



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 25.07.1997
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97/0215 (SYN)

Proposal for a

COUNCIL DIRECTIVE

AMENDING COUNCIL

**DIRECTIVE 95/21/EC 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 (PORT STATE CONTROL)**

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. Context

1.1 On 19 June 1995 the Council of Ministers adopted Council Directive 95/21/EC 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 (port State control).¹

As stated in Article 1, the purpose of this Directive is to help drastically to reduce substandard shipping in the waters under the jurisdiction of Member States.

Under this Directive, each Member State is committed to inspect a set percentage of the ships entering its ports to ensure that they comply with the principal international conventions in force on maritime safety and protection of the marine environment. The Directive also provides for cooperation between the Member States and the Commission on laying down priorities and practices which will allow more effective targeting of ships which could present deficiencies.

1.2 This proposal for a Council Directive has three essential objectives:

- to adapt the Directive to recent amendments to the international conventions applicable for the purpose of the Directive;
- to lay down specific procedures for ships not carrying the certificates issued under the IMO's ISM Code onboard;
- to facilitate adaptation of the Directive to changes in the international legislation, by applying the committee procedure.

2. Content of the proposal

2.1 Adaptation of the Directive

Article 2 of Directive 95/21/EC states that the conventions listed therein together with the protocols and the amendments to those conventions and related codes of mandatory

¹ OJ No L 157, 7.7.1995, p. 1.

status in force at the date of adoption of the Directive, i.e. on 19 June 1995, must apply for the purposes of the Directive.

Since then, a number of amendments have been made to these international conventions, in particular the amendments to the Marpol Convention (1992, 1994, 1995 and 1996 amendments), to the Solas Convention (new Chapters X and XI and 1992, 1994 and 1995 amendments) and the 1995 amendments to the 1978 STCW Convention (Convention on Standards of Training, Certification and Watchkeeping for Seafarers). The proposed amendment to Article 2 of Directive 95/21/EC changes the date to 1 July 1998, coinciding with the entry into force, at international level, of the new Chapter IX of the Solas Convention which makes the ISM Code (International Management Code for the Safe Operation of Ships and for Pollution Prevention) mandatory for certain categories of ship.

2.2 Procedure applicable in the absence of ISM certificates

In accordance with Chapter IX, Regulation 2 of the Solas Convention, the ISM Code enters into force at international level on 1 July 1998 for:

- passenger ships, including passenger high-speed craft;²
- oil tankers, chemical tankers, gas carriers, bulk carriers and cargo high-speed craft with a gross tonnage of 500 tonnes or more.

The ISM Code is a key component in a strategy aiming at establishing a safety culture in maritime transport at international level. In particular, it requires companies to establish safety objectives and develop, implement and maintain a safety management system.

It also provides for the national administrations to verify compliance with the ISM Code and issue documents of compliance to the companies and safety management certificates for the ships.

The current version of Directive 95/21/EC already contains a reference to the ISM Code. The certificates and documents which the port State control inspector must check, pursuant to Article 6(1) of the Directive, include the copy of the document of compliance and the safety management certificate (cf. Annex II, point 13). The amendment described in paragraph 2.1 will allow the administrations in the Member States in charge of port State control to check implementation of the ISM Code on board all ships concerned.

However, the international shipping community has expressed great concern about whether the provisions of the ISM Code will be implemented effectively by the set date (1 July 1998). In January 1997 representatives of the International Association of Classification Societies (IACS) announced that only 7% of the fleet subject to the ISM

² At Community level, Council Regulation (EC) No 3051/95 (OJ No L 320, 30.12.1995, p. 14) provides for advance mandatory enforcement, with effect from 1 July 1996, of the ISM code for all roll-on/roll-off passenger ferries to or from Community ports, regardless of their flag.

Code had yet been certified by an IACS member. Although the classification societies are not the only bodies performing certification, which is sometimes handled by the national administrations, the current ISM certification rate is nonetheless still extremely low, and suggests, particularly in view of the length of time needed to obtain certification (inter alia, audits must be carried out), that a large number of companies and ships will not have ISM certificates by the set date.

In response to this situation, the Community must react strongly and take the measures necessary to inform the shipping world that with effect from 1 July 1998 all Community Member States will check compliance with the ISM Code. Moreover, this approach is fully in line with the International Maritime Organisation's message that no extension of the time limit set in Regulation 2 of Chapter IX of Solas is possible.

With effect from 1 July 1998 compliance with the ISM Code will be checked in accordance with the usual rules and procedures on port State control, as set out in Directive 95/21/EC and in the Paris Memorandum on port State control, to which the European Community Member States are parties. In particular, at its last meeting the Paris Memorandum Committee decided that a three-month expanded inspection campaign would be conducted, starting on 1 July 1998, to check compliance with the ISM Code.

However, failure to carry certificates on board is a particularly serious situation calling for tougher measures. This proposed amendment to the Directive is therefore designed to establish specific procedures to deal with cases where no ISM certificates are on board.

Given the delays expected in application of the ISM Code, strict enforcement of the traditional control procedures would lead to the detention of considerable numbers of ships in European ports. This would be unacceptable for most ports, both for economic reasons, as large numbers of berths would be occupied, and for safety, bearing in mind the foreseeable congestion of ports.

Consequently, it must be possible to lift the detention orders which will normally be imposed in the absence of ISM certificates and to allow the ship to leave the port and put the situation right. Naturally, however, the detention order could be lifted only if there were no other serious deficiencies which also warrant detention of the vessel.

Ships which the port State control authority authorises to leave port must satisfy the ISM Code and must be refused access to Community ports until the owner or operator has demonstrated to the authorities in the Member State where detention was ordered that the vessel now has valid certificates issued in accordance with the ISM Code.

2.3 Amendment of the scope of the committee procedure

The procedure in Article 19(b) of Directive 95/21/EC allows referral to the committee set up by Article 12 of Directive 93/75/EEC only to adapt the annexes in order to take into account amendments which have entered into force to the conventions, protocols, codes and resolutions of relevant international organisations and to the Memorandum of Understanding.

Consequently, any adaptation of the Directive itself not limited to the annexes, such as the amendment described in paragraph 2.1 above, can only be effected by means of a proposal for a Council Directive.

Since port State control is intended to check compliance with a very large number of international conventions, codes and resolutions which are continuously being amended by the International Maritime Organisation, it is proposed that the procedure provided for in Article 19 of the Directive should apply to the entire Directive, not just to the Annexes.

COUNCIL DIRECTIVE 97/.../EC AMENDING DIRECTIVE 95/21/EC
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 (PORT STATE CONTROL)

(Text with EEA relevance)

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission,

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

Acting in accordance with the procedure laid down in Article 189c of the Treaty,

Having regard to Council Directive 95/21/EC of 19 June 1995 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 (port State control),¹

1. Whereas, for the purpose of Directive 95/21/EC, Article 2(1) thereof stipulates that international conventions means the conventions in force at the time of adoption of the Directive;
2. Whereas since the adoption of Directive 95/21/EC amendments to the Solas 74 Convention, to the Marpol 73/78 Convention and to the STCW 78 Convention have entered into force; whereas it is appropriate to apply these amendments for the purpose of the Directive;
3. Whereas the International Management Code for the Safe Operation of Ships and for Pollution Prevention (ISM Code) adopted by the International Maritime Organisation on 4 November 1993 establishes a safety management system applicable both shipboard and on shore by the company responsible for operation of the ship and verified by the administration of the country in which the company conducts its business;
4. Whereas the ISM Code is an essential contribution to maritime safety and to protection of the marine environment in Community waters;
5. Whereas Council Regulation (EC) No 3051/95 of 8 December 1995 on the safety management of roll-on/roll-off passenger ferries² aims at advanced mandatory

¹ OJ No L 157, 7.7.1995, p. 1.

² OJ No L 320, 30.12.1995, p. 14.

enforcement of the provisions of the ISM Code to all ro-ro ferries to or from Community ports, regardless of their flag;

6. Whereas the ISM Code enters into force at international level on 1 July 1998 for all passenger ships, oil tankers, chemical tankers, gas carriers, bulk carriers and cargo high-speed craft with a gross tonnage of 500 tonnes or more;
7. Whereas the delays in implementing the provisions of the ISM Code at international level by companies and administrations from several flag States are creating a situation giving extreme cause for concern from the point of view of marine safety and protection of the environment;
8. Whereas expand the control measures it is necessary to at Community level with a view to enforcement of the obligations imposed by the ISM Code as soon as they enter into force; whereas these measures must include detention of all ships without certificates issued pursuant to the ISM Code;
9. Whereas in the absence of other serious deficiencies warranting detention of the vessel, the Member State concerned should give authorisation to lift the detention order on the ship; whereas, however, the ship in question should be refused access to Community ports until valid certificates have been issued under the ISM Code;
10. Whereas it must be possible to adapt Directive 95/21/EC to amendments to the international conventions and the Memorandum of Understanding mentioned in Article 2 by a simplified procedure; whereas the procedure provided for in Article 18 of the Directive appears the most appropriate for such amendments; whereas Article 19 must be extended to this end,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Directive 95/21/EC is hereby amended as follows:

1. In Article 2(1) "in force at the date of adoption of this Directive" is replaced by "in force on 1 July 1998".
2. The following Article is added:

"Article 9a

Procedure applicable in the absence of ISM certificates

1. Where the inspection reveals that the copy of the document of compliance or certificate issued in accordance with the International Management Code for the Safe Operation of Ships and for Pollution Prevention (ISM Code) are missing, the competent authority shall ensure that the vessel is detained.
2. Notwithstanding the absence of the documentation referred to in paragraph 1, if the inspection finds no other deficiencies warranting

detention the competent authority may authorise the ship to leave port. Whenever such a decision is taken, the competent authority shall immediately inform the competent authorities of the other Member States thereof.

3. Member States shall take the measures necessary to ensure that all ships authorised to leave a port in a Member State under the circumstances referred to in paragraph 2 shall be refused access to all ports in the Community until the owner or operator of the vessel has demonstrated, to the satisfaction of the Member State in which detention was ordered, that the ship has valid certificates issued in accordance with the ISM Code."

3. In Article 19 the following point is added:

"(c) apply, for the purpose of this Directive, subsequent amendments which have entered into force to the international conventions and to the Memorandum of Understanding mentioned in Article 2(1) and (2)."

Article 2

1. Member States shall adopt the laws, regulations and administrative provisions necessary to implement this Directive not later than 1 July 1998 and 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. Member States shall communicate to the Commission the text of the provisions of national law which they have adopted in the field governed by this Directive.

Article 3

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Communities*.

Article 4

This Directive is addressed to the Member States.

Done at Brussels,

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DOCUMENTS

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