

COMMISSION OF THE EUROPEAN COMMUNITIES

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94/0068 (SYN)

Proposal for a

COUNCIL DIRECTIVE

concerning the enforcement, in respect of
shipping using Community ports and sailing in the waters under the jurisdiction
of the Member States, of international standards for ship safety, pollution
prevention and shipboard living and working conditions.

(presented by the Commission)

EXPLANATORY MEMORANDUM

GENERAL INTRODUCTION

1. Both the International Maritime Organization and the Commission of the European Community have drawn the attention of the shipping world to the fact that many flag states are unable to secure and maintain a proper control of the safety and environment protection standards of vessels operating under their flags, thus leading to varying levels of safety performance. The same picture has been revealed as regards working and living conditions, which on those ships are far below the minimum level required by the international Conventions. Variations in safety performances of fleets of States adhering to international Conventions are, to a considerable extent, due to inadequate implementation and insufficient enforcement of international standards. As a result shipping operations in European waters continue to feature a high presence of substandard operators, ships and crews. This situation was considered intolerable by all the institutions of the European Community, which have called on the Commission to submit appropriate proposals to ensure a better protection of life at sea and of the marine environment.

In its Communication "A Common Policy on Safe Seas"¹ the Commission identified besides the need to promote a modern, coherent and harmonized development of maritime infrastructure, two types of measures which would contribute to a substantial reduction of substandard shipping in Community waters:

- a- requirements on a convergent implementation of existing international rules, strengthening the flag state responsibility and the development of new appropriate rules within international organizations, and
 - b- measures for a more effective enforcement of the international rules to vessels of all flags, strengthening the level of intervention of the port and coastal states.
2. The first type of measures affects primarily those ships and crews operating under flags of Member States. The second train of measures affects directly all vessels operating in Community waters, irrespective of the flag they fly. With regard to the latter the Council² stressed the need for Community action to strengthen inspections carried out by the states of the port to assure compliance of ships to construction and operation standards as well as crews standards and to take measures designed to remove all substandard ships from Community waters.

¹COM (93)66 final of 24 February 1993

²Council Resolution of 8 June 1993 on a common policy on safe seas (93/C 271/01), O.J. C 271 p.1 of 7.10.93

3. This proposal for a Council Directive is the answer of the Commission to the Council's request. In addition to the United Nations Convention of the Law of the Sea (UNCLOS) several Conventions such as LOAD LINES³, SOLAS⁴, MARPOL⁵ and ILO No. 147⁶ provide the international legal base for port State control action.
4. The Commission recalls that this proposal is not its first initiative with regard to control of ships by the state of the port. Already in June 1980 the Commission has submitted a proposal for a Council Directive concerning the enforcement, in respect of shipping using Community ports, of international standards for shipping safety and pollution prevention⁷. This proposal is still on the table of the Council. The main reason brought forward by Member States against it at that time was the restricted geographical scope of the EEC. Due to this limitation Member States took the initiative to set up an alternative form of co-operation, geographically broader than the Community.
5. In January 1982 the maritime authorities of 14 European countries⁸ signed in Paris a Memorandum of Understanding on Port State Control (MOU). Poland's maritime authority became the fifteenth member on 1 January 1992. The purpose of the Memorandum is to ensure an effective, coordinated system of control of foreign merchant ships in members' ports, without distinction of flag. The controls relate to compliance with international IMO and ILO Conventions. Although the Commission is not a signatory of the MOU, it is a full member of the Committee which runs the MOU.
6. In its Communication referred to in para 1 the Commission presented statistical data on deficiencies, detentions and accidents providing a basis for an analysis of the present situation with regard to the effectiveness of port state control in Europe⁹. The Commission stressed that, despite positive results emerging from a decade of operation of the MOU, the Community is still lacking a fully effective and coherent approach with regard to inspection of ships, detention of and sanctions against substandard ships. The Commission underlined that, within the European Community there is no systematic system for inspection or detention of ships and a lack of uniformity in inspection criteria.

³The 1966 International Convention on Load Lines

⁴The International Convention for the Safety of Life at Sea

⁵The 1973/78 International Convention for the prevention of Pollution from ships

⁶Merchant Shipping (Minimum Standards) Convention, 1976

⁷O.J. C 192 p. 8 of 30.7.1980

⁸Comprising eleven of the Member States (Luxemburg has no maritime ports), plus Norway, Sweden and Finland.

⁹See part I and paras 61 to 68 of part II of this Communication.

In addition a different importance and follow-up is given to the deficiencies found. Furthermore the Commission drew the attention to the lack of a transparent data exchange mechanism and to the absence of a uniform legal basis for enforcement of compliance to internationally agreed rules (IMO Resolutions), a uniformity that the MOU cannot provide, as it does not provide a legal binding basis for it. This results in many substandard vessels and crews escaping the net of inspection and continuing to operate in European waters. This has been underlined by the statistical data provided by the MOU members.

7. The lack of a common approach frustrates the efforts of those who try to implement the rules rigorously and enables ships by such methods to make a selective use of certain ports of destination, to avoid the net of controls. The rigorous states and ports pay also in loss of trade for their adherence to safety and environment protection policies, while their waters continue to be threatened by transiting substandard vessels.
8. This proposal, which replaces that submitted by the Commission in 1980, builds on the experience gained over 10 years of active monitoring of the operation of the Paris MOU, of its points of strength and its weaknesses. The main elements of the proposal are:
 - i) to establish a common set of criteria for the intensification of inspections of ships,
 - ii) to harmonise inspection and detention criteria
 - iii) to establish adequate national inspection structures and qualification requirements for inspectors,
 - iv) to set up an effective mechanism to control and evaluate the effectiveness of these measures,
 - v) to introduce more transparency in the results of the inspections,

on a mandatory base within the Community.

JUSTIFICATION FOR A COUNCIL DIRECTIVE

9. a) What are the objectives of the envisaged action in relation to the obligations of the Community.

The objectives of the action envisaged is to set the regulatory framework for an effective and harmonized system of ship inspections by the authorities of the port State in order to drastically reduce the operation of substandard shipping in the European Community waters, thus enhancing through preventive action both the safety of life at sea and the protection of the marine environment. These objectives relate strictly to the Community's obligations

to lay down appropriate provisions for sea transport (art. 84 (2)), in this case dealing with the improvement of transport safety, and an environment policy which protects the quality of the environment (art. 130R). The need for such measure has been agreed by the Council, which urged the Commission to submit a proposal, as a matter of priority in its Resolution of 8th June 1993 on a Common Policy on Safe Seas¹⁰ on common criteria for a more thorough port State control.

The Council, in particular, requested that the measure is designed to harmonize rules on port state inspection and detention, including the possibility of refusing access to Community ports to ships found to be below internationally agreed standards and which refuse to be upgraded as required and including the possibility of publishing the results of the inspections. The proposed Directive is fully in line with objectives and action subscribed by the Council (see paragraph 8 above).

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

It is a responsibility shared between the Community and the Member States by virtue of Article 84,2 of the Treaty.

11. c) What is the Community dimension of the problem?

The need for uniform enforcement under the Community law system of the international and European rules, which in turn creates a coherent geographical area where compliance with the rules can be enforced against substandard shipping whilst avoiding loss of trade towards more complacent neighbouring ports.

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

Both the Commission and the Council are of the opinion that the existing "administrative" framework of the MOU, which has in the meantime been taken as an example by other countries to develop similar agreements in other parts of the world, should be maintained taking the utmost account of the procedures and commitments within the MOU. Rather than duplicating this structure the Community measures focus on providing the legal and mandatory nature to these voluntary commitments and to complete them where required. Finally, it introduces the possibility of recourse against those authorities which would not abide to the prescribed rules, thus enhancing the credibility and reliability of the whole system.

¹⁰ See footnote 2

13. e) What is the concrete added value of the action envisaged by the Community and the Member States?

Community action will contribute to the drastic reduction of different levels of inspections existing now under the MOU while establishing more balanced resources for adequate PSC within the European Community as described in paragraph 8. This should also reduce the existing practice of a selective choice of ports of destination based upon PSC performances. Any improvement of the harmonisation of PSC practices reinforces safety and pollution prevention efforts in Community waters. More rigorous action against substandard shipping is also in the interest of reducing considerably the negative effects on the competitiveness of the fleet of the Member states, complying with the Conventions, which result also from the cost advantages enjoyed by the operators of substandard ships and crews operating under other flags.

14. f) What forms of action are available to the Community?

On the one hand action at worldwide (IMO) level cannot bring relief, in the short run, to the problems the Community is faced with, due to the varying of severity and efficiency of the national administrations responsible for flag state control and for port state control. On the other hand individual action of the Member States even if it is co-ordinated within the MOU has not lead in a decade of operation to the expected harmonized and coherent PSC system in the Community, a major flaw of the system being the lack of enforcement mechanisms for the commitments of the Member States. Bearing in mind the need to maintain as much as possible the flexibility of the MOU the Community legislation should provide the legal framework for more harmonized inspections and detentions at Community level.

15. g) Is uniform legislation necessary or does a directive setting the general objectives and leaving the execution to the Member States suffice?

The rules set out in the Directive establish the main provisions necessary to ensure a more harmonized and effective control of shipping by the state of the port. The execution of the measures, for example the choice of the appropriate maritime administration and establishment of certain detailed procedures, is left to the Member States.

Special Considerations

Article 1

This article defines the purpose of the Directive: to improve maritime safety in Community waters by, to the extent possible, eradicating substandard shipping from those waters.

The aim should be achieved by enhancing compliance with all relevant international and, where appropriate, Community legislation regarding safety of the ship, its crew, passengers and cargo as well as protection of the marine environment and improvement of living and working conditions for seafarers on board. An important element in the application of the Conventions is that they are being enforced on ships of all flags operating in Community waters, i.e. without distinction as to flag.

Further the Directive establishes common criteria for the selection of ships to be inspected by the port State, a harmonized approach on the extent of the control and harmonized criteria and procedures for the rectification and possible detention of ships being inspected. The harmonization of procedures concerning rectification of deficiencies and possible detention of ships is crucial, not only in order to obtain a higher level of safety and an appropriate protection of the marine environment as well as improved shipboard living and working conditions, but also for the shipping industry, and in order to avoid distortion of competition between ports.

Article 2

This article contains definitions of the key words of the Directive.

The definition of "Conventions" comprises all the international conventions in force and relevant for the purposes of this Directive. Apart from the International Convention on Tonnage Measurements of Ships of 1969 the other conventions listed are also included in the Memorandum of Understanding on Port State Control, an administrative agreement signed by the heads of 15 maritime authorities of Europe.

The reasons for including the International Convention on Tonnage Measurement, 1969 in the Conventions are :

- the Convention contains in its Article 12 the provision for carrying out port State control;

- the transitory period of 12 years for the application of the Convention on existing ships expires on 18 July 1994. After that date a considerable number of ships will come above the tonnage limit for the application of important requirements of the relevant Conventions, i.a. chapter III of SOLAS 74/78 (the so called "paragraph" ships of 499 and 1599 gross tons). It can be foreseen that dubious tonnage certificates will appear on some of these ships in an attempt not to comply with the applicable additional requirements;
- the ship's gross tonnage is "the key" for the surveyor to establish which requirements are applicable to a ship; logically it is one of the first certificates which should be requested.

In the light of statistics given in the Commissions communication "A Common Policy on Safe Seas" it is obvious that a number of flag States do not fulfil their obligations with respect to the implementation of the provisions of the Conventions on ships flying their flag. This situation has led to the need for strengthening the efforts of port States to improve maritime safety in Community waters by eradicating sub-standard shipping.

The purpose of this proposal is to ensure an effective and harmonized application of the control procedures contained in the Conventions by the Member States.

Article 3

With the scope of the Directive all relevant merchant ships will be covered by the control procedures. The ports as well as the waters under the jurisdiction of a Member State are covered. This extended physical application is necessary to cover the possible intervention on a ship e.g. in transit having been accused of an alleged pollution incident.

Paragraph 2 covers ships of a size (gross tonnage) falling below the coverage of a Convention. The important requirements in this respect is Chapter III of SOLAS 74/78 (dealing with life saving appliances) which in general is applicable only to cargo ships in international trade on 500 gross tons and above.

Paragraph 3 is a so-called "no more favourable treatment" clause. It should not be beneficial not to ratify the Conventions. Ships flying the flag of a non-party will be treated like ships flying the flag of a Party. The principle reflected in this paragraph is found in most of the Conventions themselves.

Article 4

No comments.

Article 5

In paragraph 1 the quantitative inspection commitment is defined.

The commitment to inspect at least 25% of the individual number of ships which entered the ports of a Member State during the previous calendar year is in principle the same as the one stipulated in the MOU.

During the 12 years the MOU has been in operation experience would indicate that of the actual number of ships operating in the region covered by the MOU at a given date,

about 80% have been subject to port State inspection due to the fact that a ship calling at the ports of a member to the MOU several times during a year, will only be counted once.

In order to make the inspection as effective as possible a "Priority List of Ships to be Inspected" has been set out in Annex 1. By applying the criteria on that list the ships potentially being substandard will be given priority when the maritime authorities are selecting ships for inspection. The resources of the Member States are thus being utilised effectively and the shipping companies complying with the Conventions are not being exposed to unnecessary inspections.

Provided a number of conditions are fulfilled Member States shall refrain from inspecting a ship which has been inspected by another Member State.

Paragraph 4 of article 5 contains the possibility to apply the special inspection regime on ships of a high safety standard. While certain categories of ships have to be subjected to an enhanced control, ships which on a voluntary basis comply with safety standards above those required by the Conventions should benefit from this and thus be subject to an inspection regime which is less extensive and with a low frequency. To qualify for the special inspection regime the criteria could be i.a. that the shipping company and the ship comply with the International Management Code for the Safe Operation of Ships and for Pollution Prevention (IMO Resolution A. 741 (18)) under close scrutiny of the flag administrations and of the Commission, or the shipping company is adhering to an inspection scheme as part of an industrial agreement with shippers or insurers adequately monitored by the Commission and Member States.

Article 6

The Conventions on maritime safety, pollution prevention and improvement of shipboard working and living conditions, although containing the provisions for carrying out port State control do, however, envisage that the initial control is limited to control of certificates applicable to the ship in question - unless there are clear grounds for believing that the condition of the ship does not substantially meet the applicable requirements.

To ensure that the initial inspection is carried out by all Member States in a harmonized way, Annex II to article 6 contains a list of certificates and documents which, as a minimum, shall be examined during the initial inspection. To ensure that the initial inspection is not confined to the simple examination of certificates and documents, paragraph 1b) - e) contains four additional substantive items of actual control of the ship and its crew including verification of the presence or proper operation of i.a. lifeboats, liferafts, fire extinguishers, lifebuoys, firehoses, fire dampers, proper closing of fire doors, proper access to cargo holds or significant areas of corrosion on deck. In this respect it has been found necessary to read beyond the mere letters of the Conventions due to the fact that experience has proven that ships and crews in several cases do not comply with what was declared by the certificates.

In the case that the surveyor is convinced that there are clear grounds for believing that the condition of the ship and its crew could not substantially meet the requirements of a Convention, he shall carry out a more detailed inspection, cfr. the definition thereof in article 2. The extent of a detailed inspection will be in accordance with the circumstances and the surveyor will have to use his professional judgement to ensure that the ship, upon departure, does not pose a danger to safety, health or the environment.

To assist in a harmonized implementation of the decision when to carry out a detailed inspection, Annex III contains a non-exhaustive list of "clear grounds".

The recommendations and guidelines adopted within the IMO, ILO and MOU shall, to the extent they are relevant, also be taken into account.

Article 7

Three categories of ships have been selected on which enhanced control shall be carried out. These are :

- oil tankers, 5 years or less from the date of phasing out in accordance with MARPOL 73/78, Annex I, Regulation 13G;
- bulk carriers, older than 12 years of age;
- passenger ships.

A careful supervision of the three categories of ships has been shown to be particularly important in the interests of fostering safety and prevention of pollution. Recent serious accidents involving oil tankers have demonstrated the need also for port States to enhance the control of existing oil tankers which have not benefited from all the improvements provided for in MARPOL 73/78 and its Annex I.

As the date of phasing out is approaching one can foresee that the maintenance and repair, necessary to maintain an acceptable standard for these ships, will not be carried out.

As regards bulk carriers older than 12 years the need for enhanced control has been demonstrated by a number of serious accidents where bulk carriers, without previous notice, have broken apart and sunk, leaving no time for the crew to launch the life saving appliances. In a paper from the Organisation for Economic Co-Operation and Development dated 4 November 1993 on "Bulk Shipping Casualties and Age Limit Legislation" the age profile of bulk shipping total losses, 1990-93, shows that for dry bulk carriers, 12 years of age and above, the rate of losses is significantly higher compared to bulk carriers below 12 years, which emphasizes the need for an enhanced control.

Passenger ships shall be subject to enhanced control also. When travelling with a passenger ship, certificated by a government authority, the public may expect the ship to be a safe means of transportation. However, some tragic accidents also in European waters have proven that this can not be taken for granted.

Taking into account that a great number of these ships are permanently operating within the Community carrying millions of citizens of the Union, and to reduce as much as possible the burden on the ships and their crews caused by port State inspections, a provision has been added that the same ship shall be subject to enhanced control only once every 12 months.

Article 8

The document mentioned in this article is a report on inspection on which the surveyor specifies the result of his inspection, and the master will be informed of any action which he will have to take with respect to possible deficiencies found on the ship. The contents of this report is also being entered in the SIRENAC E information system which facilitates the follow up on the ship in question by the next port of call, if that is necessary.

Article 9

The article contains the obligation for the Member State to ensure that deficiencies which have been noted during an inspection are being rectified. The master has to be informed about any deficiencies found on the document referred in article 8, paragraph 5. On that document he will also be informed about any time limit beyond which the deficiencies have to be rectified.

In the case of deficiencies which are clearly hazardous to safety, health or the environment the action may include detention of the ship or prohibiting the operation, as the case may be. In the case of intervention the Member State shall ensure that the procedure as to inform, in writing, the Consul or, in his absence, the nearest diplomatic representative of the State whose flag the ship is entitled to fly of all the circumstances in which intervention was deemed necessary. In addition, nominated surveyors or recognized organizations responsible for the issue of certificates shall also be notified.

The detention of a ship is a drastic action and may involve considerable loss of funds for the owner. This is consequently done, only after careful considerations. To assist the surveyors in their considerations, Annex VI contains a non-exhaustive list of deficiencies, which singly or together will warrant for the detention of a ship. The list has been included to obtain harmonization on this imperative aspect.

Article 10

The general rule is that a ship which is being found with deficiencies, rendering it unseaworthy, has to be detained in the port of inspection until the deficiencies have been rectified. However, situations may occur where facilities, necessary to carry out the repair work, are not available in the port of inspection, or the shipyard in that port will be blocked for a period, unacceptable for the local shipping community, if a ship, detained in such port, has to be upgraded on the local yard.

In that case the competent authority, after careful considerations, may allow such ship to proceed to another repair yard situated within the Community. To ensure that such a ship does not pose at threat to safety, health or the environment, the surveyors may have to restrict the operation of the ship and require defective equipment substituted by equivalent equipment which is temporarily brought on board for that specific purpose. That may be i.a. a portable emergency fire pump, or bilge pump, or additional firefighting equipment.

To ensure that the ship is being closely monitored and the deficiencies followed up, the competent authority in the port where final repair has to be carried out, has to be informed, as has the diplomatic representative and other parties as required by the provisions of the Conventions. Annex 2 to the MOU contains a format for the information which has to be given.

Should the master or owner of such a ship refuse to upgrade the ship in accordance with the Conventions by not complying with the conditions imposed to proceed to the repair yard, or even not be calling into the indicated repair yard, that ship shall be refused access to any port within the Community, until the owner has provided evidence that the ship fully complies with all applicable requirements of the Conventions.

To enforce the banning of such a ship the competent authority of the Member State where the ship was found defective, shall immediately inform the competent authorities of all other Member States.

To refuse access to any of the ports within the Community is a drastic measure. Should a situation develop, where such a ship becomes an even greater threat to life at sea, or to the coastline of a Member State, or its related interests, access may be permitted, provided the necessary measures have been taken to ensure safe entry, and the owner has provided an appropriate financial security as determined by that Member State.

Article 11

In accordance with the definition of a surveyor in article 2, the text of paragraph 1a) of article 11 means that port State inspections shall be carried out only by surveyors who are also civil servants. It is not appropriate to involve surveyors from classification societies in these inspections, since the latter are being paid by the shipowner, and port State inspections are carried out without notice and request from the owner or master.

In accordance with article 11, radio officers fulfilling the minimum criteria listed in Annex VII, may be authorized to carry out port State control. However, due to their limited experience with respect to the operational and technical aspects of the ship as a whole, it is provided that additional training, necessary for radio surveyors to carry out the inspections referred to in article 6, paragraphs 1 and 2 has been completed to the satisfaction of the competent authority, before authorization to carry out port State control is being issued.

It is emphasized that the qualification criteria specified are above those known from any other port State control agreement today, and even the qualification criteria which have been set out by many private societies dealing with inspection of ships. However, this is necessary considering the responsibility which will be placed upon the surveyors.

Article 12

The requirement for the pilot to report to the competent authority whenever he learns that a ship, on which he is serving, has deficiencies which may prejudice the safe navigation of the ship, is analogous to Article 8, paragraph 2 of Council Directive 93/75/EEC dated 13 September 1993 concerning minimum requirements for vessels bound for or leaving Community ports and carrying dangerous goods. The wording of this article does not commit the pilot beyond what is required in the above mentioned Directive, but to report on deficiencies which he, due to his professional background, reasonably can be expected to notice.

Article 13

An effective port State control regime is possible only if the participants, covering a geographical region, maintain a close cooperation as to ships inspected and possible follow up action on those ships by the next part of call. A close operational link among administrations and between them and the Commission is required.

The already established information system SIRENAC E today meets most needs in that respect and no substantial changes are foreseen concerning SIRENAC E due to the coming into force of this Directive. The SIRENAC E system is managed by the French authorities and located in Saint-Malo, France. All Member States except Luxembourg, which has no sea ports, are, due to their participation in the MOU, also contributing to the SIRENAC E system.

To facilitate the information concerning ships to be inspected, the Member States shall ensure that co-operation is established between the competent authority and the port authority and other relevant authorities which mainly will be the customs office of the port.

With regard to the data exchange required to comply with the Directive the Commission will examine together with the authorities responsible for the SIRENAC E system how and to what extent specific support, within the present Community budget, is necessary to facilitate the delivery of information and to reduce as much as possible additional administrative burden upon Member States. To this end due account shall be taken of the developments at international level and in particular to the setting up of an international data base for ships within the IMO.

Article 14

The philosophy behind the provision of article 14 is its use as an incentive for the shipowners to comply with the international agreed standards, since neither a shipowner nor a classification society would like to be exposed to the public and international shipping industry by appearing in a list of ships which have been detained by a competent authority due to serious deficiencies.

Article 15

This article requires a fee to be levied on the owner of a ship on which deficiencies justifying detention have been found. For any given Member State, the total of the fee shall cover, but not exceed, the costs which are being imposed on that Member State as a consequence of the ship being deficient to a degree, where the competent authority had to detain her.

The purpose of this provision is to relieve the taxpayer of a Member State of the cost of the time devoted by the competent authority to causing serious deficiencies on ships of other nations rectified.

It is emphasized that the payment required in this article is in no case meant to have the character of a fine, only the additional costs following the detention have to be covered.

Article 16

To monitor that the inspection obligation specified in article 5 is being complied with it is necessary to know the number of individual ships which entered the ports of a Member State in the previous calendar year. To compare the inspection efforts of Member States, knowledge of the number of surveyors dealing with port State control is of equal importance.

A close monitoring of the implementation is of importance due to the distortion of competition between ports could result from the failure to implement the Directive properly.

Article 17

A Committee for easy adaptation to technical progress and changes in international rules or agreements is necessary. To avoid undue multiplication of Committees dealing with the issue of safe seas, the same Committee established under Directive 93/75/EC¹ is provided for.

Article 18

The inspection obligation of article 5 is in principle of a rigid nature. It is the number of inspections which is being counted, and no consideration is given to the quality of the inspections. This rigidity of the inspection obligation has led to the practice within the members to the MOU that, in order to reach the target of 25%, a number of ships which are unlikely to be deficient, are being inspected, the inspections only covering the ship's certificates. This can be accomplished with limited resources. At the same time ships which in the experience of the surveyor are likely to be substandard are in the port without being inspected, because completing the inspection of such a ship may take days but will also be counted as one inspection only.

It is likely that the MOU will take up that problem in the near future. In order to have a flexible Directive it is appropriate to include in the amendment procedure the possibility to take the development within the MOU into account, as far as necessary.

Article 19-22

No comments.

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

Proposal for a Council Directive concerning the enforcement, in respect of shipping using Community ports and sailing in the waters under the jurisdiction of the Member States, of international standards for ship safety, pollution prevention and shipboard living and working conditions.

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 Commission¹,

In co-operation with the European Parliament²,

Having regard to the opinion of the Economic and Social Committee³,

Whereas the Community is seriously concerned about shipping casualties and pollution of the seas and coastlines of the Member States, in particular by oil coming from ships;

Whereas the Community is equally concerned about maintaining onboard working and living conditions equal to those enjoyed by occupations ashore;

Whereas the Council of the Union, at its meeting on 25 January 1993 in Brussels, urged the Community to ensure more effective application and enforcement of adequate international maritime safety and environment protection standards and to implement the new measures when adopted;

Whereas the Council of the Union, at its meeting on 8 June 1993 in Luxembourg, urged the Commission to submit as soon as possible to the Council suggestions for specific action and formal proposals concerning criteria for inspection of ships, including the harmonization of detention, of publication of the results of the inspections and the possibility of refusing access to Community ports;

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Whereas safety, pollution prevention and shipboard working and living conditions may be effectively enhanced through a drastic reduction of substandard ships from Community waters, while strictly applying international Conventions, Codes and Resolutions;

Whereas the control of compliance of ships with the adopted international standards for safety, pollution prevention and shipboard living and working conditions should rest primarily with the flag State, whereas however, there is a serious lack of implementation and enforcement of international standards by an increasing number of such States; henceforth the control of compliance with the adopted international standards for safety, pollution prevention and shipboard living and working conditions has to be ensured also by the port State;

Whereas introduction of a harmonized approach to the effective enforcement of the international standards on ship safety, pollution prevention and shipboard living and working conditions by the Member States in respect of ships sailing in the waters under their jurisdiction and using their ports, will avoid distortions of competition;

Whereas the enactment of an appropriate Community law framework for harmonized control inspection procedures is fundamental to ensure the homogeneous application of the principle of preventive action relating to shipping safety and to the environment which are among the bases of Community transport and environment policies;

Whereas pollution of the sea waters of the Member States of the Community is by nature a trans-boundary phenomenon; whereas, in accordance with the principle of subsidiarity, the development of means of taking preventive action in this field is best done at Community level, since Member States cannot take adequate and effective action in isolation;

Whereas the adoption of a Council Directive is the appropriate procedure for laying down the legal framework and the harmonized rules and criteria for the execution of Port State Control;

Whereas advantage should be taken of the experience gained during the operation of the Paris Memorandum of Understanding (MOU) on Port State Control (PSC), signed in Paris 26 January 1982;

Whereas the enforcement of port State control in the waters under the jurisdiction of the Member States is necessary to cover the possible intervention provided for in the MARPOL Convention;

Whereas the obligation for the Member States to inspect at least 25% of the individual number of foreign ships which entered their ports in the previous year in practice means that about 80% of the ships operating within the area at a given moment have been subject to an inspection;

Whereas a special inspection regime should be enforced on ships applying standards concerning construction, equipment, manning and operation above those required by the Conventions, thus being an incentive to owners to apply such high standards;

Whereas the rules and procedures for port State inspections, including criteria for detention of a ship, have to be harmonized to ensure a constant degree of effectiveness

in all ports, thus also drastically reducing the selective use of certain ports of destination to avoid the net of proper control;

Whereas the casualty, detention and deficiencies statistics published in the Commission's communication "A Common Policy on Safe Seas" and in the annual report of the MOU show that certain categories of ships need to be subject to an enhanced control;

Whereas deficiencies related to the respect of the provisions of the Conventions have to be rectified, and ships failing to take corrective action have to be detained where such deficiencies are clearly hazardous to safety, health or the environment;

Whereas the facilities in the port of inspection may be such that the competent authority will have to give the ship permission to proceed to an appropriate repair yard within the Community, provided that the conditions for such voyage are complied with, whereas non-complying ships would continue to pose a threat to safety, health or the environment and to enjoy commercial advantages by not being upgraded in accordance with the applicable provisions of the Conventions and should therefore be refused access to all ports in the Community;

Whereas because of unforeseeable circumstances a ship, which has been refused access to ports within the Community, might become a greater threat to safety, health or the environment while off the coast of a Member State, whereas under such circumstances such a ship may have to be permitted access to a specific port, provided all precautions are taken to ensure such ship a safe entry and an appropriate financial security has been assured;

Whereas the complexity of the requirements of the Conventions as regards ship's construction, equipment and manning and the severe consequences of the decisions taken by the surveyors, and the necessity for the surveyors to take entirely impartial decisions requires that inspections be carried out only by surveyors who are civil servants, and in possession of a profound knowledge and experience;

Whereas pilots who board ships in transit through the waters under the jurisdiction of a Member State may provide useful insight information on navigational deficiencies of such ships and crews;

Whereas co-operation between the competent authorities of the Member States is necessary to ensure an effective follow-up on ships which have been permitted to proceed with minor deficiencies as well as co-operation between the competent authority of a Member State and the port authorities and other relevant authorities of that State in possession of information about ships in port;

Whereas the information system called SIRENAC E established under the MOU provides a large amount of the additional information needed for the application of this Directive;

Whereas publication of information on shipowners who do not comply with the international standards concerning safety, health and protection of the marine environment, may be an effective deterrent discouraging shippers to use such ships, and an incentive to these owners to undertake spontaneously corrective action;

Whereas while the port State has to carry the financial burden of the first inspection, all additional costs caused by deficiencies of ships or crews, leading to detention, should be imputable to the owner or the operator;

Whereas it is appropriate for the application of the present Directive to make use of the Committee set up by Article 12 of the Directive 93/75/EEC of 13 September 1993 concerning minimum requirements for vessels bound for or leaving Community ports and carrying dangerous or polluting goods⁴ to assist the Commission amending the inspection obligations of Member States on the basis of experience gained taking into account the developments in the MOU, and adapting the annexes as may be necessary taking into account amendments to the Conventions, protocols, codes, resolutions of relevant international bodies and to the MOU;

Has adopted this Directive :

⁴ O.J. N° L 247, 5.10.93, p.19

Article 1
(Purpose)

The purpose of this Directive is to contribute to a drastic reduction of substandard shipping from Community waters by:

1. enhancing compliance with international and Community legislation on maritime safety, protection of the marine environment and living and working conditions on board ships of all flags operating in Community waters;
2. establishing common criteria for thorough control of ships by the State of the port and harmonizing procedures on inspection and detention, taking proper account of the commitments made by the maritime authorities of the Member States within the MOU.

Article 2
(Definitions)

For the purpose of this Directive including its Annexes,

"Conventions": Means the International Convention on Load Lines, 1966, the International Convention for the Safety of Life at Sea, 1974, the International Convention for the Prevention of Pollution from Ships, 1973, and the Protocol of 1978 related thereto, the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, the Convention on the International Regulations for Preventing Collisions at Sea, 1972, the International Convention on Tonnage Measurement of Ships, 1969 and the Merchant Shipping (Minimum Standards) Convention, 1976 (ILO No. 147), together with the Protocols and amendments to these Conventions and related Codes of mandatory status, in force at the date of adoption of this Directive.

"MOU": Means the Memorandum of Understanding on Port State Control, signed in Paris on January 26th 1982, as amended at the date of the adoption of this Directive.

"Ship" : Means any seagoing vessel to which one or more of the Conventions apply, flying a flag other than the one of the port State.

"Inspection": Means a visit on board a ship in order to control both the validity of the relevant certificates and other documents and the condition of the ship, its equipment and crew.

"A more detailed inspection" : Means an inspection where the ship, its equipment and crew as a whole or, as appropriate, parts thereof are subjected to an in depth inspection in the circumstances as specified in article 6, paragraph 3, as regards the ship's construction, equipment, manning and compliance with on board operational procedures.

"Enhanced control" : Means a thorough inspection in the cases specified in article 7.

"Special inspection regime": Means an inspection scheme referred to in article 5 paragraph 4 limited in its extent and with a low frequency.

"Detention": Means the formal prohibition against a ship to proceed to sea or to continue an operation due to identified deficiencies which, singly or together, make the ship unseaworthy, or render the continuation of such an operation hazardous, irrespective of the time the ship is going to stay in port.

"Surveyor" : Means a civil servant, duly authorised by the competent authority of a Member State.

Article 3 (Scope)

1. This Directive applies to any ship and its crew calling at a seaport of a Member State or sailing in the waters under its jurisdiction.
2. In case of ships below 500 tons gross tonnage, Member States shall apply those requirements of a Convention which are applicable and shall, to the extent that a Convention does not apply, take such action as may be necessary to ensure that those ships are not clearly hazardous to safety, health or the environment. In their application of this paragraph, Member States shall be guided by Annex 1 to the MOU.
3. When inspecting a ship, flying the flag of a State which is not a party to a Convention, Member States shall ensure that no more favourable treatment is given to such ship and its crew than that given to a ship flying the flag of a State which is a party to the Convention.
4. Fishing vessels, ships of war, naval auxiliaries, wooden ships of a primitive build, government ships used for non-commercial purposes and pleasure yachts not engaged in trade, are excluded.

Article 4
(Inspection body)

Member States shall establish and maintain appropriate national maritime administrations, hereafter called "competent authorities" for the inspection of ships in their ports, or in the waters under their jurisdiction. Member States shall take whatever measures are appropriate to ensure that their "competent authorities" perform their duties as laid down in this Directive.

Article 5
(Inspection commitments)

1. The competent authority of each Member State shall carry out an annual total number of inspections corresponding to at least 25% of the number of individual ships which entered its ports during the previous calendar year.
2. In selecting ships for inspection the competent authority shall comply with the priority list in Annex I.
3. Member States shall refrain from inspecting ships which have been inspected by any of the other Member States, within the previous six months, provided such a ship is not listed in Annex I, or no deficiencies have been reported by a Member State, following a previous inspection, or no clear grounds exist to carry out an inspection.
4. The Commission, in accordance with the procedure laid down in article 19, will establish the provisions for the categories of ships, and the conditions under which Member States shall apply the special inspection regime for these categories of ships. The special inspection regime shall not be applied whenever there are clear grounds as referred to in article 6, paragraph 3.

Article 6
(Inspection procedure)

1. The competent authority shall ensure that an inspection includes as a minimum:
 - a) control of the certificates and documents listed in Annex II, to the extent applicable.
 - b) Verification of the ability of the crew to comply with the requirements of Article 7 and 9 of the Directive on the Minimum Level of Training of Seafarers¹.
 - c) Verification that the crew members are aware of their duties indicated in the muster list. On passenger ships this verification shall include the catering staff.

¹ A political orientation agreement has been reached on this directive by the Council on 29 November 1993, pending on the completion of the cooperation procedures.

- d) An overall impression of the vessel including the engine room and accommodation including hygienic conditions.
 - e) Verification of the presence of a ship's medical chest and the validity of the related certificate.
2. If considered appropriate by the surveyor all relevant certificates and documents, other than those listed in Annex II, which are required to be carried on board in accordance with the Conventions may be examined.
 3. Whenever there are clear grounds for believing, after the inspection referred to in paragraph 1 and 2, that the condition of a ship or its equipment, or its crew does not substantially meet the applicable requirements of a Convention, a more detailed inspection shall be carried out, including further control of compliance with on board operational requirements.
Annex III contains a non-exhaustive list of "clear grounds" within the meaning of this article.
 4. To the extent they do not conflict with the provisions of this Directive the relevant procedures and guidelines for the control of ships specified in Annex IV shall also be taken into account.

Article 7
(Enhanced control of certain ships)

1. In addition to the inspection mentioned in article 6, Member States shall ensure that an enhanced control on ships belonging to the categories listed in Annex V, is carried out.
2. The enhanced control shall be carried out in accordance with the guidelines set out in Annex V.
3. The ships referred to in paragraph 1 shall not be subject to enhanced control by any of the competent authorities of the Member States twice during a period of 12 months.

Article 8
(Report of inspection to the master)

On the completion of an inspection, a more detailed inspection, or an enhanced control, the master of the ship shall be provided by the surveyor with a document in the form specified in Annex 3 to the MOU, giving the results of the inspection and details of any decisions taken by the surveyor, and of corrective action to be taken by the master or owner.

Article 9
(Rectification and detention)

1. Whenever the inspection referred to in articles 6 and 7 confirms or reveals deficiencies in relation to the requirements of a Convention, where applicable, appropriate action shall be taken to ensure that they are being rectified in accordance with the provisions of that Convention.
2. In the case of deficiencies which are clearly hazardous to safety, health or the environment, the competent authority of the State of the port where the ship is being inspected shall ensure that the ship is detained, or the operation in connection with which the deficiencies have been revealed is prohibited. The detention shall not be lifted until the hazard is removed, or until such authority establishes that the ship can, subject to any necessary conditions, proceed to sea, or the operation be resumed, without risk to the safety and health of passengers, or crew, or risk to other ships, or without being an unreasonable threat of harm to the marine environment.
3. A non-exhaustive list of deficiencies which, singly or together, shall warrant the detention of a ship is set out in Annex VI.
4. In the event the inspections referred to in articles 6 and 7 give rise to an intervention of any kind, the surveyor carrying out the inspection shall act in accordance with the provisions of Regulation 19, d) - f) of Chapter I to the Protocol of 1978 relating to the International Convention for the Safety of Life at Sea, 1974.

Article 10
(Follow-up of inspections and detention)

1. Where deficiencies referred to in article 9, paragraph 2 cannot be rectified in the port of inspection, the competent authority of that Member State may allow such ship to proceed to a repair yard located in the Community, and as decided by the master, provided that the conditions determined by the competent authority of that Member State are complied with. Such conditions shall ensure that the ship can so proceed without risk to the safety and health of passengers, or crew, or risk to other ships, or without being an unreasonable threat of harm to the marine environment.
2. In the circumstances referred to in paragraph 1, the competent authority of the Member State in the port of inspection shall notify the competent authority of the Member State where the repair yard is situated, the parties mentioned in article 9, paragraph 4 and any other authority as appropriate.
3. Notification to the parties referred to in paragraph 2 shall be in accordance with Annex 2 to the MOU.
The competent authority receiving such notification shall inform the notifying authority of the action taken.

4. Member States shall take measures to ensure that ships referred to in paragraph 1 which proceed to sea :
 - without complying with the conditions determined by the competent authority of the Member State in the port of inspection, or
 - which refuse to comply with the applicable requirements of the Conventions by not calling into the indicated repair yard;

shall be refused access to any port within the Community, until the owner has provided evidence to the competent authority of the Member State where the ship was found defective that the ship fully complies with all applicable requirements of the Conventions.

5. The competent authority of the Member State where the ship was found defective shall, in the circumstances as referred to in paragraph 4 immediately alert the competent authorities of all the other Member States.
Notwithstanding the provisions of paragraph 4, access to a specific port may be permitted in case of force majeure, provided adequate measures, to the satisfaction of the competent authority of such Member State, have been implemented by the owner or the master of the ship to ensure safe entry, and provided that an appropriate financial security has been assured.

Article 11 (Professional profile of surveyors)

1. The inspections shall be carried out only by surveyors who fulfil the qualification criteria specified in Annex VII.
2. The surveyors carrying out port State control must have no direct commercial interest vested in neither the ports, nor the ships where inspections in accordance with this Directive are carried out.

Article 12 (Reports from pilots and harbour authorities)

1. Pilots engaged in berthing or unberthing ships or on ships bound for a port within a Member State, or on ships in transit through waters under the jurisdiction of a Member State shall immediately inform the competent authority of the port State or the coastal State, where appropriate, whenever they learn that there are deficiencies which may prejudice the safe navigation of the ship, or the safety of the crew or passengers.
2. If port authorities, when exercising their normal duties, learn that a ship within their port has deficiencies which may prejudice the safe operation of the ship, or the safety of the crew or passengers, such authority shall immediately inform the competent authority of the port State concerned.

Article 13
(Co-operation)

1. Each Member State shall make provisions for co-operation between its competent authority established under article 4, its port authorities and other relevant authorities to ensure that its competent authority can obtain all relevant information on ships calling at its ports.
2. Member States shall make provisions for the exchange of information and co-operation between their competent authority and the competent authorities of all other Member States and maintain the established operational link between their competent authority, the Commission and the SIRENAC E information system set up in St. Malo, France.
3. The information referred to in paragraph 2 shall be that specified in Annex 4 to the MOU, and that required to comply with article 14 of this Directive.

Article 14
(Publication of detentions)

Each competent authority shall publish quarterly the number of detentions which have been carried out by that authority in the previous three months. The publication shall include the name of the ship, IMO number, flag State, the shipowner and the classification society, whether or not it has issued the statutory certificates on behalf of the flag State, and, if applicable, any other Party which has issued certificates to such ship in accordance with the Conventions on behalf of the flag State.

Article 15
(Fee for reinspection)

1. A fee shall be levied on the owner, or the operator of a ship which has been inspected in accordance with this Directive, and on which deficiencies, justifying a detention, have been revealed. The total fee levied in accordance with this article shall cover, but not exceed, the total costs in any normal accounting period for the inspections carried out after the formal notice of detention has been issued.
2. All costs related to inspections carried out by the competent authority of a Member State under the provisions of article 10, paragraph 4 shall be charged to the owner, or operator of the ship.

Article 16
(Data to monitor implementation)

1. Member States shall supply yearly the following information to the Commission and the MOU-Secretariat:

- Number of surveyors working on their behalf. For authorities where surveyors are dealing with port State inspections on a part time basis only, the number has to be converted into a number equal to full time employed surveyors;
 - Number of individual ships entering their ports in the previous calendar year.
2. The information listed in paragraph 1 shall be forwarded within three months after this Directive enters into force and thereafter once every calendar year, not later than the 1st of April.

Article 17
(Advisory Committee)

The Commission shall be assisted by the Committee set up by article 12 of Directive 93/75/EC¹ in accordance with the procedure laid down in article 19.

Article 18
(Amendment procedure)

The Commission, in accordance with the procedure laid down in article 19, may:

- a) amend the inspection obligation of Member States mentioned in article 5 on the basis of the experience resulting from the application of this Directive and taking into account the developments in the MOU;
- b) amend the Annexes in order to take into account amendments to the Conventions, protocols, codes, resolutions of relevant international bodies and to the MOU.

Article 19
(Committee procedure)

1. The representative of the Commission shall submit to the Committee referred to in article 17 a draft of the measures to be taken;
2. The Committee shall deliver its opinion on the draft within a time limit which the chairman may lay down according to the urgency of the matter, if necessary by taking a vote;
3. The opinion shall be recorded in the minutes; in addition each Member State has the right to have its position recorded in the minutes;

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

4. 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 20
(Implementation)

1. The Member States shall adopt the laws, regulations and administrative provisions necessary to implement this Directive not later than 1 July 1996 and shall inform the Commission thereof.
2. 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.
3. Member States shall communicate to the Commission the text of provisions of national law adopted by them in the field governed by this Directive.

Article 21

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

Article 22

This Directive is addressed to the Member States.

ANNEX I

PRIORITY LIST OF SHIPS TO BE INSPECTED as referred to in article 5, paragraph 2

1. Ships visiting a port of a Member State for the first time. In their application of this criteria Member States shall also take into account those inspections which have been carried out by members to the MOU. In the absence of appropriate data to implement this obligation, Member States shall rely upon the available SIRENAC E data and inspect those ships which have not been registered in the SIRENAC E database, after the entry into force of that database the 1st January 1993.
2. Ships flying the flag of a State appearing in the 3-year rolling average table of above average detentions and delays published in the annual report of the MOU.
3. Ships which have been permitted to leave the port of a Member State under the condition that noted deficiencies are being rectified within a specified period, upon expiration of such period.
4. Ships which have been reported by pilots or harbour authorities to have deficiencies which may prejudice their safe navigation, cf. Council Directive 93/75/EEC of 13 September 1993¹ and article 12 of this Directive.
5. Ships to which the statutory certificates on the ship's construction and equipment, issued in accordance with the Conventions, and the classification certificates, have been issued by an organisation which is not a recognised organisation under the terms of Council Directive on Common Rules and Standards for Ship Inspection and Survey Organisations².
6. Ships which have failed to comply with the obligations embodied in Council Directive 93/75/EEC of 13 September 1993³.
7. Ships which are in a category for which enhanced control has been decided, cf. article 7.
8. Ships which have been suspended from class for safety reasons in the course of the preceding six months.

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

² O.J. N° - Concerning Common Rules and Standards for Ship Inspection and Survey Organisations. This Directive has been provisionally adopted by the Council on 29.11.93, pending on the completion of the cooperation procedure.

³ O.J. N° L 247, 5.10.93, p. 19. concerning minimum requirements for vessels bound for or leaving Community ports and carrying dangerous or polluting goods.

ANNEX II

List of certificates and documents which, to the extent applicable, shall be checked during the inspection referred to in article 6, paragraph 1.

1. International Tonnage Certificate (1969);
2. Passenger Ship Safety Certificate;
 - Cargo Ship Safety Construction Certificate;
 - Cargo Ship Safety Equipment Certificate;
 - Cargo Ship Safety Radiotelegraphy Certificate;
 - Cargo Ship Safety Radiotelephony Certificate;
 - Cargo Ship Safety Radio Certificate;
 - Exemption Certificate;
3. International Certificate of Fitness for Carriage of Liquefied Gases in Bulk;
 - Certificate of Fitness for the Carriage of Liquefied Gases in Bulk;
4. International Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk;
 - Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk;
5. International Oil Pollution Prevention Certificate;
6. International Pollution Prevention Certificate for the Carriage of Noxious Liquid Substances in Bulk;
7. International Load Line Certificate (1966);
 - International Load Line Exemption Certificate;
8. Oil Record Book, part I and II;
9. Cargo Record Book;
10. Minimum Safe Manning Document;
 - Certificates of Competency;
11. Medical Certificates, cf. ILO Convention N° 73 concerning Medical Examination of Seafarers;
12. Stability information;
13. Copy of Document of Compliance and Certificate issued in accordance with The International Management Code for the Safe Operation of Ships and for Pollution Prevention (IMO Resolution A.741 (18));
14. Certificates as to the ship's hull strength and machinery installations issued by the classification society in question (only to be required if the ship maintains class with a classification society).

ANNEX III
(Non-exhaustive list)

The following are examples of "clear grounds" for a more detailed inspection as referred to in paragraph 3 of article 6.

1. A report or notification by another Member State;
2. A report or complaint by the master, a crew member, or any person or organisation with a legitimate interest in the safe operation of the ship, shipboard living and working conditions or the prevention of pollution, unless the Member State concerned deems the report or complaint to be manifestly unfounded;
3. The ship has been involved in a collision on its way to the port;
4. The Oil Record Book has not been properly kept;
5. The ship has been accused of an alleged discharge of harmful substances or effluents;
6. During examination of the certificates and other documentation, cf. article 6, paragraph 1a), inaccuracies have been revealed;
7. Indications that the crew members are not able to communicate orally, cf. article 6, paragraph 1b);
8. Evidence of cargo and other operations not being conducted safely, or in accordance with IMO guidelines, e.g. the content of oxygen in the inert gas main supply to the cargo tanks is above the prescribed maximum level;
9. Failure of the master on an oil tanker to produce the record of the oil discharge monitoring and control system for the last ballast voyage;
10. Absence of an up-to-date muster list, or crew members not aware of their duties in case of fire, or abandon ship;
11. If the professional judgement of the surveyor warrants for a detailed inspection of specific areas of the ship, its equipment or its crew.

ANNEX IV

Procedures and Guidelines for the control of ships as referred to in article 6, paragraph 4.

1. Procedures for the Control of Ships (IMO Resolution A.466 (XII)), as amended;
2. Principles of Safe Manning (IMO Resolution A. 481 (XII) and Annexes which are Contents of Minimum Safe Manning Document (Annex 1) and Guidelines for the Application of Principles of Safe Manning (Annex 2);
3. Procedures for the Control of Ships and Discharges under Annex I of MARPOL 73/78 (IMO Resolution A.542 (13));
4. Procedures for the Control of Ships and Discharges under Annex II of MARPOL; 73/78 (IMO Resolution MEPC 26 (23));
5. Procedures for the Control of Operational Requirements Related to the Safety of Ships and Pollution Prevention (IMO Resolution A.742 (18));
6. The Provisions of the International Maritime Dangerous Goods Code;
7. The Procedures laid down in Annex 1 to the MOU;
8. ILO publication "Inspection of Labour Conditions on Board Ship : Guidelines for Procedure".

ANNEX V

CATEGORIES OF SHIPS SUBJECT TO ENHANCED CONTROL as referred to in article 7, paragraph 1.

1. Oil tankers, 5 years or less from the date of phasing out in accordance with MARPOL 73/78, Annex I, Regulation 13G;
2. Bulk carriers, older than 12 years of age;
3. Passenger ships.

* * *

GUIDELINES FOR ENHANCED CONTROL OF CERTAIN CATEGORIES OF SHIPS as referred to in article 7, paragraph 2.

To the extent applicable the following items shall be considered as part of the enhanced control. Surveyors shall be aware that it may jeopardize the safe execution of certain on board operations, e.g. cargo operation, if tests, having a direct effect thereon, are required carried out during such operations.

A. SHIPS IN GENERAL (CATEGORY 1, 2 AND 3):

- Black-out and start of emergency generator;
- Inspection of emergency lighting;
- Operation of emergency fire pump with two firehoses connected to the fire main line;
- Operation of bilge pumps;
- Closing of watertight doors;
- Lowering of one seaside lifeboat to the water;
- Test of remote emergency stop for e.g. boilers, ventilation and fuel pumps;
- Testing of steering gear including auxiliary steering gear;
- Inspection of emergency source of power to radioinstallations;
- Inspection and, to the extent possible, test of engine room separator.

B. OIL TANKERS

In addition to the items listed under A., the following items shall also be considered as part of the enhanced control for oil tankers:

- Fixed deck foam system;
- Fire fighting equipment in general;
- Inspection of fire dampers to engine room, pump room and accommodation;
- Control of pressure of inert gas and oxygen content thereof;
- Control that possible crude oil washing is being carried out in accordance with the Manual.

C. BULK CARRIERS

In addition to the items listed under A., the following items shall also be considered as part of the enhanced control for bulk carriers:

- Possible corrosion of deck machinery foundations;
- Possible deformation and/or corrosion of hatch covers;
- Possible cracking at bulwark stays;
- Possible cracks or local corrosion in transverse bulkheads;
- Access to cargo holds.

D. PASSENGER SHIPS

In addition to the items listed under A., the following items shall also be considered as part of the enhanced control for passenger ships:

- Testing of fire detection and alarm system;
- Testing of proper closing of fire doors;
- Test of public address system;
- Fire drill where, as a minimum, all sets of fireman's outfit are being demonstrated and part of the catering crew take part;
- Demonstration that key crew members are aquanted with the damage control plan.

Considering the short period some passenger ships (e.g. ferries) stay in port, and the consequences of delaying such a ship, surveyors may have to refrain from requiring certain tests carried out, unless in their professional judgement the condition of the ship, its equipment or crew warrant for the ship to be delayed.

ANNEX VI

The following are examples of deficiencies which are of such a nature that they warrant the detention of a ship as referred to in paragraph 3 of article 9. The list is not exhaustive, and the surveyor will have to use his professional judgement to determine whether to detain a ship on the basis of his findings during the inspection.

1. The lack of valid certificates as required by the Conventions. For ships flying the flag of a non-party to a Convention a Letter of Compliance or a non-Convention Certificate may be accepted by the surveyor, if they have been issued by a competent organization;
2. Significant areas of damage or corrosion, or pitting of plating and associated stiffening in decks and hull, affecting seaworthiness or strength to take local loads. Proper temporary repairs for a voyage to a port for permanent repairs may be accepted;
3. The absence of sufficient and reliable information, in an approved form, which by rapid and simple processes enables the master to arrange for the loading and ballasting of his ship in such a way that a safe margin of stability is maintained at all stages and at varying conditions of the voyage, and that the creation of any unacceptable stresses in the ship's structure are avoided;
4. Emergency generator inoperative;
5. Major parts of the emergency lighting inoperative, e.g. at the life saving appliances;
6. Main- or emergency fire pump inoperative;
7. Absence, or failure of proper operation of the required radio equipment for distress and safety communication;
8. Number, composition or certification of crew not corresponding with the Safe Manning Document and the crew not able to comply with watchkeeping procedures of the International Convention on Standards of Training, Certification and Watch keeping for Seafarers, 1978;
9. Absence, serious deterioration or failure of proper operation of the oily-water separating equipment, the oil discharge monitoring and control system, or the 15 ppm alarm arrangements. Departure to a repair port may be permitted, pending on operational conditions are complied with as required by the surveyor;
10. Substantial deterioration of hatch closing arrangements and coamings impairing the weathertightness of the hull.

ANNEX VII

MINIMUM CRITERIA FOR SURVEYORS as referred to in article 11, paragraph 1

1. The surveyor has to be authorized to carry out flag State control by the competent authority of the Member State.
2. A minimum of two years of service as a flag State surveyor has to be completed.
3. Possession of an authorization to detain a ship in accordance with the appropriate national legislation.
4. Possession of :
 - a) a certificate of competency as master, cfr. STCW, Reg. II/2, or
 - b) a certificate of competency as chief engineer, cfr. STCW, Reg. III/2, or
 - c) a certificate of competency as radio officer, cfr. STCW, Reg. IV/1, or
 - d) having passed examination as a naval architect, a mechanical engineer or an engineer related to the maritime fields and worked in that capacity for at least 5 years.
5. The surveyors mentioned under 4 a)-c) must have served at least as a Chief Officer, a Second Engineer (in some Member States that position is referred to as First Engineer) or a Radio Officer respectively, for a period of not less than two years.
6. Ability to communicate orally and in writing in the English language.

DECISION OF THE EEA JOINT COMMITTEE

No [..] /94
of [..] [.....] 1994

amending Annex XIII (Chapter V) by adding Council Directive [../..EU] concerning the enforcement, in respect of shipping using Community ports and sailing in the waters under the jurisdiction of the Member States, of international standards for ship safety, pollution prevention and shipboard living and working conditions.

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 [../..EU] of the Council of the European Union of [.. ...] 1994, 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 [../..EU] concerning the enforcement, in respect of shipping using Community ports and sailing in the waters under the jurisdiction of the Member States, of international standards for ship safety, pollution prevention and shipboard living and working conditions.

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

Article 20 (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 1 July 1996.

Article 3

The decision shall enter into force on [...] [...] 1994.

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, [...] [...] 1994

For the EEA Joint Committee
The President

.....

The Secretaries
to the EEA Joint Committee

.....

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