

Proposal for a Directive of the European Parliament and of the Council amending Council Directive 94/57/EC on common rules and standards for ship inspection and survey organisations and for the relevant activities of maritime administrations

(2000/C 212 E/07)

(Text with EEA relevance)

COM(2000) 142 final — 2000/0066(COD)

(Submitted by the Commission on 22 March 2000)

THE EUROPEAN PARLIAMENT AND THE COUNCIL
OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 80(2) thereof,

Having regard to the proposal from the Commission,

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

Having regard to the opinion of the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the Treaty,

Whereas:

- (1) Safety and pollution prevention at sea may be enhanced by a proper and compulsory implementation by Flag States of the existing relevant conventions in force at international level.
- (2) Council Directive 94/57/EC of 22 November 1994 on common rules and standards for ship inspection and survey organisations and for the relevant activities of maritime administrations ⁽¹⁾, as amended by Commission Directive 97/58/EC ⁽²⁾, established a system of Community-wide recognition of technical organisations that, in compliance with the international conventions, may be authorised to a various extent to inspect ships and issue the relevant safety certificates on behalf of the Member States.
- (3) The practical implementation of that Directive showed that some adjustments to the Community-wide recognition of technical organisations might have highly contributed towards the strengthening of such a system while simplifying the monitoring and reporting obligations imposed on Member States.
- (4) Since the adoption of Directive 94/57/EC some developments have occurred in the relevant legislation at Community and international level requesting that further adjustments to Directive 94/57/EC be made.

(5) In particular, for the purposes of Directive 94/57/EC, it is appropriate to apply the amendments to the international conventions together with the protocols and related codes of mandatory status, referred to in Article 2(d) of Directive 94/57/EC, which entered into force after the adoption of the Directive as well as the relevant International Maritime Organisation (IMO) Resolutions.

(6) With a view to promoting an effective implementation of the obligations of the flag States laid down in the international conventions, the IMO Assembly adopted Resolution A.847 (20) on Guidelines to assist Flag States in the implementation of IMO instruments at its twentieth session.

(7) IMO adopted the International Safety Management (ISM) Code through Assembly Resolution A.741 (18) of 4 November 1993 which was made mandatory through the new Chapter IX of the International Convention for the Safety of Life at Sea (SOLAS) Convention.

(8) With a view to ensuring a uniform implementation of the ISM Code, guidelines on the implementation of the ISM Code by administrations were adopted on 23 November 1995 by IMO through Resolution A.788 (19).

(9) With a view to harmonising the statutory surveys and inspections to be carried out by the flag administrations pursuant to the international conventions, IMO adopted Resolution A.746 (18) of 4 November 1993 on Survey Guidelines under the Harmonised System of Survey and Certification.

(10) A good record of safety and pollution prevention performance — measured in respect of all ships classed by an organisation, irrespective of the flag they fly — shall become essential to grant the initial recognition and to maintain such a recognition.

(11) In order to grant the initial recognition to the technical organisations wishing to be authorised to work on behalf of the Member States, compliance with the provisions of Directive 94/57/EC can be assessed more effectively in a harmonised and centralised manner by the European Commission.

⁽¹⁾ OJ L 319, 12.12.1994, p. 20.

⁽²⁾ OJ L 274, 07.10.1997, p. 8.

- (12) Similarly, the continuous ex post monitoring of the recognised organisations to assess their compliance with the provisions of Directive 94/57/EC can be carried out more effectively in a harmonised and centralised manner. Therefore it is appropriate that the Commission, together with the Member State proposing the recognition, be entrusted with this task on behalf of the whole Community.
- (13) In addition to the authority of Member States to suspend the recognition of an organisation working on its behalf, a similar authority should apply at Community level, the Commission being allowed, on the basis of the Committee procedure, to suspend the recognition of an organisation for a limited period of time in the case where the safety and pollution prevention performance of the organisation is worsening and it fails to take the appropriate corrective measures as requested.
- (14) The decision on the withdrawal of the recognition of an organisation that fails to fulfil the provisions set out in the Directive, or whose safety and pollution prevention performance becomes unsatisfactory, has to be taken at Community level, and therefore by the Commission, on the basis of the Committee procedure.
- (15) Since Directive 94/57/EC ensures freedom to provide services in the Union, the Community should negotiate with those third Countries where some of the recognised organisations are located an equal treatment for the recognised organisations located in the Community.
- (16) The limitation of the financial liability of the organisations working on behalf of the Member States represented a major obstacle to the proper implementation of Directive 94/57/EC. Its harmonisation at Community level will contribute to solve this problem.
- (17) Provisions of Directive 94/57/EC concerning the Committee procedure should be amended and adapted to take account of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ⁽¹⁾.
- (18) Since transparency and exchange of information between interested parties is a fundamental tool to prevent accidents at sea, the recognised organisations shall provide all relevant information concerning the conditions of the ships in their class to the Port State Control authorities.
- (19) In an attempt to prevent ships from changing class in order to avoid carrying out necessary repairs, the recognised organisations shall exchange all relevant

information among themselves concerning the conditions of ships changing class.

- (20) The qualitative criteria to be met by the technical organisations in order to be recognised at Community level and to maintain such a recognition shall include provisions to ensure that only exclusive surveyors can carry out the statutory tasks for which the organisation is authorised. The organisation must have a tight control on all its personnel and offices, including the regional ones and it must establish its own safety and pollution prevention performance targets and indicators. The organisation must put in place a system to measure the quality of its services. Directive 94/57/EC should be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Council Directive 94/57/EC is hereby amended as follows:

1. Article 2 shall be amended as follows:

- (a) in point (b), the words 'including ships registered in Euros once that register is approved by the Council' shall be deleted;
- (b) in point (d), the words 'in force at the date of adoption of this Directive' shall be replaced by 'in force on 1st July 2000'.

2. Article 3, paragraph 1 shall be amended as follows:

The following sentence shall be added at the end of the paragraph: 'Member States shall act in accordance with the provisions of the Annex and the Appendix to IMO Resolution A.847 (20) on Guidelines to assist Flag States in the implementation of IMO instruments'.

3. Article 4 shall be replaced by the following:

'1. Member States may submit to the Commission a request for a recognition for organisations which fulfil the criteria set out in the Annex and the provisions of Article 14, paragraphs 2, 4 and 5. Member States shall submit to the Commission complete information concerning, and evidence of, compliance with such requirements. The Commission shall carry out an inspection of the organisations for which the request of recognition was received in order to verify that the organisations meet the abovementioned requirements. A decision on the recognition shall take into account the safety and pollution prevention performance records of the organisation, referred to in Article 9. The recognition shall be granted by the Commission in accordance with the procedure referred to in Article 7.

⁽¹⁾ OJ L 184, 17.7.1999, p. 23.

2. Member States may submit to the Commission a request for a limited recognition of three years for organisations which meet all the criteria of the Annex other than those set out under paragraph 2 and 3 of the section "General" of the Annex. The same procedure referred to in paragraph 1 will apply with the exception that the criteria of the Annex for which compliance has to be assessed during the inspection carried out by the Commission are all the criteria other than those set out under paragraphs 2 and 3 of the section "General". The effects of this recognition shall be limited to the Member States which have submitted a request for such recognition.

3. All the organisations which are granted recognition shall be closely monitored by the committee set up under Article 7, also in view of deciding about extension of the limited recognition of organisations referred to in paragraph 2. A decision on the extension of such recognition shall not take into account the criteria set out under paragraphs 2 and 3 of the section "General" of the Annex while it shall take into account the safety and pollution prevention performance records of the organisation, referred to in Article 9. The decision on the extension of the limited recognition shall specify under which conditions such extension is granted, particularly in respect of the limitation of the effects of the recognition provided for in paragraph 2.

4. The Commission shall draw up and update a list of the organisations recognised in compliance with paragraphs 1, 2 and 3. The list shall be published in *the Official Journal of the European Communities*.

5. The organisations which, at the date of the entry into force of this Directive, are already recognised on the basis of Council Directive 94/57/EC continue to be recognised. Their compliance with the new provisions laid down in this Directive shall be assessed during the first inspections referred to in Article 11.'

4. Article 5 shall be amended as follows:

- (a) In paragraph 1, the reference to 'Article 3(2)(i)' shall be replaced by 'Article 3(2)' and the words 'located in the Community' shall be deleted.
- (b) Paragraph 2 shall be deleted.
- (c) Paragraph 3 shall become paragraph 2, the words 'reciprocal recognition' shall be replaced by 'reciprocal treatment' and the following sentence shall be added at the end of the paragraph: 'In addition, the European Community may request that the third State where a recognised organisation is located grant a reciprocal

treatment for those recognised organisations which are located in the Community'.

5. Article 6 shall be amended as follows:

(a) Paragraph 2 shall be replaced by the following:

'2. The working relationship shall be regulated by a formalised written and non-discriminatory agreement or equivalent legal arrangements setting out the specific duties and functions assumed by the organisations and including at least:

— the provisions set out in Appendix II of IMO Resolution A.739 (18) on guidelines for the authorisation of organisations acting on behalf of the administration, as specified in the Annex, Appendixes and Attachment to IMO MSC/Circular 710 and MEPC/Circular 307 on model agreement for the authorisation of recognised organisations acting on behalf of the administration,

— the following provisions concerning the limitation of the financial liability:

- (i) if liability arising out of any incident is finally and definitely imposed by a court of law on the Administration for loss or damage to property or personal injury or death, which is proved in that court of law to have been caused by a wilful act or omission or gross negligence of the recognised organisation, its bodies, employees, agents or others who act on behalf of the recognised organisation, the Administration shall be entitled to indemnification from the recognised organisation to the extent said loss, damage, injury or death is, as decided by that court, caused by the recognised organisation;
- (ii) if liability arising out of any incident is finally and definitely imposed by a court of law on the Administration for personal injury or death, which is proved in that court of law to have been caused by any negligent or reckless act or omission of the recognised organisation, its employees, agents or others who act on behalf of the recognised organisation, the Administration shall be entitled to indemnification from the recognised organisation, to the extent said personal injury or death is, as decided by that court, caused by the recognised organisation, up to but not exceeding an amount of EUR 5 million;

(iii) if liability arising out of any incident is finally and definitely imposed by a court of law on the Administration for loss or damage to property, which is proved in that court of law to have been caused by any negligent or reckless act or omission of the recognised organisation, its employees, agents or others who act on behalf of the recognised organisation, the Administration shall be entitled to indemnification from the recognised organisation, to the extent said loss or damage is, as decided by that court, caused by the recognised organisation, up to but not exceeding an amount of 2,5 EUR million;

(iv) neither party shall be liable to the other for any special, indirect or consequential losses or damages resulting from or arising out of services performed under the agreement, including without limitation loss of profit, loss of production, loss of contract, loss of use, business interruption or any other special, indirect or consequential losses suffered or incurred by any party howsoever caused;

(v) without prejudice to what is stated above, for any claim arising out of the recognised organisation's performance or non-performance under this Agreement, the recognised organisation, its officers, employees, agents or others who act on behalf of the recognised organisation, shall be entitled to the same defences (including but not limited to any immunity from or limitation of liability) as would be available to the Administration's own personnel if they had themselves performed the work;

— provisions for a periodical audit by the administration or by an impartial external body appointed by the administration into the duties the organisations are undertaking on its behalf, as referred to in Article 11, paragraph 1,

— the possibility for random and detailed inspections of ships,

— provisions for reporting essential information about their classed fleet, changes suspensions and withdrawals of class, irrespective of the flag the vessels fly, as referred to in Article 14, paragraph 3'.

(b) Paragraph 4 is replaced by the following:

'4. Each Member State shall provide the Commission and the other Member States with precise information

on the working relationship established in accordance with this Article.'

6. Article 7 shall be replaced by the following:

'The Commission shall be assisted by a committee composed of representatives of the Member States and chaired by the representative of the Commission.

Where reference is made to this Article, the regulatory procedure laid down in Article 5 of Decision 1999/468/EC shall apply, in compliance with Article 7(3) and Article 8 thereof.

The period provided for in Article 5(6) of Decision 1999/468/EC shall be three months.

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 or in the case of suspension of recognition by the Commission under the provisions of Article 10. The Committee shall draw up its rules of procedure.'

7. Article 8, paragraph 1, first indent, shall be replaced by the following:

'— apply, for the purposes of this Directive, subsequent amendments to the international conventions, protocols, codes and resolutions related thereto mentioned in Articles 2(d) and 6(2), which have entered into force,'

8. Article 9 shall be replaced by the following:

'1. The recognition of organisations referred to in Article 4 which no longer fulfil the criteria set out in the Annex or which fail to meet the safety and pollution prevention performance records mentioned in paragraph 2 shall be withdrawn. The withdrawal of the recognition shall be decided by the Commission in accordance with the procedure referred to in Article 7, after the organisation concerned has been given the opportunity to submit its observations.

2. In preparing drafts for a decision relating to the matters referred to in paragraph 1, the Commission shall take into account the outcome of the inspections of the recognised organisations referred to in Article 11 as well as the safety and pollution prevention performance records of the organisations, measured for all the ships they have in class irrespective of the flag the ships fly.

Indication of the safety and pollution prevention performance records of the organisations shall be derived from the statistics produced by the Paris Memorandum of Understanding on Port State Control and/or by similar schemes. Other indications may be derived from an analysis of the casualties involving ships classed by the recognised organisations.

Reports produced by Member States on the basis of Article 12 shall also be taken into consideration to assess the safety and pollution prevention performance records of the organisations.

The Committee set up under Article 7 shall determine the criteria to be followed in order to decide, on the basis of the information referred to in this paragraph, when the performance of an organisation acting on behalf of a flag State can be considered an unacceptable threat to safety and environment. Draft decisions relating to the matters referred to in paragraph 1 shall be submitted to the committee by the Commission upon its own initiative or at the request of a Member State.'

9. Article 10 shall be amended as follows:

(a) The first two sentences shall become paragraph 1 and shall be replaced by the following:

'1. Notwithstanding the criteria specified in the Annex, 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 it may suspend such authorisation on the basis of the following procedure:'

(b) The following paragraphs shall be added:

'2. Whenever the Commission considers that the safety and pollution prevention performance records of a recognised organisation worsen without however justifying the withdrawal of its recognition on the basis of the criteria referred to in Article 9, paragraph 2, it may decide to inform the recognised organisation accordingly and request it to take appropriate measures to improve its safety and pollution prevention performance records. Should the recognised organisation fail to provide the Commission with an appropriate answer or should the Commission consider that the measures taken by the recognised organisation failed to improve its safety and pollution prevention performance records, the Commission may decide to suspend the recognition of the organisation for a period of one year in accordance with the procedure referred to in Article 7 after the organisation concerned has been given the opportunity to submit its observations. During that period, the recognised organisation will not be allowed to issue or renew any certificate to ships flying the flag of the Member States while the certificates issued or renewed in the past by the organisation will remain valid.

3. The procedure referred to in paragraph 2 shall apply also in the case where the Commission has evidence that a recognised organisation failed to fulfil the provisions of Article 14, paragraphs 3, 4, or 5.

4. One year after the adoption of the decision of the Commission to suspend the recognition of an organisation, the Commission shall assess whether the shortcomings referred to in paragraph 2 and 3 which lead to the suspension have been removed. In the case where such shortcomings are still present, the recognition

shall be withdrawn in accordance with the procedure referred to in Article 7.'

10. Article 11 shall be amended as follows:

(a) In paragraph 1, the following text shall be deleted: 'and that such organisations fulfil the criteria specified in the Annex. It may do so by having the recognised organisations directly monitored by its competent administration or, in the case of organisations located in another Member State, by relying upon the corresponding monitoring of such organisations by the administration of another Member State.'

(b) In paragraph 2, the words 'Each Member State shall carry out this task on a biennial basis' shall be replaced by 'Each Member State shall carry out this task at least on a biennial basis'.

(c) Paragraphs 3 and 4 shall be deleted.

(d) A new paragraph 3 shall be inserted as follows:

'3. All the recognised organisations shall be inspected by the Commission, together with the Member State which submitted the relevant request for recognition, on a regular basis and at least every three years to verify that they fulfil the criteria of the Annex. In selecting the organisations for inspection, the Commission shall pay particular attention to the safety and pollution prevention performance records of the organisation, to the casualty records and to the reports produced by Member States as per Article 12. The inspection may include a visit to regional branches of the organisation as well as random and detailed inspection of ships. The Commission shall provide the Member States with a report of the results of the inspection.'

11. Article 12 shall be replaced by the following:

'In exercising their inspection rights and obligations as port states Member States shall report to the Commission and to other Member States the discovery of 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. Only cases of ships representing a serious threat to safety and environment or proving a particularly negligent behaviour of the organisations shall be reported for the purposes of this Article.'

12. Article 13 shall be deleted.

13. Articles 14, 15, 16 and 17 shall become Articles 13, 14, 15 and 16 respectively.

14. Article 14, paragraphs 3 and 4, shall be replaced by the following:

'3. The recognised organisations shall provide all relevant information to the administration and to the Commission about their classed fleet, changes, suspensions and withdrawals of class, irrespective of the flag the vessels fly. Information on changes, suspensions, and withdrawals of class, including information on all overdue surveys, overdue recommendations, conditions of class, operating conditions or operating restrictions issued against their classed vessels — irrespective of the flag the vessels fly — shall also be communicated to the Sirenac information system for Port State Control inspections.

4. The recognised organisations shall not issue certificates to a ship, irrespective of its flag, declassified or changing class for safety reasons before informing the competent administration of the flag State to determine whether a full inspection is necessary.'

The following paragraph 5 shall be added:

'5. In cases of transfer of class from one recognised organisation to another, the losing organisation shall inform the gaining organisation of all overdue surveys, overdue recommendations, conditions of class, operating conditions or operating restrictions issued against the vessel. On transfer, the losing organisation shall provide the gaining organisation with the complete history file of the vessel. The certificates of the ship can be issued by the gaining organisation only after all overdue surveys have been satisfactorily completed and all overdue recommendations or conditions of class previously issued against the vessel have been completed as specified by the losing organisation. Prior to the issuance of the certificates, the gaining organisation must advise the losing organisation of the date of issuing of the certificates and confirm the date, location and action taken to satisfy each overdue survey, overdue recommendation and overdue condition of class. The recognised organisations shall cooperate with each other to properly implement the provisions of this paragraph.'

15. Article 15, paragraph 3, shall be replaced by the following:

'3. The Member States shall immediately communicate to the Commission and to the other Member States the text of all the provisions of domestic law which they adopt in the field governed by this Directive.'

16. The Annex to the Directive shall be amended as follows:

(a) The word 'should' shall be replaced by the word 'must' in paragraph 2 of Section 'A. GENERAL'.

(b) The words 'would be' shall be replaced by the word 'are' in the second sentence of paragraph 3 of Section 'A. GENERAL'.

(c) The word 'should' shall be replaced by the word 'must' in paragraph 4 of Section 'A. GENERAL'.

(d) The word 'should' shall be replaced by the word 'must' in paragraph 5 of Section 'A. GENERAL'. The following words shall be added at the end of the paragraph: 'or maintained in an electronic data base accessible to interested parties'.

(e) The word 'should' shall be replaced by the word 'must' both in the first and in the second sentence of paragraph 6 of Section 'A. GENERAL'.

(f) The word 'should' shall be replaced by the word 'must' in paragraph 7 of Section 'A. GENERAL'.

(g) The following words shall be added at the end of paragraph 4 of Section 'B. SPECIFIC': 'and to the Commission'.

(h) The following words shall be added at the end of paragraph 5 of Section 'B. SPECIFIC': 'The organisation's policy must refer to safety and pollution prevention performance targets and indicators'.

(i) The following words shall be added at the end of paragraph 6(b) of Section 'B. SPECIFIC': 'and an internal system to measure the quality of service in relation to these rules and regulations is put in place'.

(j) The following words shall be added at the end of paragraph 6(c) of Section 'B. SPECIFIC': 'and an internal system to measure the quality of service in relation to the compliance with the international conventions is put in place'.

(k) Paragraph 6(g) of Section 'B. SPECIFIC' shall be replaced by the following:

'(g) the requirements of the statutory work for which the organisation is authorised are only carried out by its exclusive surveyors or by exclusive surveyors of other recognised organisations; in all cases, the exclusive surveyors must have an extensive knowledge of the particular type of ship on which they carry out the statutory work and of the relevant applicable requirements;'

(l) The word 'and' at the end of paragraph 6(i) of Section 'B. SPECIFIC' shall be deleted.

(m) Paragraph 6(j) of Section 'B. SPECIFIC' shall be replaced by the following:

'(j) a comprehensive system of planned and documented internal audits of the quality related activities is maintained in all locations'.

(n) The following two paragraphs shall be added to paragraph 6 of Section 'B. SPECIFIC':

'(k) the statutory surveys and inspections required by the Harmonised System of Survey and Certification for which the organisation is authorised are carried out in accordance with the provision set out in the Annex and Appendix to IMO Resolution A.746(18) on Survey Guidelines under the Harmonised System of Survey and Certification;

(l) clear and direct lines of responsibility and control are established between the central and the regional offices of the society.'

(o) Paragraph 7 (b) of Section 'B. SPECIFIC' shall be replaced by the following:

'(b) to carry out all inspections and surveys required by the international conventions for the issue of certificates, including the means of assessing — through the use of qualified professional staff and in accordance with the provisions set out in the Annex to "IMO Resolution A.788(19) on guidelines on implementation of the International

Safety Management (ISM) Code by administrations" — the application and maintenance of the safety management system, both shore-based and on board ships, intended to be covered in the certification.'

(p) The word 'should' shall be replaced by the word 'must' in paragraph 9 of Section 'B. SPECIFIC'.

Article 2

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive no later than twelve months after the date of adoption of this Directive. They shall forthwith inform the Commission thereof.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

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.