

INFRINGEMENTS TO LOW SULFUR REGULATIONS IN OUR PORTS

Following two cases in three weeks, we would draw your attention on sulfur inspections and consequences of breach of regulations in the main French Atlantic coast ports.

The main difficulty for us is to provide Members / Clubs with accurate advices since the handling of these past files by French Authorities are quite different between ports.

General Procedure

The vessels berthed alongside in French port can be inspected in the context of a Port Inspection. It is now within the scope of the PSCO mission to control the sulfur content of fuels burnt while the vessel is berthed.

If it is found that the ship is in breach with the provisions of the article L218-2 of the French Environmental Code which requires the use of fuels with a sulfur content less than 0.1% by mass when the ship is in port for more than two consecutive hours according published schedules, the vessel is detained by PSC and the file passed to local Public Prosecutor.

First action to be taken: taking necessary corrective action to make the ship compliant with regulations either by using another complying fuel or bunkering compliant fuel is not available on board. Compliance is the condition for a lifting of the PSC detention.

Simultaneously the case is referred to the Public Prosecutor who can:

- *either consider having sufficient evidence to decide to pursue or not the Master
- *or instruct Maritime Police to carry out additional investigations.

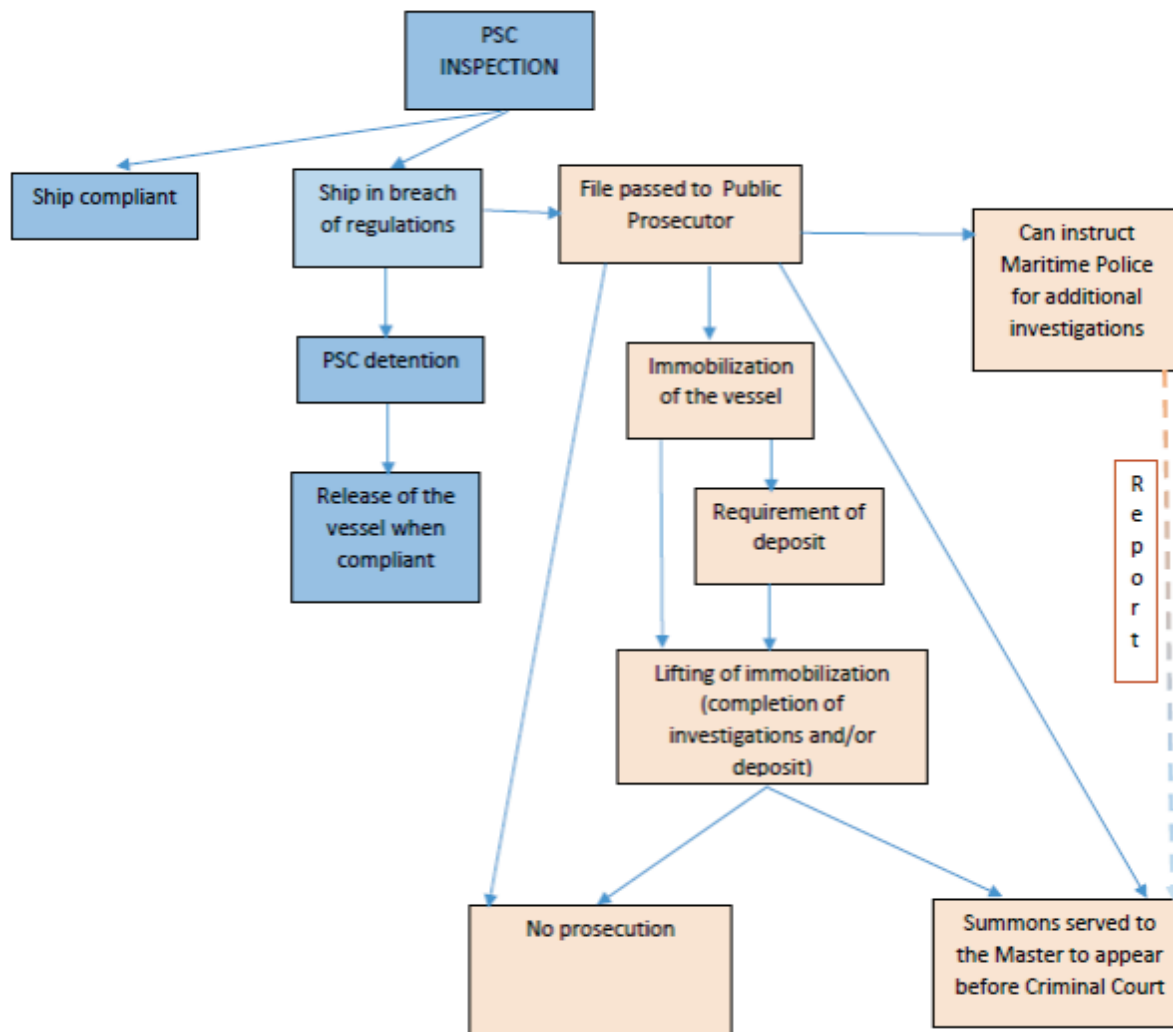
The Public Prosecutor can in the meantime consider that there are prima facie evidence enabling to charge the vessel and decide the immobilization of the vessel in port during investigations (different that administrative detention by PSC). This decision shall be served to the Master.

The Public Prosecutor can afterwards decide that the detention shall be lifted if a deposit is provided in cash, by wire transfer or certified cheque issued by a French Bank, in the hands of the Accountant of the First Instance Court (*Tribunal de Grande Instance*), and after completion of the necessary investigations. This shall also been notified to the Master.

Once administrative detention by PSC and immobilization of the vessel by Public Prosecutor have been lifted, the vessel will be allowed to sail.

The Master can be served, before departure or later (sometimes months later), with a summons to appear before Court.

The file will be taken over by the Public Prosecutor of Brest and the hearing will take place there.



Possible sanctions:

Penalty – if any – shall be based on breach of Environmental Code and are considered as criminal proceedings (hearing before Commercial Court).

In accordance with Article L. 218-15 of the French Environmental Code, the fact that, for every master of ship, to be guilty of such offenses is punishable by one year of imprisonment and 200,000 € fine max.

Either the Master only is summoned to appear before Court → he will bear the fine himself
 Or (art L218-23 environmental code) the Master and Owners are summoned. In this case the Judge will decide the apportionment of the fine (no provisions in the article)

Local Environment:

From our experience in the main ports we are covering, NANTES SAINT-NAZAIRE and LA ROCHELLE, it appears very difficult when a ship is pursued for infringement to low sulfur regulations to say Members/Clubs what is going to happen...

You will see from below sheet that for very minor excess at La Rochelle the Public Prosecutor instructs Maritime police, orders immobilization of the vessel and requests guarantee whereas for more important rates at Saint-Nazaire we never heard from the Public Prosecutor during the call.

Port	Results	Report of infringement	Detention PSC	Immobilization ordered by PP	Investigations PP	Deposit	Hearings
La Rochelle	0,21	x	x				
Lorient	0,34	x			x		
Montoir	0,21	x					
La Rochelle	0,35	x					
La Rochelle	0,15	x	x	x	x	20 000,00 €	04/06/2020
La Rochelle	0,15	x	x	x	x	20 000,00 €	04/06/2020
Montoir	0,26	x	x				

That is not to say however that the Master will not be summoned to appear before Court the following months.

This is why in our view it is important to have a surveyor attending to ascertain the causes or possible causes of the infringement in case of further prosecution.

8th November 2019

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