

**COUNCIL DIRECTIVE 98/25/EC**

of 27 April 1998

**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)**

THE COUNCIL OF THE EUROPEAN UNION,

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

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

Having regard to the opinion of the Economic and Social Committee <sup>(2)</sup>,

Acting in accordance with the procedure laid down in Article 189c of the Treaty <sup>(3)</sup>,

(1) Whereas Article 2(1) of Directive 95/21/EC <sup>(4)</sup> defines 'Conventions' in terms of the Conventions cited in that Article in force at the time of adoption of the Directive; whereas Article 2(2) stipulates that 'MOU' means the Memorandum of Understanding on port State control, signed in Paris on 26 January 1982, as it stood at the date 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 the latest amendments to the Paris MOU have entered into force on 14 January 1998; 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 and made mandatory through the new Chapter IX of the Solas Convention 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;

<sup>(1)</sup> OJ C 264, 30. 8. 1997, p. 33.

<sup>(2)</sup> Opinion delivered on 10 December 1997 (OJ C 73, 9. 3. 1998, p. 64).

<sup>(3)</sup> Opinion of the European Parliament of 4 December 1997 (OJ C 388, 22. 12. 1997, p. 16), Council common position of 12 February 1998 (OJ C 91, 26. 3. 1998, p. 28) and Decision of the European Parliament of 31 March 1998 (OJ C 138, 4. 5. 1998).

<sup>(4)</sup> OJ L 157, 7. 7. 1995, p. 1.

(4) Whereas the ISM Code is an essential contribution to maritime safety and to protection of the marine environment in Community waters;

(5) Whereas the ISM Code enters into force at international level on 1 July 1998 for all passenger ships and for oil tankers, chemical tankers, gas carriers, bulk carriers and cargo high-speed craft with a gross tonnage of 500 tonnes or more;

(6) Whereas Council Regulation (EC) No 3051/95 of 8 December 1995 on the safety management of roll-on/roll-off passenger ferries (ro-ro ferries) <sup>(5)</sup> aims at advanced mandatory enforcement of the provisions of the ISM Code to all ro-ro ferries to or from Community ports, regardless of their flag;

(7) Whereas delays in implementing the provisions of the ISM Code at international level by companies and administrations would create cause for concern from the point of view of marine safety and protection of the environment;

(8) Whereas it is therefore necessary to establish specific Community-wide measures to deal with cases where no ISM certificates are on board; whereas these measures must include detention of all ships without certificates issued pursuant to the ISM Code;

(9) Whereas, however, in the absence of other serious deficiencies warranting detention of the vessel, the Member State concerned should be able to give authorisation to lift the detention order on the ship when it is necessary in order to avoid port congestion;

(10) Whereas, in this case, Member States need to take, in conformity with Article 11 of Directive 95/21/EC, well-coordinated measures to ensure that ships which have been authorised to leave port without proper ISM certification are refused access to all ports within the Community until valid certificates have been issued under the ISM Code, without prejudice to paragraph 6 of the said Article;

<sup>(5)</sup> OJ L 320, 30. 12. 1995, p. 14.

- (11) Whereas only the detaining Member State can lift the refusal of access to ports within the Community; whereas this State may accept, if it so wishes, any information from another Member State which is deemed to be proof that a ship has valid certificates issued in accordance with the ISM Code;
- (12) Whereas it should be possible to adapt Directive 95/21/EC to take account of amendments to the international conventions and the Memorandum of Understanding on port State control mentioned in Article 2 of that Directive by a simplified procedure; whereas the procedure provided for in Article 18 of the said Directive appears the most appropriate for such amendments; whereas to that end Article 19 should be extended,

HAS ADOPTED THIS DIRECTIVE:

*Article 1*

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

1. Article 2 shall be amended as follows:
  - (a) in point 1, the words 'in force at the date of adoption of this Directive' shall be replaced by 'in force on 1 July 1998';
  - (b) in point 2, the words 'as it stands at the date of adoption of this Directive' shall be replaced by 'as it stands on 14 January 1998'.
2. The following Article shall be inserted:

*Article 9a*

**Procedure applicable in the absence of ISM certificates**

1. Where the inspection reveals that the copy of the document of compliance or the safety management certificate issued in accordance with the International management code for the safe operation of ships and for pollution prevention (ISM Code) are missing on board a vessel to which, within the Community, the ISM Code is applicable at the date of the inspection, 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 lift the detention order in order to avoid port congestion. 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, except in the situations referred to in Article 11(6), until the owner or operator of the vessel has demonstrated, to the satisfaction of the competent authority of the Member State in which detention was ordered, that the ship has valid certificates issued in accordance with the ISM Code. Where deficiencies as referred to in Article 9(2) are found and cannot be rectified in the port of detention, the relevant provisions of Article 11 shall also apply.'

3. In Article 19 the following point shall be added:

'(c) adapt the dates in Article 2 in order to take into account amendments which have entered into force to the international Conventions and to the MOU referred to in the said Article with the exception of Protocols to such Conventions.'

*Article 2*

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

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

2. Member States shall communicate to the Commission the text of the main provisions of domestic law which they adopt in the field governed by this Directive.

*Article 3*

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

*Article 4*

This Directive is addressed to the Member States.

Done at Luxembourg, 27 April 1998.

*For the Council*

*The President*

R. COOK