



COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for a

COUNCIL DIRECTIVE

Setting up a Harmonized Safety Regime for Fishing Vessels  
of 24 metres in length and over

(presented by the Commission)



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## EXPLANATORY MEMORANDUM

### GENERAL INTRODUCTION

1. Safety of fishing vessels has always been of great concern to the European Community. Recognizing that fishing is among the most accident prone occupational activities known to man<sup>1</sup>, several initiatives were taken both at worldwide and at European level aiming at the improvement of this situation.

Although regrettably, no complete picture can be given of accidents with fishing vessels occurred within the European area, due to lack of consistent statistics in Member States. The figures presented in Appendix 1 demonstrate nevertheless the importance of this problem. The high rate of accidents has triggered the special attention of the Commission, on the one hand by the Programme of action on safety and health at work and on the other by the Common Transport Policy. The risks to which fishermen are exposed are often directly linked to the constructional requirements of the ship and to its safety equipment.

2. At Community level initiatives have focused so far essentially on the improvement of the working and living conditions of fishermen on board fishing vessels.

On 23 November 1993 the Council adopted Council Directive 93/103/EC concerning the minimum safety and health requirements for workers on board fishing vessels<sup>2</sup>. This Directive aims to ensure that new fishing vessels with a length of 15 metres or over and existing fishing vessels with a length of 18 metres or over, which are flying the flag of a Member State, are not endangering the safety and health of workers. In the framework of this Directive a set of minimum safety and health requirements related to the vessel and its equipment have been established. However these requirements are less detailed than those already embodied in international Conventions related to maritime safety.

3. At international level the situation is rather complex. The first meaningful step in this sector dates back to the seventies, with an attempt to achieve agreement on an international convention, laying down safety regulations for vessels of 24 metres in length and over.

In 1977, 45 countries including the 9 coastal Member States of the Community agreed in Torremolinos upon a safety regime for fishing vessels of a length of 24 metres or more and signed the International Convention for the Safety of Fishing Vessels, called the 1977 Torremolinos Convention.

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<sup>1</sup> For the period 1982-1991 not less than 1580 casualties (world-wide and only for vessels above 100 GT), with 1186 lives lost, were reported to Lloyds.

<sup>2</sup> O.J. L 307 of 13.12.93, p.1. This Directive is the 13 th individual Directive within the meaning of article 16(1) of Directive 89/391/EEC on the introduction of measures to encourage improvements in the safety and health of workers at work.

The Convention consists of over 200 pages of detailed regulations concerning the standards of construction to be applied essentially for new vessels, including the type and nature of equipment on all subjects which have a bearing on ship safety. These regulations broadly reflect the provisions of the 1974 International Convention for the Safety of Life at Sea (SOLAS), whilst taking due account of the particularities of fishing vessels.

Seven Member States (B, D, E, F, IT, NL and UK) have ratified the Convention, but, since the minimum required number of ratifications have never been achieved, the 1977 Convention has never entered into force.

The main reason for the non-ratification of the 1977 Torremolinos Convention, despite the efforts deployed at Community level<sup>1 2</sup>, was the unwillingness of the leading fishing countries to apply a stringent safety regime, copied from SOLAS, to smaller vessels (70 GT) operating mostly in coastal areas.

On a worldwide scale, the largest fleets are found in Japan, Russia, China, Korea, USA and the Philippines, and account for about 50% of the world fleet. Today this situation has hardly changed (see Appendix 1). This gives these countries effective power to determine whether or not the Convention would ever enter into force, thus mortgaging also all future worldwide initiatives.

4. A further weakness of the 1977 Torremolinos Convention concerned its scope of application, since its rules were limited to vessels with a length of 24 metres or more. Those fishing vessels represent only a tiny fraction (around 3%) of the total fleet, so that the impact of such Convention would have been limited in sheer terms of number of vessels affected, although clearly the larger ships account for a proportionally larger share of the catch.
5. Since the signature of the Torremolinos Convention in 1977 many modifications have been made to other relevant international safety instruments, and in particular to the SOLAS Convention, modifications which in principle should be introduced also into the Torremolinos Convention. For this reason the Maritime Safety Committee of the IMO initiated in 1990 the revision of the Torremolinos Convention. This revision was completed in 1993 at a new Conference, held in Torremolinos from 22/3 to 2/4, which adopted a Protocol to the 1977 Convention.

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<sup>1</sup> On 23 September 1980 the Council adopted a recommendation on the ratification of the Torremolinos Convention, O.J. L. 259 of 2.10.1980, p.29

<sup>2</sup> On 25 June 1984 the Commission presented a Proposal for a Council decision on the ratification of the Torremolinos Convention and the application of the provisions thereof by Member States pending the entry into force of the Convention at international level, O.J C 183 of 10.7.1984, p.17. Following on partly from a disagreement on the legal basis of the action (whether fisheries policy or transport policy) and differences discovered between the provisions of the Torremolinos Convention and the revised 1978 SOLAS Convention, the Commission proposal was never finalized at Council level.

The holding of a new conference provided also the opportunity to amend the Torremolinos 1977 Convention in such a way that it would become more attractive to those countries with the largest fishing fleets and thus creating the conditions necessary for entry into force of the convention or at least its Protocol. To this end the obligatory application of the main chapters of the revised Convention has been restricted to vessels of 45 meters and above. For vessels with a length between 24 and 45 meters application of the safety requirements is left to regional decisions. However no specific provision has been included in the Protocol ensuring that uniform regional standards could be applied to fishing vessels flying the flag of States not bound by the regional standard and operating in the region concerned. It is the opinion of the Commission that such a provision in any case is not strictly necessary since international law permits, as a condition to obtain a fishing licence, to impose regional construction rules on third flag vessels when fishing in the area covered by the licence and that these rules can also be imposed on third flags landing their catch in Community ports as a condition for port entry.

A summary of the Protocol and of the main chapters of the Annex to this Protocol is given in Appendix 2.

6. The revision of the 1977 Torremolinos Convention affected both the adoption process of the health and safety Directive mentioned under paragraph 2 and some aspects of the EU maritime safety policy.

In its proposal for a health and safety Directive<sup>1</sup> the Commission underlined that the revision of the Torremolinos Convention would not be interfered with, provided that it would result in a level of safety and protection for workers at least equivalent to that contained in the Commission's proposal. The Commission reserved the right to take measures to ensure that the Convention or similar provisions are applied as widely as possible to fishing vessels in the Community. This principle was reiterated in the Commission's Communication "A common policy on safe seas"<sup>2</sup>, where the Commission was ahead to conclude that the international solution, by limiting mandatory rules to vessels larger than 45 meters in length, does not provide the required answer for the Community. The Commission's conclusion was based on the fact that 85% of the fishing vessels above 100 GT in the Community having a length between 24 and 45 metres, the Protocol would have little effect on the safety level of the European fishing fleet. The next step was therefore the search for a Community solution - to be extended as far as possible to other countries of the European region - seeking a higher level of safety. The Commission announced then that its proposals for an harmonized safety regime for fishing vessels will be based upon the internationally agreed rules for vessels of 45 m in length and above, adapted as far as necessary, to take into account the local conditions of the areas where the vessels operate. The Commission proposed firstly to legislate on fishing vessels of 24 meters in length and over. According to EUROSTAT figures 4 % of Community fishing vessels in 1995 were over 24 m in length but these account for 57.4 % of the total

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<sup>1</sup> COM(91) 466 final-SYN 369 of 27/11/1991.

<sup>2</sup> COM(93)66 final of 24/2/1993

tonnage. The implementation of safety standards for vessels of 24 metres in length and above can therefore only be seen as a first step towards the realisation of a safety regime covering a larger segment of the European fishing fleet.

For vessels below 24 meters in length, the Commission is of the opinion that it is more appropriate to examine with the Member States whether further measures would be required to complement those already included in the health and safety Directive.

7. In the light of the application of the subsidiarity principle both the Commission and the Council, on the eve of the 1993 Diplomatic Conference, convened for the revision of the 1977 Torremolinos Convention, were of the opinion that with a view to ensure that the Community objectives related to the internal market and on fisheries would not be affected by the implementation of different construction standards, which may be the cause of distortion of competition, Member states as well as the Community should have the possibility to accede to the future Protocol. Community accession would in fact ensure that the Convention is brought into application within the Community at the same time, guaranteeing a uniform and simultaneous application of the rules in the Community and that the rules implementing the Convention are shaped in conformity with the relevant Community policies and that they apply in all the Member States to fishing vessels concerned operating in Community waters. To this end the Commission has transmitted to Council a Recommendation for a Council decision giving the Commission negotiating directives. This was denied by Council. However, Member States and the Commission tried jointly during the Torremolinos Conference to safeguard a uniform high level of safety, to preserve the right to adopt appropriate rules at Community level for vessels between 24 and 45 meters in length and the possibility for the Community to become a contracting party to the Protocol.
8. The results of the Torremolinos Conference ensured only one out of the three objectives.

Article 3(5) of the Protocol permits the development of regional arrangements ensuring the implementation of a uniform and coherent safety regime for all fishing vessels operating in European waters.

At the closure of the Conference the Commission was therefore in a position to announce that the European Community intends to initiate, among the European States which are parties to the European Economic Area, the development of the widest possible regional arrangement for vessels between 24 m and 45 m in length, which would be based to the largest extent possible on the provisions which, under the Protocol, would apply to vessels of 45 m in length and above.

The possibility for the Community to become a contracting party to the Protocol was denied by strong opposition of several countries. Faced with this reality, the Community declared that the Member States reserve the right to submit, to the IMO Assembly at a later stage, a proposal giving the possibility to become a contracting party to the Torremolinos Protocol. Since the need and added value of becoming a contracting party to the Torremolinos Protocol also arises for other maritime safety Conventions, such as the SOLAS and the STCW Conventions, the Commission does not want at this stage to re-open an institutional debate. Reserving the right of the



Community to exercise its competencies whenever and wherever appropriate the Commission informed the Member States in June 1994 that it had no objection to Member States signing or ratifying the Torremolinos Protocol where appropriate. The Commission further informed them that it rather prefers to concentrate its efforts upon the development of a coherent European safety regime, through an appropriate Community legislative instrument, in line with the view it expressed at the Torremolinos Conference and applicable to all fishing vessels operating in European waters.

On the interpretation as to whether or not regional agreements can be enforced on vessels of non-parties to such agreements, no decision on either option could be reached within IMO. In these circumstances the Member States and the Community remain free to apply their interpretation of the legal situation, which leaves room for applying a uniform regime to all fishing vessels operating in the same area.

9. With the aim to prepare an appropriate legislative instrument, meeting the need for a safety regime with a scope extended to fishing vessels with a length of 24 metres onwards and including fishing vessels flying the flag of third States, the Commission consulted the industry concerned (owners, shipbuilders, classification societies and fishermen) and the government experts of the Member States. Due to the E.E.A. dimension of the initiative the experts of Iceland and Norway were associated to these consultations. The consultations resulted in the annexed Proposal for a Council Directive on setting-up a harmonized safety regime for fishing vessels of 24 m in length and over.

## CONTENT OF THE PROPOSED COUNCIL DIRECTIVE

10. Having regard to the Torremolinos Protocol and in particular Article 3(5), which encourages States to establish uniform standards for fishing vessels of 24 m in length and over but less than the length limit prescribed for the application of certain chapters of the annex to the Protocol, and whereas the aim must be pursued of applying the regional safety rules to all fishing vessels with a length of 24 metres and over operating in the fishing zones of the Community, not only fishing vessels flying the flag of a Member State fall under the scope of the Directive, but also those of third States operating in the internal or territorial waters of a Member State or landing their catch in a port of the Community. With regard to fishing vessels operating in the fishing zones of the Community but outside the internal or territorial waters of a Member State and which do not land their catch in an E.U. port, their compliance with the EU rules will be achieved through appropriate fishery agreements with the concerned third States.

The standards laid down in the Directive are based upon, to the greatest possible extent, the 1993 Torremolinos Protocol, taking as far as necessary full account of regional and local circumstances.

Since the Member States, together with Norway and Iceland cannot ensure by their ratification or adherence an early entry into force of the Protocol, the Commission proposes that all fishing vessels flying the flag of an E.U. Member State apply the rules of the 1993 Protocol by 1 January 1998 at the latest. The proposed Council Directive will be relevant for the European Economic Area (EEA) and will be proposed for extension to the EEA Agreement. On the EEA/EFTA pillar this Council Decision will have particular relevance for Norway and Iceland.

Taking into account that the Protocol does not contain rules on essential life saving appliances nor on certification for existing fishing vessels of 24 m in length and over, the Commission considers this Directive as a first step, which should be followed by a second one ensuring that existing fishing vessels comply with an acceptable safety regime, as far as possible equivalent to the one proposed for new vessels. To this end the Commission intends to submit appropriate proposals before 1 January 1998. The Commission will also examine, in the light of the implementation of Council Directive 93/103/EC, the appropriacy of developing relevant safety rules for new fishing vessels of a length less than 24 m.

With regard to the construction and maintenance of hull, main and auxiliary machinery, electrical and automatic plants, it is proposed that these features shall comply with the standards specified for classification by the rules of a recognized organisation, or with an equivalent standard. This approach ensures consistency with similar measures adopted for other types of ships under the Directive on Common Rules and Standards for Ship Inspection and Survey Organisations, adopted by the Council on 22 November 1994<sup>1</sup>.

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<sup>1</sup> O.J. L 319, 12.12.94, p. 20

Marine equipment, listed in Annex A.1 to the Council Directive on Marine Equipment<sup>1</sup> and complying with the requirements of the latter, will be automatically considered to be in conformity with the provisions of this Directive, whether or not such provisions require that equipment must be approved and subjected to tests to the satisfaction of the Administration of the flag State.

Due attention has been paid to the need to ensure that the safety provisions of this Directive do not conflict with the application of other provisions of the Treaty or relevant EU legislation, such as the fishery policy and the free transfer of ships within the EU. With regard to the elimination of technical barriers to the transfer of vessels between Member States' national registers with the aim to facilitate the transfer of vessels within the Community and to free the owners from costs and administrative procedures involved in a change of register within the Community, the Commission refers to Council Regulation (EEC) N° 613/91<sup>2</sup>. Whereas this Regulation only applies to cargo ships complying to SOLAS, the Commission intends to propose to amend this regulation, bringing the fishing vessels covered by this Directive under the scope of the regulation.

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<sup>1</sup> Proposal for a Council Directive to be adopted by the Council in 1996.

<sup>2</sup> Council Regulation (EEC) N° 613/91 of 4 March 1991 on the transfer of ships from one register to another in the Community ,O.J. L 68, 13.3.91

## JUSTIFICATION FOR A COUNCIL DIRECTIVE

11. a) **What are the objectives of the proposal in relation to the obligations of the Community?**

The obligations of the Community in this context are the improvement of safety in maritime transport as foreseen in Article 84 (2) of the Treaty read in conjunction with Article 75 (1) (c). The objective of the action proposed is the establishment of a harmonized set of safety standards for fishing vessels flying the flag of a Member State as well as for vessels of third countries operating in the internal or territorial waters of the Member States or landing their catch in a Port of a Member State.

12. b) **Is the envisaged action solely the responsibility of the Community or a responsibility shared with the Member States?**

The envisaged action does not relate to an exclusive competence of the Community. The responsibility is shared with the Member States. The responsibility of the Community is to ensure a framework of rules providing a harmonized level of safety for fishing vessels operating in the same area. The responsibility of the Member States is to adopt within their own national legislation measures designed to ensure an effective application of the Directive.

13. c) **What is the Community dimension of the problem?**

All Member States are concerned as flag States. In addition they are subject to the common fisheries policy. Common safety requirements will also ensure that competition takes place on an equal level in Community waters without compromising safety standards.

14. d) **What is the most efficient solution taking into account the resources of the Community and the Member States?**

The most efficient solution is the setting-up of common safety requirements based to the utmost upon rules accepted on a broader international level, while leaving to the Member States, in their capacity as flag State and port State, the task of ensuring and monitoring the compliance with such requirements.

15. e) **What is the concrete added value of the action envisaged by the Community and what would be the cost of inaction?**

The Community has a major interest in the establishment of harmonized safety standards for fishing vessels in order to protect fishermen more adequately. Statistics demonstrate that all too often a high price is paid in terms of shipping casualties involving the loss of human lives. This has been recognized at international level and has prompted the International Maritime Organization to develop international safety requirements contained in the Torremolinos Convention and in the Torremolinos Protocol. The latter urges contracting parties, in view of the inherent risks involved in the operation of fishing vessels, to develop

uniform regional standards, as soon as possible, without awaiting the entry into force of the Protocol. Inaction of the Community with respect to the safety standards for fishing vessels not covered by international safety requirements would maintain the present unsatisfactory and non-harmonized safety level resulting from different standards contained within each Member State's national legislation for fishing vessels operating in European waters and falling under the common fisheries policy. Furthermore, common rules on ship safety are absolutely essential to set the basis for a level playing field amongst competing operators.

**16. f) What forms of actions are available to the Community?**

Despite the existence of an international convention, the Community is faced with unilateral actions undertaken by each Member State resulting in varying safety levels of national rules for the national fleets operating in waters falling under the scope of the common policy on fisheries.

Since it has been impossible for the Community to become a contracting party to the Torremolinos Protocol it remains uncertain that all Member States will ratify the Protocol and in addition no guarantees can be provided that this Protocol will effectively enter into force. Even should the Protocol come into force, vessels of 24 m in length and over but less than 45 m would not be covered by the main safety rules of the Torremolinos Protocol. Therefore the only form of action to achieve the objective of setting up an harmonized safety regime covering all fishing vessels of 24 m in length and over operating in Community waters is to introduce a binding measure, in the form of a Directive, thus avoiding divergent national measures.

It is therefore for the Council to adopt a Directive ensuring the implementation of internationally agreed standards, allowing however for appropriate and harmonized derogations or additional requirements in order to cope with specific situations. In this way, a uniform and harmonized level of safety requirements for fishing vessels operating in Community waters will be introduced, and distortion of competition amongst the fleets of the various Member States and third countries will be avoided.

**17. g) Is uniform legislation necessary or does a Directive setting the general objectives and leaving the execution to the member States suffice?**

In accordance with the proportionality principle, a Directive will be sufficient as this will establish common requirements at Community level to harmonize the safety level of fishing vessels flying the flag of a Member State and other flags operating in internal or territorial waters of a Member State or landing their catches in a port of a Member State, while leaving the choice of practical and technical procedures for implementation to each Member State. In so doing, this Directive leaves to each Member State the responsibility of deciding on the implementation tools which best fit its internal system.

## SPECIAL CONSIDERATIONS

### Article 1

This article defines the purpose of the Directive, that is to improve the safety of fishing vessels, by introducing a set of harmonized safety rules for new and existing fishing vessels of 24 metres in length and over, without prejudice to the provisions of Council Directive 93/103/EC of 23 November 1993 concerning the minimum health and safety requirements for work on board fishing vessels<sup>1</sup>.

The scope of this Directive covers fishing vessels of 24 metres in length and over, both new and also existing, in so far as the Annex to the 1993 Torremolinos Protocol applies to the latter, when flying the flag of a Member State or when operating in the internal or territorial waters of a Member State or landing their catches in a port of a Member State.

### Article 2

This article lays down the definitions of the key words of the Directive. These definitions are, to the largest possible extent, kept in line with those in the International Conventions, in particular the 1977 Torremolinos Convention and the 1993 Torremolinos Protocol.

### Article 3

This article lays down the general safety measures to be applied by a Member State in its capacity as Flag State to fishing vessels flying its flag, and in its capacity as Host State to fishing vessels, flying the flag of a third State and operating in the internal or territorial waters of that Member State or landing their catches in a port of a Member State.

Paragraph (1) calls on Member States to ensure compliance of all fishing vessels, flying their flag, with the requirements of the Annex to the 1993 Torremolinos Protocol, as far as these are applicable and unless not otherwise provided for in Annex I, by 1 January 1998.

Paragraph (2) sets out, in accordance with the principle of Article 3, paragraph (4) of the 1993 Torremolinos Protocol, the requirements to be applied by a Member State to new fishing vessels with a length of 24 metres and over but less than the lower length limit of 45 metres specified in the Annex to the 1993 Torremolinos Protocol for the application of its Chapters IV, V, VII and IX. It requires that by 1 January 1998 such fishing vessels, when flying the flag of a Member State, shall comply with the requirements of Chapters IV, V, VII and IX of the Annex to the 1993 Torremolinos Protocol, unless otherwise provided in Annex II.

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<sup>1</sup> OJ L 307 of 13 December 1993, p.1

Paragraph (3) deals with the specific requirements to be applied to fishing vessels operating in specific areas, where geographical - and in particular climatic - conditions, justify to amend the general safety requirements by specific requirements to take into account these conditions. The specific areas and the specific conditions to be applied in these areas are defined in Annex III.

Paragraph (4) lays down the measures to be applied by a Member State, in its capacity as Host State, to fishing vessels flying the flag of a third State. It requires as a condition for such vessels to operate in a Member State's waters or to enter a member state's port to land their catch, that they shall be certified by their flag State Administration to comply with the requirements of articles 3 and 7 .

Finally paragraph (5) provides for the automatic recognition of marine equipment for the purpose of this directive, if such equipment is listed in Annex A.1 to the Council Directive on Marine Equipment and is complying with all requirements of that Directive.

#### **Article 4**

The geographical, and especially the climatic, characteristics of Member States' fishing waters can be very different. It is the aim of this article to cover those cases where specific safety measures due to local circumstances are necessary to enhance safety in that area. The same applies for the characteristics of some types of fishing vessels, such as their construction material, which require specific measures. Any Member State wishing the establishment of such measures may submit to the Commission a request for their adoption. The Commission assisted by the Advisory Committee will decide upon the adoption of such proposed measures, in accordance with the procedure set up in article 11.2. All measures so adopted shall be added to Annex III.

#### **Article 5**

This article lays down the rules of game to be applied if a Member State wishes to avail itself of the provisions of regulation 3, paragraph 3, of Chapter 1 of the Annex to the 1993 Torremolinos Protocol to exempt fishing vessels , operating solely in near the coast of that Member State, from any of the requirements of the Annex to the 1993 Torremolinos Protocol.

Any Member State availing itself of such provision shall submit due notification to the Commission. The Commission assisted by the Advisory Committee may require the Member State to withdraw or modify the proposed measures for granting exemptions , in accordance with the procedure set up in article 11.

In order to avoid abuses of the above provisions for adopting measures to grant exemptions, it is absolutely necessary that the specific conditions in which these measures may be applied are clearly specified in the national legislation, and that they shall be applied without discrimination to the ship's flag or the nationality or place of establishment of the shipoperator. These measures shall only apply for so long as the ship is operating under specified conditions.

## **Article 6**

A provision for adopting measures allowing equivalents has been provided for, similar to the provisions for equivalents provided for in Regulation 4, paragraph 1, of Chapter 1 of the Annex to the 1993 Torremolinos Protocol. The same Committee procedure as for the granting of exemptions has to be followed by a Member State availing itself the application of this provision.

## **Article 7**

To ensure optimum condition of the hull, main and auxiliary machinery and electrical and automatic plant it is compulsory that the design, construction and the maintenance of these features are surveyed in order to ensure conformity with the standards specified for classification by the rules of a "recognised organisation".

These "recognised organisations" are accurately defined in the Council Directive 94/57/EC<sup>1</sup> as organisations professionally efficient, reliable and able to maintain proper control of compliance with safety and environmental protection standards of the vessels they classify.

## **Article 8**

Bonafide certificates of compliance will prove that fishing vessels have been thoroughly inspected and are in accordance with the requirements laid down in the Directive. The certificates of compliance shall be granted either by the Administration of the flag State or by a recognized organisation which has been delegated the authority to carry out such surveys for the purpose of ascertaining the sound condition of the ship or craft.

Annex IV provides the format for the certificate of compliance. All fishing vessels falling under the scope of this Directive will have to carry on board a certificate of this nature in order to prove that the ship complies with the requirements laid down in the Directive.

The certificate of compliance will be subject to periodical renewals in accordance with the provisions of Regulation 11 of Chapter 1 of the Annex to the 1993 Torremolinos Protocol, following satisfactory compliance to periodical surveys, carried in accordance with the provisions of Regulation 6 of Chapter 1 of the Annex to the 1993 Torremolinos Protocol.

## **Article 9**

Paragraph (1) allows Member States, in their capacity as port State, to inspect fishing vessels operating in their internal or territorial waters or landing catch in their ports, in accordance with the provisions of Article 4 of the Torremolinos Protocol, in order to ascertain whether the condition of the vessel is in compliance with its certificate of compliance with this Directive.

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<sup>1</sup> O.J. N° L 319, 12.12.94, p. 20 on common rules and standards for ship inspection and survey organisations and for the relevant activities of maritime administrations.



Paragraph (2) stipulates the limitations of the port State rights of a Member State vis-à-vis fishing vessels flying the flag of a third State which are not operating in the internal or territorial waters nor landing catch in the ports of the said Member State. The provisions of paragraphs 2 and 3 of article 3 shall not be applied to such vessels, neither the provisions of the Torremolinos Protocol as long as the latter has not entered into force.

#### **Article 10**

This article allows the Commission to amend this Directive, in accordance with the procedure laid down in article 11, to adopt and incorporate provisions for harmonized interpretation of the regulations of the Annex to the Torremolinos Protocol, for mandatory application of the 1993 Torremolinos Conference recommendations and for the implementation of IMO Resolutions and Circulars relevant for a coherent application of the provisions of the Torremolinos Protocol. It also allows the Commission to amend the Annexes of the Directive, in order to be able take into account future developments in safety regulations at international level.

Without prejudice to the procedures for amending the Torremolinos protocol, the application, for the purpose of this Directive, of subsequent amendments thereto which have entered into force shall be decided upon in accordance with the procedure laid down in article 11.

#### **Article 11**

This article appoints the Advisory Committee instituted under Article 12 of the Council Directive 93/75/EC<sup>1</sup> and also describes the procedure which must be followed when the Directive establishes a Committee procedure. It is the type procedure I of article 2 of the Council Decision 87/373/EEC of 13 July 1987<sup>2</sup>.

#### **Article 12**

This article stipulates the procedure to be followed by the Commission to inform the IMO of the adoption of the Directive, in accordance with the provisions of article 3(5) of the 1993 Torremolinos Protocol.

#### **Article 13**

This article upholds the measures with which each Member State has to comply in order to enforce the Directive.

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<sup>1</sup> O.J. N° L 247, 05.10.93, p. 19 concerning minimum requirements for vessels bound for or leaving Community ports and carrying dangerous or polluting goods.

<sup>2</sup> O.J. N° L 197/33, 17.07.97, Council Decision 87/373/EEC of 13 July 1987, laying down the procedures for the exercise of implementing powers conferred on the Community.

**Article 14**

No comments

**Article 15**

No comments

## APPENDIX 1

### STATISTICAL INFORMATION

#### 1. OVERVIEW OF THE COMMUNITY FISHING FLEET OF THE MEMBER STATES IN NUMBERS OF VESSELS (as per 1 st January 1996)

|     | 0 ≤ L < 12m | 12 ≤ L < 24m | 24 ≤ L < 30m | 30 ≤ L < 36m | 36 ≤ L < 45m | L ≥ 45m | total  |
|-----|-------------|--------------|--------------|--------------|--------------|---------|--------|
| B   | 1           | 79           | 37           | 36           | 1            | 0       | 154    |
| D   | 1943        | 391          | 38           | 16           | 2            | 16      | 2406   |
| DK  | 3755        | 973          | 60           | 88           | 55           | 13      | 4944   |
| E   | 14515       | 2981         | 514          | 270          | 87           | 135     | 18502  |
| FIN | 3502        | 264          | 25           | 6            | 0            | 0       | 3797   |
| F   | 4837        | 1465         | 151          | 48           | 16           | 69      | 6586   |
| UK  | 8034        | 1436         | 262          | 119          | 90           | 27      | 9968   |
| GR  | 19043       | 1178         | 156          | 19           | 14           | 14      | 20424  |
| IRL | 892         | 388          | 39           | 27           | 9            | 8       | 1363   |
| I   | 10422       | 5148         | 624          | 125          | 24           | 23      | 16366  |
| NL  | 213         | 360          | 96           | 102          | 203          | 32      | 1006   |
| P   | 11461       | 878          | 156          | 48           | 13           | 39      | 12595  |
| S   | 2075        | 340          | 52           | 51           | 18           | 1       | 2537   |
| EU  | 80693       | 15881        | 2210         | 955          | 532          | 377     | 100648 |

#### 2. OVERVIEW OF THE COMMUNITY FISHING FLEET OF THE MEMBER STATES IN TONNAGE (as per 1 st January 1996)

|     | 0 ≤ L < 12m | 12 ≤ L < 24m | 24 ≤ L < 30m | 30 ≤ L < 36m | 36 ≤ L < 45m | L ≥ 45m | total   |
|-----|-------------|--------------|--------------|--------------|--------------|---------|---------|
| B   | 27          | 4948         | 6449         | 11297        | 372          | 0       | 23093   |
| D   | 4803        | 18397        | 7970         | 4340         | 515          | 42228   | 78253   |
| DK  | 12524       | 28211        | 8164         | 18800        | 20275        | 9397    | 97371   |
| E   | 38365       | 214607       | 96752        | 83918        | 44842        | 182627  | 661111  |
| FIN | 9304        | 8969         | 2936         | 1287         | 0            | 0       | 22496   |
| F   | 24376       | 63573        | 15548        | 10557        | 4541         | 62240   | 180835  |
| UK  | 30997       | 83110        | 42177        | 25602        | 28087        | 29170   | 239143  |
| GR  | 46588       | 39304        | 15513        | 5920         | 5051         | 9394    | 121770  |
| IRL | 5464        | 24573        | 5445         | 7032         | 2797         | 13343   | 58654   |
| I   | 28950       | 124537       | 61594        | 22807        | 6392         | 16601   | 260881  |
| NL  | 871         | 15541        | 8783         | 18781        | 71654        | 64779   | 180409  |
| P   | 15115       | 31077        | 22587        | 11987        | 4560         | 46146   | 131472  |
| S   | 4777        | 16442        | 6998         | 11395        | 7304         | 452     | 47368   |
| EU  | 222161      | 673289       | 300916       | 233723       | 196390       | 476377  | 2102856 |

3. NUMBER OF FISHING VESSELS OF 24 METRES IN LENGTH AND OVER REPORTED TO IMO<sup>1</sup>

| STATE              | NUMBER<br>OF VESSELS | % OF TOTAL<br>WORLD FLEET |
|--------------------|----------------------|---------------------------|
| Belgium            | 101                  |                           |
| Denmark            | 486                  |                           |
| Finland            | 31                   |                           |
| France             | 419                  |                           |
| Germany            | 156                  |                           |
| Greece             | 123                  |                           |
| Iceland            | 356                  |                           |
| Ireland            | 78                   |                           |
| Italy              | 237                  |                           |
| Netherlands        | 257                  |                           |
| Norway             | 546                  |                           |
| Portugal           | 246                  |                           |
| Spain              | 1.656                |                           |
| Sweden             | 92                   |                           |
| United Kingdom     | 386                  |                           |
| <hr/>              |                      |                           |
| Total E.E.A.       | 5.170                | 18,32                     |
| <hr/>              |                      |                           |
| ...                |                      |                           |
| ...                |                      |                           |
| Argentina          | 364                  |                           |
| Canada             | 418                  |                           |
| Chile              | 231                  |                           |
| China              | 4.384                | 15,53                     |
| Ecuador            | 330                  |                           |
| Hong Kong          | 1.355                |                           |
| Indonesia          | 125                  |                           |
| Japan              | 5.156                | 18,27                     |
| Morocco            | 148                  |                           |
| Panama             | 352                  |                           |
| Peru               | 403                  |                           |
| Philippines        | 895                  |                           |
| Rep. of Korea      | 2.337                | 8,28                      |
| Russian Federation | 2.253                | 7,98                      |
| South Africa       | 154                  |                           |
| Thailand           | 667                  |                           |
| United States      | 1.152                | 4,08                      |
| Venezuela          | 128                  |                           |
| ...                |                      |                           |
| ...                |                      |                           |
| <hr/>              |                      |                           |
| World total        | 28.215               | 100,00                    |
| <hr/>              |                      |                           |

<sup>1</sup> Extract from Document SFV-P/CONF 24 of 23 March 1993 presented at the latest Torremolinos Conference giving information for the fleet of the EU Member States and those States with a fleet larger than 100 vessels.

4. ANALYSIS OF CASUALTY STATISTICS FOR FISHING VESSELS WITH A LENGTH OF 24 METRES AND OVER

This information<sup>1</sup> results from figures provided for 1992 by Chile, France, Germany, Iceland, Netherlands, Norway, Spain, Sweden, United Kingdom, Vanuatu and Hong Kong.

|                                  |        |
|----------------------------------|--------|
| Total number of vessels reported | 6.440  |
| Number of total losses           | 33     |
| Number of fishermen reported     | 78.813 |
| Number of lives lost             | 40     |

5. INFORMATION ON TOTAL LOSSES OF EEA FISHING VESSELS OF MORE THAN 100 GT IN 1994,<sup>2</sup>

| <u>FLAG</u>    | <u>Name of vessel</u> | <u>Tonnage</u> | <u>Year of Built</u> |
|----------------|-----------------------|----------------|----------------------|
| United Kingdom | Heather Bloom         | 162            | 1992                 |
|                | Accord                | 474            | 1976                 |
|                | Adonis                | 220            | 1985                 |
|                | Larissa               | 361            | 1975                 |
| Spain          | Jugamar               | 638            | 1987                 |
|                | Peix del mar diez     | 268            | 1988                 |
|                | Botalon               | 443            | 1975                 |
|                | Idalsan               | 299            | 1975                 |
| Denmark        | Allesoe               | 570            | 1984                 |
|                | Ingun                 | 118            | 1977                 |
| Norway         | Lofottral III         | 1196           | 1990                 |

<sup>1</sup> Extract from information provided by the IMO Secretariat to the Flag State Implementation Sub-Committee (Doc FSI 3/5/2)

<sup>2</sup> Extract from Lloyd's Register World Casualty Statistics 1994

## APPENDIX 2

### **Protocol on Fishing Vessel Safety adopted in Torremolinos**

The Protocol on fishing vessels, adopted on 2 April in Torremolinos, Spain, is in fact a new international Treaty dealing with the safety of fishing vessels.

The Protocol was needed because the original Treaty (The 1977 Torremolinos Convention) has never entered into force and in the meantime has become outdated. The Protocol updates the parent Convention and takes account of technological evolution in recent years and the need to take a pragmatic approach towards the early ratification of an instrument which provides the appropriate legal regime needed to regulate the safety of fishing vessels and those who sail in them.

The Protocol, which amends and absorbs the parent Convention, also applies to fishing vessels of 24 metres in length and over, including those vessels that also process their catch. The purpose of the Protocol is to eliminate the provisions incorporated into the parent Convention which have caused difficulties for States, and thereby to enable it to be brought into force as soon as possible. The Protocol is also intended to take into account developments in fishing and in fishing vessel technology as they relate to the safety of fishing vessels and fishermen which have taken place in the years since the adoption of the 1977 Convention. The trend to exploit deep-water fishing grounds on a large scale and to conduct fishing operations in distant waters demands safer and more comfortable living and working conditions for fishermen. This has made it necessary for the fishing industry to design and build a new generation of modern and more sophisticated fishing vessels. To be successful in their operation, these vessels have to be fitted with advanced fish-finding and navigation equipment.

The general trend in modern designed fishing vessels, if they are to be economically profitable, must include improvements in machinery and fishing gear, improvements in safety features as a whole and better working conditions for fishermen. Safety provisions addressed by the Protocol include automatically controlled machinery spaces, improved lifesaving appliances, immersion suits and thermal protective aids, satellite communication systems and other components of the global maritime distress and safety system (GMDSS).

The articles of the Protocol include revised provisions for entry into force and new amendment procedures. The Protocol will enter into force one year after being ratified by 15 States with at least an aggregate fleet of 14,000 vessels, which is approximately equivalent to 50% of today's world fishing fleet of vessels of 24 metres in length and over.

An important innovation is contained in article 3(5), which allows for regional arrangements to be made to establish harmonized requirements for vessels which are 24 metres in length and over but which are below the length of application (which is higher than 45 metres) of chapters IV, V, VII and IX.

The technical provisions are contained in ten chapters. These are:

**Chapter I - General Provisions:**

This lists the provisions for application, exemptions, surveys and certification, similar to other technical maritime conventions recently amended.

**Chapter II- Construction, Watertight integrity and Equipment:**

This broadly updates relevant requirements set out in the 1966 Load Line Convention, as amended, for cargo ships.

**Chapter III - Stability and Associated Seaworthiness:**

While the stability requirements in the 1977 Torremolinos Convention are mainly maintained, this chapter has been editorially improved and amended in respect of operating conditions.

**Chapter IV - Machinery and Electrical Installations and Periodically Unattended Machinery Spaces:**

This chapter is applicable to new vessels of 45 metres in length and over and it follows, in principle, the pattern set in the requirements for machinery and electrical installations in passenger and cargo ships incorporated into other IMO instruments.

**Chapter V - Fire Protection, Fire Detection, Fire Extinction and Fire Fighting:**

This chapter is subdivided into two parts: part A is applicable to new fishing vessels of 60 metres in length and over, and contains provisions similar to the fire-protection requirements for cargo ships adopted by IMO. However, smaller fishing vessels, such as those between 45 and 60 metres in length, are subject to less stringent requirements, as provided in part B of this chapter.

**Chapter VI - Protection of the Crew:**

This chapter provides for safe working conditions on board.

**Chapter VII -Life-Saving Appliances and Arrangements:**

This chapter includes requirements for life-saving appliances and arrangements similar to those included in the International Convention for the Safety of Life at Sea, 1974 (SOLAS), as amended, and is divided into three parts. Part A deals with general matters applicable to new vessels of 45 metres in length and over. Some regulations, though, are applicable to both new and existing vessels in that length range. Part B deals with vessel requirements, including survival craft and rescue boats, having regard to the size range of the vessels concerned. Part C deals with life-saving appliance requirements, including construction, equipment, etc. of lifeboats, liferafts and rescue boats. Immersion suits and thermal protective aids are also included.

#### Chapter VIII - Emergency Procedures Musters and Drills:

This chapter is concerned with abandon ship procedures, periodical musters and fire drills, and training for emergencies .

#### Chapter IX - Radiocommunications:

This chapter follows closely the radiocommunication provisions laid down in the amended chapter IV of the 1974 SOLAS Convention and its 1988 Protocol on the global maritime distress and safety system (GMDSS). It applies to both new and existing vessels of 45 metres in length and over. However, implementation of the requirements for existing vessels may be deferred until 1 February 1999 or the date of entry into force of the Protocol, whichever occurs later.

#### Chapter X - Shipborne Navigational Equipment :

This chapter includes requirements which are equivalent to those given in, or expected to be adopted as amendments to, chapter V of the 1974 SOLAS Convention, which is the only chapter of that Convention which applies to all ships, i.e. new and existing ships, including fishing vessels, on all voyages.



**PROPOSAL FOR A COUNCIL DIRECTIVE SETTING UP A HARMONIZED SAFETY REGIME FOR FISHING VESSELS OF 24 METRES IN LENGTH AND OVER.**

The Council of the European Union,

Having regard to the Treaty establishing the European Community, and in particular Article 84 (2) thereof,

Having regard to the proposal from the Commission<sup>1</sup>,

In cooperation with the European Parliament<sup>2</sup>

Having regard to the opinion of the Economic and Social Committee<sup>3</sup>,

Acting in accordance with the procedure referred in Article 189 c of the Treaty<sup>4</sup>

Whereas Community action in the sector of maritime transport should aim at the improvement of maritime safety;

Whereas the 1993 Torremolinos Protocol on the Safety of Fishing Vessels has been adopted on 2 April 1993;

Whereas the enforcement of this Protocol at Community level for fishing vessels flying the flag or operating in the internal or territorial waters of a Member State or landing their catch in a port of a Member State will enhance the safety of such fishing vessels as various national legislations do not yet meet the safety level established by the Protocol; whereas such a common safety level will harmonize the different and varying national safety requirements ensuring that competition will take place on an equal level for fishing vessels operating in the same area without compromising on safety standards ; whereas action by the Community is therefore necessary;

Whereas several important chapters of the Protocol apply only to fishing vessels of 45 metres in length and over; whereas limiting the application of the Protocol at Community level only to such vessels would create a safety gap between the latter and smaller fishing vessels of 24 metres in length and over but less than 45 m, and distort competition to the prejudice of fishing vessels flying the flag of those Member States which already apply comparable high safety standards to such smaller fishing vessels;

Whereas the Directive responds to article 3(5) of the Protocol, which encourages States to establish uniform standards for fishing vessels of 24 m in length and over but less than the length limit prescribed for the application of certain chapters of the annex to the Protocol, operating in the same area or region, in order to apply these chapters to such vessels, taking into account the type, size and mode of operation of such vessels, as well as the sheltered nature and climatic conditions in such area or region;

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<sup>1</sup> OJ

<sup>2</sup>

<sup>3</sup>

<sup>4</sup>

Whereas the aim must be pursued of applying the safety rules of this Directive to all fishing vessels with a length of 24 metres and over operating in the fishing zones of the Community, irrespective of the flag they fly; whereas this must be achieved for fishing vessels flying the flag of third States through appropriate fishery agreements with the concerned third States.

Whereas the relevant provisions of Council Directives adopted under the social policy of the Community must continue to apply.

Whereas Member States shall apply to new, and where required to existing, fishing vessels of 45 metres in length and over the provisions of the Annex to the 1993 Torremolinos Protocol by 1 January 1998, together with the harmonised interpretations, footnotes and Conference recommendations, and relevant International Maritime Organisation resolutions and circulars and taking account of the relevant provisions listed in the Annex I ; whereas Member States shall apply also the provisions of the Chapters IV, V, VII and IX of the Annex to the 1993 Torremolinos Protocol, as adapted by annex II, to all new vessels of 24 m in length and over but less than 45 m flying their flag;

Whereas specific requirements can be justified for reasons relating to the exposed or sheltered nature of the waters certain fishing vessels operate in, the length of their journeys, their construction materials and the distance from the coast at which they operate, as listed in Annex III; Whereas such provisions have been developed for operation respectively in the Northern and Southern zones;

Whereas fishing vessels flying the flag of third States shall not be allowed to operate in the internal or territorial waters of a Member State or to land their catch in a Member State's port, and therefore compete with vessels flying the flag of a Member State, unless their flag State has certified that they comply with the technical provisions laid down in this directive;

Whereas marine equipment, listed in Annex A.1 to and complying with the requirements of the Council Directive on Marine equipment, when installed on board fishing vessels should be automatically recognized to be in conformity with the specific provisions imposed to such equipment in this Directive;

Whereas Member States could encounter local circumstances which justify the application of additional measures to all fishing vessels operating in a specific area; whereas in such cases they may request the Commission to adopt such measures; whereas the Commission shall, where appropriate, adopt such measures and insert them in Annex III, acting through a committee procedure.

Whereas Member States may consider it appropriate to adopt exemptions from the provisions of the Annex to the 1993 Torremolinos Protocol for fishing vessels operating under precise operational limitations; whereas they are entitled to adopt such measures provided the Commission, acting through the same committee procedure, does not oppose to them within six months from the notification of such proposals to the Commission;

Whereas the same procedure should apply where a Member State considers that equivalent requirements to those laid down in the Annex to the 1993 Torremolinos Protocol are to be accepted;

Whereas such exemptions or equivalents must be communicated by the Commission to the other Member States, and must be applied in a non-discriminatory manner;

Whereas at present there are no uniform international technical standards to which all new fishing vessels must conform at the building stage and during their entire lifetime, as regards their hull strength, main and auxiliary machinery and electrical and automatic plants; whereas such standards may be fixed according to the rules of recognised organizations or to equivalent standards to be decided by the national administrations, under the same terms and procedures as have been laid down in Council Directive 94/57/EC on common rules and standards for ship inspection and survey organisations;

Whereas it is necessary for the Member States to issue a certificate of compliance to fishing vessels which comply with the specific requirements of this directive;

Whereas, in order to alleviate as much as possible any distortion of competition, Member States acting as port States must apply the provisions of the Annex to the 1993 Torremolinos Protocol to all fishing vessels flying the flag of a third State once the Protocol has entered into force for the flag State in question;

Whereas the Commission must be allowed to amend the Directive in order to take account of progress on the safety of fishing vessels at Community or at international level; whereas the Member States must be involved in this process through their participation in an advisory committee; whereas the committee set up in article 12 of Council directive 93/75/EC can assume such an advisory function;

Has adopted this Directive :

## **Article 1 (Purpose)**

1. The purpose of this Directive is to lay down safety standards for seagoing fishing vessels of 24 metres in length and over, both new, and existing in so far as the Annex to the 1993 Torremolinos Protocol applies to the latter, and
  - flying the flag of a Member State and registered in the Community, or
  - operating in the internal or territorial waters of a Member State,
  - or landing their catch in the port of a Member State.
  
2. This Directive is without prejudice to the provisions of Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work<sup>1</sup>, its individual Directives and, in particular Council Directive 93/103/EC of 23 November 1993 concerning the minimum health and safety requirements for work on board fishing vessels (thirteenth individual directive in the meaning of Article 16 (1) of Directive 89/391/EEC)<sup>2</sup>.

## **Article 2 (Definitions)**

For the purpose of this Directive including its annexes:

1. **"fishing vessel"** means any vessel equipped and used for commercial purposes either for catching or catching and processing fish or other living resources of the sea;
  
2. **"new fishing vessel"** means a fishing vessel for which :
  - (a) on or after 1 January 1998 the building or major conversion contract is placed; or
  - (b) the building or major conversion contract has been placed before 1 January 1998, and which is delivered three years or more after that date ; or
  
  - (c) in the absence of a building contract, on or after 1 January 1998 :
    - (i) the keel is laid; or
    - (ii) construction identifiable with a specific ship begins; or
    - (iii) assembly has commenced comprising at least 50 tonnes or one per cent of the estimated mass of all structural material, whichever is less;

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<sup>1</sup> OJ L 183 29.06.89 p.1

<sup>2</sup> OJ L 307 13.12.93 p.1

3. **"existing fishing vessel"** means a fishing vessel which is not a new fishing vessel;
4. **"Torremolinos Protocol"** means the Torremolinos Protocol of 1993 relating to the Torremolinos International Convention for the Safety of Fishing Vessels, 1977<sup>1</sup>, together with the amendments thereto [and related Resolutions of mandatory status adopted by the International Maritime Organization (IMO) at the date of adoption of this Directive and listed in Annex V];
5. **"Torremolinos Convention"** means the Torremolinos International Convention for the Safety of Fishing Vessels, 1977.
6. **"Certificate"** means the Certificate of Compliance referred to in article 8.
7. **"length"** means, unless expressly provided otherwise, 96 per cent of the total length on a waterline at 85 per cent of the least moulded depth measured from the keel line, or the length from the foreside of the stem to the axis of the rudder stock on that waterline, if that be greater. In vessels designed with rake of keel the waterline on which this length is measured shall be parallel to the designed waterline.
8. **"operating"** means catching or catching and processing fish or other living resources of the sea without prejudice of the right of innocent passage in the territorial sea and the freedom of navigation in the 200-mile fishing zone.
9. **"recognised organization"** means an organization recognized in conformity with article 4 of Council Directive 94/57/EC on common rules and standards for ship inspection and survey organizations and for the relevant activities of maritime administrations<sup>2</sup>.

### Article 3 (General requirements)

1. Member States shall ensure that the provisions of the annex to the Torremolinos Protocol, unless otherwise provided for in Annex I, are applied to fishing vessels flying their flag by 1 January 1998 at the latest.
2. As far as the requirements of Chapters IV, V, VII and IX of the annex to the Torremolinos Protocol which are applicable to vessels of 45 m in length and over do not apply to vessels of less than 45 m in length, and unless otherwise provided for in Annex II, Member States shall ensure that they are applied by 1 January 1998 at the latest to new fishing vessels of 24 metres in length and over but less than 45 metres, flying their flag.

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<sup>1</sup> published by the International Maritime Organisation.(IMO-793E)

<sup>2</sup> OJ L 319 12.12.94 p.20

3. However, Member States shall ensure that vessels flying their flag operating in specific areas shall comply with the provisions for the relevant areas, as defined in Annex III.
4. Member States shall prohibit fishing vessels flying the flag of a third State to operate in their internal or territorial waters or to land their catch in their ports unless they are certified by their flag State Administration to comply with the requirements referred to in paragraphs 1, 2 and 3 and in article 7.
5. Marine equipment, listed in Annex A.1 to the Council Directive on Marine Equipment<sup>1</sup> and complying with the requirements of the latter, when placed on board a fishing vessel to comply with the provisions of this Directive, shall be automatically considered to be in conformity with such provisions, whether or not these provisions require that the equipment must be approved and subjected to tests to the satisfaction of the Administration of the flag State.

#### **Article 4** **(Specific requirements)**

1. Member States which consider that local circumstances or the vessel's particulars require specific safety measures for fishing vessels operating in a certain area, may submit to the Commission a request for adoption of such specific safety measures taking account of local circumstances such as the exposed nature of the waters these vessels operate in and the length of their journeys, or their particulars, such as their construction material. The measures shall be compatible with the principles of the EC Treaty concerning the free movement of goods and services.
2. The Commission shall decide upon such requests in accordance with the procedure laid down in article 11.2.

The measures adopted shall be added in Annex III.

#### **Article 5** **(Exemptions)**

Member States shall apply the provisions of Regulation 3 paragraph 3 of Chapter 1 of the Annex to the Torremolinos Protocol, for adopting measures containing exemptions, in accordance with the following procedure:

- a) The Member State which avails itself of the provision of this article shall notify the Commission of the measures it intends to adopt, including particulars to the extent necessary to confirm that the level of safety is adequately maintained.

Any such measure shall be applicable to all fishing vessels operating under the same specified conditions and shall not be limited to ships of a specified flag or operator or operators. The measures shall be compatible with the principles of the EC Treaty concerning the free movement of goods and services.

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<sup>1</sup> Proposal of a Council Directive to be adopted by the council in 1996

If within a period of 6 months from the notification the Commission, acting in accordance with the procedure laid down in article 11.2, considers that the proposed measures are not justified, it may require the said Member State to amend or not to adopt the proposed measures. Within that period and before the decision of the Commission, the Member State shall not adopt the proposed measures.

- b) Member States shall specify such adopted measures in the relevant national legislation and communicate them to the Commission, which shall inform the other Member States of all the particulars thereof.

The measures shall only be applicable as long as the fishing vessel is operating under the specified conditions.

#### **Article 6 (Equivalents)**

Member States may adopt measures allowing equivalents in accordance with Regulation 4 paragraph 1 of Chapter 1 of the Annex to the Torremolinos Protocol, subject to the procedure laid down in article 5.a) and b).

#### **Article 7 (Design, construction and maintenance standards)**

The design, construction and maintenance of hull strength, main and auxiliary machinery, electrical and automatic plants of new and existing fishing vessels of 24 m in length and over shall comply with the standard specified for classification by the rules of a recognised organization or equivalent rules in accordance with the procedure and subject to the conditions laid down in article 14 paragraph 2 of Council Directive 94/57/EC on common rules and standards for ship inspection and survey organisations<sup>1</sup>.

#### **Article 8 (Surveys and Certificates)**

1. Member States shall issue to fishing vessels flying their flag and complying with the requirements of articles 3 and 7, a certificate of compliance with the terms of this Directive, supplemented by a Record of Equipment and, where appropriate, exemption certificates. The certificate of compliance, Record of Equipment and exemption certificate shall have a format as laid down in Annex IV. The certificates shall be issued by the Administration of the flag State after an initial survey, carried out by the exclusive surveyors either of the Administration of the flag State itself or of a recognised organization, in accordance with the provisions of Regulation 6, paragraph (1)(a) of Chapter 1 of the Annex to the Torremolinos Protocol.

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<sup>1</sup> O.J. L 319 of 12.12.94

2. The periods of validity of the certificates referred to in paragraph 1 shall not exceed those established in Regulation 11 of Chapter 1 of the Annex to the Torremolinos Protocol. Renewal of the certificate of compliance, shall be issued after periodical surveys, in accordance with Regulation 6 of Chapter 1 of the Annex to the Torremolinos Protocol, have been carried out.

### **Article 9** **(Port State Control provisions)**

1. In exercising their inspection rights and obligations as port States, Member States shall ensure, in accordance with the provisions of article 4 of the Torremolinos Protocol and without discrimination with regard to flag or nationality of the operator, that fishing vessels operating in their internal or territorial waters or landing catch in their ports comply with the requirements of this Directive.
2. However, Member States shall not apply the provisions of article 3.4 to a fishing vessel flying the flag of a third State which is not operating in their internal or territorial waters nor landing its catch in their ports. Nevertheless, Member States shall apply to such vessels the provisions of the Torremolinos Protocol once it has entered into force for the State whose flag the ship flies.

### **Article 10** **(Amendments)**

In accordance with the procedure laid down in article 11.2 the Commission may :

- a) adopt and incorporate provisions for :
  - a harmonised interpretation of provisions of the annex to the Torremolinos Protocol which have been left to the discretion of the Administrations of individual contracting parties,
  - the application of Torremolinos 1993 Conference recommendations and "footnotes",
  - the implementation of IMO resolutions and circulars relevant for a coherent application of the Torremolinos Protocol.
- b) without prejudice to the procedures for amending the Torremolinos Protocol, amend the Directive and its Annexes, to ensure the application, for the purpose of this Directive, of subsequent amendments to the Torremolinos Protocol which have entered into force after the adoption of this Directive.



**Article 11**  
**(Advisory Committee)**

1. The Commission shall be assisted by the Committee established by article 12.1 of Council Directive 93/75/EC<sup>1</sup>.
2. Where reference is made to this paragraph, the following procedure shall apply:
  - (a) the representative of the Commission shall submit to the Committee referred to in paragraph 1 a draft of the measures to be taken;
  - (b) the Committee shall deliver its opinion within a time limit which the chairman may lay down according to the urgency of the matter, if necessary by taking a vote;
  - (c) the opinion shall be recorded in the minutes; in addition each Member State shall have the right to have its position recorded in the minutes;
  - (d) the Commission shall take the utmost account of the opinion delivered by the Committee. It shall inform the Committee of the manner in which its opinion has been taken into account.

**Article 12**  
**(Notification to IMO)**

The Commission shall inform the International Maritime Organisation of the adoption of this Directive, whereby reference shall be made to article 3(5) of the Torremolinos Protocol.

**Article 13**  
**(Implementation)**

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 1 January 1998. They shall forthwith inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such a reference shall be laid down by Member States.

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<sup>1</sup> O.J. N° L 247, of 5.10.93, p.19 concerning minimum requirements for vessels bound for or leaving Community ports and carrying dangerous or polluting goods

2. Member States shall lay down the system of penalties for breaching the national provisions adopted pursuant to this Directive and shall take all the measures necessary to ensure that those penalties are applied. The penalties thus provided for shall be effective, proportionate and dissuasive.
3. Member States shall immediately communicate to the Commission all provisions of domestic law which they adopt in the field governed by this Directive. The Commission shall inform the other Member States thereof.

#### **Article 14**

This Directive is addressed to the Member States.

#### **Article 15**

The present Directive shall enter into force on the twentieth day after its publication.

**ANNEX I: Adaptation of provisions of the Annex to the 1993 Torremolinos Protocol for application of article 3.1 of Council Directive ../../EC.**

**CHAPTER I : GENERAL PROVISIONS**

**Regulation 2 : Definitions**

Paragraph (1) "New vessel" has to be replaced by the definition of "new vessel" contained in article 2.

**CHAPTER V :FIRE PROTECTION, FIRE DETECTION, FIRE EXTINCTION AND FIRE FIGHTING**

**Regulation 2 : Definitions**

Paragraph (2) "standard fire" test to be read with the following changes at the end with regard to the standard temperature curve :

"...The standard time-temperature curve is defined by a smooth curve drawn through the following internal furnace temperature points :

|                                      |          |
|--------------------------------------|----------|
| initial internal furnace temperature | 20 °C    |
| at the end of the first 5 minutes    | 576 °C   |
| at the end of 10 minutes             | 679 °C   |
| at the end of 15 minutes             | 738 °C   |
| at the end of 30 minutes             | 841 °C   |
| at the end of 60 minutes             | 945 °C " |

**CHAPTER VII : LIFE-SAVING APPLIANCES AND ARRANGEMENTS**

**Regulation 1 : Application**

Paragraph (2) to be read as follows :

"Regulations 13 and 14 shall also apply to existing vessels of 45 metres in length and over, provided that the Administration may defer the implementation of the requirements of these regulations until 1 February 1999."

**Regulation 13 : Radio life-saving appliances**

Paragraph (2) to be read as follows :

"Two-way VHF radiotelephone apparatus provided on board existing vessels and not complying with the performance standards adopted by the Organization may be accepted by the Administration until 1 February 1999, provided that the Administration is satisfied that they are compatible with approved two-way VHF radiotelephone apparatus."

## CHAPTER IX : RADIOCOMMUNICATIONS

### Regulation 1 : Application

Paragraph (1) to be read as follows :

"Unless expressly provided otherwise, this chapter shall apply to new and existing vessels of 45 metres in length and over. However, for existing vessels, the Administration may defer the implementation of the requirements until 1 February 1999."

### Regulation 3 : Exemptions

Paragraph (2)(c) to be read as follows :

"when the vessel will be taken permanently out of service before 1 February 2001."

**ANNEX II : Adaptation of provisions of the Chapters IV, V, VII and IX of the Annex to the 1993 Torremolinos Protocol, in accordance with article 3(4) of the latter, for application to new fishing vessels with a length of 24 metres and over but less than 45 metres.**

**CHAPTER IV**

**Regulation 1:**

to be read as follows :

*"Unless expressly provided otherwise, this chapter shall apply to new fishing vessels of 24 metres in length and over."*

**Regulation 7**

To be read with the following addition :

(cfr Regulation 45 of the Annex to the 1977 Torremolinos Convention):

*"Two separate means of communication ... shall be provided one of which shall be an engine room telegraph, except that in vessels of less than 45 meters in length, where the propulsion machinery is directly controlled from the wheelhouse, the Administration may accept means of communication other than an engine room telegraph."*

**Regulation 8**

Paragraph (1)(d) to be read with the following addition :

(cfr Regulation 46 of the Annex to the 1977 Torremolinos Convention) :

*"... or control room. On vessels of less than 45 metres in length the Administration may permit the control station in the machinery space to be an emergency station only, provided that the monitoring and control in the wheelhouse is adequate."*

**Regulation 16**

Paragraph (1)(b) to be read with the following addition :

(cfr Regulation 54 (1)(b) of the Annex to the 1977 Torremolinos Convention):

*"... sets being stopped. However, in vessels of less than 45 metres in length, in the event of any one of the generating sets being stopped, it shall only be necessary to ensure the functioning of the services essential for propulsion and safety of the vessel."*

## Regulation 17

Paragraph (6) to be read with the following insertion:

(cfr Regulation 55 (6) of the Annex to the 1977 Torremolinos Convention) :

"An accumulator battery fitted in accordance with this regulation, *other than batteries fitted for the radio transmitter and receiver in vessels of less than 45 metres in length*, shall be installed...".

## Regulation 22

Paragraph (2)(a) to be read with the following addition :

(cfr Regulation 60 (2)(a) of the Annex to the Torremolinos Convention):

"The alarm system... at a suitable position. *However, in vessels of less than 45 metres in length the Administration may permit the system to be capable of sounding and indicating visually each separate alarm function in the wheelhouse only.*"

Paragraph (2)(b) to be read with the following addition :

(cfr Regulation 60 (2)(b) of the Annex to the 1977 Torremolinos Convention):

"*In vessels of 45 metres in length and over the alarm system shall have a connection ...*"

Paragraph (2)(c) to be read with the following addition :

(cfr Regulation 60 (2)(c) of the Annex to the 1977 Torremolinos Convention):

"*In vessels of 45 metres in length and over an engineer's alarm ...*"

## CHAPTER V

### Regulation 2

Paragraph (14)(b) to be read with following change:

(cfr Regulation 2, §(45)(b) of the Annex to the 1977 Torremolinos Convention):

"... not less than  $3/5$  kilowatts"

## PART C

Replace the title as follows :

"PART C - FIRE SAFETY MEASURES IN VESSELS *OF LESS THAN 60 METRES IN LENGTH*"

### Regulation 40

Paragraph (1)(a) to be read with following change :

(cfr Regulation 101 of the Annex of the 1977 Torremolinos Convention)

"... of not less than 375 kilowatts..."

## CHAPTER VII

### Regulation 1

Paragraph (1) to be read with following changes:

- (1) : "Unless expressly provided otherwise, this chapter shall apply to new vessels of 24 metres in length and over"

### Regulation 5

1. Beginning of paragraph (3) to be read as follows :

(cfr Regulation 110 of the Annex to the Torremolinos Convention):

"Vessels of less than 75 metres in length *but of 45 metres in length and over* shall comply with the following:"

2. Read with a new paragraph (3 bis) :

(cfr text of paragraph (4)(a) and (b) of Regulation 110 of the Annex to the 1977 Torremolinos Convention) :

"(3 bis) *Vessels of less than 45 metres in length shall be provided with :*

(a) *survival craft of sufficient aggregate capacity to accommodate at least 200 per cent of the total number of persons on board. Sufficient of these survival craft to accommodate at least the total number of persons on board shall be capable of being launched from either side of the vessel; and*

(b) *a rescue boat, except where the Administration is satisfied that because of the size and the manoeuvrability of the vessel, the near availability of search and rescue facilities and meteorological warning systems, the operation of the vessel in areas not susceptible to heavy weather or the seasonal characteristics of the operation, such provision is unnecessary."*

3. Read paragraph (4) with the following addition :

"In lieu of meeting the requirements of paragraphs (2)(a), (3)(a) and (3 bis) (a), vessels may carry..."

### Regulation 10

1. Read sub-paragraph (1)(b) as follows:

(cfr Regulation 119 (1)(b) of the Annex to the 1977 Torremolinos Convention):

"6 lifebuoys in vessels of less than 75 metres in length *but 45 metres in length and over* ;"

2. Read a new sub-paragraph (1)(c) as follows :

(cfr Regulation 119 (1)(c) of the Annex to the 1977 Torremolinos Convention):

"(1)(c) *4 lifebuoys in vessels of less than 45 metres in length.*"

### Regulation 13

Insert a new paragraph (1)(bis) to read as follows :

*"(1)(bis) However, for vessels of less than 45 metres in length the number of such apparatus may be reduced to two, if the Administration considers the requirement to carry three such apparatus unnecessary taking into account the operation area of the vessel and the number of persons employed on board;"*

Paragraph (2) to be read as follows :

"Two-way VHF radiotelephone apparatus provided on board existing vessels and not complying with the performance standards adopted by the Organization may be accepted by the Administration until 1 February 1999, provided that the Administration is satisfied that they are compatible with approved two-way VHF radiotelephone apparatus."

### Regulation 14

To be read with the following addition at the end :

*"...in each survival craft. On every vessel of less than 45 metres in length at least one radar transponder shall be carried."*

## CHAPTER IX

### Regulation 1

Read paragraph (1) as follows :

"Unless expressly provided otherwise, this chapter shall apply to new vessels of 24 metres in length and over and to existing vessels of 45 metres in length and over. However, for existing vessels, the Administration may defer the implementation of the requirements until 1 February 1999."

### Regulation 3 : Exemptions

Paragraph (2)(c) to be read as follows :

"when the vessel will be taken permanently out of service before 1 February 2001."



**ANNEX III : Regional and local provisions (Articles 3.3 and 4.1)**

**1. "Northern" regional provisions :**

**.1 Area of application :**

Unless expressly mentioned otherwise elsewhere, the waters north of latitude 60 N, excluding the Baltic Sea

**.2 Definitions :**

**"Heavy drift ice"** is drift ice covering 8/10 or more of the sea surface.

**.3 ad Regulation III/7(1) (Operating conditions) :**

"In addition to the specific operating conditions given in regulation III/7(1) the following operating conditions shall also be considered :

(e) operating condition (b), (c) or (d), whichever produces the lowest values of the stability parameters contained in the stability criteria listed in regulation 2, shall be calculated including allowance for ice accretion in accordance with the provisions of regulation III/8.

(f) for purse seiners : departure from the fishing grounds with the fishing gear, no catch and 30 per cent stores, fuel, etc, including allowance for ice accretion in accordance with the provisions of regulation III/8."

**.4 ad Regulation III/8 (Ice accretion) :**

"The specific requirements of Regulation III/8 and the specific guidance given in Recommendation 2 by the Torremolinos Conference shall be applied within the region concerned, i.e. also outside the boundaries shown in the chart accompanying the said Recommendation."

"Notwithstanding the provisions of regulation III/8(1)(a) and (b) the following icing allowance shall be made in the stability calculations for vessels operating in the area north of latitude 63° N, between longitude 28° W and longitude 11° W :

(a) 40 kilogrammes per square metre on exposed weather decks and gangways;

(b) 10 kilogrammes per square metre for projected lateral area of each side of the vessel above the water plane."

.5 ad Chapter VII, Part B (new provision) :

"In addition to the provisions of Chapter VII, Part B, every lifeboat, rescue boat and liferaft shall contain an approved Emergency Position Indicating Radio Beacon (EPIRB), operating on the frequencies 121,5 MHz and 406 MHz, permanently stowed in each boat and raft. Alternatively for inflatable liferafts stowed in sealed containers and rescueboats the EPIRB's may be stowed in such locations that they can be rapidly placed in each of the liferafts once these are inflated, as well as in the rescueboats".

.6 ad Regulations VII/5 (2) (b) and (3) (b) (Number and types of survival crafts and rescue boats) :

"Notwithstanding the provisions of Regulation VII/5 (2) (b), (3) b), and (3 bis), for fishing vessels which hull is built to comply with the rules of a recognized organization for operation in waters with heavy drift ice concentration in compliance with regulation II/1/2 of the Annex to the 1993 Torremolinos Protocol, the rescue boat/lifeboat required in (2) (b), (3)(b) or (3 bis) (b) shall at least be partially covered (as defined in Regulation VII/18) and shall have sufficient capacity to accommodate all persons on board".

.7 ad Regulation VII/9 (Immersion suits and thermal protective aids) :

"Notwithstanding the provisions of Regulation VII/9 an approved immersion suit, of an appropriate size, complying with the provisions of Regulation VII/25, including the measures applied to that regulation and listed in this annex under item 1.8, shall be provided for every person on board"

.8 ad Regulation VII/25 (Immersion suits) :

"Notwithstanding the provisions of Regulation VII/25 all immersion suits required under item 1.7 of this annex shall, as a single unit, be made of material with inherent insulation and shall also comply with the buoyancy requirements of Regulation VII/24(c)(i). All other relevant requirements of Regulation VII/25 shall also be complied with".

.9 ad Regulation X/3 (7) (Radar installations) :

"Notwithstanding the provisions of regulation X/3 (7), every vessel of 24 metres in length and over shall be fitted with a radar installation to the satisfaction of the Administration. This radar installation shall be capable of operating in the 9 GHz band."

.10 ad Regulation X/3 (14) (Radio direction-finding equipment) :

"In addition to the provisions of regulation X/3 (14), every vessel of 45 metres in length and over shall be fitted with a VHF direction-finding apparatus for homing on the marine VHF distress frequency 156,8 MHz (channel 16) and the aeronautical VHF emergency frequency 121,5 MHz."

.11 ad Regulation X/5 (Signalling equipment) :

"In addition to the provisions of regulation X/5, every vessel shall, when operating in waters where drift ice may occur, be fitted with at least one searchlight with a lighting capacity of at least 1 lux, measured at a distance of 750 meters."

## 2. "Southern" regional provisions :

### .1 Areas of application :

the Mediterranean Sea and the coastal areas, within 20 miles from the coast of Spain and Portugal, of the summer zone of the Atlantic Ocean, as defined on the "Chart of zones and seasonal areas" in Annex II of the 1966 International Convention on Load Lines,<sup>1</sup> as amended.

### .2 Immersion suits and thermal protective aids :

ad Regulation VII/B/9(1): taking into consideration the provisions of § (4) of Regulation VII/B/9, add at the end of par.(1) the following sentence:

"For vessels of less than 45 m in length the number of immersion suits needs not be greater than two."

### .3 Radio life-saving appliances :

ad Regulation VII/B/13(1): add at the end of the paragraph the following sentence :  
"For fishing vessels with a length of less than 45 metres the number of VHF radiotelephone apparatus may be reduced to two if the Administration considers the requirement to carry three two-way VHF radiotelephone apparatus unnecessary taking into account the operation area of the vessel and the number of persons employed on board. "

### .4 Radiocommunications - application :

ad Regulation IX/A/1: add a new paragraph (1)bis as follows:

"This Chapter shall also apply to new vessels of 24 m in length and over, provided that the area in which they operate is supported appropriately by coast station operating in accordance with IMO Master Plan."

### .5 Radiocommunications - definitions :

ad Regulation IX/A/2(l) and (m): replace the words "as may be defined by a Party" by "as it is contained in IMO Master Plan".

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<sup>1</sup> International Convention on Load Lines, 1966 adopted on 5 April 1966 by the International Conference on Load Lines, held in London upon the invitation of the Inter-Governmental Maritime Consultative Organization

**ANNEX IV : FORMS OF CERTIFICATE OF COMPLIANCE, EXEMPTION CERTIFICATE, AND RECORD OF EQUIPMENT.**

**CERTIFICATE OF COMPLIANCE**

This Certificate of Compliance shall be supplemented by a Record of Equipment

(Official seal)

(State)

for a new/existing<sup>1</sup> fishing vessel

Issued under the provisions of the

(name of the relevant measure(s) introduced by the Member State)

.....

and confirming compliancy

of the vessel named hereafter

with the provisions of

Council Directive .../.../EC

setting up a harmonized safety regime

for fishing vessels of 24 metres in length and over,

under the authority of the Government of

(full official designation of the Member State)

.....

by

(full official designation of the competent organization  
recognized under the provisions of the Council Directive 94/57/EC)

.....

| Name of the ship | Distinctive Numbers or Letters | Port of Registry | Length <sup>2</sup> |
|------------------|--------------------------------|------------------|---------------------|
|                  |                                |                  |                     |

Date of building or major conversion contract <sup>3</sup> : .....

Date on which the keel was laid or ship  
was at a similar stage of construction<sup>3</sup> : .....

Date of delivery or completion of major conversion <sup>3</sup> : .....

<sup>1</sup> delete as appropriate in accordance with the definitions of article 2.2 and 2.3

<sup>2</sup> Length as defined in article 2.7

<sup>3</sup> in accordance with the definitions of article 2.2

Initial survey :

THIS IS TO CERTIFY :

- 1 that the ship has been surveyed in accordance with Regulation I/6(1)(a) of the Annex to the Torremolinos Protocol of 1993;
- 2 that the survey showed that :
  - .1 the ship fully complies with the requirements of the Council Directive .../.../EC; and
  - .2 the maximum permissible operating draught associated with each operating condition for the vessel is contained in the approved stability booklet dated .....
- 3 that an Exemption Certificate has/has not <sup>1</sup> been issued.

This certificate is valid until.....subject to surveys in accordance with regulation I/6(1)(b)(ii), (b)(iii) and (c).

Issued (Place of issue of certificate) (date of issue)  
 at.....On.....

(Signature of official issuing the certificate) and/or (Seal of issuing authority)  
 .....

*If signed, the following paragraph is to be added:*  
 The undersigned declares that he is duly authorized by the said Member State to issue this certificate.

(Signature)  
 .....

---

<sup>1</sup> delete as appropriate

( Next page of Certificate)

**Endorsement to extend the validity of the certificate for a period of grace  
where regulation I/11(1) applies :**

This certificate shall, in accordance with regulation I/11(1), be accepted as valid until  
.....

(Signature of authorized official issuing the endorsement)  
Signed : .....

Place : .....

Date : .....

(Seal or stamp of the issuing authority)  
.....

---

**Endorsement to extend the validity of the certificate until reaching the port of  
survey or for a period of grace where regulation I/11(2) or regulation I/11(4)  
applies :**

This certificate shall, in accordance with regulation I/11(2) / regulation I/11(4) <sup>1</sup>, be  
accepted as valid until .....

(Signature of authorized official issuing the endorsement)  
Signed : .....

Place : .....

Date : .....

(Seal or stamp of the issuing authority)  
.....

---

<sup>1</sup> delete as appropriate

( Next page of Certificate)

**Endorsement for periodical surveys :**

Equipment survey :

THIS IS TO CERTIFY that, at a survey as required by regulation I/6(1)(b)(ii), the vessel was found to comply with the relevant requirements.

Signed : .....  
(Signature of authorized official issuing the endorsement)

Place : .....

Date : .....

.....  
(Seal or stamp of the issuing authority)

Radio surveys :

THIS IS TO CERTIFY that, at a survey as required by regulation I/6(1)(b)(iii), the vessel was found to comply with the relevant requirements.

First periodical radio survey:

Signed : .....  
(Signature of authorized official issuing the endorsement)

Place : .....

Date : .....

.....  
(Seal or stamp of the issuing authority)



( Next page of Certificate)

Second periodical radio survey:

Signed : .....  
(Signature of authorized official issuing the endorsement)

Place : .....

Date : .....

(Seal or stamp of the issuing authority)  
.....

Third periodical radio survey:

Signed : .....  
(Signature of authorized official issuing the endorsement)

Place : .....

Date : .....

(Seal or stamp of the issuing authority)  
.....

---

**Endorsement for intermediate survey :**

**THIS IS TO CERTIFY** that, at a survey as required by regulation I/6(1)(c), the vessel was found to comply with the relevant requirements.

Signed : .....  
(Signature of authorized official issuing the endorsement)

Place : .....

Date : .....

(Seal or stamp of the issuing authority)  
.....

# EXEMPTION CERTIFICATE

(Official seal)

(State)

for a new/existing<sup>1</sup> fishing vessel

Issued under the provisions of the

[name of the relevant measure(s) introduced by the Member State]

.....  
and confirming compliancy  
of the vessel named hereafter  
with the provisions of  
Council Directive .../.../EC  
setting up a harmonized safety regime  
for fishing vessels of 24 metres in length and over,

under the authority of the Government of

(full official designation of the Member State)

by

(full official designation of the competent organization  
recognized under the provisions of the Council Directive 94/57/EC)

## PARTICULARS OF THE VESSEL :

| Name of the ship | Distinctive Numbers or Letters | Port of Registry | Length <sup>2</sup> |
|------------------|--------------------------------|------------------|---------------------|
|                  |                                |                  |                     |

<sup>1</sup> delete as appropriate in accordance with the definitions of of article 2.2 and 2.3

<sup>2</sup> Length as defined in article 2.7

(Reverse of Certificate)

THIS IS TO CERTIFY :

that the vessel is, under the authority conferred by regulation .....  
exempted from the requirements of.....  
.....  
.....

Conditions, if any, on which the Exemption Certificate is granted :  
.....  
.....  
.....

This Certificate is valid until ....., subject to the Certificate of Compliance,  
to which this certificate is attached, remaining valid.

Issued..... (Place of issue of certificate) ..... ON..... (date of issue)

(Signature of official issuing the certificate) and/or (Seal of issuing authority)  
.....

*If signed, the following paragraph is to be added:*  
The undersigned declares that he is duly authorized by the said Member State to issue  
this certificate.

(Signature)  
.....

( Next page of Certificate)

**Endorsement to extend the validity of the certificate for a period of grace  
where regulation I/11(1) applies :**

This certificate shall, in accordance with regulation I/11(1), be accepted as valid until  
.....

Signed : .....  
(Signature of authorized official issuing the endorsement)

Place : .....

Date : .....

.....  
(Seal or stamp of the issuing authority)

---

**Endorsement to extend the validity of the certificate until reaching the port of  
survey or for a period of grace where regulation I/11(2) or regulation I/11(4)  
applies :**

This certificate shall, in accordance with regulation I/11(2) / regulation I/11(4) <sup>1</sup>, be  
accepted as valid until .....

Signed : .....  
(Signature of authorized official issuing the endorsement)

Place : .....

Date : .....

.....  
(Seal or stamp of the issuing authority)

---

<sup>1</sup> delete as appropriate .

(Form of supplement to the Certificate of Compliance)

**RECORD OF EQUIPMENT  
for the Certificate of Compliance**

This Record shall be permanently attached to the Certificate of Compliance

**RECORD OF EQUIPMENT FOR COMPLIANCE WITH THE COUNCIL  
DIRECTIVE .../EC SETTING UP A HARMONIZED SAFETY REGIME FOR  
FISHING VESSELS WITH A LENGTH OF 24 METRES AND OVER**

1. PARTICULARS OF THE VESSEL :

| Name of the ship | Distinctive Numbers or Letters | Port of Registry | Length <sup>1</sup> |
|------------------|--------------------------------|------------------|---------------------|
|                  |                                |                  |                     |

2. DETAILS OF LIFE-SAVING APPLIANCES :

| 1. Total number of persons for whom life-saving appliances are provided : | .....     |                |
|---|-----------|----------------|
|   | Port side | Starboard side |
| 2. Total number of lifeboats  | .....     | .....          |
| 2.1 Total number of persons accommodated by them                          | .....     | .....          |
| 2.2 Number of partially enclosed lifeboats<br>(Regulation VII/18)         | .....     | .....          |
| 2.3 Number of totally enclosed lifeboats<br>(Regulation VII/19)           | .....     | .....          |

<sup>1</sup> Length as defined in article 2.7

|       |  |       |
|-------|--|-------|
| 3     | <u>Number of rescue boats</u>  | ..... |
| 3.1   | Number of boats which are included<br>in the total number of lifeboats shown above | ..... |
| 4     | <u>Liferafts</u>   |       |
| 4.1   | Those for which approved launching appliances are<br>required                      |       |
| 4.1.1 | Number of liferafts  | ..... |
| 4.1.2 | Number of persons accommodated by them   | ..... |
| 4.2   | Those for which approved launching appliances are<br>not required                  |       |
| 4.2.1 | Number of liferafts  | ..... |
| 4.2.2 | Number of persons accommodated by them   | ..... |
| 5     | Number of <u>lifebuoys</u>   | ..... |
| 6     | Number of <u>lifejackets</u>   | ..... |
| 7     | <u>Immersion suits</u>   |       |
| 7.1   | Total number   | ..... |
| 7.2   | Number of immersion suits complying with the<br>requirements for lifejackets       | ..... |
| 8     | Number of <u>thermal protective aids</u> <sup>1</sup>                              | ..... |
| 9     | Radio installations used in life-saving appliances                                 |       |
| 9.1   | Number of radar transponders   | ..... |
| 9.2   | Number of two-way VHF radiotelephone apparatus                                     | ..... |

<sup>1</sup> Excluding those required by regulations VII/17(8)(xxi), VII/20(5)(a)(xxiv)

3. DETAILS OF RADIO FACILITIES :

| Item  | Actual provision |
|---|------------------|
| 1 Primary systems   |                  |
| 1.1 <u>VHF radio installation</u> :   |                  |
| 1.1.1 DSC encoder   | .....            |
| 1.1.2 DSC watch receiver  | .....            |
| 1.1.3 Radiotelephony  | .....            |
| 1.2 <u>MF radio installation</u> :  |                  |
| 1.2.1 DSC encoder   | .....            |
| 1.2.2 DSC watch receiver  | .....            |
| 1.2.3 Radiotelephony  | .....            |
| 1.3 <u>MF/HF radio installation</u> :   |                  |
| 1.3.1 DSC encoder   | .....            |
| 1.3.2 DSC watch receiver  | .....            |
| 1.3.3 Radiotelephony  | .....            |
| 1.3.4 Direct-printing radiotelegraphy   | .....            |
| 1.4 <u>INMARSAT</u> ship earth station  | .....            |
| 2 Secondary means of alerting   | .....            |
| 3 Facilities for reception of maritime safety information                         |                  |
| 3.1 NAVTEX receiver   | .....            |
| 3.2 EGC receiver  | .....            |
| 3.3 HF Direct-printing radiotelegraphy receiver                                   | .....            |
| 4 Satellite EPIRB   |                  |
| 4.1 COSPAS-SARSAT   | .....            |
| 4.2 INMARSAT  | .....            |
| 5 VHF EPIRB   | .....            |
| 6 Vessel's radar transponder  | .....            |
| 7 Radiotelephone distress frequency watch receiver on 2,182 kHz <sup>1</sup>      | .....            |
| 8 Device for generating the radiotelephone alarm signal on 2,182 kHz <sup>2</sup> | .....            |

<sup>1</sup> Unless another date is determined by the Maritime Safety Committee of the Organization, this item need not be reproduced on the record attached to Certificates issued after 1 February 1999.

<sup>2</sup> This item need not be reproduced on the record attached to certificates issued after 1 February 1999

4. METHODS USED TO ENSURE AVAILABILITY OF RADIO FACILITIES  
(regulation IX/14)

4.1 Duplication of equipment : .....

4.2 Shore-based maintenance : .....

4.3 At-sea maintenance capability : .....

THIS IS TO CERTIFY that this Record of Equipment is correct in all respects

Issued at.....(Place of issue of record).....(date of issue).....ON.....

(Signature of official issuing the record) and/or (Seal of issuing authority)

.....

*If signed, the following paragraph is to be added:*

The undersigned declares that he is duly authorized by the said Member State to issue this record.

(Signature)

.....



## DECISION OF THE EEA JOINT COMMITTEE

N° (..) . ./ 9.  
of (..) (.....) 199.

amending Annex XIII (Chapter V) of the Agreement on the European Economic Area by adding Council Directive (.././EC) setting up a harmonized safety regime for fishing vessels of 24 metres in length and over.

THE EEA JOINT COMMITTEE,

Having regard to the Agreement on the European Economic Area as adjusted by the Protocol Adjusting the Agreement on the European Economic Area, hereinafter referred to as the Agreement, and in particular Article 98 thereof,

Whereas Directive (.././EC) of the Council of the European Union of (.. ..... 19..), of which a copy is annexed to this Decision, is to be integrated into the Agreement,

Whereas the horizontal adaptation in Protocol 1 and the sectoral and other adaptations in the introduction of Annex XIII to the Agreement shall apply,

HAS DECIDED AS FOLLOWS:

### Article 1

Annex XIII, Transport, to the Agreement shall be amended as specified below. The text of the new Act is at Appendix.

### Article 2

The following new point shall be inserted in Chapter V after point 56 (Council Regulation 613/91/EEC):

"56.a                    394 L ...: Council Directive (.././EC) on setting up a harmonized safety regime for fishing vessels of 24 metres in length and over.

The provision of the Directive shall, for the purposes of the present Agreement, be read with the following adaptation:

Article 13.1, shall be replaced by the following:

The Contracting Parties shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than ( .. ..... 199.)

**Article 3**

The decision shall enter into force on ( .. ..... 199.)

**Article 4**

This Decision shall be published in the EEA Section of, and in the EEA Supplement to, the Official Journal of the European Communities.

Done at Brussels, ( .. ..... 199.)

For the EEA Joint Committee  
The President

.....

The Secretaries  
to the EEA Joint Committee

.....

## FINANCIAL STATEMENT

### 1 TITLE OF OPERATION

*Proposal for a Council Directive Setting up a Harmonized Safety Regime for Fishing Vessels of 24 metres in length and over*

### 2 BUDGET HEADING INVOLVED *Part A (see § 10)*

### 3 LEGAL BASIS *Measures to improve Maritime Transport Safety : article 84(2) of the Treaty in conjunction with article 75 (1) (c).*

### 4 DESCRIPTION OF OPERATION

#### 4.1 General Objective

*The establishment of a harmonized set of safety standards for fishing vessels of 24 metres in length and over operating in Community Waters.*

#### 4.2 Period covered and arrangements for renewal

*indefinite*

### 5 CLASSIFICATION OF EXPENDITURE OR REVENUE

#### 5.1 *Non-compulsory expenditure*

#### 5.2 *Non-differentiated appropriations*

### 6 TYPE OF EXPENDITURE OR REVENUE

*Administrative expenses*

### 7 FINANCIAL IMPACT

*none*

## 8 FRAUD PREVENTION MEASURES

*Control of adherence to the procedures for inviting Member States' experts*

## 9 ELEMENTS OF COST-EFFECTIVENESS ANALYSIS

### 9.1 Specific and quantified objectives; target population

*Reducing the risks to which fishermen are exposed in the execution of their profession by enhancing the safety standards for the design, construction of fishing vessels and their safety related equipment (lifesaving appliances, firefighting equipment, radiocommunication equipment, etc.) Casualty statistics demonstrate that a too high price is paid not only in terms of material loss but also of loss of human lives.*

### 9.2 Monitoring and evaluation of the operation

*Monitoring and evaluation of the operation will be done by the yearly meeting of the Committee on Maritime Safety and by missions (see §10.3)*

## 10 ADMINISTRATIVE EXPENDITURE (SECTION III, PART A OF THE BUDGET)

Actual mobilization of the necessary administrative resources will depend on the Commission's annual decision on the allocation of resources, taking into account the number of staff and additional amounts authorized by the budgetary authority.

### 10.1 Effect on the number of posts

|                              |   | Staff to be assigned to managing the operation |                        | Source   |                      | Duration          |
|------------------------------|---|--|------------------------|--|----------------------|-------------------|
|                              |   | <u>Permanent posts</u>                         | <u>Temporary posts</u> | Existing resources in the DG or department concerned | Additional resources |                   |
| Officials or temporary staff | A | 1  | -                      | 1  | -                    | <i>indefinite</i> |
|                              | B | -  | -                      | -  | -                    | -                 |
|                              | C | -  | -                      | -  | -                    | -                 |
| Other resources              |   | -  | -                      | -  | -                    | -                 |
| Total                        |   | 1  | -                      | 1  | -                    | <i>indefinite</i> |

### 10.2 Overall financial impact of additional human resources

ECU

|   | Amounts | Method of calculation |
|---|---------|-----------------------|
| Officials                                 | 0       |                       |
| Temporary staff                           | 0       |                       |
| Other resources (indicate budget heading) | 0       |                       |
|   | 0       |                       |
| Total                                     | 0       |                       |

### 10.3 Increase in other administrative expenditure as a result of the operation

ECU

|        | Amounts | Method of calculation   |
|--------|---------|---|
| A 2510 | 20.000  | <i>The Committee of Maritime Safety is already meeting for other maritime safety related EC legislation; one additional meeting/year of this Committee is esteemed necessary to discuss particular issues related to this proposal. Reimbursement of travel expenses is valued at 20.000 ECU)</i> |
| A 130  | 10.000  | <i>Missions : about 4 missions are esteemed necessary within the EU for follow-up of application and enforcement of the measure. Estimated annual expenses are valued at 10.000 ECU. Resources will be obtained by redeployment.</i>  |
| Total  | 30.000  |   |

## IMPACT ASSESSMENT FORM

### THE IMPACT OF THE PROPOSAL ON BUSINESS with special reference to small and medium-sized enterprises

TITLE OF PROPOSAL :

**Proposal for a Council Directive Setting up a Harmonized Safety Regime for Fishing Vessels of 24 meters in length and over.**

REFERENCE NUMBER : COM (95)302

#### The proposal

1. *Taking account of the principle of subsidiarity, why is Community legislation necessary in this area and what are its main aims?*

The obligations of the Community in this context are the improvement of safety in maritime transport as foreseen in Article 84 (2) of the Treaty read in conjunction with Article 75 (1) (c). The objective of the action proposed is the establishment of a harmonized set of safety standards for fishing vessels flying the flag of a Member State, as well as for vessels of non-Member States operating in the territorial waters of the Member States or landing their catch in a Port of a Member State.

Referring to the principle of subsidiarity, it will be the responsibility of the Community to ensure a framework of rules providing a harmonized level of safety for fishing vessels operating in the same area. The responsibility of the Member States is to adopt within their own national legislation measures designed to ensure an effective application of the Directive.

#### The impact on business

2. *Who will be affected by the proposal?*
  - *which sector of business?*
  - *which sizes of business?*
  - *are there particular geographical areas of the Community where these businesses are found ?*

The business sector which will be involved by this proposal is the fishing industry. The majority of the Community fishing vessels are owned and operated by small and medium-sized enterprises.

The half-yearly statistical bulletin "Community Register of Fishing Vessels" published by DG XIV provides detailed information on the capacity, typology and characteristics of the Community's fishing fleet. According to the latest bulletin, covering the period from July to December 1995, the total number of fishing vessels in the Community amounts to about 100.000, with their fishing activity concentrated in the North, the Intertropical and the South Atlantic Oceans, as well as in seas adjoining the Atlantic and, to a lesser extent, in the Indian Ocean.

Full details on particular geographical areas within the Community where these enterprises are established are given in the same Bulletin, region by region in each Member State. A ranking of Member States in terms of capacity of their fishing fleet, by number of ships and by their tonnage, is given in appendix 1 to the draft proposal for a Council Directive. The largest fishing fleets are concentrated in Spain, Greece, Italy, Portugal and United Kingdom.

3. *What will businesses have to do to comply with the proposal?*

For all new fishing vessels with a length of 24 metres and above, i.e. those to be built on or after 1 January 1998, the safety standards laid down in the proposal will have to be applied.

Existing fishing vessels of 24 metres in length and above will have to comply with the provisions on Emergency procedures, musters and drills, Radiocommunications and Shipborne Navigation equipment. By restricting the requirements for existing fishing vessels to those essential safety matters, the proposal strictly respects the provisions of the internationally approved 1993 Torremolinos Protocol for the Safety of Fishing Vessels and avoids to impose substantial structural changes to existing fishing vessels.

4. *What economic effects is the proposal likely to have?*

- on employment
- on investment and the creation of new businesses
- on the competitive position of businesses

With regard to the fishing activities no or little impact on employment is expected. The proposal is likely to have a substantial and beneficial impact on the competitive position of business. By establishing a harmonized safety regime for all fishing vessels, including those flying a non-community flag, operating in Community waters or landing their catch in a Community port, a level playing field will be created for all operators involved, minimizing the risks for distortion of competition by operators trying to gain a competitive edge by economising on the safety standard of their ships.

5. *Does the proposal contain measures to take account of the specific situation of small and medium sized firms (reduced or different requirements)?*

For the reasons explained in paragraph 3 above, the measures for existing fishing vessels of 24 metres in length and above have been limited to essential safety issues, avoiding substantial structural changes to these vessels, which might constitute an insurmountable financial burden for the involved enterprises.

Further the proposal does not contain harmonized safety standards for new and existing fishing vessels having a length of less than 24 metres, for which it is left to the Member States to establish appropriate safety requirements (Subsidiarity principle).

**Consultation :**

6. *List of the organizations which have been consulted about the proposal and outline of their main views.*

See enclosed list on organizations consulted. The industry expressed mainly their concern on the impact the proposal might have on existing fishing vessels and called for the measures referred to in paragraph 5 above. In addition the industry requested the Commission not to propose safety standards going beyond those agreed at international level, except if local conditions require so. This principle has to the largest extent possible been respected throughout the proposal, on the one hand by strictly adhering to the provisions of the 1993 Torremolinos Protocol, and on the other by applying article 3.5 of the Protocol, allowing for the establishment of regionally based safety standards. As an example this has resulted in to the relaxation of some of the requirements for the southern Community waters, taking into account the more favourable prevailing climatical conditions in this area.



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