

COMMISSION OF THE EUROPEAN COMMUNITIES

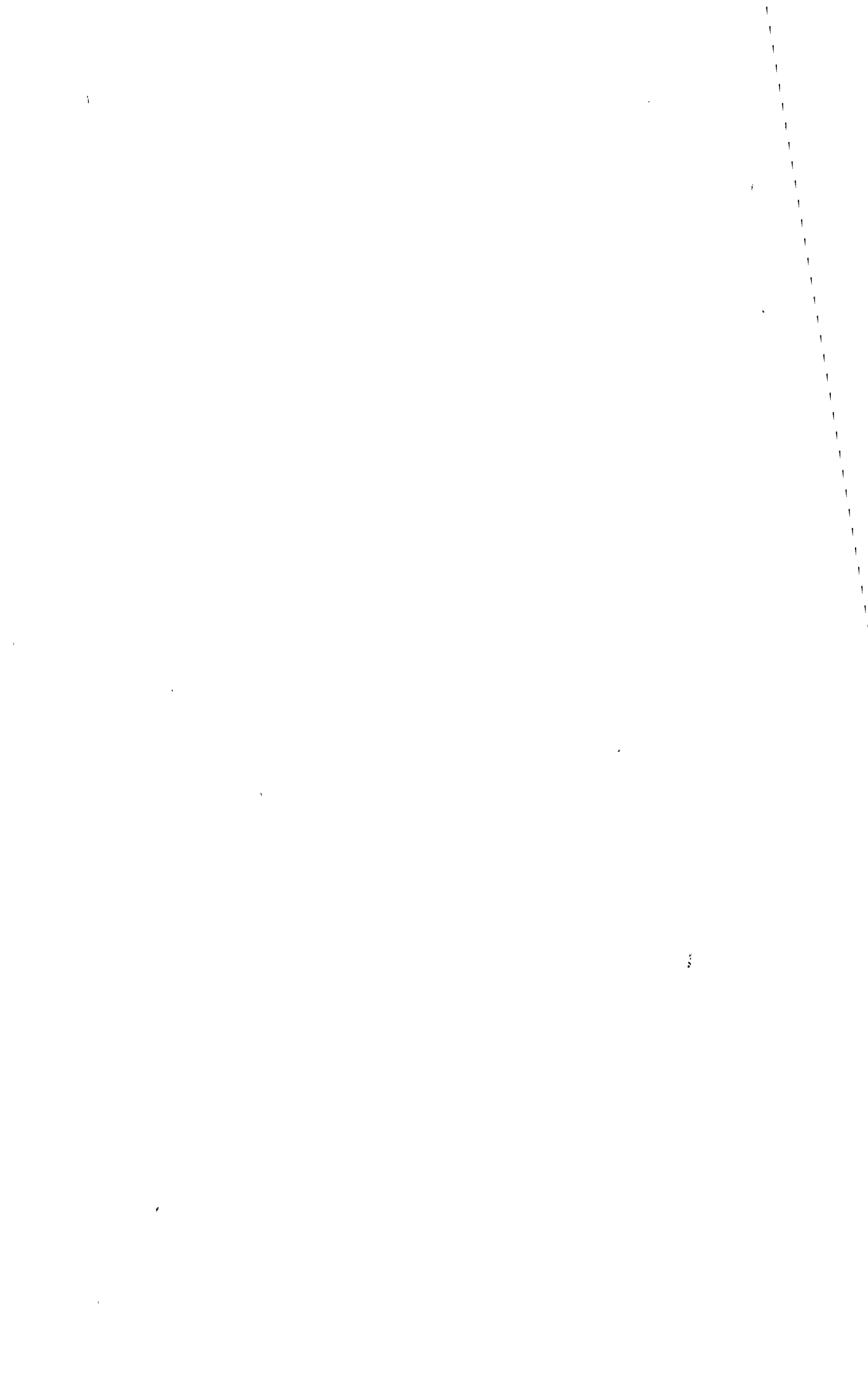
COM(76) 393 final

Brussels, 22 July 1976

PROPOSAL FOR A DIRECTIVE ON THE APPROXIMATION
OF THE LAWS OF THE MEMBER STATES RELATING TO
BOATS AND THEIR FITTINGS

(submitted by the Commission to the Council)

C(76) 393 final



EXPLANATORY MEMORANDUM

I. The incidence and nature of technical barriers to trade have become apparent only in the last fifteen years as international trade has grown and customs barriers have been lowered, thus throwing the technical barriers into ever greater relief.

At European Community level it therefore seemed that all efforts should be directed towards eliminating these barriers; their survival, relics that they are of the protectionist frame of mind and obstacles to the free movement of goods and therefore to the realisation of the common market, seemed an anachronism.

Hence in 1969, on a proposal by the Commission, the Council of the European Community adopted a "general programme to remove those technical barriers to trade resulting from differences between the laws, regulations and administrative provisions of the Member States (1). This programme was probably very ambitious but it was well thought out and balanced and has made possible the adoption of about fifty directives to date in a very wide range of industrial sectors (motor vehicles, measuring instruments, dangerous substances, crystal glass, textiles, agricultural and forestry tractors, etc).

In May 1973, on a proposal by the Commission, the Council adopted a supplement to the general programme (2) which included some new sectors, amongst them the "pleasure craft" sector.

Finally in December 1973 the Council adopted a Resolution on industrial policy (3) which was a timetable for completing the first part of an action programme on the abolition of technical barriers to trade in foodstuffs and industrial products, as provided for in the Paris Conference Declaration.

(1) OJ N° C 76/I, 17 June 1969

(2) OJ N° G-38/I, 5 June 1973

(3) OJ N° C 117/I, 31 December 1973

In order to keep to the deadlines as far as possible, the Community's work has been based on this timetable.

The Commission therefore began the work that was required to the schedule in the Resolution concerning industrial policy and felt that for this purpose and in view of the section connected with naval construction and more specifically the construction of "pleasure craft", it was both appropriate and necessary to set up a Working Party on the Removal of Technical Barriers to trade in Naval construction (Pleasure Craft), made up of experts from the Member States who were qualified to assist the Commission departments in drawing up proposals for directives for the sector concerned.

The provisions of Article 100 of the Treaty of Rome, which provides for the approximation of the laws, regulations and administrative provisions of the Member States, form the basis for this work. It is now evident that divergences exist between the requirements currently in force in some Member States and that these disparities are likely to increase, if, as is quite likely, new regulations are brought in by other Member States which at present have no legal provisions on the subject, or which act on recommendations.

As specified in the addition to the General Programme, the Commission has begun work, on the Community level, on establishing a clearly defined category for boats, namely pleasure craft.

2. In order to ensure the safety of pleasure craft, some of the Member States carry out various inspections which cover the individual parts, features and fittings of pleasure craft, and the pleasure craft themselves. Technical barriers can intervene at two levels : the mandatory technical specifications which differ from one Member State to the next, and the inspections which have to be repeated in different forms for each importing Member State.

The Commission is seeking to eliminate these two types of barrier by proposing a procedure for EEC type-approval for individual parts, features or fittings together with an EEC approval procedure for pleasure craft. The technical specifications and testing methods, in particular those covering the design or performance of individual parts, features or fittings of pleasure craft, as well as their installation and functioning as integral parts of a craft, will be the subject of specific directives.

Mutual recognition by the various Member States of the inspections carried out to ensure compliance with Community requirements is a concomitant of these procedures.

The method of approximation chosen is that of optional harmonization, with the possibility of subsequent total harmonization in certain clear-out-cases.

Total harmonization could be applied to the specific directives whose aim is to harmonize laws on those individual parts, features or fittings whose "safety" and "environmental protection" acts are shown to be essential.

3. Chapter I of this proposal for a directive is concerned with the scope of the directive and with definitions.

The scope is as wide as possible in the sense that it will be for the specific directives to fix the precise field of application in the light of particular technical requirements. For the definition of pleasure craft by type, the length will be taken as the basic parameter.

Chapter II sets out the rules and procedures relating to EEC type-approval and EEC approval, EEC type-approval being for the individual parts, features and fittings, and EEC approval for the pleasure craft themselves.

Lastly, Chapter III sets out the general and final provisions, particularly the procedure for adapting the provisions of the specific directives to technological progress.

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THE COUNCIL OF THE EUROPEAN COMMUNITIES

Having regard to the Treaty establishing the European Economic Community, and in particular Article 100 thereof;

Having regard to the proposal from the Commission;

Having regard to the Opinion of the European Parliament;

Having regard to the Opinion of the Economic and Social Committee;

whereas in some of the Member States the construction of pleasure craft must comply with certain mandatory technical requirements whereas checks to ensure that pleasure craft comply with these provisions are traditionally carried out before the craft are placed on the markets; whereas these checks are carried out on the individual parts and features of the pleasure craft and on certain fittings; whereas these requirements vary from one Member State to another and whereas this disparity hinders trade and could create unequal conditions of competition in the Community;

Whereas these barriers to the establishment and proper functioning of the common market can be reduced and even eliminated if the same requirements are applicable in all Member States either in addition to any existing national provisions or, where appropriate, in place thereof;

whereas bringing in Community requirements would enable undertakings to manufacture technically uniform production lines which could therefore be marketed and used throughout the Community once they had passed the EEC inspection;

whereas for this purpose provision must be made for the mutual recognition of testing methods among the Member States and for the introduction both of an EEC type-approval procedure for each type of individual part, feature or fitting in pleasure craft and of an EEC approval procedure for pleasure craft in respect of their individual parts, features and fittings;

whereas the separate implementing directives for the various individual parts, features or fittings will set out the requirements relating to their technical design, operation and installation in pleasure craft, the testing method and, where appropriate, the conditions subject to which the Community's technical specifications will be substituted for previously existing national provisions; whereas in order to determine the types of pleasure craft for which these individual parts, features or fittings are designed it will be useful to retain "length" parameter;

whereas technical progress requires prompt adjustment of the technical requirements specified in the specific directives referred to above; whereas the Commission should be given the task of adopting certain implementing measures; whereas, in order to facilitate implementation of the measures envisaged, reference should be made to the procedure establishing close cooperation between the Member States and the Commission within the Committee on the Adjustment to Technical Progress of the Directives on the Removal of Technical Barriers to the Trade in Industrial Products,

HAS ADOPTED THIS DIRECTIVE.

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CHAPTER I - Scope and definitions

Article I

The aim of this Directive is to approximate the laws, regulations and administrative provisions of the Member States relating to the individual parts of construction, features and fittings of pleasure craft as well as pleasure craft themselves. For information purposes a list of the individual parts, features and fittings of pleasure craft is annexed to this Directive.

Article 2

For the purpose of this Directive :

a) "pleasure craft" means any vessel or other craft used for navigation for pleasure.

The term "craft" applies to all pleasure craft as devined above.

b) "feature" means any design or performance characteristic of a craft.

c) "fittings" means any piece of equipment or any device which is essential for the operation and use of a boat.

d) "EEC type-approval" means the procedure by which a Member State certifies that the individual parts, features or fittings of a craft satisfy the technical requirements laid down in specific directives.

e) "EEC approval" means the procedure by which a Member State certifies that a craft satisfies the technical requirements laid down in specific directives in respect of the individual parts, features or fittings.

CHAPTER II - EEC type-approval and EEC approval

Article 3

- I. Application for EEC type-approval or EEC approval shall be submitted to a Member State by the manufacturer or the builder or by an authorised representative.
2. An application shall be accompanied by the information, plans and documents required by the specific directive relating to the individual parts, features or fittings of the craft, or to the craft itself for which EEC type-approval or EEC approval is requested.
3. An application for EEC type-approval or EEC approval may be submitted to one Member State only.

Article 4

- I. Each Member State shall :
 - (i) grant type-approval for any individual parts, features or fittings of a craft if they comply with the technical requirements laid down in the specific directives.
 - (ii) grant EEC approval for any craft in respect of its individual parts, features or fittings if these comply with the technical requirements laid down in the specific directives.
 2. The Member State which has granted EEC type-approval or EEC approval shall take the necessary measures to verify, and if need be in cooperation with the competent authorities of the other Member States, that production models conform to the approved type of the individual parts, features or fittings for which type-approval has been granted, or with the prototype for the craft approved.
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Special provisions on the conformity check of production can be established by specific directives.

- 3. The Member State shall complete all the sections of a type-approval or approval certificate required by a specific directive for each of the individual parts, features or fittings for which it grants type-approval or for each prototype for the craft for which it grants EEC approval in respect of any of its individual parts, features or fittings.

Article 5

- I. The competent authorities of each Member State shall, within one month, send to the competent authorities of the other Member States a copy of the data sheets and EEC type-approval or EEC approval certificate drawn up for each of the individual parts, features or fittings for which they grant or refuse type-approval, or for each prototype for a craft for which they grant or refuse EEC approval in respect of any of its individual parts, features or fittings.
- 2. If EEC type-approval is granted, Member States shall give the manufacturer or his authorised representative an EEC type-approval certificate or an EEC certificate of conformity in accordance with the provisions laid down in the specific directives. If EEC approval is granted, Member States shall give the boat-builder or his authorised representative an EEC approval certificate in accordance with the provisions laid down in the specific directives.

Article 6

1. The Member State which has granted EEC type-approval or EEC approval shall take the necessary measures to ensure that it is informed of any cessation of production and of any change in the particulars appearing in the data sheet.
2. If the Member State in question considers that such a change does not require an amendment to the existing type-approval or approval certificate or completion of a fresh type-approval certificate, the competent authorities of that State shall so inform the boat-builder and shall send the competent authorities of the other Member States, in periodic batches, copies of amendments to data sheets which have already been distributed.
3. If the State in question finds that an amendment to a data sheet warrants fresh checks or tests and that it is therefore necessary to amend the existing type-approval or approval certificate or to complete a fresh type-approval or approval certificate, the competent authorities of that State shall so inform the manufacturer or boat-builder and shall, within one month of such fresh documents being completed, send them to the competent authorities of the other Member States.
4. Where a type-approval or approval certificate is no longer valid because the type to which it relates has been taken out of production, the competent authorities of the Member States which granted type-approval or approval shall, within one month, inform the competent authorities of the other Member States of the cancellation of the type-approval or approval certificate.

Article 7

1. No Member State may prohibit the sale of any individual parts, features or fittings of a craft if they bear the EEC type-approval mark or are accompanied by an EEC certificate of conformity.
2. The EEC type-approval mark or EEC certificate of conformity shall not prevent a Member State from refusing the marketing of individual parts, features or fittings of a craft which do not conform to the approved types.
3. By derogation from paragraph 1 above Member States shall, where expressly provided for by the specific directives, take any necessary measures to ensure that no individual parts, features or fittings of a craft are sold unless they meet the requirements laid down in the abovementioned directives.

Article 8

1. No Member State may prohibit the sale or use of a craft on grounds connected with design or operation if it is accompanied by an EEC approval certificate.
2. This certificate shall not prevent a Member State from refusing the marketing or use of a craft or crafts which do not conform to the prototype for which EEC approval has been granted in respect of their individual parts, features or fittings.
3. By derogation from paragraph 1 above, Member States shall, where expressly provided for by the specific directives, take any necessary measures to ensure that no craft is sold or used unless it meets the requirements laid down in the abovementioned directives.

Article 9

- I. If the Member State which has granted EEC type-approval finds that any individual parts, features or fittings of a craft which bear the EEC type-approval mark or are accompanied by an EEC certificate of conformity do not conform to the type which it has approved, it shall take the necessary measures to ensure that production models conform to the approved type.
2. If the Member State which has granted EEC approval finds that craft for which EEC approval has been granted in respect of any of their individual parts, features or fittings do not conform to the prototype for the craft for which EEC approval has been granted, it shall take the necessary measures to ensure that the production models conform to the approved prototype.
3. The competent authorities of the Member State which has adopted the measures referred to in paragraphs I and 2 above shall advise the authorities of the other Member States of the measures taken, which may, where necessary, extend to withdrawal of EEC type-approval or EEC approval. The said authorities shall take like measures if they are informed by the competent authorities of another Member State of such failure to conform.
4. The competent authorities of the Member States shall inform each other, within one month, of any withdrawal of EEC type-approval or EEC approval and of the reasons for such a measure.

CHAPTER III : General and final provisions

Article IO

Any changes which are necessary to adapt the provisions contained in the specific directives to take account of technical progress and which are specified in each of those directives, shall be adopted in accordance with the procedure laid down in Article 12.

Article II

1. I. A Committee on the Adaptation to Technical Progress of the Directives on the Removal of Technical Barriers to Trade in the construction of boats and their fittings (hereinafter called the Committee) is hereby set up; it shall consist of representatives of the Member States and its chairman shall be Commission representative.
2. The Committee shall adopt its own rules of procedure.

Article I2

1. Where the procedure laid down in this Article is to be followed, matters shall be referred to the Committee by the Chairman either on his own initiative or at the request of the representative of a Member State.
2. The Commission representative shall submit to the Committee a draft of the measures to be adopted. The Committee shall deliver its Opinion on the draft within a time-limit set by the Chairman with due regard to the urgency of the matter. Opinions shall be adopted by a majority of forty one votes, the votes of Member States being weighted as provided for in Article I48 (2) of the Treaty. The Chairman shall not vote.

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3. a) The Commission shall adopt the measures envisaged where they are in accordance with the Opinion of the Committee.
- b) Where the measures envisaged are not in accordance with the Opinion of the Committee, or if no Opinion is delivered, the Commission shall without delay propose to the Council the measures to be adopted. The Council shall act by a qualified majority.
- c) If within three months of the proposal being submitted to it the Council has not acted, the proposed measures shall be adopted by the Commission.

Article I3

- I. All decisions taken pursuant to the provisions adopted in implementation of this Directive and which constitute a refusal or withdrawal of EEC type-approval or EEC approval, or the refusal of registration or prohibition of sale or use, shall state in detail the reasons on which they are based. The decision shall be notified to the Member State and party concerned, who shall at the same time be informed of the remedies available to him under the laws in force in the Member States and of the time-limits allowed for the exercise of such remedies.
2. Such decision shall at the same time be notified to the other Member States.

Article I4

- I. The Member States shall adopt and publish the provisions necessary for compliance with this Directive by 1 January 1978 and shall forthwith inform the Commission thereof. They shall apply these provisions as from 1 October 1978.
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2. Immediately after receiving notification of this Directive, the Member States shall also inform the Commission, in sufficient time for it to present its comments, of any draft laws, regulations or administrative provisions they intend to adopt in accordance with this Directive.

Article 15

This Directive is addressed to the Member States.

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ANNEXLIST OF INDIVIDUAL PARTS, FEATURES OR FITTINGS

- I. Hull
 - I.1. Wooden hull
 - I.2. Steel hull
 - I.3. Hull of other metal (aluminium, ...)
 - I.4. Reinforced plastic hull
 - I.5. Hull of coating fabric or similar material
 - I.6. Ferro-cement hull
 - I.7. Thermoplastic hull (ABS,...)
2. Cockpit
3. Life-rails
4. Steering gear
5. Openings in the hull superstructure
6. Propulsion machinery - auxiliary engine(s)
7. Fuel installation
8. Liquefied gas installation
9. Electrical fittings
- IO. Chief characteristics (procedure for checks)
 - IO.1. Overall length
 - IO.2. Beam
 - IO.3. Depth moulded
 - IO.4. Maximum weight of engines
 - IO.5. Maximum permissible power of engines
 - IO.6. Number of persons permitted on board
 - IO.7. Normal working sail area
 - IO.8. Displacement
- II. Stability, reserve buoyancy and sub-division

12. Pumping, drainage
13. Fire protection
14. Environmental protection
15. Individual and communal lifesaving gear
 - 15.1 Lifeboats
 - 15.2 Lifebelts
 - 15.3 Safety buoys
16. Mooring lines
17. Pyrotechnic devices
18. Lights and visual warning devices
19. Audible warning devices