PCS) in Poland. According to the EU regulation, the existence of PCS is not required but only recommended, but PCS seems to be a standard in the modern European ports, such as La Havre (ADEMAR), London (PACE), Bremen (BHT), Ipswich, Liverpool (Detsin8) or Amsterdam and Rotterdam (PORTBASE). According to Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, in force since May 2016, the customs documents also have to be submitted in electronic formats and also in this area, Polish law is in compliance with the EU regulations as the Polish customs service works through PUESC²⁷ connected with the Integrated System of Financial Control²⁸ and other systems connecting the authorities. The simplified system of the customs clearances, implemented in the recent years in the Polish port(s), assumes completing the clearness in 24 hours and through one entry point. According to the EU and IMO position²⁹, the connection between state/public reporting systems and a private (port management) system, should simplify the ship clearance and result in further cost reduction. IMO also encourages to connecting terminals or port's systems with a national single window for ship formalities. It looks like all the tools for integrating public systems concerning ship formalities, customs and security requirements with private interest of ports, should be easily reached in Poland, but it has to be noticed that still, there is not much progress in completing the PCS system in Poland. It has to be emphasized once more, that in any way, that does not cause an infringement of EU or international law.

REGULACJE UNII EUROPEJSKIEJ DOTYCZĄCE UPROSZCZENIA FORMALNOŚCI SPRAWOZDAWCZYCH DLA STATKÓW W PRAKTYCE POLSKIEJ

Słowa kluczowe: konwencja FAL, formalności sprawozdawcze dla statków, pojedynczy punkt kontaktowy dla statków, morskie prawo UE.

²⁷ Platforma Usług Elektronicznych Służby Celnej, eng. Platform of Custom Electronic Service.

²⁸ Zintegrowany System Kontroli Finansowej.

²⁹ For example: *e-business possibilities for the facilitation of Maritime traffic*, FAL 38/5/2 dated 29th January 2013.

Abstrakt

Artykuł stanowi analizę najnowszych regulacji UE w zakresie minimalizowania formalności sprawozdawczych dla statków zawijających do portów państw UE. Analizie poddano także regulacje IMO w przedmiotowym zakresie, wskazując na pojawiające się w tym zakresie rozbieżności w prawodawstwie międzynarodowym i unijnym. Zaakcentowano także skutki owych rozbieżności. Na tym tle przedstawiona została polska regulacja wdrażająca zarówno postanowienia konwencji FAL, jak i prawo UE. W oparciu o analizę rozwiązań legislacyjnych i praktyki administracyjnej, Autorka stawia wniosek o wzorcowym charakterze polskiego modelu wdrożenia ramowego systemu unijnego.