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Proposal for a

COUNCIL DIRECTIVE

ON COMMON RULES AND STANDARDS

FOR SHIP INSPECTION

AND SURVEY ORGANISATIONS

(presented by the Commission)

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(93) 218 final

Brussels, 19 May 1993

Proposal for a

COUNCIL DECISION

ON COMMON RULES AND STANDARDS

FOR SHIP INSPECTION

AND SURVEY ORGANISATIONS

(presented by the Commission)

EXPLANATORY MEMORANDUM

GENERAL INTRODUCTION

1. In the Communication "A Common Policy on Safe Seas", approved on 24 February 1993, the Commission underlines that despite the efforts already made in order to reduce the risk of casualties at sea, both at national and international level, the risk in shipping activities is still very high¹.
2. The Communication also draws attention to the wide variation of accidents and deficiencies within the world fleets. These differences continue to exist in spite of the maze of international standards which regulate the shipping sector and which would be expected to lead to similar levels of safety performance in all fleets.
3. The variations in safety performance are due to different factors. An important one is the unsatisfactory performance of a number of shipping operators and the flag authorities responsible for safety.
4. The International Maritime Organization (IMO) has also 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 on their respective registers or operating under their flags.
5. Investigations into the causes of accidents and deficiencies found on ships point to the ways chosen by States of implementing the internationally agreed standards on construction and maintenance of seagoing vessels. These standards are mostly fixed by international Conventions designed to ensure a satisfactory level of safety and pollution prevention. More precisely:
 - the International Convention for the Safety of Life at Sea (SOLAS 1974) lays down technical safety standards for cargo vessels over a

¹ Communication from the Commission "A Common Policy on Safe Seas", p.1 to 13.

given tonnage and for passenger vessels, both on an international voyage

- the International Convention on Load Lines (LLC 1966) establishes safety standards relating to solidity and stability of ships and
- the International Convention on Maritime Pollution (MARPOL 1973) lays down construction and operational rules designed to prevent pollution of the seas.

6. According to these Conventions, the national Administrations are responsible for the testing of compliance with the international standards and the issuing of the corresponding international Certificates to the vessels on their Registers. These tasks require such a vast technical infrastructure and expertise that it is difficult for most Member States to carry out their responsibilities using the actual structure of the national Administrations.

7. Until two decades ago, these tasks were, however, already performed by a limited number of highly specialized organisations, the classification societies, with extensive experience in the shipping sector, employing skilled technical staff and supported by powerful research and computer centres. They had been assessing for quite some time already the seaworthiness and quality of ships, within the framework of private contracts with shipowners, in order to deliver a class, in a highly professional manner, thanks to the adequacy of their back-up structures. For this reason, the national Administrations decided, in conformity with specific provisions in the Conventions, to delegate to these classification societies inspections and surveys to various extents, i.e. control of compliance with national and international safety rules and, in some cases, the issuing of safety Certificates.

8. Furthermore, neither the SOLAS '74 Convention nor the Load Lines Convention identify the standards to which all ships must conform, at the building stage and during their entire life, to a degree detailed enough to ensure that they are uniformly implemented in a non-divergent manner. This is particularly true for elements such as the hull, machinery and electrical and control installations. These fundamental ship components are

controlled according to the rules of classification societies; the Load Lines Convention even expressly provides that hull, machinery and electrical and control installations "built and maintained in conformity with the requirements of a classification society recognized by the Administration may be considered to possess adequate strength"². Therefore, most national Administrations decided at the same time to delegate to the classification societies the preparation and enforcement of safety rules concerning these parts of the ships.

9. Since the adoption of these Conventions, however, the number of classification societies has sharply increased to reach 40 to 50 nowadays. This is the root of the problem. Quite a number of these companies, in fact, cannot offer sufficient evidence as regards their experience, reliability and professionalism and do not have the traditional characteristics to justify their being delegated to act on behalf of the national Administrations: for example, they have insufficient trained and experienced personnel and infrastructure to prepare and carry out tests, to interpret rules and in some cases to lay them down. There is also a lack of procedural criteria to be followed by certain classification societies: for ships in service, survey intervals and specifications of conditions under which a partially worn out structure or worn machinery may be considered unsafe are not defined.

10. All these factors have led to a situation worldwide and in the EC where the most important rules, i.e. those affecting hull, machinery and electrical and control installations, have not been laid down internationally but only internally by classification societies, and the conformity of ships to rules is determined by bodies of different levels of quality and expertise whose decisions on safety-related issues can hardly disregard other considerations such as the need to retain a fleet under their class. These divergences do not only have an adverse effect on safety, they can and do create competitive disadvantages which encourage a more lax approach to surveying and certification in those classification societies with an excellent record of performance.

² International Convention on Load Lines, 1966, Annex I Regulation 1.

JUSTIFICATION FOR A COUNCIL DIRECTIVE

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

The Extraordinary Council on Environment and Transport, at its meeting of 25 January 1993, urged the Community and Member States to establish strict, convergent implementation for the whole Community of international rules, in particular on construction, certification and maintenance of vessels. The Communication, "A Common Policy on safe Seas", approved by the Commission on 24 February 1993, announced the proposal for a Community Directive establishing measures to be followed by the Member States and national organisations concerned with the certification and the related surveillance of compliance by ships with the international Conventions on safety and pollution prevention at sea. This Directive is fully in line with the action announced in the Communication.

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

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

- c) What is the Community dimension of the problem?

All the Member States are concerned as flag States and eleven of them are also concerned as port States.

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

The most efficient solution is at Community level; a complete explanation of the need for a Community measure is given in paragraphs 12 to 15.

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

The concrete added value of this Directive is the enforcement of international standards in a non-divergent way at flag level and also at port level, all over in the Community. Statistics show that each year of inactivity involves a high price in terms of casualties and loss of human lives.

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

This measure is meant to solve problems at Community level because of the added value the Community can bring. One of the elements necessary for attaining the objectives of the action is to organise a Community-wide recognition of certain organisations. This recognition can maintain an adequate safety and pollution prevention level only if it lays down minimum standards for recognition. Common criteria for hull, machinery and electrical and control installations are also introduced by the proposed measure. The definition of priority criteria for Port State Control will ensure appropriate implementation to ensure that ships flying third State flags are not treated more favourably than ships flying the flag of a Member State.

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

This Directive establishes at Community level a common framework of quality requirements to be met by the organisations to which the Member States decide to delegate tasks, but it does so by leaving to each Member State the responsibility of deciding the implementation tools which best fit its internal system, the recognition its, the means of enforcement, and the implementation of the Directive.

12. The facts outlined in the general introduction show the necessity to ensure that all the national Administrations and the organisations to which they delegate the inspection, survey and certification tasks are fully qualified for the job, which implies that their structure, methods, rules and know-how guarantee a high quality of control of conformity with international rules. Rules should also be established such as those for hull, machinery and electrical and control installations, against which the construction and maintenance of ships can actually be examined.

13. Action within the international organisations have not so far achieved these objectives.

Quite a number of the States which are members of IMO are not in a position to improve the performance of the organisations acting on their behalf. Furthermore for several organisations to accept internationally agreed high quality standards would imply raising their present performance levels to a point where they will be less attractive than they are now to irresponsible shipowners. If certain developing States were obliged to delegate their tasks only to more severe classification societies, they would need financial support to upgrade the quality of their classification societies and their fleet. These circumstances make it extremely difficult to introduce rules of a level of adequate severity

through IMO; this has been demonstrated during the first meeting of the Flag State Implementation (FSI) Committee (see paragraph 17 below).

Furthermore, ongoing work on classification societies in IMO does not deal with implementation and development of the rules affecting hull, machinery and electrical and control installations, while this item is considered an essential part of the Directive proposed by the Commission.

It is also quite obvious that an effective answer to the situation outlined above cannot be given solely at national level. The present unacceptable situation described above is, in fact, the result of two decades during which individual action by States has failed to secure the safety level provided for by the international regulatory framework. Hence the need for a Community solution which regulates the link between the national Administrations and the classification societies, establishes qualitative criteria for the organisations and aims to harmonise the development and implementation of safety requirements as regards hull, machinery and electrical and control installations. Finally, through Port State Control action, it also ensures that ships flying third country flags are not treated more favourably than ships operating under the flags of the Member States.

14. In accordance with the proportionality principle, the Directive proposed by the Commission establishes at Community level a common framework of quality requirements to be met by the organisations to which the Member States decide to delegate tasks, in order to guarantee equivalent safety performances of classification societies in the EC, but it does so by leaving to each Member State the responsibility of deciding the implementation tools which best fit its internal system, and to the delegated competent organisations the duty to lay down, maintain and apply the appropriate standards under the surveillance of the Member States in cooperation with the Commission.

15. The need to introduce qualitative criteria for organisations acting on behalf of Member States has already been stressed by the Council, which

in its Regulation (EEC) N° 613/91 of 4 March 1991, on the transfer of ships from one register to another within the Community, provides that "Where the Certificates are issued by an organisation on behalf of a Member State, the latter must ensure that the qualifications, technical experience and staffing of the said organisation are such as will enable it, in applying the Conventions, to issue Certificates guaranteeing a high level of safety. The organisation must be in a position to develop and update rules and regulations having the quality of accepted technical standards, and must operate with qualified and experienced surveyors so as adequately to assess a ship's condition".³

CONTENT OF THE COUNCIL DIRECTIVE

16. The scope of this Directive is to specify a set of criteria to be met by the classification societies and other private bodies, when acting on behalf of the national Administrations of the Member States; to ensure, through such criteria, that the organisations authorised to carry out surveillance and certification, or organisations upon which Member States intend to rely for those purposes, are professionally efficient, reliable and able to maintain proper control of compliance with safety and environmental protection standards of the vessels they classify.

This Directive represents a first step to improve the compliance with international safety standards existing in the shipping sector and in view in particular of the low safety performance of some organisations concerned with the certification and related surveillance of compliance of ships with the Conventions. Moreover, loopholes and weaknesses in the international Conventions, Codes and Resolutions have often led to varying

³ Council Regulation (EEC) N° 613/91 of 4 March 1991, article 3, paragraph 3.

levels of application and enforcement thereof, and to consequent differing safety and environmental performances. A further aim of this Directive, therefore, is to establish the development and implementation of minimum safety requirements with equivalent effect throughout the Community, in order to eliminate substantial differences in the construction and maintenance of vessels operating under the flags of the Member States, and more precisely rules on hull, machinery and electrical and control installations.

17. The IMO intends to develop non-mandatory guidelines for delegation of authority to organisations, and minimum standards for organisations acting on behalf of the Administration.

Therefore, the newly created sub-Committee on Flag State Implementation was invited to prepare a relevant IMO Resolution. During its April 1993 meeting this sub-Committee finalised a draft Resolution.

It is the intention of the sub-Committee to report to the next Maritime Safety Committee (MSC) and Marine Environment Protection Committee (MEPC) on the outcome of its work, with the aim of inviting the Assembly to adopt a Resolution.

The requirements, with regard to delegation of authority, set out in this Directive are quite similar to those under preparation in the IMO. The criteria set out in Annex I of the Directive contain the minimum requirements identified at this stage by the Flag State Implementation sub-Committee.

Should this Assembly Resolution be adopted in November 1993, the Commission is prepared to take the IMO recommendations duly into account in so far as the guidelines contain more detailed provisions with regard to the relationship between the Administration and the organisations, and if the minimum criteria for the organisations ensure at least an equivalent level of safety.

18. In order to achieve the above mentioned aims, the Directive sets two objectives. The first objective of this Directive is to secure the direct and tighter involvement of the national Administrations in the ship certification

and survey process. To this end the following provisions will be necessary:

a) A first provision to establish that where a Member State decides to delegate fully or in part its statutory role in inspecting and certifying compliance with Conventions such as SOLAS, Load Lines and MARPOL, or to rely upon expertise from organisations outside its Administration to carry out inspections and surveys related to those Certificates, it shall only entrust these duties to organisations which meet a set of common minimum criteria established in the Directive, guaranteeing their ability and commitment to perform at a highly reliable and efficient level.

This provision applies to the inspection surveys and Certificates required by the International Conventions listed in the Directive; for example, the Directive does not affect certification of specific items of marine equipment, nor does it relate to Certificates for ships which are not covered by the International Conventions.

The list of criteria has been established having regard to the requirements of the International Association of Classification Societies (IACS) and to the criteria specified in EN 45004 (inspection bodies) and EN 29001 European standardisation (CEN). According to these criteria, organisations authorised to act on behalf of Member States are required

- to maintain a documented quality system;
- to employ a number of professionally qualified technical staff, working exclusively for the organisation and sufficient to carry out research and to develop a full and adequate set of own rules and regulations at least on hull, machinery and electrical and control installations, and able to carry out all inspections and surveys required by the Conventions for the issue of Certificates;
- to maintain a worldwide coverage of inspection offices and a minimum size of classified fleet or tonnage;
- to demonstrate willingness to cooperate with port State control.

In deciding upon the recognition of the organisations, the Commission

shall consult a Committee; such Committee will become operational as soon as the Council has adopted the Directive.

b) A second provision to establish a working relationship between the competent national Administrations and the organisations acting on their behalf, to ensure quality and consistency of rules, surveys and certifications. This relationship is based upon a formalized agreement between the parties setting out the specific duties and functions assumed by the organisations; the national Administrations shall carry out a periodic audit of this work as well as checking procedures involving random and detailed inspections of ships, and shall provide the Commission with a report of the results of this monitoring and with any information relating to the performances of the organisations.

c) A third provision concerns the non-Community flag Administrations. Since safety at sea is a worldwide problem, the responsible behaviour required from Member States' Administrations when delegating tasks to outside organisations must also be required from third States' Administrations, whose ships intend to operate in Community waters. To this end, the Directive establishes that Member States, acting as States of the port, shall ensure that ships flying third States flags are not treated more favourably than ships operating under the flag of a Member State. They shall therefore consider as a primary criterion for selecting ships for inspection the fact that the ship Certificates have been delivered by an organisation which has not been recognised. Appropriate measures should then be taken for ships which fail to meet the agreed international standards.

19. The second objective of this Directive is to ensure that all "Convention" ships flying the flag of a Member State comply with precisely defined requirements designed to achieve equivalent results on safety and reliability of hull, machinery and electrical and control installations. These requirements apply both to the certification of new constructions and to surveys during the life of the ship. Preparation of sufficiently detailed standards for new constructions would mean, however,

practically re-writing the extremely large and complex set of rules and procedures of the classification societies, in fact several hundred volumes of rules, and keeping them continuously updated. This would be unrealistic and unnecessary since the major classification societies which are members of the International Association of Classification Societies (IACS) have developed, maintained and upgraded in the course of the years all necessary standards for these ships' main components. Although they may differ in cases, it is generally accepted that their effects on the safety of ships are substantially equivalent. Thus, the Directive states that hull, machinery and electrical and control installations are to be built and maintained in conformity with the requirements of one of the classification societies which meet the set of common criteria described above. In order to maintain equivalence of safety standards in accordance with the provisions of the Directive, approved organisations shall consult with each other periodically.

20. The Commission considers that an immediate consequence of this Directive, apart from the improvement and harmonisation of safety and environmental rules within the Community will be to release the approved organisations from the present economic pressure put on them by unsound competitors. The Commission shares the views expressed by the shipping sector that such an economic pressure prevents classification societies from maintaining the necessary full independence of judgement when carrying out their statutory duties on behalf of the national Administrations. The adoption of this Directive will restore full confidence in the effectiveness and reliability of the inspections and surveys of the approved organisations and in their continuous commitment to maintain and update rules on hull, machinery and electrical and control installations.

21. An additional positive effect of this Directive will be the suppression of special or exclusive rights granted by Member States to one or more organisations on the basis of criteria other than quality and safety criteria. The application of the principle of freedom to provide services within the Community to organisations which meet the common set of minimum criteria will allow only qualified organisations to compete freely, while

guaranteeing shipowners and Governments a high quality service as regards the safety aspects. The Directive achieves these objectives by stating that Member States which delegate to or rely upon organisations outside their Administration will have to accept that such tasks are carried out by any one of the recognised organisations.

SPECIAL CONSIDERATIONS

Article 1

This article defines the purpose of the Directive: to specify a set of criteria to be met by the classification societies and other private bodies, when acting on behalf of the national Administrations of the Member States; to ensure, through such criteria, that the organisations authorised to carry out surveillance and certification, or organisations upon which Member States intend to rely for those purposes, are professionally efficient, reliable and able to maintain proper control of compliance with safety and environmental protection standards of the vessels they classify.

This Directive represents a first step to improve the compliance with international safety standards existing in the shipping sector and in view in particular of the low safety performances of some organisations concerned with the certification and related surveillance of compliance of ships with the Conventions.

Moreover, loopholes and weaknesses in the international Conventions, Codes and Resolutions have often led to varying levels of application and enforcement thereof, and to consequent differing safety and environmental performances. A further aim of this Directive, therefore, is to establish the development and implementation of minimum safety requirements with equivalent effect throughout the Community, in order to eliminate substantial differences in the construction and maintenance of vessels operating under the flags of the Member States, and more precisely rules on hull, machinery and electrical and control installations of ships.

Article 2

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

Article 3

Paragraph 1. This article reaffirms the principle that States are primarily responsible for the implementation of the provisions of international Conventions to which they have acceded. Each Member State must, in so far as possible, ensure that their Administrations effecting inspections of the ships and issuing the related Certificates, do have enough experience, capability and reliability to carry out such tasks.

Paragraph 2. Most of the relevant international Conventions, however, allow Member States to delegate fully or in part surveys and inspections of the ships (including those for the assessment of the general structural strength of the hull, the reliability and safety of machinery and electrical and control installations) and the issuing of Certificates to private organisations or experts.

This article states that the organisations or experts entrusted to carry out these duties on behalf of a Member State, or on the expertise of which a Member State relies, shall only be the recognised organisations, being bodies which offer evidence of their experience, technical ability and ethical reliability. Exceptions to this provision are the Cargo Ship Safety Radiotelegraphy Certificate and the Cargo Ship Safety Radiotelephony Certificate, whose issuing may be delegated to other bodies for practical reasons.

Paragraph 3. The certification of specific items of marine equipment is not covered by this article; it will be regulated by another EC Directive.

Article 4

Paragraph 1. This article states that Member States may recognise as organisations acting on their behalf only those bodies which fulfil the criteria set out in Annex I of this Directive. The organisations which want to be recognised for the purpose of article 3 have to submit adequate information to the Member States in order to prove their compliance with such criteria.

Paragraph 2. Notification of the recognised organisations shall be given by each Member State to the Commission and to the other Member States.

Article 5

Paragraph 1. In accordance with the principles of free circulation of services and the elimination of special and exclusive rights within the common market, laid down in articles 60 and 90 of the Treaty, this article states that Member States delegating safety duties as mentioned in Article 3, cannot refuse any of the recognised organisations which are located in the Community to act on their behalf. Where a Member State decides to delegate or rely upon an organisation for those tasks, it has to accept all the recognised organisations which are located, within the meaning of article 58 of the Treaty, in the European Community and which offer to provide their services for the accomplishment of such tasks.

Paragraph 2. If the recognised organisation is located in a third State, a reciprocal recognition between the Member State and the third State may be requested to authorise the said organisation to act on behalf of the Member State.

Article 6

Paragraph 1. Since the Directive intends to secure a tighter involvement of the national Administrations in the ship certification and survey process, this article describes the working relationship which must be established between the responsible administration of each Member State and the organisations carrying out its statutory duties.

Paragraph 2. Transparency of this relationship is assured by formalised written agreements setting out the duties and functions assumed by the organisations acting on behalf of a Member State. This agreement will guarantee the possibility for that Member State to undertake periodical audits and carry out inspections of ships for which these duties and functions have been delegated. The organisations shall also provide the Member States with information about their classed fleet.

Paragraph 3. Moreover, in order to allow the circulation of relevant information concerning the performances of the classification societies within the Community, this article sets up a procedure to inform the Commission and subsequently all the Member States about the working relationship which each national Administration establishes with external organisations.

Article 7

This article establishes an advisory Committee made up of representatives of the Member States, preferably maritime safety experts, and chaired by a representative of the Commission. The experts meet as required to assist the Commission in amending Annex I, in withdrawing recognition of organisations which no longer fulfil the criteria set out in Annex I, and in the case of a suspension procedure for reasons of serious danger to safety or environment in accordance with article 9.

Article 8

This article provides that Annex I may be amended by the Commission in order to adapt it to possible evolutions of the relevant international Conventions and to update the common set of criteria. The Commission may also decide to withdraw the recognition of the recognised organisations which no longer fulfil the criteria of Annex I.

In both cases, the Commission will do so in accordance with a specific procedure laid down in article 12.

Article 9

This article describes the procedure for suspending the authorisation given to an organisation to carry out statutory duties: when a Member State considers that the performance of a classification society acting on its behalf is no longer reliable in terms of safety and environmental protection, it may suspend such authorisation, and must then inform the Commission and the other Member States. The Commission shall decide whether to withdraw the suspension or to withdraw the recognition of the organisations in accordance with article 12 within three months.

This article has been designed as a safeguard clause.

Article 10

Paragraph 1. With regard to the principle of direct involvement of the national Administrations in the survey and certification process, this article establishes mandatory verification of the effectiveness of the tasks carried out by the authorised organisations and of their compliance with the

criteria set out in Annex I. Member States must fulfil the obligations under 1 and 2 by monitoring those items themselves, but in the case of organisations located in another State, it is sufficient for them to review the monitoring by another Member State's Administration.

Paragraph 2. Each Member State is requested to monitor the work of the delegated organisations every year.

Paragraph 3. They must forward to the Commission and to the other Member States both the results of this control and any information about the performance of the organisation.

Article 11

Paragraph 1. This paragraph is designed to ensure that ships calling at Community ports and carrying Certificates issued by organisations which have not been recognised in this Directive as meeting the required quality, are inspected as a priority since one may reasonably doubt the conformity of the ship with its Certificates. Member States, when acting as Port Authorities, are required to inspect with high priority those ships whose safety and class Certificates have not been issued by a recognised organisation.

Member States are required to take appropriate measures when ships do not meet the internationally agreed standards and to inform the Commission and the Secretariat of the Memorandum of Understanding on Port State Control of all the discrepancies discovered acting as Port Authorities.

Paragraph 2. A performance record of the organisations working on behalf of flag States will be held, updated every year and distributed to the other Member States and the Commission.

Article 12

This article describes the procedure which must be applied when the Commission is required to take a decision on matters covered by articles 8 and 9. It is the type procedure I of article 2 of the Council Decision 87/373/EEC of 13 July 1987⁴ laying down the procedures for the exercise of implementing powers conferred to the Commission.

Article 13

This article requires the Member States to ensure that the ships flying their flag comply with the requirements for construction and maintenance, including periodic surveys, of hull, machinery and electrical and control installations set out by one of the classification societies among the recognised organisations. Furthermore, classification societies are required to consult each other in order to maintain equivalence of their technical standards.

This approach appears sensible as these standards exist and are so numerous and complex that rewriting them would be very time-consuming and indeed also unnecessary, since the major classification societies have developed and upgraded in the course of the years all necessary safety standards for these ships' main components.

⁴ OJ N° L 197/33, 17. 7. 87. Council Decision 87/373/EEC of 13 July 1987 laying down the procedures for the exercise of implementing powers conferred on the Commission.

Article 14

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

Article 15

No comments.

PROPOSAL FOR A
COUNCIL DIRECTIVE ON COMMON RULES AND STANDARDS
FOR SHIP INSPECTION AND SURVEY ORGANISATIONS

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

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

Whereas safety and pollution prevention at sea may be effectively enhanced through the elimination of substandard operators and vessels from Community waters, while strictly applying international Conventions, Codes and Resolutions;

Whereas the control of compliance of ships with the uniform international standards for safety and prevention of pollution of the seas is the responsibility of flag and port States;

Whereas Member States are responsible for the issuing of international Certificates for safety and pollution provided under Conventions such as SOLAS 74, Load Lines 66 and MARPOL 73/78, and for the implementation of the provisions thereof;

Whereas in compliance with such Conventions, all Member States may delegate to or rely to a various extent upon technical organisations for the certification of such compliance, and may delegate the issue of the relevant safety Certificates;

Whereas worldwide a large number of the existing classification societies do not ensure either adequate implementation of the rules or reliability when acting on behalf of the national Administrations, as they do not have adequate structures and experience to be relied upon and to enable them to carry out their duties in a highly professional manner;

Whereas the action at Community level is more efficient in this field than the combined actions of the Member States;

Whereas the appropriate way to act is through a Council Directive laying down minimum criteria for recognition of organisations, while leaving recognition itself, the means of enforcement and the implementation of the Directive to the Member States;

Whereas the Council urged the introduction of standards at Community level to enforce the implementation of the international rules in order to eliminate substandard vessels and operators from Community waters;

Whereas EN 45004 and EN 29001 standards combined with International Association of Classification Societies (IACS) standards constitute an adequate guarantee of performance quality of organisations;

Whereas organisations wishing to be recognised for the purpose of this Directive shall submit to the Member States complete information and

evidence of their compliance with the minimum criteria, and the Member States shall notify to the Commission and to the other Member States the organisations they have recognised;

Whereas the establishment of the common market involves free circulation of services so that organisations meeting a set of common criteria which guarantee their professionalism and reliability cannot be prevented from supplying their services within the Community;

Whereas a tighter involvement of the national Administrations in ship surveys and issue of the related Certificates is necessary to ensure full compliance with the international safety rules even if the Member States rely upon organisations outside their Administration for carrying out statutory duties;

Whereas it is necessary to establish an advisory committee composed of the representatives of the Member States in order to assist the Commission in its effort to ensure effective application of the existing maritime safety and environmental standards;

Whereas the Commission shall act according to the same procedure laid down in article 12 in order to take due account of progress in international fora and to update the minimum criteria;

Whereas on the basis of the information provided in accordance with article 10 by the Member States about the performance of the organisations working on their behalf, the Commission will decide whether to withdraw the recognition of recognised organisations which no longer fulfil the set of common minimum criteria, acting in accordance with the procedure of article 12;

Whereas Member States must nevertheless be left the possibility of suspending their authorization to an organisation for reasons of serious danger to safety or environment;

Whereas the Commission shall rapidly decide upon confirmation or overruling of such a national measure in accordance with the procedure referred to above;

Whereas each Member State should periodically assess the performance of the organisations working on its behalf, and provide the Commission and all the other Member States with precise information related to such performance;

Whereas Member States, as port authorities, are required to enhance safety and prevention of pollution in the Community waters through the elimination of substandard vessels irrespective of the flag of the ships;

Whereas the adequate procedure according to which the Committee will act is Procedure I of article 2 of Council Decision 87/373/EEC;

Whereas the Commission's decision on withdrawal of recognition of organisations which no longer fulfil the criteria of Annex I will take the utmost account of the opinion delivered by the Committee and will pay particular attention to the safety and pollution prevention performance records of the organisations;

Whereas classification societies have to update and enforce their technical standards in order to harmonize safety rules and ensure uniform implementation of international rules within the Community;

Whereas at present there are no uniform international standards to which all ships must conform at the building stage and during their entire life, as regards hull, machinery and electrical and control installations;

Whereas such standards may be fixed according to the rules of classification societies;

HAS ADOPTED THIS DIRECTIVE:

[REDACTED]
[REDACTED]

PROPOSAL FOR A COUNCIL DIRECTIVE ON COMMON RULES AND STANDARDS
FOR SHIP INSPECTION AND SURVEY ORGANISATIONS

Article 1

The purpose of this Directive is to establish measures to be followed by the Member States and organisations concerned with the inspection, survey and certification of ships for compliance with the international Conventions. This process includes the development and implementation of safety requirements for hull, machinery and electrical and control installations of ships falling under the scope of the international Conventions.

Article 2

For the purpose of this Directive including its annex,

"ship" means a ship falling within the scope of the international Conventions;

"inspections and surveys" means inspections and surveys made mandatory by the international Conventions;

"international Conventions" means the 1974 International Convention for the Safety of Life at Sea, the 1966 International Convention on Load Lines and the 1973/78 International Convention for the Prevention of Pollution from Ships, together with the Protocols and amendments thereto, and related Codes of mandatory status in all Member States;

"organisation" means classification societies and other private bodies authorised by governments to carry out safety assessment work on their behalf;

"recognised organisation" means an organisation recognised in conformity with article 4;

"Certificate" means a certificate issued by or on behalf of a Member State in accordance with the international Conventions except the exemption certificates;

"class certificate" means a representation by a classification society as to the structural and mechanical fitness for a particular use or service in accordance with its rules and standards;

"location" refers to the place of the registered office, central administration or principal place of business of an organisation.

Article 3

1. In assuming their responsibilities and obligations under the international Conventions, Member States shall ensure that their competent administrations can assure an appropriate enforcement of the provisions of the international Conventions, in particular with regard to the inspection and survey of ships and the issue of certificates and exemption certificates.

2. Where for the purpose of paragraph 1 a Member State decides with respect to ships flying its flag

i) to delegate fully or in part

- inspections and surveys including those for the assessment of compliance with article 13 on the general structural strength of the hull, the reliability and safety of machinery and electrical and control installations, or
- the issue or renewal of Certificates,

or

ii) to rely upon expertise outside its Administration to carry out inspections and surveys related to Certificates,

it shall entrust these duties only to recognised organisations.

However for the Cargo Ship Safety Radiotelegraphy Certificate and the Cargo Ship Safety Radiotelephony Certificate, these duties may be entrusted to other bodies with sufficient expertise in radio-communication.

3. This article does not concern the certification of specific items of marine equipment.

Article 4

1. Member States may only recognise such organisations which fulfil the criteria set out in Annex I. The organisations shall submit to the Member States complete information concerning, and evidence of, compliance with these criteria from whom recognition has been requested. The Member States will notify the organisations in an appropriate manner of their recognition.

2. Each Member State shall notify to the Commission and the other Member States those organisations it has recognised.

Article 5

1. In applying Article 3, paragraph 2, Member States shall not refuse to delegate to or rely upon any of the recognised organisations located in the Community.

2. In order for a Member State to accept that an organisation located in a third State is to carry out the duties mentioned in Article 3 or part of them it may request that the said third State grant a reciprocal recognition for those recognised organisations which are located in the Community.

Article 6

1. Member States which decide to act as described in Article 3, paragraph 2 shall set out a working relationship between their

responsible administration and the organisations authorised to act on their behalf.

2. The working relationship shall be regulated by a formalised written and non-discriminatory agreement setting out the specific duties and functions assumed by the organisations and at least including provisions for a periodical audit by the administration into the duties the organisations are authorised to undertake on its behalf and the possibility for random and detailed inspections of ships and provisions for reporting essential information about their classed fleet, changes of class or disclassing of vessels.

3. Each Member State shall provide the Commission with precise information on the working relationship established in accordance with this Article. The Commission shall subsequently inform the other Member States.

Article 7

A Committee of an advisory nature composed of the representatives of the Member States and chaired by the representative of the Commission is hereby instituted to assist the Commission. This Committee shall be called by the Commission at least once a year and whenever required in the case of suspension of authorisation of an organisation by a Member State under the provisions of Article 9.

The Committee shall draw up its rules of procedure.

Article 8

The Commission, in accordance with the procedure laid down in Article 12, may

a) amend Annex I in order to

- (i) take into account amendments to the international Conventions and new international Conventions,

Conventions and new international Conventions,
Protocols and Codes;

(ii) update the criteria of Annex I;

b) withdraw the recognition of recognised organisations referred to in article 4 which no longer fulfil the criteria set out in Annex I.

Article 9

Notwithstanding the criteria specified in Annex I, where a Member State considers that a recognised organisation can no longer be authorised to carry out on its behalf the tasks specified in Article 3 for reasons of serious danger to safety or environment, it may suspend such authorisation.

In the above circumstances the following procedure shall apply:

- (a) the Member State shall inform the Commission and the other Member States of its decision without delay, giving substantiated reasons therefor;
- (b) the Commission shall decide whether to withdraw the suspension of authorisation or to withdraw the recognition of the organisation. It shall do so in accordance with Article 12 within a period not exceeding three months.

Article 10

1. Each Member State must satisfy itself that the functions delegated to recognised organisations under Article 3 are effectively carried out and that the criteria specified in Annex I are fulfilled. It may do so by directly monitoring the recognised organisations or, in the case of organisations located in another Member State, by reviewing the corresponding monitoring of such organisations by the administration of another Member State.

2. Each Member State shall carry out this task each year and shall provide the other Member States and the Commission with a report of the results of this monitoring at the latest by the 1st of March of each year following the year for which compliance has been assessed.

3. Member States shall forward to the Commission and the other Member States any information relevant to the assessment of the performance of organisations.

Article 11

1. In exercising their inspection rights and obligations as port States,

(a) Member States shall ensure that ships flying a third State flag are not treated more favourably than ships entitled to fly the flag of a Member State. To this end the fact that the ship Certificates including the class Certificate have been delivered by an organisation which is not a recognised organisation shall be taken as a primary criterion for selecting ships for inspection.

b) Member States shall take appropriate measures when ships do not meet the internationally agreed standards and report to the Commission and the Secretariat of the Memorandum of Understanding on Port State Control the discovery of any issue of valid Certificates by organisations acting on behalf of a flag State to a ship which does not fulfil the relevant requirements of the international Conventions, or any failure of a ship carrying a valid class Certificate and relating to items covered by that certificate.

2. Each Member State shall establish a performance record of the organisations acting on behalf of flag States. This performance record shall be updated yearly and distributed to the other Member States and the Commission.

Article 12

1. The following procedure shall apply for matters covered by Articles 8 and 9:

- (a) the representative of the Commission shall submit to the Committee referred to in Article 7 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.

2. In preparing drafts for a decision relating to the matters referred to in article 8 (b), the Commission shall take into account the reports and information mentioned in articles 10 and 11. In preparing such draft measures, the Commission shall pay particular attention to the safety and pollution prevention performance records of the organisations. Draft decisions relating to such matters may also be submitted to the Committee by the Member States.

Article 13

1. Each Member State shall ensure that a ship flying its flag shall be constructed and maintained in accordance with the hull, machinery and electrical and control installation requirements of a recognised organisation.

2. The recognised organisations shall consult with each other periodically with a view to maintaining equivalence of their technical standards and the implementation thereof. They shall provide the Commission with periodic reports on fundamental progress in standards.

Article 14

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive on 1 November 1994. 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.

2. The 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 15

This Directive is addressed to the Member States.

ANNEX I

MINIMUM CRITERIA FOR ORGANISATIONS REFERRED TO IN ARTICLE 3

GENERAL

- 1 The recognised organisation must be able to document extensive experience in assessing the design and construction of merchant ships.
- 2 The organisation should have in its class a fleet of at least 1000 ocean-going vessels (over 100 GRT) totalling no less than 5 million GRT.
- 3 The organisation must employ a technical staff commensurate with the number of vessels classed. As a minimum, 100 exclusive surveyors would be needed to meet the requirements in paragraph 1.2.
- 4 The organisation should have comprehensive rules and regulations for the design, construction and periodic survey of merchant ships, published and continually upgraded and improved through research and development programmes.
- 5 The organisation should have its Register of Vessels published on an annual basis.

SPECIFIC

- 1 The organisation is established with:
 - (a) a significant technical, managerial, support and research staff;
 - (b) world-wide coverage by exclusive field staff.
- 2 The organisation is governed by a Code of Ethics.
- 3 The organisation is managed and administered in such a way as to ensure the confidentiality of information required by the Administration.
- 4 The organisation is prepared to provide relevant information to the administration.
- 5 The organisation's management has defined and documented its policy and objectives for, and commitment to, quality and has ensured that this policy is understood, implemented and maintained at all levels in the organisation.

6 The organisation has developed, implemented and maintains an effective internal quality system based on appropriate parts of internationally recognised quality standards and in compliance with EN 45004 (inspection bodies) and with EN 29001, as interpreted by the IACS Quality System Certification Scheme Requirements, and which, inter alia, ensures that:

- (a) the organisation's Rules and Regulations are established and maintained in a systematic manner;
- (b) the organisations Rules and Regulations are complied with;
- (c) the requirements of the statutory work for which the organisation is authorised are satisfied;
- (d) the responsibilities, authorities and interrelation of personnel whose work affects the quality of the organisation's services are defined and documented;
- (e) all work is carried out under controlled conditions;
- (f) a supervisory system is in place which monitors the actions and work carried out by surveyors and technical and administrative staff employed directly by the organisation;
- (g) a system for qualification of surveyors and continuous updating of their knowledge is implemented;
- (h) records are maintained, demonstrating achievement of the required standards in the items covered by the services performed, as well as the effective operation of the quality system; and
- (i) a comprehensive system of planned and documented internal audits of the quality related activities in all locations.

7 The organisation must demonstrate ability

- (a) to develop and keep updated a full and adequate set of own rules and regulations on hull, machinery and electrical and control equipment having the quality of internationally recognised technical standards on the basis of which SOLAS Convention and Passenger Ship Safety Certificates (as regards adequacy of ship structure and essential shipboard machinery systems) and Load Line Certificates (as regards adequacy of ship

strength) can be issued.

(b) to carry out all inspections and surveys required by the international Conventions for the issue of Certificates.

- 8 The organisation is subject to certification of its quality system by an independent body of auditors recognised by the Administration of the State in which it is located.
9. The organisation should allow participation in the development of its rules and/or regulations by representatives of the Administration and other parties concerned.
10. The organisation must demonstrate willingness to co-operate with port State control when a ship of its class is concerned and in particular in order to facilitate the rectification of reported deficiencies or other discrepancies.
11. The organisation must provide all relevant information to the Administration about changes of class or disclassing vessels.

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