

## Summary of the Detention Case 27-02-2016

### General

#### Ground for detention

The ship was detained due to the following detainable deficiency:

10114 SAFETY OF NAVIGATION/Voyage data recorder (VDR)/Simplified Voyage data recorder (S-VDR) - THE DATE OF KEEL LAID IS 07-07-2014,BUT THE VDR FITTED ON BOARD NOT CONFORM TO THE REQUIREMENT OF RESOLUTION MSC.333(90).

#### Dispute

The flag State did not agree with the detention by the port State Authority and expressed views that:

1. Since VDR in question was ordered (February 2014), delivered (March 2014) and installed (June 2014) onboard the ship before 1 July 2014 therefore compliance with the performance standards required by Resolution A.861(20), as amended by Resolution MSC.214(81), would be sufficient;
2. The flag State requirements, based on Resolution MSC.333(90) and the IACS UI SC261, provide that:
  - a) S-VDRs to comply with Resolution MSC.163(78) as amended by Resolution MSC.214(81);
  - b) VDRs installed before 1 July 2014 to comply with Resolution A.861(20), as amended by Resolution MSC.214(81); and
  - c) VDRs installed on or after 1 July 2014 to comply with Resolution MSC.333(90).
3. As the VDR was installed before 1 July 2014, Resolution MSC.333(90) would not be applicable.

Based on the above, the flag State is of the opinion that the detention was unjustified.

The port State Authority is of the opinion that:

1. The IACS UI SC261 that was accepted by the flag State could not be used as the regulatory basis for this case because IACS UI SC261 was rejected at NAV59;
2. Date of keel laid for ship is the baseline for determining application of relevant convention requirements on construction and equipment; Since the date of keel laid of the vessel is 7 July 2014, structure and equipment of ship should meet the requirements and standards in force of that date; Therefore the VDR in question should be in compliance with MSC.333(90);
3. Based on the report of performance test, the date of installation of the VDR is June 2014 earlier than the date of keel laid of the ship; It is commonly understood that shipboard equipment would be installed after the keel laid; Furthermore, VDR system would need to access to and record data from various sources (e.g. rudder, main engine, major navigation equipment, etc.), it is practically impossible, giving consideration of the current shipbuilding

technology, for VDR to access to any items required to interface with the sources of input signals before ship's keel laid and completion of installation of associated equipment for VDR; and

4. The date of installation VDR indicated in the performance test report (i.e. June 2014) appears to be doubtful as the date of keel laid provided (i.e. 1 July 2014) is different from the date in ship's certificate (i.e. 7 July 2014); In addition, based on material available, the superstructure block, where the VDR was supposed to be installed, had not yet been assembled in June 2014 because it was still under construction; Taking the aforementioned into account, the installation date of VDR should not be in June 2014.

Based on the above, the detention was correct.

### **Opinions of the panel**

#### **Opinions in favour of the detention**

Two panel members considered the detention justified with the opinion that:

1. Based on the keel laid date of the ship, which was 7 July 2014, the VDR installed onboard should conform to the performance standard of Res. MSC.333(90);
2. Relevant exemption from the requirement or supporting document of the flag State was not available onboard for the consideration of PSCO at the time of inspection;
3. No proof of the flag State's acceptance of the interpretation of IACS UI SC261(which was not accepted by IMO at NAV59 actually) made known to the IMO; and
4. In accordance with Guidelines for the Detention of Ships (Appendix 2 to Res. A.1052(27)), it would be a detainable deficiency because VDR not conforming to Res. MSC.333(90) in this case is considered violation, taking the keel laid date into account.

Taking the above into account, the detention is justified. However, the PSCO should consider, based on the "Main criteria" for detention provided in Section 3.1-4 of the PSC Manual, if the deficiency would cause the ship unsafe to proceed to sea as VDR conforming to Res. A.861(20) is still allowed to be used on other ships.

#### **Opinions not in favour of the detention**

Seven panel members were of the view that the detention was not justified based on the following:

1. The interpretation of the phrase "installed on or after 1 July 2014" on application of Res. MSC.333(90) has not been clarified/defined. It is noted that, though NAV 59 did not agree with UI SC261, there was no new unified interpretation has been proposed either; As such, this matter would be depending on the determination by the Flag Administration;
2. Furthermore, for the application to the performance standards adopted by IMO to comply with the functional requirements of SOLAS Reg.V/20 that specifies the installation requirements of VDR, it is stipulated as "where applicable" in SOLAS Reg.V/18. Therefore, the "application" of Res. MSC 333 (90) which revised Res. A. 861 (20) is within the discretion of the Flag Administration and PSCO should respect the decision by Flag;
3. Although, generally speaking, the VDR installed onboard the ship should conform to Res. MSC.333(90), the VDR in question, which is complied with Res. A.861(20), passed

inspection by the RO and accepted by the flag State, would be considered functioning adequately;

4. The issue of VDR in this case would not be considered as a deficiency sufficiently serious to merit detention in accordance with the Guidelines for the Detention of Ships (Appendix 2 to Res. A.1052(27)) because it does not constitute absence or failure of proper operation; and

5. As a matter of fact that it was said that the VDR complied with new standards by Res. MSC.333 (90) were not available in the market at the time of 1 July 2014, from that point, the deficiency itself would not exist.

Based on the above, the detention is not justified.

### **Conclusion**

The majority of the panel members (7 of 9) are of the opinion that the decision of detention was not justified. Therefore, the port State Authority would be asked to re-consider the decision of the detention.