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<sup>(1)</sup> Text with EEA relevance

## I

(Acts adopted under the EC Treaty/Euratom Treaty whose publication is obligatory)

## REGULATIONS

**REGULATION (EC) No 390/2009 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL  
of 23 April 2009**

**amending the Common Consular Instructions on visas for diplomatic missions and consular posts  
in relation to the introduction of biometrics including provisions on the organisation of the  
reception and processing of visa applications**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE  
EUROPEAN UNION,

Having regard to the Treaty establishing the European  
Community, and in particular Article 62(2)(b)(ii) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Data Protection  
Supervisor <sup>(1)</sup>,

Acting in accordance with the procedure laid down in  
Article 251 of the Treaty <sup>(2)</sup>,

Whereas:

(1) To ensure the reliable verification and identification of applicants, it is necessary to process biometric data in the Visa Information System (VIS) established by Council Decision 2004/512/EC <sup>(3)</sup> and to provide for a legal framework for the collection of these biometric identifiers. Furthermore, the implementation of the VIS requires new forms of organisation for the reception of visa applications.

(2) The integration of biometric identifiers in the VIS is an important step towards the use of new elements, which establish a more reliable link between the visa holder and the passport in order to avoid the use of false identities. Therefore, the personal appearance of the applicant — at least for the first application — should be one of the basic requirements for issuing a visa with the registration of biometric identifiers in the VIS.

(3) The choice of the biometric identifiers is made in Regulation (EC) No 767/2008 of the European Parliament and of the Council of 9 July 2008 concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas (VIS Regulation) <sup>(4)</sup>.

(4) This Regulation defines the standards for the collection of these biometric identifiers by referring to the relevant provisions set out by the International Civil Aviation Organisation (ICAO). No further technical specifications are required in order to ensure interoperability.

(5) Any document, data or biometric identifier received by a Member State in the course of a visa application shall be considered a consular document under the Vienna Convention on Consular Relations of 24 April 1963 and shall be treated in an appropriate manner.

(6) In order to facilitate the registration of applicants and to reduce the costs for Member States, new organisational possibilities need to be envisaged in addition to the existing framework of representation. Firstly, a specific type of representation limited to the collection of applications and enrolment of biometric identifiers should be added to the Common Consular Instructions on visas for the diplomatic missions and consular posts <sup>(5)</sup>.

<sup>(1)</sup> OJ C 321, 29.12.2006, p. 38.

<sup>(2)</sup> Opinion of the European Parliament of 10 July 2008 (not yet published in the Official Journal), Council Common Position of 5 March 2009 (not yet published in the Official Journal) and Position of the European Parliament of 25 March 2009 (not yet published in the Official Journal).

<sup>(3)</sup> OJ L 213, 15.6.2004, p. 5.

<sup>(4)</sup> OJ L 218, 13.8.2008, p. 60.

<sup>(5)</sup> OJ C 326, 22.12.2005, p. 1.

- (7) Other options such as co-location, common application centres, honorary consuls and cooperation with external service providers should be introduced. An appropriate legal framework for these options should be established, taking into account, in particular, data protection issues. Member States should, in accordance with the conditions laid down in this legal framework, determine the type of organisational structure which they will use in each third country. Details of those structures should be published by the Commission.
- (8) When organising cooperation, Member States should ensure that applicants are directed to the Member State responsible for the processing of their applications.
- (9) It is necessary to make provision for situations in which Member States decide, in order to facilitate the procedure, to cooperate with an external service provider for the collection of applications. Such a decision may be taken if, in particular circumstances or for reasons relating to the local situation, cooperation with other Member States in the form of limited representation, co-location or a Common Application Centre proves not to be appropriate for the Member State concerned. Such arrangements should be established in compliance with the general principles for issuing visas, respecting the data protection requirements set out in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data<sup>(1)</sup>. In addition, the need to avoid visa-shopping should be taken into consideration when establishing and implementing such arrangements.
- (10) Member States should cooperate with external service providers on the basis of a legal instrument which should contain provisions on their exact responsibilities, on direct and total access to their premises, information for applicants, confidentiality and on the circumstances, conditions and procedures for suspending or terminating the cooperation.
- (11) This Regulation, by allowing Member States to cooperate with an external service provider for the collection of applications while establishing the 'one stop' principle for the presentation of applications, creates a derogation from the general rule of the personal appearance, as provided for in Part III, point 4, of the Common Consular Instructions. This is without prejudice to the possibility of calling the applicant for a personal interview and is also without prejudice to future legal instruments regulating these issues.
- (12) To ensure compliance with data protection requirements, the Working Party set up by Article 29 of Directive 95/46/EC has been consulted.
- (13) Directive 95/46/EC applies to the Member States with regard to the processing of personal data pursuant to this Regulation.
- (14) Member States should maintain the possibility for all applicants to lodge applications directly at their diplomatic missions or consular posts.
- (15) In order to facilitate the procedure of any subsequent application, it should be possible to copy fingerprints from the first entry into the VIS within a period of 59 months. Once this period of time has elapsed, the fingerprints should be collected again.
- (16) Due to the requirement to collect biometric identifiers, commercial intermediaries such as travel agencies should no longer be used for the first application but only for subsequent ones.
- (17) The Common Consular Instructions should therefore be amended accordingly.
- (18) The Commission should present a report on the implementation of this Regulation three years after the VIS is brought into operation and every four years thereafter.
- (19) Since the objectives of this Regulation, namely the organisation of the reception and the processing of applications in respect of the entry of biometric data into the VIS and the introduction of common standards and interoperable biometric identifiers and of common rules for all Member States participating in the Community's common policy on visas, cannot be sufficiently achieved by the Member States and can therefore be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.
- (20) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark, annexed to the Treaty on European Union and to the Treaty establishing the European Community, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application. Given that this Regulation builds upon the Schengen *acquis* under the provisions of Title IV of Part Three of the Treaty establishing the European Community, Denmark shall, in accordance with Article 5 of that Protocol, decide within a period of six months after the date of adoption of this Regulation, whether it will implement it in its national law.

<sup>(1)</sup> OJ L 281, 23.11.1995, p. 31.

(21) As regards Iceland and Norway, this Regulation constitutes a development of provisions of the Schengen *acquis* within the meaning of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the latter's association with the implementation, application and development of the Schengen *acquis* <sup>(1)</sup> which fall within the area referred to in Article 1, point B, of Council Decision 1999/437/EC <sup>(2)</sup> on certain arrangements for the application of that Agreement.

(22) This Regulation constitutes a development of provisions of the Schengen *acquis* in which the United Kingdom does not take part, in accordance with Council Decision 2000/365/EC of 29 May 2000 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen *acquis* <sup>(3)</sup>. The United Kingdom is therefore not taking part in its adoption and is not bound by it or subject to its application.

(23) This Regulation constitutes a development of provisions of the Schengen *acquis* in which Ireland does not take part, in accordance with Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen *acquis* <sup>(4)</sup>. Ireland is therefore not taking part in its adoption and is not bound by it or subject to its application.

(24) As regards Switzerland, this Regulation constitutes a development of provisions of the Schengen *acquis* within the meaning of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis* <sup>(5)</sup>, which fall within the area referred to in Article 1, point B, of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2008/146/EC <sup>(6)</sup>.

(25) As regards Liechtenstein, this Regulation constitutes a development of provisions of the Schengen *acquis* within the meaning of the Protocol signed between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement concluded between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implemen-

tation, application and development of the Schengen *acquis*, which fall within the area referred to in Article 1, point B, of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2008/261/EC <sup>(7)</sup>.

(26) As regards Cyprus, this Regulation constitutes an act building upon the Schengen *acquis* or otherwise related to it within the meaning of Article 3(2) of the 2003 Act of Accession.

(27) This Regulation constitutes an act building upon the Schengen *acquis* or otherwise related to it within the meaning of Article 4(2) of the 2005 Act of Accession,

HAVE ADOPTED THIS REGULATION:

#### Article 1

#### Amendments to the Common Consular Instructions

The Common Consular Instructions on visas for diplomatic missions and consular posts are hereby amended as follows:

1. Part II shall be amended as follows:

(a) In point 1.2(b) the following paragraphs shall be added:

'A Member State may also represent one or more other Member States in a limited manner solely for the collection of applications and the enrolment of biometric identifiers. The relevant provisions of 1.2(c) and (e) shall apply. The collection and transmission of files and data to the represented Member State shall be carried out respecting the relevant data protection and security rules.

The represented Member State(s) shall ensure that the data are fully encrypted, whether electronically transferred or physically transferred on an electronic storage medium from the authorities of the representing Member State to the authorities of the represented Member State.

<sup>(1)</sup> OJ L 176, 10.7.1999, p. 36.

<sup>(2)</sup> OJ L 176, 10.7.1999, p. 31.

<sup>(3)</sup> OJ L 131, 1.6.2000, p. 43.

<sup>(4)</sup> OJ L 64, 7.3.2002, p. 20.

<sup>(5)</sup> OJ L 53, 27.2.2008, p. 52.

<sup>(6)</sup> OJ L 53, 27.2.2008, p. 1.

<sup>(7)</sup> OJ L 83, 26.3.2008, p. 3.

In third countries which prohibit encryption of data to be electronically transferred from the authorities of the representing Member State to the authorities of the represented Member State(s), the represented Member State(s) shall not allow the representing Member State to transfer data electronically.

In this case, the represented Member State(s) concerned shall ensure that the electronic data are transferred physically in fully encrypted form on an electronic storage medium from the authorities of the representing Member State to the authorities of the represented Member State(s) by a consular officer of a Member State or, where such a transfer would require disproportionate or unreasonable measures to be taken, in another safe and secure way, for example by using established operators experienced in transporting sensitive documents and data in the third country concerned.

In all cases the level of security for the transfer shall be adapted to the sensitive nature of the data.

The Member States or the Community shall endeavour to reach an agreement with the third countries concerned with the aim of lifting the prohibition against encryption of data to be electronically transferred between the authorities of the Member States concerned.:

(b) Point (d) shall be replaced by the following:

‘(d) When uniform visas are issued pursuant to (a) and (b), the representation and limited representation shall be reflected in the table of representation for the issuing of uniform visas set out in Annex 18.’.

2. Part III shall be amended as follows:

(a) Point 1 shall be replaced by the following:

### 1. Visa applications

#### 1.1. Visa application forms — number of application forms

Applicants shall also be required to fill in the uniform visa application form. Applications for a uniform visa must be made using the harmonised form, a specimen of which is given in Annex 16.

At least one copy of the application form shall be filled in so that it may be used during consultation with the central authorities. Member States may, in so far as national administrative procedures so require, request several copies of the application.

#### 1.2. Biometric identifiers

- (a) Member States shall collect biometric identifiers comprising the facial image and 10 fingerprints from the applicant in accordance with the safeguards laid down in the European Convention for the Protection of Human Rights and Fundamental Freedoms, in the Charter of Fundamental Rights of the European Union and in the United Nations Convention on the Rights of the Child.

At the moment of submission of the first application, the applicant shall be required to appear in person. At that time, the following biometric identifiers shall be collected:

- a photograph, scanned or taken at the time of application, and
- 10 fingerprints taken flat and digitally collected.

Where fingerprints collected from the applicant regarding an earlier application were entered for the first time in the Visa Information System (VIS) less than 59 months before the date of the new application, they shall be copied to the subsequent application.

However, in case of reasonable doubt regarding the identity of the applicant, the diplomatic mission or consular post shall collect fingerprints within the period specified above.

Furthermore, if at the time when the application is lodged, it cannot be immediately confirmed that the fingerprints were collected within the period specified above, the applicant may request that they be collected.

In accordance with Article 9(5) of the VIS Regulation, the photograph attached to each application shall be entered in the VIS. The applicant shall not be required to appear in person for this purpose.

The technical requirements for the photograph shall be in accordance with the international standards as set out in ICAO Doc 9303 part 1, 6th edition.

Fingerprints shall be taken in accordance with ICAO standards and Commission Decision 2006/648/EC of 22 September 2006 laying down the technical specifications on the standards for biometric features related to the development of the Visa Information System (\*).

The biometric identifiers shall be collected by qualified and duly authorised staff of the diplomatic mission or consular post and the authorities responsible for issuing visas at the borders. Under the supervision of the diplomatic missions or consular posts, the biometric identifiers may also be collected by qualified and duly authorised staff of an honorary consul or of an external service provider referred to in Part VII, points 1.3 and 1.4.

The data shall be entered in the VIS only by duly authorised consular staff in accordance with Articles 6(1), 7, 9(5) and 9(6) of the VIS Regulation.

Member States shall ensure that full use is made of all search criteria under Article 15 of the VIS Regulation in order to avoid false rejections and identifications.

(b) Exceptions

The following applicants shall be exempt from the requirement to give fingerprints:

- children under the age of 12,
- persons for whom fingerprinting is physically impossible. If the fingerprinting of less than 10 fingers is possible, the respective number of fingerprints shall be taken. However, should the impossibility be temporary, the applicant shall be required to give the fingerprints at the following application. Diplomatic missions or consular posts and authorities responsible for issuing visas at the borders shall be entitled to ask for further clarification on the grounds of the temporary impossibility. Member States shall ensure that appropriate procedures guaranteeing the dignity of the applicant are in place in the event of there being difficulties in enrolling. The fact that fingerprinting is physically impossible shall not influence the grant or refusal of a visa,
- heads of State or government and members of the national government with accom-

panying spouses, and the members of their official delegation when they are invited by Member States' governments or by international organisations for an official purpose,

- sovereigns and other senior members of a royal family, when they are invited by Member States' governments or by international organisations for an official purpose.

In each of these cases, the entry "not applicable" shall be introduced in the VIS.

(\*) OJ L 267, 27.9.2006, p. 41.'

(b) The following point shall be added:

**'5. Conduct of staff**

Member States' diplomatic missions or consular posts shall ensure that applicants are received courteously.

Consular staff shall, in the performance of their duties, fully respect human dignity. Any measures taken shall be proportionate to the objectives pursued by such measures.

While performing their tasks, consular staff shall not discriminate against persons on grounds of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.'

3. Point 1 of Part VII shall be amended as follows:

**'1. Organisation of visa sections**

**1.1. Organisation of the reception and processing of visa applications**

Each Member State shall be responsible for organising the reception and processing of applications. In principle, applications shall be lodged at a diplomatic mission or consular post of a Member State.

Member States shall:

- equip their diplomatic missions or consular posts and authorities responsible for issuing visas at the borders with the required material for the collection of biometric identifiers, as well as the offices of their honorary consuls, whenever they make use of them, to collect biometric identifiers in accordance with point 1.3, and/or

- cooperate with one or more other Member States, within the framework of local consular cooperation or by other appropriate contacts, in the form of limited representation, co-location, or a Common Application Centre, in accordance with point 1.2.

In particular circumstances or for reasons relating to the local situation, such as where:

- the high number of applicants does not allow the collection of applications and of data to be organised in a timely manner and in decent conditions, or
- it is not possible to ensure a good territorial coverage of the third country concerned in any other way,

and where the abovementioned forms of cooperation prove not to be appropriate for the Member State concerned, a Member State may, as a last resort, cooperate with an external service provider in accordance with point 1.4.

Without prejudice to the right to call the applicant for a personal interview, as provided for in Part III, point 4, the selection of a form of organisation shall not result in requiring the applicant to make personal appearances at more than one location in order to lodge an application.

#### 1.2. *Forms of cooperation between Member States*

- (a) Where “co-location” is chosen, staff of the diplomatic missions or consular posts of one or more Member States shall process the applications (including biometric identifiers) addressed to them at the diplomatic mission or consular post of another Member State and share the equipment of that Member State. The Member States concerned shall agree on the duration of and conditions for the termination of the co-location as well as the proportion of the visa fee to be received by the Member State whose diplomatic mission or consular post is being used.
- (b) Where “Common Application Centres” are established, staff of the diplomatic missions or consular posts of two or more Member States shall be pooled in one building in order to receive the applications (including biometric identifiers) addressed to them. Applicants shall be directed to the Member State responsible for the processing of the application. Member States shall agree on the duration of and conditions for the termination of this cooperation as well as the cost-sharing among the participating Member

States. One Member State shall be responsible for contracts in relation to logistics and diplomatic relations with the host country.

#### 1.3. *Recourse to honorary consuls*

Honorary consuls may also be authorised to perform some or all of the tasks referred to in point 1.5. Adequate measures shall be taken to guarantee security and data protection.

Where the honorary consul is not a civil servant of a Member State, the performance of those tasks shall comply with the requirements set out in Annex 19 except for the provisions in point C(c) of that Annex.

Where the honorary consul is a civil servant of a Member State, the Member State concerned shall ensure that requirements comparable to those which would apply if the tasks were performed by its diplomatic mission or consular post are applied.

#### 1.4. *Cooperation with external service providers*

Member States shall endeavour to cooperate with an external service provider together with one or more Member States, without prejudice to public procurement and competition rules.

Cooperation with an external service provider shall be based on a legal instrument that shall comply with the requirements set out in Annex 19.

Member States shall, within the framework of local consular cooperation, exchange information about the selection of external service providers and the establishment of the terms and conditions of their respective legal instruments.

#### 1.5. *Types of cooperation with external service providers*

An external service provider may be entrusted with the performance of one or more of the following tasks:

- (a) providing general information on visa requirements and application forms;
- (b) informing the applicant of the required supporting documents, on the basis of a checklist;
- (c) collecting data and applications (including collection of biometric identifiers) and transmitting the application to the diplomatic mission or consular post;



- (d) collecting the fee to be charged;
- (e) managing the appointments for personal appearance at the diplomatic mission or consular post or at the external service provider;
- (f) collecting the travel documents (including a refusal notification if applicable) from the diplomatic mission or consular post and returning them to the applicant.

#### 1.6. *Obligations of Member States*

When selecting an external service provider, the Member State(s) concerned shall scrutinise the solvency and reliability of the company (including the necessary licences, commercial registration, company statutes, bank contracts) and ensure that there is no conflict of interests.

The Member State(s) concerned shall ensure that the external service provider selected complies with the terms and conditions assigned to it in the legal instrument referred to in point 1.4.

The Member State(s) concerned shall remain responsible for compliance with data protection rules for the processing of data and shall be supervised in accordance with Article 28 of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (\*).

Cooperation with an external service provider shall not limit or exclude any liability arising under the national law of the Member State(s) concerned for breaches of obligations with regard to the personal data of applicants and the processing of visas. This provision is without prejudice to any action which may be taken directly against the external service provider under the national law of the third country concerned.

The Member State(s) concerned shall ensure that the data are fully encrypted, whether electronically transferred or physically transferred on an electronic storage medium from the external service provider to the authorities of the Member State(s) concerned.

In third countries which prohibit encryption of data to be electronically transferred from the external service

provider to the authorities of the Member State(s) concerned, the Member State(s) concerned shall not allow the external service provider to transfer data electronically.

In this case, the Member State(s) concerned shall ensure that the electronic data are transferred physically in fully encrypted form on an electronic storage medium from the external service provider to the authorities of the Member State(s) concerned by a consular officer of a Member State or, where such a transfer would require disproportionate or unreasonable measures to be taken, in another safe and secure way, for example by using established operators experienced in transporting sensitive documents and data in the third country concerned.

In all cases the level of security for the transfer shall be adapted to the sensitive nature of the data.

The Member States or the Community shall endeavour to reach an agreement with the third countries concerned with the aim of lifting the prohibition against encryption of data to be electronically transferred from the external service provider to the authorities of the Member State(s) concerned.

The Member State(s) concerned shall provide training to the external service provider, corresponding to the knowledge needed to offer appropriate service and sufficient information to applicants.

The Member State(s) concerned shall, in case of doubt, provide for the possibility of verifying at the diplomatic mission or consular post fingerprints which have been taken by the external service provider.

The examination of applications, interviews, where appropriate, the authorisation process and the printing and affixing of visa stickers shall be carried out only by the diplomatic mission or consular post.

External service providers shall not have access to the VIS under any circumstances. Access to the VIS shall be reserved exclusively to duly authorised staff of diplomatic missions or consular posts.

The Member State(s) concerned shall closely monitor the implementation of the legal instrument referred to in point 1.4, including:

- (a) the general information on visa requirements and application forms provided by the external service provider to applicants;
- (b) all the technical and organisational security measures required to protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the cooperation involves the transmission of files and data to the diplomatic mission or consular post of the Member State(s) concerned, and all other unlawful forms of processing the personal data;
- (c) the collection and transmission of biometric identifiers;
- (d) the measures taken to ensure compliance with data protection provisions.

To this end, the diplomatic mission or consular post of the Member State(s) concerned shall, on a regular basis, carry out unannounced checks on the premises of the external service provider.

#### 1.7. *Service fee*

External service providers may charge a service fee in addition to the fee to be charged as set out in Annex 12. The service fee shall be proportionate to the costs incurred by the external service provider while performing one or more of the tasks referred to in point 1.5.

This service fee shall be specified in the legal instrument referred to in point 1.4.

In the framework of local consular cooperation, Member States shall ensure that the service fee charged to an applicant duly reflects the services offered by the external service provider and is adapted to local circumstances. Furthermore, they shall aim to harmonise the service fee applied.

The service fee shall not exceed half of the amount of the visa fee set out in Annex 12, irrespective of the possible exemptions from the visa fee as provided for by Annex 12.

The Member State(s) concerned shall maintain the possibility for all applicants to lodge applications directly at its diplomatic missions or consular posts.

#### 1.8. *Information*

Precise information on the means of obtaining an appointment and submitting an application shall be displayed by Member States' diplomatic missions and consular posts for the general public.

#### 1.9. *Continuity of service*

In the event of termination of cooperation with other Member States or with any type of external service provider, Member States shall assure the continuity of full service.

#### 1.10. *Decision and publication*

Member States shall inform the Commission of how they intend to organise the reception and processing of applications in each consular location. The Commission shall ensure appropriate publication.

Member States shall provide the Commission with a copy of the legal instrument referred to in point 1.4.

(\*) OJ L 281, 23.11.1995, p. 31.

#### 4. Point 5.2 of Part VIII shall be amended as follows:

- (a) the title shall be replaced by the following:

'5.2. *Cooperation by Member States' diplomatic missions and consular posts with commercial intermediaries*;

- (b) the following sentence shall be inserted between the title and point 5.2(a):

'For subsequent applications under Part III, point 1.2, Member States may allow their diplomatic missions or consular posts to cooperate with commercial intermediaries (i.e. private administrative agencies and transport or travel agencies, such as tour operators and retailers).'

#### 5. The following Annex shall be added:

'ANNEX 19

**List of minimum requirements to be included in the legal instrument in the case of cooperation with external service providers**

- A. In relation to the performance of its activities, the external service provider shall, with regard to data protection:
- (a) prevent at all times any unauthorised reading, copying, modification or deletion of data, in particular during their transmission to the diplomatic mission or consular post of the Member State(s) responsible for processing an application;
  - (b) in accordance with the instructions given by the Member State(s) concerned, transmit the data:
    - electronically, in encrypted form, or
    - physically, in a secured way;
  - (c) transmit the data as soon as possible:
    - in the case of physically transferred data, at least once a week,
    - in the case of electronically transferred encrypted data, at the latest at the end of the day of their collection;
  - (d) delete the data immediately after their transmission and ensure that the only data that might be retained shall be the name and contact details of the applicant for the purposes of the appointment arrangements, as well as the passport number, until the return of the passport to the applicant, where applicable;
  - (e) ensure all the technical and organisational security measures required to protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the cooperation involves the transmission of files and data to the diplomatic mission or consular post of the Member State(s) concerned and all other unlawful forms of processing the personal data;
  - (f) process the data only for the purposes of processing the personal data of applicants on behalf of the Member State(s) concerned;
  - (g) apply data protection standards at least equivalent to those set out in Directive 95/46/EC;
- (h) provide applicants with the information required under Article 37 of the VIS Regulation.
- B. In relation to the performance of its activities, the external service provider shall, with regard to the conduct of staff:
- (a) ensure that its staff are appropriately trained;
  - (b) ensure that its staff in the performance of their duties:
    - receive applicants courteously,
    - respect the human dignity and integrity of applicants,
    - do not discriminate against persons on grounds of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation, and
    - respect the rules of confidentiality which shall also apply once members of staff have left their job or after suspension or termination of the legal instrument;
  - (c) provide identification of the staff working in the company at all times;
  - (d) prove that its staff do not have criminal records and have the requisite expertise.
- C. In relation to the verification of the performance of its activities, the external service provider shall:
- (a) provide for access by staff entitled by the Member State(s) concerned to its premises at all times without prior notice, in particular for inspection purposes;
  - (b) ensure the possibility of remote access to its appointment system for inspection purposes;
  - (c) ensure the use of relevant monitoring methods (e.g. test applicants; webcam);
  - (d) ensure access to proof of data protection compliance, including reporting obligations, external audits and regular spot checks;
  - (e) report to the Member State(s) concerned without delay any security breaches or any complaints from applicants on data misuse or unauthorised access, and coordinate with the Member State(s) concerned in order to find a solution and give explanatory responses promptly to the complaining applicants.

D. In relation to general requirements, the external service provider shall:

- (a) act under the instructions of the Member State(s) responsible for processing the application;
- (b) adopt appropriate anti-corruption measures (e.g. provisions on staff remuneration; cooperation in the selection of staff members employed on the task; two-man rule; rotation principle);
- (c) respect fully the provisions of the legal instrument, which shall contain a suspension or termination clause, in particular in the event of breach of the rules established, as well as a revision clause with a view to ensuring that the legal instrument reflects best practices.

#### Article 2

##### Reporting

The Commission shall present, three years after the VIS is brought into operation and every four years thereafter, a report to the European Parliament and to the Council on the implementation of this Regulation, including the implementation of the collection and use of biometric identifiers, the

suitability of the ICAO standard chosen, compliance with data protection rules, experience with external service providers with specific reference to the collection of biometric data, the implementation of the 59-month rule for the copying of fingerprints and the organisation of the reception and processing of applications. The report shall also include, on the basis of Article 17(12), (13) and (14) and of Article 50(4) of the VIS Regulation, the cases in which fingerprints could factually not be provided or were not required to be provided for legal reasons, compared with the number of cases in which fingerprints were taken. The report shall include information on cases in which a person who could factually not provide fingerprints was refused a visa. The report shall be accompanied, where necessary, by appropriate proposals to amend this Regulation.

The first report shall also address the issue of the sufficient reliability for identification and verification purposes of fingerprints of children under the age of 12 and, in particular, how fingerprints evolve with age, based on the results of a study carried out under the responsibility of the Commission.

#### Article 3

##### Entry into force

This Regulation shall enter into force on the day following its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States in accordance with the Treaty establishing the European Community.

Done at Strasbourg, 23 April 2009.

*For the European Parliament*

*The President*

H.-G. PÖTTERING

*For the Council*

*The President*

P. NEČAS

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**REGULATION (EC) No 391/2009 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**of 23 April 2009**

**on common rules and standards for ship inspection and survey organisations**

**(Recast)**

**(Text with EEA relevance)**

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 European Economic and Social Committee <sup>(1)</sup>,

Having regard to the opinion of the Committee of the Regions <sup>(2)</sup>,

Acting in accordance with the procedure laid down in Article 251 of the Treaty, in the light of the joint text approved by the Conciliation Committee on 3 February 2009 <sup>(3)</sup>,

Whereas:

- (1) 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 <sup>(4)</sup> has been substantially amended several times. Since further amendments are to be made, it should be recast in the interests of clarity.
- (2) In view of the nature of the provisions of Directive 94/57/EC it seems appropriate that its provisions be recast in two different Community legal instruments, namely a Directive and a Regulation.
- (3) Ship inspection and survey organisations should be able to offer their services throughout the Community and compete with each other while providing equal levels of safety and of environmental protection. The

necessary professional standards for their activities should therefore be uniformly established and applied across the Community.

- (4) This objective should be pursued through measures that adequately tie in with the work of the International Maritime Organisation (IMO) and, where appropriate, build on and complement it. Furthermore, the Member States and the Commission should promote the development by the IMO of an international code for recognised organisations.

- (5) Minimum criteria for recognition of organisations should be laid down with a view to enhancing the safety of, and preventing pollution from, ships. The minimum criteria laid down in Directive 94/57/EC should therefore be strengthened.

- (6) In order to grant initial recognition to the organisations wishing to be authorised to work on behalf of the Member States, compliance with the minimum criteria laid down in this Regulation could be assessed more effectively in a harmonised and centralised manner by the Commission together with the Member States requesting the recognition.

- (7) Recognition should be granted only on the basis of the quality and safety performance of the organisation. It should be ensured that the extent of that recognition be at all times in keeping with the actual capacity of the organisation concerned. Recognition should furthermore take into account the differences in legal status and corporate structure of recognised organisations while continuing to ensure uniform application of the minimum criteria laid down in this Regulation and the effectiveness of the Community controls. Regardless of the corporate structure, the organisation to be recognised should provide services worldwide and its legal entities should be subject to global joint and several liability.

<sup>(1)</sup> OJ C 318, 23.12.2006, p. 195.

<sup>(2)</sup> OJ C 229, 22.9.2006, p. 38.

<sup>(3)</sup> Opinion of the European Parliament of 25 April 2007 (OJ C 74 E, 20.3.2008, p. 632), Council Common Position of 6 June 2008 (OJ C 190E, 29.7.2008, p. 1), Position of the European Parliament of 24 September 2008 (not yet published in the Official Journal), Council Decision of 26 February 2009 and Legislative Resolution of the European Parliament of 11 March 2009 (not yet published in the Official Journal).

<sup>(4)</sup> OJ L 319, 12.12.1994, p. 20.

- (8) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission <sup>(5)</sup>.

<sup>(5)</sup> OJ L 184, 17.7.1999, p. 23.

- (9) In particular, the Commission should be empowered to amend this Regulation in order to incorporate subsequent amendments to the international conventions, protocols, codes and resolutions related thereto, to update the minimum criteria in Annex I and to adopt the criteria to measure the effectiveness of the rules and procedures as well as the performance of the recognised organisations as regards the safety of, and the prevention of pollution from, their classed ships. Since those measures are of general scope and are designed to amend non-essential elements of this Regulation, *inter alia*, by supplementing it with new non-essential elements, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.
- (10) It is of the utmost importance that failure by a recognised organisation to fulfil its obligations can be addressed in a prompt, effective and proportionate manner. The primary objective should be to correct any deficiencies with a view to removing any potential threat to safety or the environment at an early stage. The Commission should therefore be given the necessary powers to require that the recognised organisation undertake the necessary preventive and remedial action, and to impose fines and periodic penalty payments as coercive measures. When exercising these powers, the Commission should do so in a manner that complies with fundamental rights and should ensure that the organisation can make its views known throughout the procedure.
- (11) In accordance with the Community-wide approach, the decision to withdraw the recognition of an organisation which fails to fulfil the obligations set out in this Regulation if the above measures prove ineffective or the organisation otherwise presents an unacceptable threat to safety or the environment, has to be taken at Community level, and therefore by the Commission, on the basis of a committee procedure.
- (12) The continuous *a posteriori* monitoring of the recognised organisations to assess their compliance with this Regulation can be carried out more effectively in a harmonised and centralised manner. Therefore, it is appropriate that the Commission, together with the Member State requesting the recognition, be entrusted with this task on behalf of the Community.
- (13) As part of the monitoring of the operations of recognised organisations, it is crucial that Commission inspectors have access to ships and ship files regardless of the ship's flag in order to ascertain whether the recognised organisations are complying with the minimum criteria laid down in this Regulation in respect of all ships in their respective classes.
- (14) The ability of recognised organisations to identify rapidly and correct weaknesses in their rules, processes and internal controls is critical for the safety of the ships they inspect and certify. That ability should be enhanced by means of a quality assessment and certification entity, which should be independent of commercial or political interests, can propose common action for the sustained improvement of all recognised organisations and ensure fruitful cooperation with the Commission.
- (15) The rules and procedures of recognised organisations are a key factor for increasing safety and preventing accidents and pollution. The recognised organisations have initiated a process that should lead to harmonisation of their rules and procedures. That process should be encouraged and supported by Community legislation, as it should have a positive impact on maritime safety as well as on the competitiveness of the European shipbuilding industry.
- (16) The harmonisation of the rules of recognised organisations for the design, construction and periodic survey of merchant ships is an ongoing process. Therefore, the obligation to have a set of own rules or the demonstrated ability to have own rules should be seen in the context of the process of harmonisation and should not constitute an obstacle to the activities of recognised organisations or potential candidates for recognition.
- (17) Recognised organisations should be obliged to update their technical standards and enforce them consistently in order to harmonise safety rules and ensure uniform implementation of international rules within the Community. Where the technical standards of recognised organisations are identical or very similar, mutual recognition of certificates for materials, equipment and components should be considered in appropriate cases, taking the most demanding and rigorous standards as the reference.
- (18) While each recognised organisation, in principle, should be held responsible solely and exclusively in relation to the parts it certifies, the liability of recognised organisations and manufacturers will follow the agreed conditions or, as the case may be, the applicable law in each individual case.
- (19) Since transparency and exchange of information between interested parties, as well as public right of access to information, are fundamental tools for preventing accidents at sea, recognised organisations should provide all relevant statutory information concerning the conditions of the ships in their class to the port State control authorities and make it available to the general public.

- (20) In order to prevent ships from changing class to avoid carrying out necessary repairs, recognised organisations should exchange all relevant information among themselves concerning the conditions of ships changing class and involve the flag State when necessary.
- (21) The protection of intellectual property rights of maritime stakeholders including shipyards, equipment suppliers and shipowners, should not prevent normal business transactions and contractually agreed services between these parties.
- (22) The European Maritime Safety Agency (EMSA) established by Regulation (EC) No 1406/2002 of the European Parliament and of the Council<sup>(1)</sup> should provide the necessary support to ensure the application of this Regulation.
- (23) Since the objective of this Regulation, namely the establishment of measures to be followed by organisations entrusted with the inspection, survey and certification of ships, operating in the Community, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale of the action, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.
- (24) Measures to be followed by the Member States in their relationship with ship inspection and survey organisations are laid down in Directive 2009/15/EC of the European Parliament and of the Council of 23 April 2009 on common rules and standards for ship inspection and survey organisations and for the relevant activities of maritime administrations<sup>(2)</sup>,

HAVE ADOPTED THIS REGULATION:

#### Article 1

This Regulation establishes measures to be followed by organisations entrusted with the inspection, survey and certification of ships for compliance with the international conventions on safety at sea and prevention of marine pollution, while furthering the objective of freedom to provide services. This 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.

<sup>(1)</sup> OJ L 208, 5.8.2002, p. 1.

<sup>(2)</sup> See page 47 of this Official Journal.

#### Article 2

For the purpose of this Regulation the following definitions shall apply:

- (a) 'ship' means a ship falling within the scope of the international conventions;
- (b) 'international conventions' means the International Convention for the Safety of Life at Sea of 1 November 1974 (SOLAS 74) with the exception of chapter XI-2 of the Annex thereto, the International Convention on Load Lines of 5 April 1966 and the International Convention for the Prevention of Pollution from Ships of 2 November 1973 (MARPOL), together with the protocols and amendments thereto, and the related codes of mandatory status in all Member States, in their up-to-date version;
- (c) 'organisation' means a legal entity, its subsidiaries and any other entities under its control, which jointly or separately carry out tasks falling under the scope of this Regulation;
- (d) 'control' means, for the purpose of point (c), rights, contracts or any other means, in law or in fact, which, either separately or in combination confer the possibility of exercising decisive influence on a legal entity or enable that entity to carry out tasks falling under the scope of this Regulation;
- (e) 'recognised organisation' means an organisation recognised in accordance with this Regulation;
- (f) 'authorisation' means an act whereby a Member State grants an authorisation or delegates powers to a recognised organisation;
- (g) 'statutory certificate' means a certificate issued by or on behalf of a flag State in accordance with the international conventions;
- (h) 'rules and procedures' means a recognised organisation's requirements for the design, construction, equipment, maintenance and survey of ships;
- (i) 'class certificate' means a document issued by a recognised organisation certifying the fitness of a ship for a particular use or service in accordance with the rules and procedures laid down and made public by that recognised organisation;
- (j) 'location' means the place of the registered office, central administration or principal place of business of an organisation.

### Article 3

1. Member States which wish to grant an authorisation to any organisation which is not yet recognised shall submit a request for recognition to the Commission together with complete information on, and evidence of, the organisation's compliance with the minimum criteria set out in Annex I and on the requirement and its undertaking that it shall comply with the provisions of Articles 8(4), 9, 10 and 11.

2. The Commission, together with the respective Member States submitting the request, shall carry out assessments of the organisations for which the request for recognition was received in order to verify that the organisations meet and undertake to comply with the requirements referred to in paragraph 1.

3. The Commission shall, in accordance with the regulatory procedure referred to in Article 12(3), refuse to recognise organisations which fail to meet the requirements referred to in paragraph 1 or whose performance is considered an unacceptable threat to safety or the environment on the basis of the criteria laid down in accordance with Article 14.

### Article 4

1. Recognition shall be granted by the Commission in accordance with the regulatory procedure referred to in Article 12(3).

2. Recognition shall only be granted to organisations which meet the requirements referred to in Article 3.

3. Recognition shall be granted to the relevant legal entity, which is the parent entity of all legal entities that constitute the recognised organisation. The recognition shall encompass all legal entities that contribute to ensuring that that organisation provides cover for their services worldwide.

4. The Commission, acting in accordance with the regulatory procedure referred to in Article 12(3), may limit the recognition as regards certain types of ships, ships of a certain size, certain trades, or a combination thereof, in accordance with the proven capacity and expertise of the organisation concerned. In such a case, the Commission shall state the reasons for the limitation and the conditions under which the limitation shall be removed or can be widened. The limitation may be reviewed at any time.

5. The Commission shall draw up and regularly update a list of the organisations recognised in accordance with this Article. That list shall be published in the *Official Journal of the European Union*.

### Article 5

Where the Commission considers that a recognised organisation has failed to fulfil the minimum criteria set out in Annex I or its obligations under this Regulation, or that the safety and

pollution prevention performance of a recognised organisation has worsened significantly, without, however, it constituting an unacceptable threat to safety or the environment, it shall require the recognised organisation concerned to undertake the necessary preventive and remedial action within specified deadlines to ensure full compliance with those minimum criteria and obligations and, in particular, remove any potential threat to safety or the environment, or to otherwise address the causes of the worsening performance.

The preventive and remedial action may include interim protective measures when the potential threat to safety or the environment is immediate.

However, and without prejudice to their immediate implementation, the Commission shall give to all Member States which have granted an authorisation to the recognised organisation concerned, advance notice of the measures that it intends to take.

### Article 6

1. In addition to the measures taken under Article 5, the Commission may, in accordance with the advisory procedure referred to in Article 12(2), impose fines on a recognised organisation:

(a) — whose serious or repeated failure to fulfil the minimum criteria set out in Annex I or its obligations under Articles 8(4), 9, 10 and 11,

or

— whose worsening performance reveals serious shortcomings in its structure, systems, procedures or internal controls;

or

(b) which has deliberately provided incorrect, incomplete or misleading information to the Commission in the course of its assessment pursuant to Article 8(1) or otherwise obstructed that assessment.

2. Without prejudice to paragraph 1, where a recognised organisation fails to undertake the preventive and remedial action required by the Commission, or incurs unjustified delays, the Commission may impose periodic penalty payments on that organisation until the required action is fully carried out.

3. The fines and periodic penalty payments referred to in paragraphs 1 and 2 shall be dissuasive and proportionate to both the gravity of the case and the economic capacity of the recognised organisation concerned, taking into account, in particular, the extent to which safety or the protection of the environment has been compromised.



They shall be imposed only after the recognised organisation and the Member States concerned have been given the opportunity to submit their observations.

The aggregate amount of the fines and periodic penalty payments imposed shall not exceed 5 % of the total average turnover of the recognised organisation in the preceding three business years for the activities falling under the scope of this Regulation.

4. The Court of Justice of the European Communities shall have unlimited jurisdiction to review decisions whereby the Commission has fixed a fine or periodic penalty payment. It may cancel, reduce or increase the fine or periodic penalty payment imposed.

#### Article 7

1. The Commission shall withdraw the recognition of an organisation:

- (a) whose repeated and serious failure to fulfil the minimum criteria set out in Annex I or its obligations under this Regulation is such that it constitutes an unacceptable threat to safety or the environment;
- (b) whose repeated and serious failure in its safety and pollution prevention performance is such that it constitutes an unacceptable threat to safety or the environment;
- (c) which prevents or repeatedly obstructs the assessment by the Commission;
- (d) which fails to pay the fines and/or periodic penalty payments referred to in Article 6(1) and (2); or
- (e) which seeks to obtain financial cover or reimbursement of any fines imposed on it pursuant to Article 6.

2. For the purpose of points (a) and (b) of paragraph 1, the Commission shall decide on the basis of all the available information, including:

- (a) the results of its own assessment of the recognised organisation concerned pursuant to Article 8(1);
- (b) reports submitted by Member States pursuant to Article 10 of Directive 2009/15/EC;
- (c) analyses of casualties involving ships classed by the recognised organisations;

(d) any recurrence of the shortcomings referred to in point (a) of Article 6(1);

(e) the extent to which the fleet in the recognised organisation's class is affected; and

(f) the ineffectiveness of the measures referred to in Article 6(2).

3. Withdrawal of recognition shall be decided by the Commission, upon its own initiative or at the request of a Member State, in accordance with the regulatory procedure referred to in Article 12(3) and after the recognised organisation concerned has been given the opportunity to submit its observations.

#### Article 8

1. All the recognised organisations shall be assessed by the Commission, together with the Member State which submitted the relevant request for recognition, on a regular basis and at least every two years to verify that they meet the obligations under this Regulation and fulfil the minimum criteria set out in Annex I. The assessment shall be confined to those activities of the recognised organisations, which fall within the scope of this Regulation.

2. In selecting the recognised organisations for assessment, the Commission shall pay particular attention to the safety and pollution prevention performance of the recognised organisation, to the casualty records and to the reports produced by Member States in accordance with Article 10 of Directive 2009/15/EC.

3. The assessment may include a visit to regional branches of the recognised organisation as well as random inspection of ships, both in service and under construction, for the purpose of auditing the recognised organisation's performance. In this case the Commission shall, where appropriate, inform the Member State in which the regional branch is located. The Commission shall provide the Member States with a report on the results of the assessment.

4. Each recognised organisation shall make available the results of its quality system management review to the Committee referred to in Article 12(1), on an annual basis.

#### Article 9

1. Recognised organisations shall ensure that the Commission has access to the information necessary for the purposes of the assessment referred to in Article 8(1). No contractual clauses may be invoked to restrict this access.

2. Recognised organisations shall ensure in their contracts with shipowners or operators for the issue of statutory certificates or class certificates to a ship that such issue shall be made conditional on the parties not opposing the access of the Commission inspectors on board that ship for the purposes of Article 8(1).

#### Article 10

1. Recognised organisations shall consult with each other periodically with a view to maintaining equivalence and aiming for harmonisation of their rules and procedures and the implementation thereof. They shall cooperate with each other with a view to achieving consistent interpretation of the international conventions, without prejudice to the powers of the flag States. Recognised organisations shall, in appropriate cases, agree on the technical and procedural conditions under which they will mutually recognise the class certificates for materials, equipment and components based on equivalent standards, taking the most demanding and rigorous standards as the reference.

Where mutual recognition cannot be agreed upon for serious safety reasons, recognised organisations shall clearly state the reasons therefor.

Where a recognised organisation ascertains by inspection or otherwise that material, a piece of equipment or a component is not in compliance with its certificate, that organisation may refuse to authorise the placing on board of that material, piece of equipment or component. The recognised organisation shall immediately inform the other recognised organisations, stating the reasons for its refusal.

Recognised organisations shall recognise, for classification purposes, certificates of marine equipment bearing the wheel mark in accordance with Council Directive 96/98/EC of 20 December 1996 on marine equipment <sup>(1)</sup>.

They shall provide the Commission and the Member States with periodic reports on fundamental progress in standards and mutual recognition of certificates for materials, equipment and components.

2. The Commission shall submit a report to the European Parliament and the Council by 17 June 2014, based on an independent study, on the level reached in the process of harmonising the rules and procedures and on mutual recognition of certificates for materials, equipment and components.

3. The recognised organisations shall cooperate with port State control administrations where a ship of their class is concerned, in particular in order to facilitate the rectification of reported deficiencies or other discrepancies.

4. The recognised organisations shall provide to all Member States' administrations which have granted any of the authorisations provided for in Article 3 of Directive 2009/15/EC and to the Commission all relevant information about their classed fleet, transfers, changes, suspensions and withdrawals of class, irrespective of the flag the ships fly.

Information on transfers, 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 ships, irrespective of the flag the ships fly, shall also be communicated electronically to the common inspection database used by the Member States for the implementation of Directive 2009/16/EC of the European Parliament and of the Council of 23 April 2009 on port State control <sup>(2)</sup> at the same time as it is recorded within the recognised organisation's own systems and in any case no later than 72 hours after the event that gave rise to the obligation to communicate the information. That information, with the exception of recommendations and conditions of class which are not overdue, shall be published on the website of these recognised organisations.

5. The recognised organisations shall not issue statutory certificates to a ship, irrespective of its flag, which has been declassified or is changing class for safety reasons, before giving the opportunity to the competent administration of the flag State to give its opinion within a reasonable time as to whether a full inspection is necessary.

6. In cases of transfer of class from one recognised organisation to another, the losing organisation shall, without undue delay, provide the gaining organisation with the complete history file of the ship and, in particular, inform it of:

- (a) any overdue surveys;
- (b) any overdue recommendations and conditions of class;
- (c) operating conditions issued against the ship; and
- (d) operating restrictions issued against the ship.

New certificates for 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 in respect of the ship have been completed as specified by the losing organisation.

Prior to the issue of the certificates, the gaining organisation must advise the losing organisation of the date of issue of the certificates and confirm the date, place and action taken to satisfy each overdue survey, overdue recommendation and overdue condition of class.

<sup>(1)</sup> OJ L 46, 17.2.1997, p. 25.

<sup>(2)</sup> See page 57 of this Official Journal.

Recognised organisations shall establish and implement appropriate common requirements concerning cases of transfer of class where special precautions are necessary. Those cases shall, as a minimum, include the transfer of class of ships of 15 years of age or over and the transfer from a non-recognised organisation to a recognised organisation.

Recognised organisations shall cooperate with each other in properly implementing the provisions of this paragraph.

#### Article 11

1. Recognised organisations shall set up by 17 June 2011 and maintain an independent quality assessment and certification entity in accordance with the applicable international quality standards where the relevant professional associations working in the shipping industry may participate in an advisory capacity.

2. The quality assessment and certification entity shall carry out the following tasks:

- (a) frequent and regular assessment of the quality management systems of recognised organisations, in accordance with the ISO 9001 quality standard criteria;
- (b) certification of the quality management systems of recognised organisations, including organisations for which recognition has been requested in accordance with Article 3;
- (c) issue of interpretations of internationally recognised quality management standards, in particular to take account of the specific features of the nature and obligations of recognised organisations; and
- (d) adoption of individual and collective recommendations for the improvement of recognised organisations' processes and internal control mechanisms.

3. The quality assessment and certification entity shall have the necessary governance and competences to act independently of the recognised organisations and shall have the necessary means to carry out its duties effectively and to the highest professional standards, safeguarding the independence of the persons performing them. The quality assessment and certification entity will lay down its working methods and rules of procedure.

4. The quality assessment and certification entity may request assistance from other external quality assessment bodies.

5. The quality assessment and certification entity shall provide the interested parties, including flag States and the Commission, with full information on its annual work plan as well as on its findings and recommendations, particularly with regard to situations where safety might have been compromised.

6. The quality assessment and certification entity shall be periodically assessed by the Commission.

7. The Commission shall report to the Member States on the results and follow-up of its assessment.

#### Article 12

1. The Commission shall be assisted by the Committee on Safe Seas and the Prevention of Pollution from Ships (COSS) established by Regulation (EC) No 2099/2002 of the European Parliament and of the Council <sup>(1)</sup>.

2. Where reference is made to this paragraph, Articles 3 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

3. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at three months.

4. Where reference is made to this paragraph, Article 5a(1) to (4) and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

#### Article 13

1. This Regulation may, without broadening its scope, be amended in order to update the minimum criteria set out in Annex I taking into account, in particular, the relevant decisions of the IMO.

These measures designed to amend non-essential elements of this Regulation shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 12(4).

2. Amendments to the international conventions defined in Article 2(b) of this Regulation may be excluded from the scope of this Regulation, pursuant to Article 5 of Regulation (EC) No 2099/2002.

<sup>(1)</sup> OJ L 324, 29.11.2002, p. 1.

*Article 14*

1. The Commission shall adopt and publish:
  - (a) criteria to measure the effectiveness of the rules and procedures as well as the performance of the recognised organisations as regards the safety of, and the prevention of pollution from, their classed ships, having particular regard to the data produced by the Paris Memorandum of Understanding on Port State Control and/or by other similar schemes; and
  - (b) criteria to determine when such performance is to be considered an unacceptable threat to safety or the environment, which may take into account specific circumstances affecting smaller-sized or highly specialised organisations.

These measures designed to amend non-essential elements of this Regulation by supplementing it shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 12(4).

2. The measures designed to amend non-essential elements of this Regulation by supplementing it relating to the implementation of Article 6 and, if appropriate, Article 7 shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 12(4).

3. Without prejudice to the immediate application of the minimum criteria set out in Annex I, the Commission may, in accordance with the regulatory procedure referred to in Article 12(3), adopt rules on their interpretation and may consider the establishment of objectives for the general minimum criteria referred to in point 3, Part A of Annex I.

*Article 15*

1. The organisations which, at the entry into force of this Regulation, had been granted recognition in accordance with Directive 94/57/EC shall retain their recognition, subject to the provisions of paragraph 2.

2. Without prejudice to Articles 5 and 7, the Commission shall re-examine all limited recognitions granted under Directive 94/57/EC in light of Article 4(3) of this Regulation by 17 June 2010, with a view to deciding, in accordance with the regulatory procedure referred to in Article 12(3), whether the limitations are to be replaced by others or removed. The limitations shall continue to apply until the Commission has taken a decision.

*Article 16*

In the course of the assessment pursuant to Article 8(1), the Commission shall verify that the holder of the recognition is the relevant legal entity within the organisation to which the provisions of this Regulation shall apply. If that is not the case, the Commission shall take a decision amending that recognition.

Where the Commission amends the recognition, the Member States shall adapt their agreements with the recognised organisation to take account of the amendment.

*Article 17*

The Commission shall, on a biennial basis, inform the European Parliament and the Council on the application of this Regulation.

*Article 18*

References in Community and national law to Directive 94/57/EC shall be construed, as appropriate, as being made to this Regulation and shall be read in accordance with the correlation table in Annex II.

*Article 19*

This Regulation shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Strasbourg, 23 April 2009.

*For the European Parliament*  
The President  
H.-G. PÖTTERING

*For the Council*  
The President  
P. NEČAS

## ANNEX I

**MINIMUM CRITERIA FOR ORGANISATIONS TO OBTAIN OR TO CONTINUE TO ENJOY COMMUNITY RECOGNITION****(referred to in Article 3)**

## A. GENERAL MINIMUM CRITERIA

1. A recognised organisation must have legal personality in the State of its location. Its accounts shall be certified by independent auditors.
2. The recognised organisation must be able to document extensive experience in assessing the design and construction of merchant ships.
3. The recognised organisation must be equipped at all times with significant managerial, technical, support and research staff commensurate with the size of the fleet in its class, its composition and the organisation's involvement in the construction and conversion of ships. The recognised organisation must be capable of assigning to every place of work, when and as needed, means and staff commensurate with the tasks to be carried out in accordance with general minimum criteria under points 6 and 7 and with the specific minimum criteria under part B.
4. The recognised organisation must have and apply a set of own comprehensive rules and procedures, or the demonstrated ability thereto, for the design, construction and periodic survey of merchant ships, having the quality of internationally recognised standards. They must be published and continually upgraded and improved through research and development programmes.
5. The recognised organisation must have its register of ships published on an annual basis or maintained in an electronic database accessible to the public.
6. The recognised organisation must not be controlled by shipowners or shipbuilders, or by others engaged commercially in the manufacture, equipping, repair or operation of ships. The recognised organisation is not substantially dependent on a single commercial enterprise for its revenue. The recognised organisation does not carry out class or statutory work if it is identical to or has business, personal or family links to the shipowner or operator. This incompatibility shall also apply to surveyors employed by the recognised organisation.
7. The recognised organisation must operate in accordance with the provisions set out in the Annex to IMO Resolution A.789(19) on specifications on the survey and certification functions of recognised organisations acting on behalf of the administration, in so far as they cover matters falling within the scope of this Regulation.

## B. SPECIFIC MINIMUM CRITERIA

1. The recognised organisation must provide worldwide coverage by its exclusive surveyors or, in exceptional and duly justified cases, through exclusive surveyors of other recognised organisations.
2. The recognised organisation must be governed by a code of ethics.
3. The recognised organisation must be managed and administered in such a way as to ensure the confidentiality of information required by the administration.
4. The recognised organisation must provide relevant information to the administration, to the Commission and to interested parties.

5. The recognised organisation, its surveyors and its technical staff shall carry out their work without in any way harming the intellectual property rights of shipyards, equipment suppliers, and shipowners, including patents, licences, know-how, or any other kind of knowledge whose use is legally protected at international, Community or national level; under no circumstances, and without prejudice to the assessment powers of Member States and the Commission and in particular under Article 9, may either the recognised organisation or the surveyors and technical staff, whom it employs pass on or divulge commercially relevant data obtained in the course of their work of inspecting, checking, and monitoring ships under construction or repair.
6. The recognised organisation's management must define and document its policy and objectives for, and commitment to, quality and must ensure that this policy is understood, implemented and maintained at all levels in the recognised organisation. The recognised organisation's policy must refer to safety and pollution prevention performance targets and indicators.
7. The recognised organisation must ensure that:
  - (a) its rules and procedures are established and maintained in a systematic manner;
  - (b) its rules and procedures are complied with and an internal system to measure the quality of service in relation to these rules and procedures is put in place;
  - (c) the requirements of the statutory work for which the recognised organisation is authorised are satisfied and an internal system to measure the quality of service in relation to compliance with the international conventions is put in place;
  - (d) the responsibilities, powers and interrelation of personnel whose work affects the quality of the recognised 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 by the recognised organisation;
  - (g) surveyors have an extensive knowledge of the particular type of ship on which they carry out their work as relevant to the particular survey to be carried out and of the relevant applicable requirements;
  - (h) a system for qualification of surveyors and continuous updating of their knowledge is implemented;
  - (i) 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;
  - (j) a comprehensive system of planned and documented internal audits of the quality related activities is maintained in all locations;
  - (k) the statutory surveys and inspections required by the harmonised system of survey and certification for which the recognised organisation is authorised are carried out in accordance with the provision set out in the Annex and Appendix to IMO Resolution A.948(23) 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 recognised organisation and between the recognised organisations and their surveyors.

8. The recognised organisation must have developed, implemented and must maintain an effective internal quality system based on appropriate parts of internationally recognised quality standards and in compliance with EN ISO/IEC 17020:2004 (inspection bodies) and with EN ISO 9001:2000 (quality management systems, requirements), as interpreted and certified by the quality assessment and certification entity referred to in Article 11(1).
  9. The rules and procedures of the recognised organisation must be implemented in such a way that the organisation remains in a position to derive from its own direct knowledge and judgment a reliable and objective declaration on the safety of the ships concerned by means of class certificates on the basis of which statutory certificates can be issued.
  10. The recognised organisation must have the necessary means of assessing, through the use of qualified professional staff and pursuant to the provisions set out in the Annex to IMO Resolution A.913(22) 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.
  11. The recognised organisation must allow participation in the development of its rules and procedures by representatives of the administration and other parties concerned.
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## ANNEX II

## Correlation table

Directive 94/57/EC	Directive 2009/15/EC	This Regulation
Article 1	Article 1	Article 1
Article 2(a)	Article 2(a)	Article 2(a)
Article 2(b)	Article 2(b)	—
Article 2(c)	Article 2(c)	—
Article 2(d)	Article 2(d)	Article 2(b)
Article 2(e)	Article 2(e)	Article 2(c)
—	Article 2(f)	Article 2(d)
Article 2(f)	Article 2(g)	Article 2(e)
Article 2(g)	Article 2(h)	Article 2(f)
Article 2(h)	Article 2(i)	Article 2(g)
Article 2(i)	Article 2(k)	Article 2(i)
—	Article 2(j)	Article 2(h)
Article 2(j)	Article 2(l)	—
Article 2(k)	—	Article 2(j)
Article 3	Article 3	—
Article 4(1) first phrase	—	Article 3(1)
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—	—	Article 3(3)
—	—	Article 4(2), (3), (4)
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—	Article 7(1) second subparagraph	Article 13(1) second subparagraph
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Article 10(1)(a), (b), (c), (2), (3), (4)	—	—
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Article 15(5)		Article 10(6) first, second, third, fifth subparagraphs
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Article 16	Article 13	—
Article 17	Article 16	—
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		Article 11
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Annex		Annex I
	Annex I	
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**REGULATION (EC) No 392/2009 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**  
**of 23 April 2009**  
**on the liability of carriers of passengers by sea in the event of accidents**  
 (Text with EEA relevance)

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 European Economic and Social Committee <sup>(1)</sup>,

Having regard to the opinion of the Committee of the Regions <sup>(2)</sup>,

Acting in accordance with the procedure laid down in Article 251 of the Treaty <sup>(3)</sup>, in the light of the joint text approved by the Conciliation Committee on 3 February 2009,

Whereas:

- (1) Within the framework of the common transport policy, further measures need to be adopted in order to enhance safety in maritime transport. Those measures should include liability rules for damage caused to passengers, since it is important to ensure a proper level of compensation for passengers involved in maritime accidents.
- (2) The Protocol of 2002 to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974 was adopted on 1 November 2002 under the auspices of the International Maritime Organisation (IMO). The Community and its Member States are in the process of deciding whether to accede to or ratify that Protocol. In any case, the provisions thereof incorporated by this Regulation should apply for the Community from no later than 31 December 2012.
- (3) The Athens Convention relating to the Carriage of Passengers and their Luggage by Sea 1974, as amended by the Protocol of 2002 (the Athens Convention), applies

<sup>(1)</sup> OJ C 318, 23.12.2006, p. 195.

<sup>(2)</sup> OJ C 229, 22.9.2006, p. 38.

<sup>(3)</sup> Opinion of the European Parliament of 25 April 2007 (OJ C 74 E, 20.3.2008, p. 562), Council Common Position of 6 June 2008 (OJ C 190 E, 29.7.2008, p. 17), Position of the European Parliament of 24 September 2008 (not yet published in the Official Journal), Council Decision of 26 February 2009 and Legislative Resolution of the European Parliament of 11 March 2009 (not yet published in the Official Journal).

to international transport only. The distinction between national and international transport has been eliminated within the internal market in maritime transport services and it is therefore appropriate to have the same level and nature of liability in both international and national transport within the Community.

- (4) The insurance arrangements required under the Athens Convention must take into consideration the financial means of ship-owners and insurance companies. Ship-owners must be in a position to manage their insurance arrangements in an economically acceptable way and, particularly in the case of small shipping companies operating national transport services, account must be taken of the seasonal nature of their operations. When setting insurance arrangements under this Regulation, account should therefore be taken of the different classes of ship.
- (5) It is appropriate to oblige the carrier to make an advance payment in the event of the death of or personal injury to a passenger, whereby advance payment does not constitute recognition of liability.
- (6) Appropriate information on rights being conferred on passengers should be provided to those passengers prior to their journey or, where that is not possible, at the latest on departure.
- (7) The Legal Committee of the IMO adopted on 19 October 2006 the IMO Reservation and Guidelines for the Implementation of the Athens Convention (the IMO Guidelines) to address certain issues under the Athens Convention, such as, in particular, compensation for terrorism-related damage. As such, the IMO Guidelines may be considered a *lex specialis*.
- (8) This Regulation incorporates and makes binding parts of the IMO Guidelines. To that end, where it occurs in the provisions of the IMO Guidelines, the verb 'should' should, in particular, be understood as 'shall'.
- (9) The provisions of the Athens Convention (Annex I) and of the IMO Guidelines (Annex II) should be understood, *mutatis mutandis*, in the context of Community legislation.

- (10) The system of liability provided for by this Regulation should be extended step-by-step to the different classes of ship as set out in Article 4 of Council Directive 98/18/EC of 17 March 1998 on safety rules and standards for passenger ships<sup>(1)</sup>. Account should be taken of the consequences for fares and the ability of the market to obtain affordable insurance coverage at the level required against the policy background of strengthening passengers' rights and the seasonal nature of some of the traffic.
- (11) The matters covered by Articles 17 and 17bis of the Athens Convention fall within the exclusive competence of the Community in so far as those Articles affect the rules established by Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters<sup>(2)</sup>. To that extent, these two provisions will form part of the Community legal order when the Community accedes to the Athens Convention.
- (12) For the purposes of this Regulation, the expression 'or is registered in a Member State' should be considered to mean that the flag State for the purposes of bareboat charter-out registration is either a Member State or a contracting party to the Athens Convention. Necessary steps should be taken by the Member States and the Commission to invite the IMO to develop guidelines on the concept of bareboat charter-out registration.
- (13) For the purposes of this Regulation, the expression 'mobility equipment' should be considered to mean neither luggage nor vehicles within the meaning of Article 8 of the Athens Convention.
- (14) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission<sup>(3)</sup>.
- (15) In particular, the Commission should be empowered to amend this Regulation in order to incorporate subsequent amendments to the international conventions, protocols, codes and resolutions related thereto. Since those measures are of general scope and are designed to amend non-essential elements of this Regulation, *inter alia*, by supplementing it with new non-essential elements, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.
- (16) The European Maritime Safety Agency, established by Regulation (EC) No 1406/2002 of the European Parliament and of the Council<sup>(4)</sup>, should assist the Commission in preparing and drafting a progress report on the functioning of the rules laid down by this Regulation.
- (17) The national authorities, particularly the port authorities, play a fundamental and vital role in identifying and managing the various risks in relation to maritime safety.
- (18) Member States have taken the firm commitment in their Statement on Maritime Safety of 9 October 2008 to express, no later than 1 January 2012, their consent to be bound by the International Convention on Limitation of Liability for Maritime Claims, 1976, as amended by the Protocol of 1996. Member States may make use of the option provided for in Article 15(3bis) of that Convention to regulate, by means of specific provisions of this Regulation, the system of limitation of liability to be applied to passengers.
- (19) Since the objective of this Regulation, namely to create a single set of rules governing the rights of carriers by sea and their passengers in the event of an accident, cannot be sufficiently achieved by the Member States and can therefore, by reason of its scale and effects, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective,

HAVE ADOPTED THIS REGULATION:

#### *Article 1*

#### **Subject matter**

1. This Regulation lays down the Community regime relating to liability and insurance for the carriage of passengers by sea as set out in the relevant provisions of:

- (a) the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974, as amended by the Protocol of 2002 (the Athens Convention) as set out in Annex I; and
- (b) the IMO Reservation and Guidelines for Implementation of the Athens Convention adopted by the Legal Committee of the IMO on 19 October 2006 (the IMO Guidelines) as set out in Annex II.

<sup>(1)</sup> OJ L 144, 15.5.1998, p. 1.

<sup>(2)</sup> OJ L 12, 16.1.2001, p. 1.

<sup>(3)</sup> OJ L 184, 17.7.1999, p. 23.

<sup>(4)</sup> OJ L 208, 5.8.2002, p. 1.

2. Furthermore, this Regulation extends the application of those provisions to carriage of passengers by sea within a single Member State on board ships of Classes A and B under Article 4 of Directive 98/18/EC, and lays down certain supplementary requirements.

3. No later than 30 June 2013, the Commission shall, if appropriate, present a legislative proposal in order, inter alia, to extend the scope of this Regulation to ships of Classes C and D under Article 4 of Directive 98/18/EC.

#### Article 2

##### Scope

This Regulation shall apply to any international carriage within the meaning of point 9 of Article 1 of the Athens Convention and to carriage by sea within a single Member State on board ships of Classes A and B under Article 4 of Directive 98/18/EC, where:

- (a) the ship is flying the flag of or is registered in a Member State;
- (b) the contract of carriage has been made in a Member State; or
- (c) the place of departure or destination, according to the contract of carriage, is in a Member State.

Member States may apply this Regulation to all domestic sea-going voyages.

#### Article 3

##### Liability and insurance

1. The liability regime in respect of passengers, their luggage and their vehicles and the rules on insurance or other financial security shall be governed by this Regulation, by Articles 1 and 1bis, Article 2(2), Articles 3 to 16 and Articles 18, 20 and 21 of the Athens Convention set out in Annex I and by the provisions of the IMO Guidelines set out in Annex II.

2. The IMO Guidelines as set out in Annex II shall be binding.

#### Article 4

##### Compensation in respect of mobility equipment or other specific equipment

In the event of loss of, or damage to, mobility equipment or other specific equipment used by a passenger with reduced mobility, the liability of the carrier shall be governed by Article 3(3) of the Athens Convention. The compensation

shall correspond to the replacement value of the equipment concerned or, where applicable, to the costs relating to repairs.

#### Article 5

##### Global limitation of liability

1. This Regulation shall not modify the rights or duties of the carrier or performing carrier under national legislation implementing the International Convention on Limitation of Liability for Maritime Claims, 1976, as amended by the Protocol of 1996, including any future amendment thereto.

In the absence of any such applicable national legislation, the liability of the carrier or performing carrier shall be governed only by Article 3 of this Regulation.

2. In respect of claims for loss of life or personal injury to a passenger caused by any of the risks referred to in paragraph 2.2 of the IMO Guidelines the carrier and the performing carrier may limit their liability pursuant to the provisions referred to in paragraph 1 of this Article.

#### Article 6

##### Advance payment

1. Where the death of, or personal injury to, a passenger is caused by a shipping incident, the carrier who actually performed the whole or a part of the carriage when the shipping incident occurred shall make an advance payment sufficient to cover immediate economic needs on a basis proportionate to the damage suffered within 15 days of the identification of the person entitled to damages. In the event of the death, the payment shall not be less than EUR 21 000.

This provision shall also apply where the carrier is established within the Community.

2. An advance payment shall not constitute recognition of liability and may be offset against any subsequent sums paid on the basis of this Regulation. It shall not be refundable, except in the cases set out in Article 3(1) or Article 6 of the Athens Convention or Appendix A to the IMO Guidelines, or where the person who received it is not the person entitled to damages.

#### Article 7

##### Information to passengers

Without prejudice to the obligations of tour operators set out in Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours<sup>(1)</sup>, the carrier and/or performing carrier shall ensure that passengers are provided with appropriate and comprehensible information regarding their rights under this Regulation.

<sup>(1)</sup> OJ L 158, 23.6.1990, p. 59.

Where the contract of carriage is made in a Member State, that information shall be provided at all points of sale, including sale by telephone and via the Internet. Where the place of departure is in a Member State, that information shall be provided prior to departure. In all other cases, it shall be provided at the latest on departure. To the extent that the information required under this Article has been provided by either the carrier or the performing carrier, the other shall not be obliged to provide it. The information shall be provided in the most appropriate format.

In order to comply with the information requirement under this Article, the carrier and performing carrier shall provide passengers with at least the information contained in a summary of the provisions of this Regulation prepared by the Commission and made public.

#### Article 8

##### Reporting

No later than three years after the date of application of this Regulation, the Commission shall draw up a report on the application of this Regulation, which shall, inter alia, take into account economic developments and developments in international fora.

That report may be accompanied by a proposal for amendment of this Regulation, or by a proposal for a submission to be made by the Community before the relevant international fora.

#### Article 9

##### Amendments

1. Measures designed to amend non-essential elements of this Regulation and relating to the incorporation of amendments to the limits set out in Article 3(1), Article 4bis(1), Article 7(1) and Article 8 of the Athens Convention to take account of decisions taken pursuant to Article 23 of that Convention, as well as corresponding updates to Annex I to this Regulation, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 10(2) of this Regulation.

Taking into consideration the consequences for fares and the ability of the market to obtain affordable insurance coverage at the level required against the policy background of strengthening passengers' rights, as well as the seasonal nature of some of the traffic, by 31 December 2016, the Commission shall, on the basis of a suitable impact assessment, adopt a measure relating to the limits set out in Annex I for ships of

Class B under Article 4 of Directive 98/18/EC. That measure, designed to amend non-essential elements of this Regulation, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 10(2) of this Regulation.

2. Measures designed to amend non-essential elements of this Regulation and relating to the incorporation of amendments to the provisions of the IMO Guidelines set out in Annex II shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 10(2).

#### Article 10

##### Committee procedure

1. The Commission shall be assisted by the Committee on Safe Seas and the Prevention of Pollution from Ships (COSS) established by Regulation (EC) No 2099/2002 of the European Parliament and of the Council<sup>(1)</sup>.

2. Where reference is made to this paragraph, Article 5a(1) to (4) and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

#### Article 11

##### Transitional provisions

1. In respect of carriage by sea within a single Member State on board ships of Class A under Article 4 of Directive 98/18/EC, Member States may choose to defer application of this Regulation until four years after the date of its application.

2. In respect of carriage by sea within a single Member State on board ships of Class B under Article 4 of Directive 98/18/EC, Member States may choose to defer application of this Regulation until 31 December 2018.

#### Article 12

##### Entry into force

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

It shall apply from the date of the entry into force of the Athens Convention for the Community, and in any case from no later than 31 December 2012.

<sup>(1)</sup> OJ L 324, 29.11.2002, p. 1.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Strasbourg, 23 April 2009.

*For the European Parliament*  
*The President*  
H.-G. PÖTTERING

*For the Council*  
*The President*  
P. NEČAS

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## ANNEX I

**PROVISIONS OF THE ATHENS CONVENTION RELATING TO THE CARRIAGE OF PASSENGERS AND THEIR LUGGAGE BY SEA RELEVANT FOR THE APPLICATION OF THIS REGULATION****(Consolidated text of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974 and the Protocol of 2002 to the Convention)***Article 1***Definitions**

In this Convention the following expressions have the meaning hereby assigned to them:

1. (a) 'carrier' means a person by or on behalf of whom a contract of carriage has been concluded, whether the carriage is actually performed by that person or by a performing carrier;
- (b) 'performing carrier' means a person other than the carrier, being the owner, charterer or operator of a ship, who actually performs the whole or a part of the carriage; and
- (c) 'carrier who actually performs the whole or a part of the carriage' means the performing carrier, or, in so far as the carrier actually performs the carriage, the carrier;
2. 'contract of carriage' means a contract made by or on behalf of a carrier for the carriage by sea of a passenger or of a passenger and his luggage, as the case may be;
3. 'ship' means only a seagoing vessel, excluding an air-cushion vehicle;
4. 'passenger' means any person carried in a ship:
  - (a) under a contract of carriage; or
  - (b) who, with the consent of the carrier, is accompanying a vehicle or live animals which are covered by a contract for the carriage of goods not governed by this Convention;
5. 'luggage' means any article or vehicle carried by the carrier under a contract of carriage, excluding:
  - (a) articles and vehicles carried under a charter party, bill of lading or other contract primarily concerned with the carriage of goods; and
  - (b) live animals;
6. 'cabin luggage' means luggage which the passenger has in his cabin or is otherwise in his possession, custody or control. Except for the application of paragraph 8 of this Article and Article 8, cabin luggage includes luggage which the passenger has in or on his vehicle;
7. 'loss of or damage to luggage' includes pecuniary loss resulting from the luggage not having been re-delivered to the passenger within a reasonable time after the arrival of the ship on which the luggage has been or should have been carried, but does not include delays resulting from labour disputes;
8. 'carriage' covers the following periods:
  - (a) with regard to the passenger and his cabin luggage, the period during which the passenger and/or his cabin luggage are on board the ship or in the course of embarkation or disembarkation, and the period during which the passenger and his cabin luggage are transported by water from land to the ship or vice-versa, if the cost of such transport is included in the fare or if the vessel used for this purpose of auxiliary transport has been put at the disposal of the passenger by the carrier. However, with regard to the passenger, carriage does not include the period during which he is in a marine terminal or station or on a quay or in or on any other port installation;

- (b) with regard to cabin luggage, also the period during which the passenger is in a marine terminal or station or on a quay or in or on any other port installation if that luggage has been taken over by the carrier or his servant or agent and has not been re-delivered to the passenger;
  - (c) with regard to other luggage which is not cabin luggage, the period from the time of its taking over by the carrier or his servant or agent on shore or on board until the time of its re-delivery by the carrier or his servant or agent;
9. 'international carriage' means any carriage in which, according to the contract of carriage, the place of departure and the place of destination are situated in two different States, or in a single State if, according to the contract of carriage or the scheduled itinerary, there is an intermediate port of call in another State;
10. 'Organisation' means the International Maritime Organisation;
11. 'Secretary-General' means the Secretary-General of the Organisation.

#### *Article 1bis*

#### **Annex**

The Annex to this Convention shall constitute an integral part of the Convention.

#### *Article 2*

#### **Application**

1. [...] (\*)
2. Notwithstanding paragraph 1 of this Article, this Convention shall not apply when the carriage is subject, under any other international convention concerning the carriage of passengers or luggage by another mode of transport, to a civil liability regime under the provisions of such convention, in so far as those provisions have mandatory application to carriage by sea.

#### *Article 3*

#### **Liability of the carrier**

1. For the loss suffered as a result of the death of or personal injury to a passenger caused by a shipping incident, the carrier shall be liable to the extent that such loss in respect of that passenger on each distinct occasion does not exceed 250 000 units of account, unless the carrier proves that the incident:
  - (a) resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character; or
  - (b) was wholly caused by an act or omission done with the intent to cause the incident by a third party.If and to the extent that the loss exceeds the above limit, the carrier shall be further liable unless the carrier proves that the incident which caused the loss occurred without the fault or neglect of the carrier.
2. For the loss suffered as a result of the death of or personal injury to a passenger not caused by a shipping incident, the carrier shall be liable if the incident which caused the loss was due to the fault or neglect of the carrier. The burden of proving fault or neglect shall lie with the claimant.
3. For the loss suffered as a result of the loss of or damage to cabin luggage, the carrier shall be liable if the incident which caused the loss was due to the fault or neglect of the carrier. The fault or neglect of the carrier shall be presumed for loss caused by a shipping incident.
4. For the loss suffered as a result of the loss of or damage to luggage other than cabin luggage, the carrier shall be liable unless the carrier proves that the incident which caused the loss occurred without the fault or neglect of the carrier.
5. For the purposes of this Article:
  - (a) 'shipping incident' means shipwreck, capsizing, collision or stranding of the ship, explosion or fire in the ship, or defect in the ship;
  - (b) 'fault or neglect of the carrier' includes the fault or neglect of the servants of the carrier, acting within the scope of their employment;

(\*) Not reproduced.



(c) 'defect in the ship' means any malfunction, failure or non-compliance with applicable safety regulations in respect of any part of the ship or its equipment when used for the escape, evacuation, embarkation and disembarkation of passengers, or when used for the propulsion, steering, safe navigation, mooring, anchoring, arriving at or leaving berth or anchorage, or damage control after flooding; or when used for the launching of life saving appliances; and

(d) 'loss' shall not include punitive or exemplary damages.

6. The liability of the carrier under this Article only relates to loss arising from incidents that occurred in the course of the carriage. The burden of proving that the incident which caused the loss occurred in the course of the carriage, and the extent of the loss, shall lie with the claimant.

7. Nothing in this Convention shall prejudice any right of recourse of the carrier against any third party, or the defence of contributory negligence under Article 6 of this Convention. Nothing in this Article shall prejudice any right of limitation under Articles 7 or 8 of this Convention.

8. Presumptions of fault or neglect of a party or the allocation of the burden of proof to a party shall not prevent evidence in favour of that party from being considered.

#### Article 4

##### **Performing carrier**

1. If the performance of the carriage or part thereof has been entrusted to a performing carrier, the carrier shall nevertheless remain liable for the entire carriage according to the provisions of this Convention. In addition, the performing carrier shall be subject and entitled to the provisions of this Convention for the part of the carriage performed by him.

2. The carrier shall, in relation to the carriage performed by the performing carrier, be liable for the acts and omissions of the performing carrier and of his servants and agents acting within the scope of their employment.

3. Any special agreement under which the carrier assumes obligations not imposed by this Convention or any waiver of rights conferred by this Convention shall affect the performing carrier only if agreed by him expressly and in writing.

4. Where and to the extent that both the carrier and the performing carrier are liable, their liability shall be joint and several.

5. Nothing in this Article shall prejudice any right of recourse as between the carrier and the performing carrier.

#### Article 4bis

##### **Compulsory insurance**

1. When passengers are carried on board a ship registered in a State Party that is licensed to carry more than twelve passengers, and this Convention applies, any carrier who actually performs the whole or a part of the carriage shall maintain insurance or other financial security, such as the guarantee of a bank or similar financial institution, to cover liability under this Convention in respect of the death of and personal injury to passengers. The limit of the compulsory insurance or other financial security shall not be less than 250 000 units of account per passenger on each distinct occasion.

2. A certificate attesting that insurance or other financial security is in force in accordance with the provisions of this Convention shall be issued to each ship after the appropriate authority of a State Party has determined that the requirements of paragraph 1 have been complied with. With respect to a ship registered in a State Party, such certificate shall be issued or certified by the appropriate authority of the State of the ship's registry; with respect to a ship not registered in a State Party it may be issued or certified by the appropriate authority of any State Party. This certificate shall be in the form of the model set out in the annex to this Convention and shall contain the following particulars:

(a) name of ship, distinctive number or letters and port of registry;

- (b) name and principal place of business of the carrier who actually performs the whole or a part of the carriage;
- (c) IMO ship identification number;
- (d) type and duration of security;
- (e) name and principal place of business of insurer or other person providing financial security and, where appropriate, place of business where the insurance or other financial security is established; and
- (f) period of validity of the certificate, which shall not be longer than the period of validity of the insurance or other financial security.

3. (a) A State Party may authorise an institution or an organisation recognised by it to issue the certificate. Such institution or organisation shall inform that State of the issue of each certificate. In all cases, the State Party shall fully guarantee the completeness and accuracy of the certificate so issued, and shall undertake to ensure the necessary arrangements to satisfy this obligation.

(b) A State Party shall notify the Secretary-General of:

(i) the specific responsibilities and conditions of the authority delegated to an institution or organisation recognised by it;

(ii) the withdrawal of such authority; and

(iii) the date from which such authority or withdrawal of such authority takes effect.

An authority delegated shall not take effect prior to three months from the date on which notification to that effect was given to the Secretary-General.

(c) The institution or organisation authorised to issue certificates in accordance with this paragraph shall, as a minimum, be authorised to withdraw these certificates if the conditions under which they have been issued are not complied with. In all cases the institution or organisation shall report such withdrawal to the State on whose behalf the certificate was issued.

4. The certificate shall be in the official language or languages of the issuing State. If the language used is not English, French or Spanish, the text shall include a translation into one of these languages, and, where the State so decides, the official language of the State may be omitted.

5. The certificate shall be carried on board the ship, and a copy shall be deposited with the authorities who keep the record of the ship's registry or, if the ship is not registered in a State Party, with the authority of the State issuing or certifying the certificate.

6. An insurance or other financial security shall not satisfy the requirements of this Article if it can cease, for reasons other than the expiry of the period of validity of the insurance or security specified in the certificate, before three months have elapsed from the date on which notice of its termination is given to the authorities referred to in paragraph 5, unless the certificate has been surrendered to these authorities or a new certificate has been issued within the said period. The foregoing provisions shall similarly apply to any modification which results in the insurance or other financial security no longer satisfying the requirements of this Article.

7. The State of the ship's registry shall, subject to the provisions of this Article, determine the conditions of issue and validity of the certificate.

8. Nothing in this Convention shall be construed as preventing a State Party from relying on information obtained from other States or the Organisation or other international organisations relating to the financial standing of providers of insurance or other financial security for the purposes of this Convention. In such cases, the State Party relying on such information is not relieved of its responsibility as a State issuing the certificate.

9. Certificates issued or certified under the authority of a State Party shall be accepted by other States Parties for the purposes of this Convention and shall be regarded by other States Parties as having the same force as certificates issued or certified by them, even if issued or certified in respect of a ship not registered in a State Party. A State Party may at any time request consultation with the issuing or certifying State should it believe that the insurer or guarantor named in the insurance certificate is not financially capable of meeting the obligations imposed by this Convention.

10. Any claim for compensation covered by insurance or other financial security pursuant to this Article may be brought directly against the insurer or other person providing financial security. In such case, the amount set out in paragraph 1 applies as the limit of liability of the insurer or other person providing financial security, even if the carrier or the performing carrier is not entitled to limitation of liability. The defendant may further invoke the defences (other than the bankruptcy or winding up) which the carrier referred to in paragraph 1 would have been entitled to invoke in accordance with this Convention. Furthermore, the defendant may invoke the defence that the damage resulted from the wilful misconduct of the assured, but the defendant shall not invoke any other defence which the defendant might have been entitled to invoke in proceedings brought by the assured against the defendant. The defendant shall in any event have the right to require the carrier and the performing carrier to be joined in the proceedings.

11. Any sums provided by insurance or by other financial security maintained in accordance with paragraph 1 shall be available exclusively for the satisfaction of claims under this Convention, and any payments made of such sums shall discharge any liability arising under this Convention to the extent of the amounts paid.

12. A State Party shall not permit a ship under its flag to which this Article applies to operate at any time unless a certificate has been issued under paragraphs 2 or 15.

13. Subject to the provisions of this Article, each State Party shall ensure, under its national law, that insurance or other financial security, to the extent specified in paragraph 1, is in force in respect of any ship that is licensed to carry more than twelve passengers, wherever registered, entering or leaving a port in its territory in so far as this Convention applies.

14. Notwithstanding the provisions of paragraph 5, a State Party may notify the Secretary-General that, for the purposes of paragraph 13, ships are not required to carry on board or to produce the certificate required by paragraph 2 when entering or leaving ports in its territory, provided that the State Party which issues the certificate has notified the Secretary-General that it maintains records in an electronic format, accessible to all States Parties, attesting the existence of the certificate and enabling States Parties to discharge their obligations under paragraph 13.

15. If insurance or other financial security is not maintained in respect of a ship owned by a State Party, the provisions of this Article relating thereto shall not be applicable to such ship, but the ship shall carry a certificate issued by the appropriate authorities of the State of the ship's registry, stating that the ship is owned by that State and that the liability is covered within the amount prescribed in accordance with paragraph 1. Such a certificate shall follow as closely as possible the model prescribed by paragraph 2.

#### *Article 5*

#### **Valuables**

The carrier shall not be liable for the loss of or damage to monies, negotiable securities, gold, silverware, jewellery, ornaments, works of art, or other valuables, except where such valuables have been deposited with the carrier for the agreed purpose of safe-keeping in which case the carrier shall be liable up to the limit provided for in paragraph 3 of Article 8 unless a higher limit is agreed upon in accordance with paragraph 1 of Article 10.

#### *Article 6*

#### **Contributory fault**

If the carrier proves that the death of or personal injury to a passenger or the loss of or damage to his luggage was caused or contributed to by the fault or neglect of the passenger, the Court seized of the case may exonerate the carrier wholly or partly from his liability in accordance with the provisions of the law of that court.

*Article 7***Limit of liability for death and personal injury**

1. The liability of the carrier for the death of or personal injury to a passenger under Article 3 shall in no case exceed 400 000 units of account per passenger on each distinct occasion. Where, in accordance with the law of the court seized of the case, damages are awarded in the form of periodical income payments, the equivalent capital value of those payments shall not exceed the said limit.

2. A State Party may regulate by specific provisions of national law the limit of liability prescribed in paragraph 1, provided that the national limit of liability, if any, is not lower than that prescribed in paragraph 1. A State Party, which makes use of the option provided for in this paragraph, shall inform the Secretary-General of the limit of liability adopted or of the fact that there is none.

*Article 8***Limit of liability for loss of or damage to luggage and vehicles**

1. The liability of the carrier for the loss of or damage to cabin luggage shall in no case exceed 2 250 units of account per passenger, per carriage.

2. The liability of the carrier for the loss of or damage to vehicles including all luggage carried in or on the vehicle shall in no case exceed 12 700 units of account per vehicle, per carriage.

3. The liability of the carrier for the loss of or damage to luggage other than that mentioned in paragraphs 1 and 2 shall in no case exceed 3 375 units of account per passenger, per carriage.

4. The carrier and the passenger may agree that the liability of the carrier shall be subject to a deductible not exceeding 330 units of account in the case of damage to a vehicle and not exceeding 149 units of account per passenger in the case of loss of or damage to other luggage, such sum to be deducted from the loss or damage.

*Article 9***Unit of Account and conversion**

1. The Unit of Account mentioned in this Convention is the Special Drawing Right as defined by the International Monetary Fund. The amounts mentioned in Article 3(1), Article 4bis(1), Article 7(l) and Article 8 shall be converted into the national currency of the State of the court seized of the case on the basis of the value of that currency by reference to the Special Drawing Right on the date of the judgment or the date agreed upon by the parties. The value of the national currency, in terms of the Special Drawing Right, of a State Party which is a member of the International Monetary Fund, shall be calculated in accordance with the method of valuation applied by the International Monetary Fund in effect on the date in question for its operations and transactions. The value of the national currency, in terms of the Special Drawing Right, of a State Party which is not a member of the International Monetary Fund, shall be calculated in a manner determined by that State Party.

2. Nevertheless, a State which is not a member of the International Monetary Fund and whose law does not permit the application of the provisions of paragraph 1 may, at the time of ratification, acceptance, approval of or accession to this Convention or at any time thereafter, declare that the Unit of Account referred to in paragraph 1 shall be equal to 15 gold francs. The gold franc referred to in this paragraph corresponds to sixty-five and a half milligrams of gold of millesimal fineness nine hundred. The conversion of the gold franc into the national currency shall be made according to the law of the State concerned.

3. The calculation mentioned in the last sentence of paragraph 1, and the conversion mentioned in paragraph 2 shall be made in such a manner as to express in the national currency of the States Parties, as far as possible, the same real value for the amounts in Article 3(1), Article 4bis(1), Article 7(1) and Article 8 as would result from the application of the first three sentences of paragraph 1. States shall communicate to the Secretary-General the manner of calculation pursuant to paragraph 1, or the result of the conversion in paragraph 2, as the case may be, when depositing an instrument of ratification, acceptance, approval of or accession to this Convention and whenever there is a change in either.

*Article 10***Supplementary provisions on limits of liability**

1. The carrier and the passenger may agree, expressly and in writing, to higher limits of liability than those prescribed in Articles 7 and 8.
2. Interest on damages and legal costs shall not be included in the limits of liability prescribed in Articles 7 and 8.

*Article 11***Defences and limits for carriers' servants**

If an action is brought against a servant or agent of the carrier or of the performing carrier arising out of damage covered by this Convention, such servant or agent, if he proves that he acted within the scope of his employment, shall be entitled to avail himself of the defences and limits of liability which the carrier or the performing carrier is entitled to invoke under this Convention.

*Article 12***Aggregation of claims**

1. Where the limits of liability prescribed in Articles 7 and 8 take effect, they shall apply to the aggregate of the amounts recoverable in all claims arising out of the death of or personal injury to any one passenger or the loss of or damage to his luggage.
2. In relation to the carriage performed by a performing carrier, the aggregate of the amounts recoverable from the carrier and the performing carrier and from their servants and agents acting within the scope of their employment shall not exceed the highest amount which could be awarded against either the carrier or the performing carrier under this Convention, but none of the persons mentioned shall be liable for a sum in excess of the limit applicable to him.
3. In any case where a servant or agent of the carrier or of the performing carrier is entitled under Article 11 of this Convention to avail himself of the limits of liability prescribed in Articles 7 and 8, the aggregate of the amounts recoverable from the carrier, or the performing carrier as the case may be, and from that servant or agent, shall not exceed those limits.

*Article 13***Loss of right to limit liability**

1. The carrier shall not be entitled to the benefit of the limits of liability prescribed in Articles 7 and 8 and Article 10(1), if it is proved that the damage resulted from an act or omission of the carrier done with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.
2. The servant or agent of the carrier or of the performing carrier shall not be entitled to the benefit of those limits if it is proved that the damage resulted from an act or omission of that servant or agent done with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

*Article 14***Basis for claims**

No action for damages for the death of or personal injury to a passenger, or for the loss of or damage to luggage, shall be brought against a carrier or performing carrier otherwise than in accordance with this Convention.

*Article 15***Notice of loss or damage to luggage**

1. The passenger shall give written notice to the carrier or his agent:
  - (a) in the case of apparent damage to luggage:
    - (i) for cabin luggage, before or at the time of disembarkation of the passenger;
    - (ii) for all other luggage, before or at the time of its re-delivery;

(b) in the case of damage to luggage which is not apparent, or loss of luggage, within 15 days from the date of disembarkation or re-delivery or from the time when such re-delivery should have taken place.

2. If the passenger fails to comply with this Article, he shall be presumed, unless the contrary is proved, to have received the luggage undamaged.

3. The notice in writing need not be given if the condition of the luggage has at the time of its receipt been the subject of joint survey or inspection.

#### *Article 16*

##### **Time-bar for actions**

1. Any action for damages arising out of the death of or personal injury to a passenger or for the loss of or damage to luggage shall be time-barred after a period of two years.

2. The limitation period shall be calculated as follows:

(a) in the case of personal injury, from the date of disembarkation of the passenger;

(b) in the case of death occurring during carriage, from the date when the passenger should have disembarked, and in the case of personal injury occurring during carriage and resulting in the death of the passenger after disembarkation, from the date of death, provided that this period shall not exceed three years from the date of disembarkation;

(c) in the case of loss of or damage to luggage, from the date of disembarkation or from the date when disembarkation should have taken place, whichever is later.

3. The law of the Court seized of the case shall govern the grounds for suspension and interruption of limitation periods, but in no case shall an action under this Convention be brought after the expiration of any one of the following periods of time:

(a) a period of five years beginning with the date of disembarkation of the passenger or from the date when disembarkation should have taken place, whichever is later; or, if earlier;

(b) a period of three years beginning with the date when the claimant knew or ought reasonably to have known of the injury, loss or damage caused by the incident.

4. Notwithstanding paragraphs 1, 2 and 3 of this Article, the period of limitation may be extended by a declaration of the carrier or by agreement of the parties after the cause of action has arisen. The declaration or agreement shall be in writing.

#### *Article 17*

##### **Competent jurisdiction (\*)**

#### *Article 17bis*

##### **Recognition and enforcement (\*)**

#### *Article 18*

##### **Invalidity of contractual provisions**

Any contractual provision concluded before the occurrence of the incident which has caused the death of or personal injury to a passenger or the loss of or damage to the passenger's luggage, purporting to relieve any person liable under this Convention of liability towards the passenger or to prescribe a lower limit of liability than that fixed in this Convention except as provided in Article 8, paragraph 4, and any such provision purporting to shift the burden of proof which rests on the carrier or performing carrier, or having the effect of restricting the options specified in Article 17, paragraphs 1 or 2, shall be null and void, but the nullity of that provision shall not render void the contract of carriage which shall remain subject to the provisions of this Convention.

(\*) Not reproduced.

*Article 20***Nuclear damage**

No liability shall arise under this Convention for damage caused by a nuclear incident:

- (a) if the operator of a nuclear installation is liable for such damage under either the Paris Convention of 29 July 1960 on Third Party Liability in the Field of Nuclear Energy as amended by its Additional Protocol of 28 January 1964, or the Vienna Convention of 21 May 1963 on Civil Liability for Nuclear Damage, or any amendment or Protocol thereto which is in force; or
- (b) if the operator of a nuclear installation is liable for such damage by virtue of a national law governing the liability for such damage, provided that such law is in all respects as favourable to persons who may suffer damage as either the Paris or the Vienna Conventions or any amendment or Protocol thereto which is in force.

*Article 21***Commercial carriage by public authorities**

This Convention shall apply to commercial carriage undertaken by States or Public Authorities under contract of carriage within the meaning of Article 1.

[Articles 22 and 23 of the Protocol of 2002 to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974]

*Article 22***Revision and amendment (\*)***Article 23***Amendment of limits**

1. Without prejudice to the provisions of Article 22, the special procedure in this Article shall apply solely for the purposes of amending the limits set out in Article 3(1), Article 4bis(1), Article 7(1) and Article 8 of the Convention as revised by this Protocol.
2. Upon the request of at least one half, but in no case less than six, of the States Parties to this Protocol, any proposal to amend the limits, including the deductibles, specified in Article 3(1), Article 4bis(1), Article 7(1) and Article 8 of the Convention as revised by this Protocol shall be circulated by the Secretary General to all Members of the Organisation and to all States Parties.
3. Any amendment proposed and circulated as above shall be submitted to the Legal Committee of the Organisation (hereinafter referred to as 'the Legal Committee') for consideration at a date at least six months after the date of its circulation.
4. All States Parties to the Convention as revised by this Protocol, whether or not Members of the Organisation, shall be entitled to participate in the proceedings of the Legal Committee for the consideration and adoption of amendments.
5. Amendments shall be adopted by a two thirds majority of the States Parties to the Convention as revised by this Protocol present and voting in the Legal Committee expanded as provided for in paragraph 4, on condition that at least one half of the States Parties to the Convention as revised by this Protocol shall be present at the time of voting.
6. When acting on a proposal to amend the limits, the Legal Committee shall take into account the experience of incidents and, in particular, the amount of damage resulting therefrom, changes in the monetary values and the effect of the proposed amendment on the cost of insurance.

(\*) Not reproduced.

7. (a) No amendment of the limits under this Article may be considered less than five years from the date on which this Protocol was opened for signature nor less than five years from the date of entry into force of a previous amendment under this Article.
- (b) No limit may be increased so as to exceed an amount which corresponds to the limit laid down in the Convention as revised by this Protocol increased by six per cent per year calculated on a compound basis from the date on which this Protocol was opened for signature.
- (c) No limit may be increased so as to exceed an amount which corresponds to the limit laid down in the Convention as revised by this Protocol multiplied by three.
8. Any amendment adopted in accordance with paragraph 5 shall be notified by the Organisation to all States Parties. The amendment shall be deemed to have been accepted at the end of a period of 18 months after the date of notification, unless within that period not less than one fourth of the States that were States Parties at the time of the adoption of the amendment have communicated to the Secretary General that they do not accept the amendment, in which case the amendment is rejected and shall have no effect.
9. An amendment deemed to have been accepted in accordance with paragraph 8 shall enter into force 18 months after its acceptance.
10. All States Parties shall be bound by the amendment, unless they denounce this Protocol in accordance with Article 21, paragraphs 1 and 2 at least six months before the amendment enters into force. Such denunciation shall take effect when the amendment enters into force.
11. When an amendment has been adopted but the 18 month period for its acceptance has not yet expired, a State which becomes a State Party during that period shall be bound by the amendment if it enters into force. A State which becomes a State Party after that period shall be bound by an amendment which has been accepted in accordance with paragraph 8. In the cases referred to in this paragraph, a State becomes bound by an amendment when that amendment enters into force, or when this Protocol enters into force for that State, if later.
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## ANNEX TO ATHENS CONVENTION

**CERTIFICATE OF INSURANCE OR OTHER FINANCIAL SECURITY IN RESPECT OF LIABILITY FOR THE DEATH OF AND PERSONAL INJURY TO PASSENGERS**

Issued in accordance with the provisions of Article 4bis of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 2002

Name of ship	Distinctive number or letters	IMO ship identification number	Port of registry	Name and full address of the principal place of business of the carrier who actually performs the carriage

This is to certify that there is in force in respect of the abovenamed ship a policy of insurance or other financial security satisfying the requirements of Article 4bis of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 2002.

Type of security .....

Duration of security .....

Name and address of the insurer(s) and/or guarantor(s)

Name .....

Address .....

This certificate is valid until .....

Issued or certified by the Government of .....

(Full designation of the State)

OR

The following text should be used when a State Party avails itself of Article 4bis, paragraph 3:

The present certificate is issued under the authority of the Government of .....

(full designation of the State) by .....(name of institution or organisation)

At .....On .....  
(Place) (Date)

.....  
(Signature and title of issuing or certifying official)

Explanatory notes:

1. If desired, the designation of the State may include a reference to the competent public authority of the country where the Certificate is issued.
2. If the total amount of security has been furnished by more than one source, the amount of each of them should be indicated.
3. If security is furnished in several forms, these should be enumerated.
4. The entry 'Duration of Security' must stipulate the date on which such security takes effect.
5. The entry 'Address' of the insurer(s) and/or guarantor(s) must indicate the principal place of business of the insurer(s) and/or guarantor(s). If appropriate, the place of business where the insurance or other security is established shall be indicated.

## ANNEX II

**Extract From the IMO Reservation and Guidelines for Implementation of THE ATHENS Convention, adopted by the Legal Committee of the INTERNATIONAL MARITIME ORGANISATION on 19 October 2006****IMO RESERVATION AND GUIDELINES FOR IMPLEMENTATION OF THE ATHENS CONVENTION****Reservation**

1. The Athens Convention should be ratified with the following reservation or a declaration to the same effect:

[1.1.] Reservation in connection with the ratification by the Government of ... of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 2002 (the Convention)

*Limitation of liability of carriers, etc.*

[1.2.] The Government of ... reserves the right to and undertakes to limit liability under paragraph 1 or 2 of Article 3 of the Convention, if any, in respect of death of or personal injury to a passenger caused by any of the risks referred to in paragraph 2.2 of the IMO Guidelines for Implementation of the Athens Convention to the lower of the following amounts:

— 250 000 units of account in respect of each passenger on each distinct occasion,

or

— 340 million units of account overall per ship on each distinct occasion.

[1.3.] Furthermore, the Government of ... reserves the right to and undertakes to apply the IMO Guidelines for Implementation of the Athens Convention paragraphs 2.1.1 and 2.2.2 *mutatis mutandis*, to such liabilities.

[1.4.] The liability of the performing carrier pursuant to Article 4 of the Convention, the liability of the servants and agents of the carrier or the performing carrier pursuant to Article 11 of the Convention and the limit of the aggregate of the amounts recoverable pursuant to Article 12 of the Convention shall be limited in the same way.

[1.5.] The reservation and undertaking in paragraph 1.2 will apply regardless of the basis of liability under paragraph 1 or 2 of Article 3 and notwithstanding anything to the contrary in Article 4 or 7 of the Convention; but this reservation and undertaking do not affect the operation of Articles 10 and 13.

*Compulsory insurance and limitation of liability of insurers*

[1.6.] The Government of ... reserves the right to and undertakes to limit the requirement under paragraph 1 of Article 4bis to maintain insurance or other financial security for death or personal injury to a passenger caused by any of the risks referred to in paragraph 2.2 of the IMO Guidelines for Implementation of the Athens Convention to the lower of the following amounts:

— 250 000 units of account in respect of each passenger on each distinct occasion,

or

— 340 million units of account overall per ship on each distinct occasion.

[1.7.] The Government of ... reserves the right to and undertakes to limit the liability of the insurer or other person providing financial security under paragraph 10 of Article 4bis, for death or personal injury to a passenger caused by any of the risks referred to in paragraph 2.2 of the IMO Guidelines for Implementation of the Athens Convention, to a maximum limit of the amount of insurance or other financial security which the carrier is required to maintain under paragraph 1.6 of this reservation.

[1.8.] The Government of ... also reserves the right to and undertakes to apply the IMO Guidelines for Implementation of the Athens Convention including the application of the clauses referred to in paragraphs 2.1 and 2.2 in the Guidelines in all compulsory insurance under the Convention.

- [1.9.] The Government of ... reserves the right to and undertakes to exempt the provider of insurance or other financial security under paragraph 1 of Article 4bis from any liability for which he has not undertaken to be liable.

#### *Certification*

- [1.10.] The Government of ... reserves the right to and undertakes to issue insurance certificates under paragraph 2 of Article 4bis of the Convention so as:

- to reflect the limitations of liability and the requirements for insurance cover referred to in paragraphs 1.2, 1.6, 1.7 and 1.9, and
- to include such other limitations, requirements and exemptions as it finds that the insurance market conditions at the time of the issue of the certificate necessitate.

- [1.11.] The Government of ... reserves the right to and undertakes to accept insurance certificates issued by other States Parties issued pursuant to a similar reservation.

- [1.12.] All such limitations, requirements and exemptions will be clearly reflected in the Certificate issued or certified under paragraph 2 of Article 4bis of the Convention.

#### *Relationship between this Reservation and the IMO Guidelines for Implementation of the Athens Convention*

- [1.13.] The rights retained by this reservation will be exercised with due regard to the IMO Guidelines for Implementation of the Athens Convention, or to any amendments thereto, with an aim to ensure uniformity. If a proposal to amend the IMO Guidelines for Implementation of the Athens Convention, including the limits, has been approved by the Legal Committee of the International Maritime Organisation, those amendments will apply as from the time determined by the Committee. This is without prejudice to the rules of international law regarding the right of a State to withdraw or amend its reservation.'

#### **Guidelines**

2. In the current state of the insurance market, State Parties should issue insurance certificates on the basis of one undertaking from an insurer covering war risks, and another insurer covering non war risks. Each insurer should only be liable for its part. The following rules should apply (the clauses referred to are set out in Appendix A):

- 2.1. Both war and non war insurance may be subject to the following clauses:

2.1.1. *Institute Radioactive Contamination, Chemical, Biological, Bio-chemical and Electromagnetic Weapons Exclusion Clause* (Institute clause No 370);

2.1.2. *Institute Cyber Attack Exclusion Clause* (Institute clause No 380);

2.1.3. the defences and limitations of a provider of compulsory financial security under the Convention as modified by these guidelines, in particular the limit of 250 000 units of account per passenger on each distinct occasion;

2.1.4. the proviso that the insurance shall only cover liabilities subject to the Convention as modified by these guidelines; and

2.1.5. the proviso that any amounts settled under the Convention shall serve to reduce the outstanding liability of the carrier and/or its insurer under Article 4bis of the Convention even if they are not paid by or claimed from the respective war or non war insurers.

2.2. War insurance shall cover liability, if any; for the loss suffered as a result of death or personal injury to passenger caused by:

- war, civil war, revolution, rebellion, insurrection, or civil strife arising there from, or any hostile act by or against a belligerent power,
- capture, seizure, arrest, restraint or detainment, and the consequences thereof or any attempt thereat,
- derelict mines, torpedoes, bombs or other derelict weapons of war,
- act of any terrorist or any person acting maliciously or from a political motive and any action taken to prevent or counter any such risk,
- confiscation and expropriation,

and may be subject to the following exemptions, limitations and requirements:

2.2.1. *War Automatic Termination and Exclusion Clause*

2.2.2. In the event the claims of individual passengers exceed in the aggregate the sum of 340 million units of account overall per ship on any distinct occasion, the carrier shall be entitled to invoke limitation of his liability in the amount of 340 million units of account, always provided that:

- this amount should be distributed amongst claimants in proportion to their established claims,
- the distribution of this amount may be made in one or more portions to claimants known at the time of the distribution, and
- the distribution of this amount may be made by the insurer, or by the Court or other competent authority seized by the insurer in any State Party in which legal proceedings are instituted in respect of claims allegedly covered by the insurance.

2.2.3. 30 days notice clause in cases not covered by 2.2.1.

2.3. Non-war insurance should cover all perils subject to compulsory insurance other than those risks listed in 2.2, whether or not they are subject to exemptions, limitations or requirements in 2.1 and 2.2.

3. An example of a set of insurance undertakings (Blue Cards) and an insurance certificate, all reflecting these guidelines, are included in Appendix B.

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## APPENDIX A

**Clauses referred to in guidelines 2.1.1, 2.1.2 and 2.2.1****Institute Radioactive Contamination, Chemical, Biological, Bio-chemical and Electromagnetic Exclusion Clause**  
(Cl. 370, 10/11/2003)

**This clause shall be paramount and shall override anything contained in this insurance inconsistent therewith**

1. In no case shall this insurance cover loss damage liability or expense directly or indirectly caused by or contributed to by or arising from:
  - 1.1. ionising radiations from or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel;
  - 1.2. the radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear installation, reactor or other nuclear assembly or nuclear component thereof;
  - 1.3. any weapon or device employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter;
  - 1.4. the radioactive, toxic, explosive or other hazardous or contaminating properties of any radioactive matter. The exclusion in this sub clause does not extend to radioactive isotopes, other than nuclear fuel, when such isotopes are being prepared, carried, stored, or used for commercial, agricultural, medical, scientific or other similar peaceful purposes;
  - 1.5. any chemical, biological, bio chemical, or electromagnetic weapon.

**Institute Cyber Attack Exclusion Clause** (Cl. 380, 10/11/03)

1. Subject only to clause 10.2 below, in no case shall this insurance cover loss damage liability or expense directly or indirectly caused by or contributed to by or arising from the use or operation, as a means for inflicting harm, of any computer, computer system, computer software programme, malicious code, computer virus or process or any other electronic system.
2. Where this clause is endorsed on policies covering risks of war, civil war, revolution, rebellion, insurrection, or civil strife arising therefrom, or any hostile act by or against a belligerent power, or terrorism or any person acting from a political motive, Clause 10.1 shall not operate to exclude losses (which would otherwise be covered) arising from the use of any computer, computer system or computer software programme or any other electronic system in the launch and/or guidance system and/or firing mechanism of any weapon or missile.

**War Automatic Termination and Exclusion**

## 1.1. Automatic Termination of Cover

Whether or not such notice of cancellation has been given cover hereunder shall TERMINATE AUTOMATICALLY

- 1.1.1. upon the outbreak of war (whether there be a declaration of war or not) between any of the following: United Kingdom, United States of America, France, the Russian Federation, the People's Republic of China;
- 1.1.2. in respect of any vessel, in connection with which cover is granted hereunder, in the event of such vessel being requisitioned either for title or use.

## 1.2. Five Powers War

This insurance excludes

- 1.2.1. loss damage liability or expense arising from the outbreak of war (whether there be a declaration of war or not) between any of the following: United Kingdom, United States of America, France, the Russian Federation, the People's Republic of China;
  - 1.2.2. requisition either for title or use.
-

## APPENDIX B

## I. Examples of insurance undertakings (Blue Cards) referred to in guideline 3

*Blue Card issued by War Insurer*

**Certificate furnished as evidence of insurance pursuant to Article 4bis of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 2002.**

Name of Ship:

IMO Ship Identification Number:

Port of registry:

Name and Address of owner:

This is to certify that there is in force in respect of the above named ship while in the above ownership a policy of insurance satisfying the requirements of Article 4bis of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 2002, subject to all exceptions and limitations allowed for compulsory war insurance under the Convention and the implementation guidelines adopted by the Legal Committee of the International Maritime Organisation in October 2006, including in particular the following clauses: [Here the text of the Convention and the guidelines with appendices can be inserted to the extent desirable]

Period of insurance from: 20 February 2007

to: 20 February 2008

Provided always that the insurer may cancel this certificate by giving 30 days written notice to the above Authority whereupon the liability of the insurer hereunder shall cease as from the date of the expiry of the said period of notice but only as regards incidents arising thereafter.

Date:

This certificate has been issued by:

War Risks, Inc

[Address]

.....

As agent only for War Risks, Inc.

Signature of insurer

*Blue Card issued by Non-War Insurer*

**Certificate furnished as evidence of insurance pursuant to Article 4bis of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 2002.**

Name of Ship:

IMO Ship Identification Number:

Port of registry:

Name and Address of owner:

This is to certify that there is in force in respect of the above named ship while in the above ownership a policy of insurance satisfying the requirements of Article 4bis of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 2002, subject to all exceptions and limitations allowed for non-war insurers under the Convention and the implementation guidelines adopted by the Legal Committee of the International Maritime Organisation in October 2006, including in particular the following clauses: [Here the text of the Convention and the guidelines with appendices can be inserted to the extent desirable]

Period of insurance from: 20 February 2007

to: 20 February 2008

Provided always that the insurer may cancel this certificate by giving three months written notice to the above Authority whereupon the liability of the insurer hereunder shall cease as from the date of the expiry of the said period of notice but only as regards incidents arising thereafter.

Date:

This certificate has been issued by:

PANDI P&I

[Address]

.....

As agent only for PANDI P&I

Signature of insurer

## II. Model of certificate of insurance referred to in guideline 3

### CERTIFICATE OF INSURANCE OR OTHER FINANCIAL SECURITY IN RESPECT OF LIABILITY FOR THE DEATH OF AND PERSONAL INJURY TO PASSENGERS

Issued in accordance with the provisions of Article 4bis of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 2002

Name of ship	Distinctive number or letters	IMO ship identification number	Port of registry	Name and full address of the principal place of business of the carrier who actually performs the carriage

This is to certify that there is in force in respect of the abovenamed ship a policy of insurance or other financial security satisfying the requirements of Article 4bis of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 2002.

Type of Security .....

Duration of Security .....

Name and address of the insurer(s) and/or guarantor(s)

The insurance cover hereby certified is split in one war insurance part and one non-war insurance part, pursuant to the implementation guidelines adopted by the Legal Committee of the International Maritime Organisation in October 2006. Each of these parts of the insurance cover is subject to all exceptions and limitations allowed under the Convention and the implementation guidelines. The insurers are not jointly and severally liable. The insurers are:

For war risks: War Risks, Inc., [address]

For non-war risks: Pandi P&I, [address]

This certificate is valid until .....

Issued or certified by the Government of .....

(Full designation of the State)

OR

The following text should be used when a State Party avails itself of Article 4bis, paragraph 3:

The present certificate is issued under the authority of the Government of ..... (full designation of the State) by .....(name of institution or organisation)

At ..... On .....  
(Place) (Date)

.....  
(Signature and title of issuing or certifying official)

Explanatory notes:

1. If desired, the designation of the State may include a reference to the competent public authority of the country where the certificate is issued.
2. If the total amount of security has been furnished by more than one source, the amount of each of them should be indicated.
3. If security is furnished in several forms, these should be enumerated.
4. The entry 'Duration of Security' must stipulate the date on which such security takes effect.
5. The entry 'Address' of the insurer(s) and/or guarantor(s) must indicate the principal place of business of the insurer(s) and/or guarantor(s). If appropriate, the place of business where the insurance or other security is established shall be indicated.

\_\_\_\_\_



## DIRECTIVES

## DIRECTIVE 2009/15/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 23 April 2009

**on common rules and standards for ship inspection and survey organisations and for the relevant activities of maritime administrations**

(Recast)

(Text with EEA relevance)

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 European Economic and Social Committee <sup>(1)</sup>,

Having regard to the opinion of the Committee of the Regions <sup>(2)</sup>,

Acting in accordance with the procedure laid down in Article 251 of the Treaty, in the light of the Joint text approved by the Conciliation Committee on 3 February 2009 <sup>(3)</sup>,

Whereas:

(1) 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 <sup>(4)</sup> has been substantially amended several times. Since further amendments are to be made, it should be recast in the interests of clarity.

<sup>(1)</sup> OJ C 318, 23.12.2006, p. 195.

<sup>(2)</sup> OJ C 229, 22.9.2006, p. 38.

<sup>(3)</sup> Opinion of the European Parliament of 25 April 2007 (OJ C 74 E, 20.3.2008, p. 633), Council Common Position of 6 June 2008 (OJ C 184 E, 22.7.2008, p. 11), Position of the European Parliament of 24 September 2008 (not yet published in the Official Journal), Council Decision of 26 February 2009 and Legislative Resolution of the European Parliament of 11 March 2009 (not yet published in the Official Journal).

<sup>(4)</sup> OJ L 319, 12.12.1994, p. 20.

(2) In view of the nature of the provisions of Directive 94/57/EC it seems appropriate that its provisions be recast in two different Community legal instruments, namely a Directive and a Regulation.

(3) In its Resolution of 8 June 1993 on a common policy on safe seas, the Council set the objective of removing all substandard vessels from Community waters and gave priority to Community action designed to secure the effective and uniform implementation of international rules by drawing up common standards for classification societies.

(4) Safety and pollution prevention at sea may be effectively enhanced by strictly applying international conventions, codes and resolutions while furthering the objective of freedom to provide services.

(5) 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.

(6) Member States are responsible for the issuing of international certificates for safety and the prevention of pollution provided for under conventions such as the International Convention for the Safety of Life at Sea of 1 November 1974 (SOLAS 74), the International Convention on Load Lines of 5 April 1966 and the International Convention for the Prevention of Pollution from Ships of 2 November 1973 (Marpol), and for the implementation of those conventions.

(7) In compliance with such conventions all Member States may authorise to a varying extent recognised organisations for the certification of such compliance and may delegate the issue of the relevant certificates for safety and the prevention of pollution.

- (8) Worldwide a large number of the existing organisations recognised by International Maritime Organisation (IMO) Contracting Parties do not ensure either adequate implementation of the rules or sufficient reliability when acting on behalf of national administrations as they do not have reliable and adequate structures and experience to enable them to carry out their duties in a highly professional manner.
- (9) In accordance with SOLAS 74 Chapter II-1, Part A-1, Regulation 3-1, Member States are responsible for ensuring that ships flying their flag are designed, constructed and maintained in compliance with the structural, mechanical and electrical requirements of organisations, recognised by administrations. These organisations therefore produce and implement rules for the design, construction, maintenance and inspection of ships and they are responsible for inspecting ships on behalf of the flag States and certifying that those ships meet the requirements of the international conventions for the issue of the relevant certificates. To enable them to carry out that duty in a satisfactory manner they need to have strict independence, highly specialised technical competence and rigorous quality management.
- (10) Ship inspection and survey organisations play an important role in Community legislation concerning maritime safety.
- (11) Ship inspection and survey organisations should be able to offer their services throughout the Community and compete with each other while providing equal levels of safety and of environmental protection. The necessary professional standards for their activities should therefore be uniformly established and applied across the Community.
- (12) The issue of the cargo ship safety radio certificate may be entrusted to private bodies having sufficient expertise and qualified personnel.
- (13) A Member State may restrict the number of recognised organisations it authorises in accordance with its needs, based on objective and transparent grounds, subject to control exercised by the Commission in accordance with a committee procedure.
- (14) This Directive should ensure freedom to provide services in the Community; accordingly the Community should agree with those third countries where some of the recognised organisations are located, to ensure equal treatment for the recognised organisations located in the Community.
- (15) A tight involvement of the national administrations in ship surveys and in the issue of the related certificates is necessary to ensure full compliance with the international safety rules even if the Member States rely upon recognised organisations, which are not part of their administration for carrying out statutory duties. It is appropriate, therefore, to establish a close working relationship between the administrations and the recognised organisations authorised by them, which may require that the recognised organisations have a local representation on the territory of the Member State on behalf of which they perform their duties.
- (16) When a recognised organisation, its inspectors, or its technical staff issue the relevant certificates on behalf of the administration, Member States should consider enabling them, as regards these delegated activities, to be subject to proportionate legal safeguards and judicial protection, including the exercise of appropriate rights of defence, apart from immunity, which is a prerogative that can only be invoked by Member States as an inseparable right of sovereignty and therefore that cannot be delegated.
- (17) Divergence in terms of financial liability regimes among the recognised organisations working on behalf of the Member States would impede the proper implementation of this Directive. In order to contribute to solving this problem it is appropriate to bring about a degree of harmonisation at Community level of the liability arising out of any marine casualty caused by a recognised organisation, as decided by a court of law, including settlement of a dispute through arbitration procedures.
- (18) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission <sup>(1)</sup>.
- (19) In particular the Commission should be empowered to amend this Directive in order to incorporate subsequent amendments to the international conventions, protocols, codes and resolutions related thereto. Since those measures are of general scope and are designed to amend non-essential elements of this Directive, inter alia by supplementing it with new non-essential elements, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.
- (20) Member States should nevertheless be left with the possibility of suspending or withdrawing their authorisation of a recognised organisation while informing the Commission and the other Member States of their decisions and giving substantiated reasons therefor.

<sup>(1)</sup> OJ L 184, 17.7.1999, p. 23.

- (21) Member States should periodically assess the performance of the recognised organisations working on their behalf and provide the Commission and all the other Member States with precise information related to such performance.
- (22) As port authorities, Member States are required to enhance safety and prevention of pollution in Community waters through priority inspection of ships carrying certificates of organisations which do not fulfil the common criteria, thereby ensuring that ships flying the flag of a third State do not receive more favourable treatment.
- (23) At present there are no uniform international standards to which all ships must conform either at the building stage or during their entire lifetime, as regards hull, machinery and electrical and control installations. Such standards may be fixed according to the rules of recognised organisations or to equivalent standards to be decided by the national administrations in accordance with the procedure laid down in Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on Information Society services <sup>(1)</sup>.
- (24) Since the objective of this Directive, namely to establish measures to be followed by the Member States in their relationship with organisations entrusted with the inspection, survey and certification of ships, operating in the Community, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale of the action, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.
- (25) The obligation to transpose this Directive into national law should be confined to those provisions which represent a substantive change as compared with the Directive 94/57/EC. The obligation to transpose the provisions which are unchanged arises under that Directive.
- (26) This Directive should be without prejudice to the obligations of the Member States relating to the time limits for transposition into national law of the Directives set out in Annex I, Part B.
- (27) In accordance with point 34 of the Interinstitutional Agreement on better law-making <sup>(2)</sup>, Member States are

encouraged to draw up, for themselves and in the interest of the Community, their own tables, illustrating, as far as possible, the correlation between this Directive and the transposition measures, and to make them public.

- (28) Measures to be followed by ship inspection and survey organisations are laid down in Regulation (EC) No 391/2009 of the European Parliament and the Council of 23 April 2009 on common rules and standards for ship inspection and survey organisations (recast) <sup>(3)</sup>,

HAVE ADOPTED THIS DIRECTIVE:

#### *Article 1*

This Directive establishes measures to be followed by the Member States in their relationship with organisations entrusted with the inspection, survey and certification of ships for compliance with the international conventions on safety at sea and prevention of marine pollution, while furthering the objective of freedom to provide services. This 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 the following definitions shall apply:

- (a) 'ship' means a ship falling within the scope of the international conventions;
- (b) 'ship flying the flag of a Member State' means a ship registered in and flying the flag of a Member State in accordance with its legislation. Ships not corresponding to this definition are assimilated to ships flying the flag of a third country;
- (c) 'inspections and surveys' means inspections and surveys that are mandatory under the international conventions;
- (d) 'international conventions' means the International Convention for the Safety of Life at Sea of 1 November 1974, (SOLAS 74) with the exception of chapter XI-2 of the Annex thereto, the International Convention on Load Lines of 5 April 1966 and the International Convention for the Prevention of Pollution from Ships of 2 November 1973 (Marpol), together with the protocols and amendments thereto, and the related codes of mandatory status in all Member States, in their up-to-date version;

<sup>(1)</sup> OJ L 204, 21.7.1998, p. 37.

<sup>(2)</sup> OJ C 321, 31.12.2003, p. 1.

<sup>(3)</sup> See page 11 of this Official Journal.

- (e) 'organisation' means a legal entity, its subsidiaries and any other entities under its control, which jointly or separately carry out tasks falling under the scope of this Directive;
- (f) 'control' means, for the purpose of point (e), rights, contracts or any other means, in law or in fact, which, either separately or in combination confer the possibility of exercising decisive influence on a legal entity or enable that entity to carry out tasks falling under the scope of this Directive;
- (g) 'recognised organisation' means an organisation recognised in accordance with Regulation (EC) No 391/2009;
- (h) 'authorisation' means an act whereby a Member State grants an authorisation or delegates powers to a recognised organisation;
- (i) 'statutory certificate' means a certificate issued by or on behalf of a flag State in accordance with the international conventions;
- (j) 'rules and procedures' means a recognised organisation's requirements for the design, construction, equipment, maintenance and survey of ships;
- (k) 'class certificate' means a document issued by a recognised organisation certifying the fitness of a ship for a particular use or service in accordance with the rules and procedures laid down and made public by that recognised organisation;
- (l) 'cargo ship safety radio certificate' means the certificate introduced by the 1988 Protocol amending SOLAS, adopted by the International Maritime Organisation (IMO).

#### Article 3

1. In assuming their responsibilities and obligations under the international conventions, Member States shall ensure that their competent administrations can ensure appropriate enforcement of the provisions thereof, in particular with regard to the inspection and survey of ships and the issue of statutory certificates and exemption certificates as provided for by the international conventions. Member States shall act in accordance with the relevant 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.

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

- (i) to authorise organisations to undertake fully or in part inspections and surveys related to statutory certificates including those for the assessment of compliance with the rules referred to in Article 11(2) and, where appropriate, to issue or renew the related certificates; or
- (ii) to rely upon organisations to undertake fully or in part the inspections and surveys referred to in point (i);

it shall entrust these duties only to recognised organisations.

The competent administration shall in all cases approve the first issue of the exemption certificates.

However, for the cargo ship safety radio certificate these duties may be entrusted to a private body recognised by a competent administration and having sufficient expertise and qualified personnel to carry out specified safety assessment work on radio-communication on its behalf.

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

#### Article 4

1. In applying Article 3(2), Member States shall in principle not refuse to authorise any of the recognised organisations to undertake such functions, subject to the provisions of paragraph 2 of this Article and Articles 5 and 9. However, they may restrict the number of organisations they authorise in accordance with their needs provided there are transparent and objective grounds for so doing.

At the request of a Member State, the Commission shall, in accordance with the regulatory procedure referred to in Article 6(2), adopt appropriate measures to ensure the correct application of the first subparagraph of this paragraph as regards refusal of authorisation and of Article 8 as regards those cases where authorisation is suspended or withdrawn.

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

In addition, the Community may request the third State where a recognised organisation is located to grant reciprocal treatment to those recognised organisations which are located in the Community.

### Article 5

1. Member States which take a decision as described in Article 3(2) shall set out a 'working relationship' between their competent administration and the organisations acting on their behalf.

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:

(a) 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, while drawing inspiration from the Annex, Appendices and Attachment to IMO MSC/Circular 710 and MEPC/Circular 307 on a model agreement for the authorisation of recognised organisations acting on behalf of the administration;

(b) the following provisions concerning financial liability:

(i) if liability arising out of any marine casualty is finally and definitely imposed on the administration by a court of law or as part of the settlement of a dispute through arbitration procedures, together with a requirement to compensate the injured parties for loss of 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 financial compensation from the recognised organisation to the extent that that loss, damage, injury or death was, as decided by that court, caused by the recognised organisation;

(ii) if liability arising out of any marine casualty is finally and definitely imposed on the administration by a court of law or as part of the settlement of a dispute through arbitration procedures, together with a requirement to compensate the injured parties 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 financial compensation from the recognised organisation to the extent that that personal injury or death was, as decided by that court, caused by the recognised organisation; the Member States may limit the maximum amount payable by the recognised organisation, which must, however, be at least equal to EUR 4 million;

(iii) if liability arising out of any marine casualty is finally and definitely imposed on the administration by a court

of law or as part of the settlement of a dispute through arbitration procedures, together with a requirement to compensate the injured parties for loss of 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 financial compensation from the recognised organisation, to the extent that that loss or damage was, as decided by that court, caused by the recognised organisation; the Member States may limit the maximum amount payable by the recognised organisation, which must, however, be at least equal to EUR 2 million;

(c) 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 9(1);

(d) the possibility for random and detailed inspections of ships;

(e) provisions for compulsory reporting of essential information about their classed fleet, and changes, suspensions and withdrawals of class.

3. The agreement or equivalent legal arrangement may require the recognised organisation to have a local representation on the territory of the Member State on behalf of which it performs the duties referred to in Article 3. A local representation with legal personality under the law of the Member State and subject to the jurisdiction of its national courts may satisfy such a requirement.

4. 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 thereof.

### Article 6

1. The Commission shall be assisted by the Committee on Safe Seas and the Prevention of Pollution from Ships (COSS) established by Regulation (EC) No 2099/2002 of the European Parliament and of the Council<sup>(1)</sup>.

2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at three months.

<sup>(1)</sup> OJ L 324, 29.11.2002, p. 1.

3. Where reference is made to this paragraph, Article 5a(1) to (4) and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

#### Article 7

1. This Directive may, without broadening its scope, be amended in order to:

- (a) incorporate, for the purposes of this Directive, subsequent amendments to the international conventions, protocols, codes and resolutions related thereto referred to in Articles 2(d), 3(1) and 5(2), which have entered into force;
- (b) alter the amounts specified in points (ii) and (iii) of Article 5(2)(b).

These measures designed to amend non-essential elements of this Directive shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 6(3).

2. Following the adoption of new instruments or protocols to the international conventions referred to in Article 2(d), the Council, acting on a proposal from the Commission, shall decide, taking into account the Member States' parliamentary procedures as well as the relevant procedures within the IMO, on the detailed arrangements for ratifying those new instruments or protocols, while ensuring that they are applied uniformly and simultaneously in the Member States.

The amendments to the international instruments referred to in Article 2(d) and Article 5 may be excluded from the scope of this Directive, pursuant to Article 5 of Regulation (EC) No 2099/2002.

#### Article 8

Notwithstanding the minimum criteria specified in the Annex I of Regulation (EC) No 391/2009, 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 or withdraw such authorisation. In such case the Member State shall inform the Commission and the other Member States of its decision without delay and shall give substantiated reasons therefor.

#### Article 9

1. Each Member State shall satisfy itself that the recognised organisations acting on its behalf for the purpose of Article 3(2) effectively carry out the functions referred to in that Article to the satisfaction of its competent administration.

2. In order to carry out the task referred to in paragraph 1, each Member State shall, at least on a biennial basis, monitor every recognised organisation acting on its behalf and shall provide the other Member States and the Commission with a report on the results of such monitoring activities at the latest by 31 March of the year following the year in which the monitoring was carried out.

#### Article 10

In exercising their inspection rights and obligations as port States, Member States shall report to the Commission and to other Member States, and inform the flag State concerned, if they find that valid statutory certificates have been issued by recognised organisations acting on behalf of a flag State to a ship which does not fulfil the relevant requirements of the international conventions, or in the event of 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 the environment or showing evidence of particularly negligent behaviour of the recognised organisations shall be reported for the purposes of this Article. The recognised organisation concerned shall be advised of the case at the time of the initial inspection so that it can take appropriate follow-up action immediately.

#### Article 11

1. Each Member State shall ensure that ships flying its flag are designed, constructed, equipped and maintained in accordance with the rules and procedures relating to hull, machinery and electrical and control installation requirements of a recognised organisation.

2. A Member State may decide to use rules it considers equivalent to the rules and procedures of a recognised organisation only on the proviso that it immediately notifies them to the Commission in conformity with the procedure under Directive 98/34/EC and to the other Member States and they are not objected to by another Member State or the Commission and are held, through the regulatory procedure referred to in Article 6(2) of this Directive, not to be equivalent.

3. Member States shall cooperate with the recognised organisations they authorise in the development of the rules and procedures of those organisations. They shall confer with the recognised organisations with a view to achieving consistent interpretation of the international conventions.

#### Article 12

The Commission shall, on a biennial basis, inform the European Parliament and the Council of progress in the implementation of this Directive in the Member States.

*Article 13*

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 17 June 2011. They shall forthwith inform the Commission thereof.

When they are adopted by Member States, these measures shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. They shall also include a statement that references in existing laws, regulations and administrative provisions to the directives repealed by this Directive shall be construed as references to this Directive. The methods of making such references shall be laid down by Member States.

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

*Article 14*

Directive 94/57/EC, as amended by the Directives listed in Annex I, Part A, shall be repealed with effect from 17 June 2009, without prejudice to the obligations of the Member

States relating to the time limits for transposition into national law of the Directives set out in Annex I, Part B.

References to the repealed Directives shall be construed as references to this Directive and shall be read in accordance with the correlation table in Annex II.

*Article 15*

This Directive shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

*Article 16*

This Directive is addressed to the Member States.

Done at Strasbourg, 23 April 2009.

*For the European Parliament*

*The President*

H.-G. PÖTTERING

*For the Council*

*The President*

P. NEČAS

## ANNEX I

**PART A****Repealed Directive with its successive amendments**

(referred to in Article 14)

Council Directive 94/57/EC	OJ L 319, 12.12.1994, p. 20
Commission Directive 97/58/EC	OJ L 274, 7.10.1997, p. 8
Directive 2001/105/EC of the European Parliament and of the Council	OJ L 19, 22.1.2002, p. 9
Directive 2002/84/EC of the European Parliament and of the Council	OJ L 324, 29.11.2002, p. 53

**PART B****List of time limits for transposition into national law**

(referred to in Article 14)

Directive	Time limit for transposition
94/57/EC	31 December 1995
97/58/EC	30 September 1998
2001/105/EC	22 July 2003
2002/84/EC	23 November 2003



## ANNEX II

## Correlation table

Directive 94/57/EC	This Directive	Regulation (EC) No 391/2009
Article 1	Article 1	Article 1
Article 2(a)	Article 2(a)	Article 2(a)
Article 2(b)	Article 2(b)	—
Article 2(c)	Article 2(c)	—
Article 2(d)	Article 2(d)	Article 2(b)
Article 2(e)	Article 2(e)	Article 2(c)
—	Article 2(f)	Article 2(d)
Article 2(f)	Article 2(g)	Article 2(e)
Article 2(g)	Article 2(h)	Article 2(f)
Article 2(h)	Article 2(i)	Article 2(g)
Article 2(i)	Article 2(k)	Article 2(i)
—	Article 2(j)	Article 2(h)
Article 2(j)	Article 2(l)	—
Article 2(k)	—	Article 2(j)
Article 3	Article 3	—
Article 4(1) first phrase	—	Article 3(1)
Article 4(1) second phrase	—	Article 3(2)
Article 4(1) third phrase	—	—
Article 4(1) fourth phrase	—	Article 4(1)
—	—	Article 3(3)
—	—	Article 4(2), (3), (4)
—	—	Article 5
—	—	Article 6
—	—	Article 7
Article 5(1)	Article 4(1)	—
Article 5(3)	Article 4(2)	—
Article 6(1), (2), (3), (4)	Article 5 (1), (2), (3), (4)	—
Article 6(5)	—	—
Article 7	Article 6	Article 12
Article 8(1) first indent	Article 7(1), point (a) of first subparagraph	—
Article 8(1) second indent	—	Article 13(1)
Article 8(1) third indent	Article 7(1), point (b) of first subparagraph	—
—	Article 7(1) second subparagraph	Article 13(1) (second subparagraph)
Article 8(2)	Article 7(2)	—
Article 8(2) second subparagraph	—	Article 13(2)
Article 9(1)	—	—
Article 9(2)	—	—
Article 10(1) introductory wording	Article 8	—
Article 10(1)(a), (b), (c), (2), (3), (4)	—	—
Article 11(1),(2)	Article 9(1), (2)	—

Directive 94/57/EC	This Directive	Regulation (EC) No 391/2009
Article 11(3), (4)	—	Article 8(1), (2)
Article 12	Article 10	—
Article 13	—	—
Article 14	Article 11(1), (2)	—
—	Article 11(3)	—
—	Article 12	—
—	—	Article 9
Article 15(1)	—	—
—	—	Article 10(1), (2)
Article 15(2)	—	Article 10(3)
Article 15(3)	—	Article 10(4)
Article 15(4)	—	Article 10(5)
Article 15(5)	—	Article 10(6) first, second, third, fifth subparagraphs
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**DIRECTIVE 2009/16/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL****of 23 April 2009****on port State control****(Recast)****(Text with EEA relevance)**

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 European Economic and Social Committee <sup>(1)</sup>,

Having regard to the opinion of the Committee of the Regions <sup>(2)</sup>,

Acting in accordance with the procedure laid down in Article 251 of the Treaty <sup>(3)</sup>, in the light of the joint text approved by the Conciliation Committee on 3 February 2009,

Whereas:

(1) Council Directive 95/21/EC of 19 June 1995 on port State control of shipping <sup>(4)</sup> has been substantially amended several times. Since further amendments are to be made, it should be recast in the interests of clarity.

(2) The Community is seriously concerned about shipping casualties and pollution of the seas and coastlines of Member States.

(3) The Community is equally concerned about on-board living and working conditions.

(4) Safety, pollution prevention and on-board living and working conditions may be effectively enhanced through a drastic reduction of substandard ships from Community waters, by strictly applying Conventions, international codes and resolutions.

(5) To this end, in accordance with Council Decision 2007/431/EC of 7 June 2007 authorising Member States to ratify, in the interests of the European Community, the Maritime Labour Convention, 2006, of the International Labour Organisation <sup>(5)</sup>, Member States should make efforts to ratify, for the parts falling under Community competence, that Convention as soon as possible, preferably before 31 December 2010.

(6) Responsibility for monitoring the compliance of ships with the international standards for safety, pollution prevention and on-board living and working conditions lies primarily with the flag State. Relying, as appropriate, on recognised organisations, the flag State fully guarantees the completeness and efficiency of the inspections and surveys undertaken to issue the relevant certificates. Responsibility for maintenance of the condition of the ship and its equipment after survey to comply with the requirements of Conventions applicable to the ship lies with the ship company. However, there has been a serious failure on the part of a number of flag States to implement and enforce international standards. Henceforth, as a second line of defence against substandard shipping, the monitoring of compliance with the international standards for safety, pollution prevention and on-board living and working conditions should also be ensured by the port State, while recognising that port State control inspection is not a survey and the relevant inspection forms are not seaworthiness certificates.

(7) A harmonised approach to the effective enforcement of these international standards by Member States in respect of ships sailing in the waters under their jurisdiction and using their ports should avoid distortions of competition.

(8) The shipping industry is vulnerable to acts of terrorism. Transport security measures should be effectively implemented and Member States should vigorously monitor compliance with security rules by carrying out security checks.

<sup>(1)</sup> OJ C 318, 23.12.2006, p. 195.

<sup>(2)</sup> OJ C 229, 22.9.2006, p. 38.

<sup>(3)</sup> Opinion of the European Parliament of 25 April 2007 (OJ C 74 E, 20.3.2008, p. 584), Council Common Position of 6 June 2008 (OJ C 198 E, 5.8.2008, s. 1), Position of the European Parliament of 24 September 2008 (not yet published in the Official Journal), Council Decision of 26 February 2009 and Legislative Resolution of the European Parliament of 11 March 2009 (not yet published in the Official Journal).

<sup>(4)</sup> OJ L 157, 7.7.1995, p. 1.

<sup>(5)</sup> OJ L 161, 22.6.2007, p. 63.

- (9) Advantage should be taken of the experience gained during the operation of the Paris Memorandum of Understanding on Port State Control (Paris MOU), signed in Paris on 26 January 1982.
- (10) The European Maritime Safety Agency (EMSA) established by Regulation (EC) No 1406/2002 of the European Parliament and of the Council<sup>(1)</sup>, should provide the necessary support to ensure the convergent and effective implementation of the port State control system. EMSA should in particular contribute to the development and implementation of the inspection database set up in accordance with this Directive and of a harmonised Community scheme for the training and assessment of competences of port State control inspectors by Member States.
- (11) An efficient port State control system should seek to ensure that all ships calling at ports and anchorages within the Community are regularly inspected. Inspection should concentrate on substandard ships, while quality ships, meaning those which have satisfactory inspection records or which fly the flag of a State complying with the Voluntary International Maritime Organisation (IMO) Member State Audit Scheme, should be rewarded by undergoing less frequent inspections. In particular to this effect, Member States should give overall priority to ships due for inspections with a high risk profile.
- (12) Such new inspection arrangements should be incorporated into the Community port State control system as soon as its various aspects have been defined and on the basis of an inspection-sharing scheme whereby each Member State contributes fairly to the achievement of the Community objective of a comprehensive inspection scheme and the volume of inspections is shared in an equitable manner among the Member States. This inspection-sharing scheme should be revised taking into account the experience gained with the new port State control system with a view to improving its effectiveness. Moreover, Member States should recruit and retain the requisite number of staff, including qualified inspectors, taking into account the volume and characteristics of shipping traffic at each port.
- (13) The inspection system set up by this Directive takes into account the work carried under the Paris MOU. Since any developments arising from the Paris MOU should be agreed at Community level before being made applicable within the EU, close coordination should be established and maintained between the Community and the Paris MOU in order to facilitate as much convergence as possible.
- (14) The Commission should manage and update the inspection database, in close collaboration with the Paris MOU. The inspection database should incorporate inspection data of Member States and all signatories to the Paris MOU. Until the Community maritime information system, SafeSeaNet, is fully operational and allows for an automatic record of the data concerning ships' calls in the inspection database, Member States should provide the Commission with the information needed to ensure a proper monitoring of the application of this Directive, in particular concerning the movements of ships. On the basis of the inspection data provided by Member States, the Commission should retrieve from the inspection database data on the risk profile of ships, on ships due for inspections and on the movement of ships and should calculate the inspection commitments for each Member State. The inspection database should also be capable of interfacing with other Community maritime safety databases.
- (15) Member States should endeavour to review the method of drawing the white, grey and black list of flag States in the framework of the Paris MOU, in order to ensure its fairness, in particular with respect to the way it treats flag States with small fleets.
- (16) The rules and procedures for port State control inspections, including criteria for the detention of ships, should be harmonised to ensure consistent effectiveness in all ports, which would also drastically reduce the selective use of certain ports of destination to avoid the net of proper control.
- (17) Periodic and additional inspections should include an examination of pre-identified areas for each ship, which will vary according to the type of ship, the type of inspection and the findings of previous port State control inspections. The inspection database should indicate the elements to identify the risk areas to be checked at each inspection.
- (18) Certain categories of ships present a major accident or pollution hazard when they reach a certain age and should therefore be subject to an expanded inspection. The details of such expanded inspection should be laid down.
- (19) Under the inspection system set up by this Directive, the intervals between periodic inspections on ships depend on their risk profile that is determined by certain generic and historical parameters. For high risk ships this interval should not exceed six months.
- (20) In order to provide the competent port State control authorities with information on ships in ports or anchorages, port authorities or bodies or the authorities or bodies designated for that purpose should forward notifications on arrivals of ships, on receipt to the extent possible.

<sup>(1)</sup> OJ L 208, 5.8.2002, p. 1.

- (21) Some ships pose a manifest risk to maritime safety and the marine environment because of their poor condition, flag performance and history. It is therefore legitimate for the Community to dissuade those ships from entering the ports and anchorages of Member States. The refusal of access should be proportionate and could result in a permanent refusal of access, if the operator of the ship persistently fails to take corrective action in spite of several refusals of access and detentions in ports and anchorages within the Community. Any third refusal of access can only be lifted if a number of conditions designed to ensure that the ship concerned can be operated safely in Community waters, in particular relating to the flag State of the ship and the managing company, are fulfilled. Otherwise, the ship should be permanently refused access to ports and anchorages of the Member States. In any case, any subsequent detention of the ship concerned should lead to a permanent refusal of access to ports and anchorages of the Member States. In the interests of transparency, the list of ships refused access to ports and anchorages within the Community should be made public.
- (22) With a view to reducing the burden placed on certain administrations and companies by repetitive inspections, surveys under Council Directive 1999/35/EC of 29 April 1999 on a system of mandatory surveys for the safe operation of regular ro-ro ferry and high-speed passenger craft services<sup>(1)</sup>, carried out on ro-ro ferries or high-speed passenger craft by a host State which is not the flag State of the vessel, and which include at least all the items of an expanded inspection, should be taken into account when calculating the risk profile of a ship, the intervals between inspections and the fulfilment of the inspection commitment of each Member State. In addition, the Commission should examine whether it is appropriate that Directive 1999/35/EC be amended in the future with a view of enhancing the level of safety required for the operation of ro-ro ferries and high-speed passenger craft to and from ports of Member States.
- (23) Non-compliance with the provisions of the relevant Conventions should be rectified. Ships which need to be the subject of corrective action should, where the observed deficiencies are clearly hazardous to safety, health or the environment, be detained until the shortcomings are rectified.
- (24) A right of appeal against detention orders by the competent authorities should be made available, in order to prevent unreasonable decisions which may cause undue detention and delay. Member States should cooperate in order to ensure that appeals are dealt with in a reasonable time in accordance with their national legislation.
- (25) Authorities and inspectors involved in port State control activities should have no conflict of interests with the port of inspection or with the ships inspected, or of related interests. Inspectors should be adequately qualified and receive appropriate training to maintain and improve their competence in the conduct of inspections. Member States should cooperate in developing and promoting a harmonised Community scheme for the training and assessment of competences of inspectors.
- (26) Pilots and port authorities or bodies should be enabled to provide useful information on apparent anomalies found on board ships.
- (27) Complaints from persons with a legitimate interest regarding on-board living and working conditions should be investigated. Any person lodging a complaint should be informed of the follow-up action taken with regard to that complaint.
- (28) Cooperation between the competent authorities of Member States and other authorities or organisations is necessary to ensure an effective follow-up with regard to ships with deficiencies, which have been permitted to proceed, and for the exchange of information about ships in port.
- (29) Since the inspection database is an essential part of port State control, Member States should ensure that it is updated in the light of Community requirements.
- (30) Publication of information concerning ships and their operators or companies which do not comply with international standards on safety, health and protection of the marine environment, taking account of the companies' fleet size, may be an effective deterrent discouraging shippers from using such ships and an incentive to their owners to take corrective action. With regard to the information to be made available, the Commission should establish a close collaboration with the Paris MOU and take account of any information published in order to avoid unnecessary duplication. Member States should have to provide the relevant information only once.
- (31) All costs of inspecting, which warrant detention of ships, and those incurred in lifting a refusal of access, should be borne by the owner or the operator.

<sup>(1)</sup> OJ L 138, 1.6.1999, p. 1.

- (32) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission <sup>(1)</sup>.
- (33) In particular, the Commission should be empowered to amend this Directive in order to apply subsequent amendments to Conventions, international codes and resolutions related thereto and to establish the rules of implementation for the provisions of Articles 8 and 10. Since those measures are of general scope and are designed to amend non-essential elements of this Directive, inter alia, by supplementing it with new non-essential elements, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.
- (34) Since the objectives of this Directive, namely to reduce substandard shipping in waters under Member States' jurisdiction through improvement of the Community's inspection system for seagoing ships and the development of the means of taking preventive action in the field of pollution of the seas, cannot be sufficiently achieved by the Member States and can, therefore, by reason of its scale and effects, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.
- (35) The obligation to transpose this Directive into national law should be confined to those provisions which represent a substantive change as compared with Directive 95/21/EC. The obligation to transpose the provisions which are unchanged arises under that Directive.
- (36) This Directive should be without prejudice to the obligations of Member States relating to the time limits for transposition into national law of the Directives set out in Annex XV, Part B.
- (37) The port State control system established in accordance with this Directive should be implemented on the same date in all Member States. In this context, the Commission should ensure that appropriate preparatory measures are taken, including the testing of the inspection database and the provision of training to inspectors.
- (38) In accordance with point 34 of the Interinstitutional Agreement on better law-making <sup>(2)</sup>, Member States are encouraged to draw up, for themselves and in the interests of the Community, their own tables illustrating, as far as possible, the correlation between this Directive and the transposition measures, and to make them public.
- (39) In order not to impose a disproportionate administrative burden on landlocked Member States, a *de minimis* rule should allow such Member States to derogate from the provisions of this Directive, which means that such Member States, as long as they meet certain criteria, are not obliged to transpose this Directive.
- (40) In order to take into account the fact that the French overseas departments belong to a different geographical area, are to a large extent Parties to regional port State control memoranda other than the Paris MOU and have very limited traffic flows with mainland Europe, the Member State concerned should be allowed to exclude those ports from the port State control system applied within the Community,

HAVE ADOPTED THIS DIRECTIVE:

#### Article 1

##### **Purpose**

The purpose of this Directive is to help to drastically reduce substandard shipping in the waters under the jurisdiction of Member States by:

- (a) increasing compliance with international and relevant Community legislation on maritime safety, maritime security, protection of the marine environment and on-board living and working conditions of ships of all flags;
- (b) establishing common criteria for control of ships by the port State and harmonising procedures on inspection and detention, building upon the expertise and experience under the Paris MOU;
- (c) implementing within the Community a port State control system based on the inspections performed within the Community and the Paris MOU region, aiming at the inspection of all ships with a frequency depending on their risk profile, with ships posing a higher risk being subject to a more detailed inspection carried out at more frequent intervals.

<sup>(1)</sup> OJ L 184, 17.7.1999, p. 23.

<sup>(2)</sup> OJ C 321, 31.12.2003, p. 1.

*Article 2***Definitions**

For the purposes of this Directive the following definitions shall apply:

1. 'Conventions' means the following Conventions, with the Protocols and amendments thereto, and related codes of mandatory status, in their up-to-date version:
  - (a) the International Convention on Load Lines, 1966 (LL 66);
  - (b) the International Convention for the Safety of Life at Sea, 1974 (SOLAS 74);
  - (c) the International Convention for the Prevention of Pollution from Ships, 1973, and the 1978 Protocol relating thereto (Marpol 73/78);
  - (d) the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW 78/95);
  - (e) the Convention on the International Regulations for Preventing Collisions at Sea, 1972 (Colreg 72);
  - (f) the International Convention on Tonnage Measurement of Ships, 1969 (ITC 69);
  - (g) the Merchant Shipping (Minimum Standards) Convention, 1976 (ILO No 147);
  - (h) the International Convention on Civil Liability for Oil Pollution Damage, 1992 (CLC 92).
2. 'Paris MOU' means the Memorandum of Understanding on Port State Control, signed in Paris on 26 January 1982, in its up-to-date version.
3. 'Framework and procedures for the Voluntary IMO Member State Audit Scheme' means IMO Assembly Resolution A.974(24).
4. 'Paris MOU region' means the geographical area in which the signatories to the Paris MOU conduct inspections in the context of the Paris MOU.
5. 'Ship' means any seagoing vessel to which one or more of the Conventions apply, flying a flag other than that of the port State.
6. 'Ship/port interface' means the interactions that occur when a ship is directly and immediately affected by actions involving the movement of persons or goods or the provision of port services to or from the ship.
7. 'Ship at anchorage' means a ship in a port or another area within the jurisdiction of a port, but not at berth, carrying out a ship/port interface.
8. 'Inspector' means a public-sector employee or other person, duly authorised by the competent authority of a Member State to carry out port-State control inspections, and responsible to that competent authority.
9. 'Competent authority' means a maritime authority responsible for port State control in accordance with this Directive.
10. 'Night time' means any period of not less than seven hours, as defined by national law, and which must include, in any case, the period between midnight and 5.00.
11. 'Initial inspection' means a visit on board a ship by an inspector, in order to check compliance with the relevant Conventions and regulations and including at least the checks required by Article 13(1).
12. 'More detailed inspection' means an inspection where the ship, its equipment and crew as a whole or, as appropriate, parts thereof are subjected, in the circumstances specified in Article 13(3), to an in-depth examination covering the ship's construction, equipment, manning, living and working conditions and compliance with on-board operational procedures.
13. 'Expanded inspection' means an inspection, which covers at least the items listed in Annex VII. An expanded inspection may include a more detailed inspection whenever there are clear grounds in accordance with Article 13(3).
14. 'Complaint' means any information or report submitted by any person or organisation with a legitimate interest in the safety of the ship, including an interest in safety or health hazards to its crew, on-board living and working conditions and the prevention of pollution.
15. 'Detention' means the formal prohibition for a ship to proceed to sea due to established deficiencies which, individually or together, make the ship unseaworthy.

16. 'Refusal of access order' means a decision issued to the master of a ship, to the company responsible for the ship and to the flag State notifying them that the ship will be refused access to all ports and anchorages of the Community.
17. 'Stoppage of an operation' means a formal prohibition for a ship to continue an operation due to established deficiencies which, individually or together, would render the continued operation hazardous.
18. 'Company' means the owner of the ship or any other organisation or person such as the manager, or the bareboat charterer, who has assumed the responsibility for operation of the ship from the owner of the ship and who, on assuming such responsibility, has agreed to take over all the duties and responsibilities imposed by the International Safety Management (ISM) Code.
19. 'Recognised Organisation' means a classification company or other private body, carrying out statutory tasks on behalf of a flag State administration.
20. 'Statutory certificate' means a certificate issued by or on behalf of a flag State in accordance with Conventions.
21. 'Classification certificate' means a document confirming compliance with SOLAS 74, Chapter II-1, Part A-1, Regulation 3-1.
22. 'Inspection database' means the information system contributing to the implementation of the port State control system within the Community and concerning the data related to inspections carried out in the Community and the Paris MOU region.

### Article 3

#### Scope

1. This Directive shall apply to any ship and its crew calling at a port or anchorage of a Member State to engage in a ship/port interface.

France may decide that the ports and anchorages covered by this paragraph do not include ports and anchorages situated in the overseas departments referred to in Article 299(2) of the Treaty.

If a Member State performs an inspection of a ship in waters within its jurisdiction, other than at a port, it shall be considered as an inspection for the purposes of this Directive.

Nothing in this Article shall affect the rights of intervention available to a Member State under the relevant Conventions.

Member States which do not have seaports and which can verify that of the total number of individual vessels calling annually over a period of the three previous years at their river ports, less than 5 % are ships covered by this Directive, may derogate from the provisions of this Directive.

Member States which do not have seaports shall communicate to the Commission at the latest on the date of transposition of the Directive the total number of vessels and the number of ships calling at their ports during the three-year period referred to above and shall inform the Commission of any subsequent change to the abovementioned figures.

2. Where the gross tonnage of a ship is less than 500, Member States shall apply those requirements of a relevant Convention which are applicable and shall, to the extent that a Convention does not apply, take such action as may be necessary to ensure that the ships concerned are not clearly hazardous to safety, health or the environment. In applying this paragraph, Member States shall be guided by Annex 1 to the Paris MOU.

3. When inspecting a ship flying the flag of a State which is not a party to a Convention, Member States shall ensure that the treatment of such ship and its crew is not more favourable than that of a ship flying the flag of a State party to that Convention.

4. Fishing vessels, warships, naval auxiliaries, wooden ships of a primitive build, government ships used for non-commercial purposes and pleasure yachts not engaged in trade shall be excluded from the scope of this Directive.

### Article 4

#### Inspection powers

1. Member States shall take all necessary measures, in order to be legally entitled to carry out the inspections referred to in this Directive on board foreign ships, in accordance with international law.

2. Member States shall maintain appropriate competent authorities, to which the requisite number of staff, in particular qualified inspectors, for the inspection of ships is assigned, for example, through recruitment, and shall take appropriate measures to ensure that inspectors perform their duties as laid down in this Directive and in particular that they are available for carrying out the inspections required in accordance with this Directive.



*Article 5***Inspection system and annual inspection commitment**

1. Member States shall carry out inspections in accordance with the selection scheme described in Article 12 and the provisions in Annex I.

2. In order to comply with its annual inspection commitment, each Member State shall:

- (a) inspect all Priority I ships, referred to in Article 12(a), calling at its ports and anchorages; and
- (b) carry out annually a total number of inspections of Priority I and Priority II ships, referred to in Article 12(a) and (b), corresponding at least to its share of the total number of inspections to be carried out annually within the Community and the Paris MOU region. The inspection share of each Member State shall be based on the number of individual ships calling at ports of the Member State concerned in relation to the sum of the number of individual ships calling at ports of each State within the Community and the Paris MOU region.

3. With a view to calculating the share of the total number of inspections to be carried out annually within the Community and the Paris MOU region referred to in point (b) of paragraph 2, ships at anchorage shall not be counted unless otherwise specified by the Member State concerned.

*Article 6***Modalities of compliance with the inspection commitment**

A Member State which fails to carry out the inspections required in Article 5(2)(a), complies with its commitment in accordance with that provision if such missed inspections do not exceed:

- (a) 5 % of the total number of Priority I ships with a high risk profile calling at its ports and anchorages;
- (b) 10 % of the total number of Priority I ships other than those with a high risk profile calling at its ports and anchorages.

Notwithstanding the percentages in (a) and (b), Member States shall prioritise inspection of ships, which, according to the information provided by the inspection database, call at ports within the Community infrequently.

Notwithstanding the percentages in (a) and (b), for Priority I ships calling at anchorages, Member States shall prioritise

inspection of ships with a high risk profile, which, according to the information provided by the inspection database, call at ports within the Community infrequently.

*Article 7***Modalities allowing a balanced inspection share within the Community**

1. A Member State in which the total number of calls of Priority I ships exceeds its inspection share referred to in Article 5(2)(b), shall be regarded as complying with such commitment, if a number of inspections on Priority I ships carried out by that Member State corresponds at least to such inspection share and if that Member State does not miss more than 30 % of the total number of Priority I ships calling at its ports and anchorages.

2. A Member State, in which the total number of calls of Priority I and Priority II ships is less than the inspection share referred to in Article 5(2)(b), shall be regarded as complying with such commitment, if that Member State carries out the inspections of Priority I ships required under Article 5(2)(a) and inspections on at least 85 % of the total number of Priority II ships calling at its ports and anchorages.

3. The Commission shall, in its review referred to in Article 35, examine in particular the impact of this Article on the inspection commitment, taking into account the expertise and the experience gained in the Community and under the Paris MOU. The review shall take into account the objective of inspecting all ships calling at ports and anchorages within the Community. If appropriate, the Commission shall propose complementary measures with a view to improving the effectiveness of the inspection system applied in the Community, and, if necessary, a new review of the impact of this Article at a later stage.

*Article 8***Postponement of inspections and exceptional circumstances**

1. A Member State may decide to postpone the inspection of a Priority I ship in the following circumstances:

- (a) if the inspection may be carried out at the next call of the ship in the same Member State, provided that the ship does not call at any other port in the Community or the Paris MOU region in between and the postponement is not more than 15 days; or
- (b) if the inspection may be carried out in another port of call within the Community or the Paris MOU region within 15 days, provided the State in which such port of call is located has agreed in advance to perform the inspection.

If an inspection is postponed in accordance with point (a) or (b) and recorded in the inspection database, a missed inspection shall not be counted as a missed inspection against the Member States which postponed the inspection.

Nevertheless, where an inspection of a Priority I ship is not performed, the relevant ship shall not be exempted from being inspected at the next port of call within the Community in accordance with this Directive.

2. Where an inspection is not performed on Priority I ships for operational reasons, it shall not be counted as a missed inspection, provided that the reason for missing the inspection is recorded in the inspection database and the following exceptional circumstances occur:

- (a) in the judgement of the competent authority the conduct of the inspection would create a risk to the safety of inspectors, the ship, its crew or to the port, or to the marine environment; or
- (b) the ship call takes place only during night time. In this case Member States shall take the measures necessary to ensure that ships which call regularly during night time are inspected as appropriate.

3. If an inspection is not performed on a ship at anchorage, it shall not be counted as a missed inspection if:

- (a) the ship is inspected in another port or anchorage within the Community or the Paris MOU region in accordance with Annex I within 15 days; or
- (b) the ship call takes place only during night time or its duration is too short for the inspection to be carried out satisfactorily, and the reason for missing the inspection is recorded in the inspection database; or
- (c) in the judgement of the competent authority the conduct of the inspection would create a risk to the safety of inspectors, the ship, its crew or to the port, or to the marine environment, and the reason for missing the inspection is recorded in the inspection database.

4. The measures designed to amend non-essential elements of this Directive, by supplementing it, relating to the rules for the implementation of this Article shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 31(3).

#### Article 9

##### Notification of arrival of ships

1. The operator, agent or master of a ship which, in accordance with Article 14, is eligible for an expanded inspection and bound for a port or anchorage of a Member State, shall notify its arrival in accordance with the provisions laid down in Annex III.

2. On receipt of the notification referred to in paragraph 1 of this Article and in Article 4 of Directive 2002/59/EC of the European Parliament and of the Council of 27 June 2002 establishing a Community vessel traffic monitoring and information system <sup>(1)</sup>, the port authority or body or the authority or body designated for that purpose shall forward such information to the competent authority.

3. Electronic means shall be used whenever possible for any communication provided for in this Article.

4. The procedures and formats developed by Member States for the purposes of Annex III to this Directive shall comply with the relevant provisions laid down in Directive 2002/59/EC regarding ships' notifications.

#### Article 10

##### Ship risk profile

1. All ships calling at a port or anchorage of a Member State shall, in the inspection database, be attributed a ship risk profile which determines their respective priority for inspection, the intervals between the inspections and the scope of inspections.

2. The risk profile of a ship shall be determined by a combination of generic and historical risk parameters as follows:

- (a) Generic parameters

Generic parameters shall be based on the type, age, flag, recognised organisations involved and company performance in accordance with Annex I, Part I.1 and Annex II.

- (b) Historical parameters

Historical parameters shall be based on the number of deficiencies and detentions during a given period in accordance with Annex I, Part I.2 and Annex II.

<sup>(1)</sup> OJ L 208, 5.8.2002, p. 10.

3. The measures designed to amend non-essential elements of this Directive, by supplementing it, relating to the rules for the implementation of this Article, in particular:

- (a) the flag State criteria;
- (b) the company performance criteria;

shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 31(3) and building upon the expertise of the Paris MOU.

#### Article 11

##### Frequency of inspections

Ships calling at ports or anchorages within the Community shall be subject to periodic inspections or to additional inspections as follows:

- (a) Ships shall be subject to periodic inspections at predetermined intervals depending on their risk profile in accordance with Annex I, Part I. The interval between periodic inspections of ships shall increase as the risk decreases. For high risk ships, this interval shall not exceed six months.
- (b) Ships shall be subject to additional inspections regardless of the period since their last periodic inspection as follows:
  - the competent authority shall ensure that ships to which overriding factors listed in Annex I, Part II 2A, apply are inspected,
  - ships to which unexpected factors listed in Annex I, Part II 2B, apply may be inspected. The decision to undertake such an additional inspection is left to the professional judgement of the competent authority.

#### Article 12

##### Selection of ships for inspection

The competent authority shall ensure that ships are selected for inspection on the basis of their risk profile as described in Annex I, Part I, and when overriding or unexpected factors arise in accordance with Annex I, Part II 2A and 2B.

With a view to the inspection of ships, the competent authority:

- (a) shall select ships which are due for a mandatory inspection, referred to as 'Priority I' ships, in accordance with the selection scheme described in Annex I, Part II 3A;

- (b) may select ships which are eligible for inspection, referred to as 'Priority II' ships, in accordance with Annex I, Part II 3B.

#### Article 13

##### Initial and more detailed inspections

Member States shall ensure that ships which are selected for inspection in accordance with Article 12 are subject to an initial inspection or a more detailed inspection as follows:

1. On each initial inspection of a ship, the competent authority shall ensure that the inspector, as a minimum:
  - (a) checks the certificates and documents listed in Annex IV required to be kept on board in accordance with Community maritime legislation and Conventions relating to safety and security;
  - (b) verifies, where appropriate, whether outstanding deficiencies found during the previous inspection carried out by a Member State or by a State signatory to the Paris MOU have been rectified;
  - (c) satisfies himself of the overall condition of the ship, including the hygiene of the ship, including engine room and accommodation.
2. When, after an inspection referred to in point 1, deficiencies to be rectified at the next port of call have been recorded in the inspection database, the competent authority of such next port may decide not to carry out the verifications referred to in point 1(a) and (c).
3. A more detailed inspection shall be carried out, including further checking of compliance with on-board operational requirements, whenever there are clear grounds for believing, after the inspection referred to in point 1, that the condition of a ship or of its equipment or crew does not substantially meet the relevant requirements of a Convention.

'Clear grounds' shall exist when the inspector finds evidence which in his professional judgement warrants a more detailed inspection of the ship, its equipment or its crew.

Examples of 'clear grounds' are set out in Annex V.

*Article 14***Expanded inspections**

1. The following categories of ships are eligible to an expanded inspection in accordance with Annex I, Part II 3A and 3B:

- ships with a high risk profile,
- passenger ships, oil tankers, gas or chemical tankers or bulk carriers, older than 12 years of age,
- ships with a high risk profile or passenger ships, oil tankers, gas or chemical tankers or bulk carriers, older than 12 years of age, in cases of overriding or unexpected factors,
- ships subject to a re-inspection following a refusal of access order issued in accordance with Article 16.

2. The operator or master of the ship shall ensure that sufficient time is available in the operating schedule to allow the expanded inspection to be carried out.

Without prejudice to control measures required for security purposes, the ship shall remain in the port until the inspection is completed.

3. On receipt of a pre-notification provided by a ship eligible for a periodic expanded inspection, the competent authority shall inform the ship if no expanded inspection will be carried out.

4. The scope of an expanded inspection, including the risk areas to be covered, is set out in Annex VII. The Commission shall, in accordance with the procedures referred to in Article 31(2), adopt measures for the implementation of Annex VII.

*Article 15***Safety and security guidelines and procedures**

1. Member States shall ensure that their inspectors follow the procedures and guidelines specified in Annex VI.

2. As far as security checks are concerned, Member States shall apply the relevant procedures set out in Annex VI to this Directive to all ships referred to in Articles 3(1), 3(2) and 3(3) of Regulation (EC) No 725/2004 of the European Parliament and of the Council <sup>(1)</sup>, calling at their ports and anchorages, unless they fly the flag of the port State of inspection.

3. The provisions of Article 14 of this Directive concerning expanded inspections shall apply to ro-ro ferries and high-speed passenger craft, referred to in Article 2(a) and (b) of Directive 1999/35/EC.

When a ship has been surveyed in accordance with Articles 6 and 8 of Directive 1999/35/EC by a host State which is not the flag State of the ship, such specific survey shall be recorded as a more detailed or an expanded inspection, as relevant, in the inspection database and taken into account for the purposes of Articles 10, 11 and 12 of this Directive and for calculating the fulfilment of the inspection commitment of each Member State in as much as all the items referred to in Annex VII to this Directive are covered.

Without prejudice to a prevention of operation of a ro-ro ferry or a high-speed passenger craft decided in accordance with Article 10 of Directive 1999/35/EC, the provisions of this Directive concerning rectification of deficiencies, detention, refusal of access, follow-up to inspections, detentions and refusal of access, as appropriate, shall apply.

4. If necessary, the Commission may, in accordance with the procedure referred to in Article 31(2), adopt the rules for the harmonised implementation of paragraphs 1 and 2 of this Article.

*Article 16***Access refusal measures concerning certain ships**

1. A Member State shall ensure that any ship which:

- flies the flag of a State whose detention rate falls into the black list, adopted in accordance with the Paris MOU on the basis of information recorded in the inspection database and as published annually by the Commission, and has been detained or has been issued with a prevention of operation order under Directive 1999/35/EC more than twice in the course of the preceding 36 months in a port or anchorage of a Member State or of a State signatory of the Paris MOU, or

- flies the flag of a State whose detention rate falls into the grey list, adopted in accordance with the Paris MOU on basis of information recorded in the inspection database and as published annually by the Commission, and has been detained or has been issued with a prevention of operation order under Directive 1999/35/EC more than twice in the course of the preceding 24 months in a port or anchorage of a Member State or of a State signatory of the Paris MOU,

is refused access to its ports and anchorages, except in the situations described in Article 21(6).

<sup>(1)</sup> OJ L 129, 29.4.2004, p. 6.

Refusal of access shall become applicable as soon as the ship leaves the port or anchorage where it has been the subject of a third detention and where a refusal of access order has been issued.

2. The refusal of access order shall be lifted only after a period of three months has passed from the date of issue of the order and when the conditions in paragraphs 3 to 9 of Annex VIII are met.

If the ship is subject to a second refusal of access, the period shall be 12 months.

3. Any subsequent detention in a port or anchorage within the Community shall result in the ship being refused access to any port and anchorage within the Community. This third refusal of access order may be lifted after a period of 24 months has passed from the issue of the order and only if:

- the ship flies the flag of a State whose detention rate falls neither into the black list nor the grey list referred to in paragraph 1,
- the statutory and classification certificates of the ship are issued by an organisation or organisations recognised under Regulation (EC) No 391/2009 of the European Parliament and of the Council of 23 April 2009 on common rules and standards for ship inspection and survey organisations (recast) <sup>(1)</sup>,
- the ship is managed by a company with a high performance according to Annex I, Part I.1, and
- the conditions in paragraphs 3 to 9 of Annex VIII are met.

Any ship not meeting the criteria specified in this paragraph, after a period of 24 months has passed from the issue of the order, shall be permanently refused access to any port and anchorage within the Community.

4. Any subsequent detention in a port or anchorage within the Community after the third refusal of access shall result in the ship being permanently refused access to any port and anchorage within the Community.

5. For the purpose of this Article, Member States shall comply with the procedures laid down in Annex VIII.

<sup>(1)</sup> See page 11 of this Official Journal.

#### Article 17

##### Report of inspection to the master

On completion of an inspection, a more detailed inspection or an expanded inspection, the inspector shall draw up a report in accordance with Annex IX. The ship's master shall be provided with a copy of the inspection report.

#### Article 18

##### Complaints

All complaints shall be subject to a rapid initial assessment by the competent authority. This assessment shall make it possible to determine whether a complaint is justified.

Should that be the case, the competent authority shall take the necessary action on the complaint, in particular, ensuring that anyone directly concerned by that complaint can make their views known.

Where the competent authority deems the complaint to be manifestly unfounded, it shall inform the complainant of its decision and of the reasons therefor.

The identity of the complainant shall not be revealed to the master or the shipowner of the ship concerned. The inspector shall ensure confidentiality during any interviews of crew members.

Member States shall inform the flag State administration, with a copy to the International Labour Organisation (ILO) if appropriate, of complaints not manifestly unfounded and of follow-up actions taken.

#### Article 19

##### Rectification and detention

1. The competent authority shall be satisfied that any deficiencies confirmed or revealed by the inspection are, or will be, rectified in accordance with the Conventions.

2. In the case of deficiencies which are clearly hazardous to safety, health or the environment, the competent authority of the port State where the ship is being inspected shall ensure that the ship is detained or that the operation in the course of which the deficiencies are revealed is stopped. The detention order or stoppage of an operation shall not be lifted until the hazard is removed or until such authority establishes that the ship can, subject to any necessary conditions, proceed to sea or the operation be resumed without risk to the safety and health of passengers or crew, or risk to other ships, or without there being an unreasonable threat of harm to the marine environment.

3. When exercising his professional judgement as to whether or not a ship is to be detained, the inspector shall apply the criteria set out in Annex X.

4. If the inspection reveals that the ship is not equipped with a functioning voyage data recorder, when use of such recorder is compulsory in accordance with Directive 2002/59/EC, the competent authority shall ensure that the ship is detained.

If such deficiency cannot be readily rectified in the port of detention, the competent authority may either allow the ship to proceed to the appropriate repair yard nearest to the port of detention where it may be readily rectified or require the deficiency to be rectified within a maximum period of 30 days, as provided for in the guidelines developed by the Paris MOU. For these purposes, the procedures laid down in Article 21 shall apply.

5. In exceptional circumstances, where the overall condition of a ship is obviously substandard, the competent authority may suspend the inspection of that ship until the responsible parties take the steps necessary to ensure that it complies with the relevant requirements of the Conventions.

6. In the event of detention, the competent authority shall immediately inform, in writing and including the report of inspection, the flag State administration or, when this is not possible, the Consul or, in his absence, the nearest diplomatic representative of that State, of all the circumstances in which intervention was deemed necessary. In addition, nominated surveyors or recognised organisations responsible for the issue of classification certificates or statutory certificates in accordance with Conventions shall also be notified where relevant.

7. This Directive shall be without prejudice to the additional requirements of the Conventions concerning notification and reporting procedures related to port State control.

8. When port State control is exercised under this Directive, all possible efforts shall be made to avoid a ship being unduly detained or delayed. If a ship is unduly detained or delayed, the owner or operator shall be entitled to compensation for any loss or damage suffered. In any instance of alleged undue detention or delay the burden of proof shall lie with the owner or operator of the ship.

9. In order to alleviate port congestion, a competent authority may allow a detained ship to be moved to another part of the port if it is safe to do so. However, the risk of port congestion shall not be a consideration when deciding on a detention or on a release from detention.

Port authorities or bodies shall cooperate with the competent authority with a view to facilitating the accommodation of detained ships.

10. The port authorities or bodies shall be informed at the earliest convenience when a detention order is issued.

#### Article 20

##### Right of appeal

1. The owner or operator of a ship or his representative in the Member State shall have a right of appeal against detention or refusal of access by the competent authority. An appeal shall not cause the detention or refusal of access to be suspended.

2. Member States shall establish and maintain appropriate procedures for this purpose in accordance with their national legislation.

3. The competent authority shall properly inform the master of a ship referred to in paragraph 1 of the right of appeal and the practical arrangements relating thereto.

4. When, as a result of an appeal or of a request made by the owner or the operator of a ship or his representative, a detention order or a refusal of access order is revoked or amended:

(a) Member States shall ensure that the inspection database is amended accordingly without delay;

(b) the Member State where the detention order or refusal of access order is issued shall, within 24 hours of such a decision, ensure that the information published in accordance with Article 26 is rectified.

#### Article 21

##### Follow-up to inspections and detentions

1. Where deficiencies referred to in Article 19(2) cannot be rectified in the port of inspection, the competent authority of that Member State may allow the ship concerned to proceed without undue delay to the appropriate repair yard nearest to the port of detention, as chosen by the master and the authorities concerned, where follow-up action can be taken, provided that the conditions determined by the competent authority of the flag State and agreed by that Member State are complied with. Such conditions shall ensure that the ship can proceed without risk to the safety and health of passengers or crew, or risk to other ships, or without there being an unreasonable threat of harm to the marine environment.

2. Where the decision to send a ship to a repair yard is due to a lack of compliance with IMO Resolution A. 744(18), either with respect to a ship's documentation or with respect to a ship's structural failures and deficiencies, the competent authority may require that the necessary thickness measurements be carried out in the port of detention before the ship is allowed to sail.

3. In the circumstances referred to in paragraph 1, the competent authority of the Member State in the port of inspection shall notify the competent authority of the State where the repair yard is situated, the parties mentioned in Article 19(6) and any other authority as appropriate of all the conditions for the voyage.

The competent authority of a Member State receiving such notification shall inform the notifying authority of the action taken.

4. Member States shall take measures to ensure that access to any port or anchorage within the Community is refused to ships referred to in paragraph 1 which proceed to sea:

- (a) without complying with the conditions determined by the competent authority of any Member State in the port of inspection; or
- (b) which refuse to comply with the applicable requirements of the Conventions by not calling into the indicated repair yard.

Such refusal shall be maintained until the owner or operator provides evidence to the satisfaction of the competent authority of the Member State where the ship was found defective, demonstrating that the ship fully complies with all applicable requirements of the Conventions.

5. In the circumstances referred to in paragraph 4(a), the competent authority of the Member State where the ship was found defective shall immediately alert the competent authorities of all the other Member States.

In the circumstances referred to in paragraph 4(b), the competent authority of the Member State in which the repair yard lies shall immediately alert the competent authorities of all the other Member States.

Before denying entry, the Member State may request consultations with the flag administration of the ship concerned.

6. By way of derogation from the provisions of paragraph 4, access to a specific port or anchorage may be permitted by the relevant authority of that port State in the event of *force majeure* or overriding safety considerations, or to reduce or minimise the risk of pollution or to have deficiencies rectified, provided that adequate measures to the satisfaction of the competent authority of such Member State have been implemented by the owner, the operator or the master of the ship to ensure safe entry.

#### Article 22

##### Professional profile of inspectors

1. Inspections shall be carried out only by inspectors who fulfil the qualification criteria specified in Annex XI and who are authorised to carry out port State control by the competent authority.

2. When the required professional expertise cannot be provided by the competent authority of the port State, the inspector of that competent authority may be assisted by any person with the required expertise.

3. The competent authority, the inspectors carrying out port State control and the persons assisting them shall have no commercial interest either in the port of inspection or in the ships inspected, nor shall the inspectors be employed by, or undertake work on behalf of, non-governmental organisations which issue statutory and classification certificates or which carry out the surveys necessary for the issue of those certificates to ships.

4. Each inspector shall carry a personal document in the form of an identity card issued by his competent authority in accordance with Commission Directive 96/40/EC of 25 June 1996 establishing a common model for an identity card for inspectors carrying out port State control <sup>(1)</sup>.

5. Member States shall ensure that the competence of inspectors and their compliance with the minimum criteria referred to in Annex XI are verified, before authorising them to carry out inspections and periodically thereafter in the light of the training scheme referred to in paragraph 7.

6. Member States shall ensure that inspectors receive appropriate training in relation to changes to the port State control system applied in the Community as laid down in this Directive and amendments to the Conventions.

7. In cooperation with Member States, the Commission shall develop and promote a harmonised Community scheme for the training and assessment of competences of port State control inspectors by Member States.

<sup>(1)</sup> OJ L 196, 7.8.1996, p. 8.

*Article 23***Reports from pilots and port authorities**

1. Member States shall take appropriate measures to ensure that their pilots engaged on the berthing or unberthing of ships or engaged on ships bound for a port or in transit within a Member State immediately inform the competent authority of the port State or the coastal State, as appropriate, whenever they learn in the course of their normal duties that there are apparent anomalies which may prejudice the safe navigation of the ship, or which may pose a threat of harm to the marine environment.

2. If port authorities or bodies, in the course of their normal duties, learn that a ship within their port has apparent anomalies which may prejudice the safety of the ship or poses an unreasonable threat of harm to the marine environment, such authority or body shall immediately inform the competent authority of the port State concerned.

3. Member States shall require pilots and port authorities or bodies to report at least the following information, in electronic format whenever possible:

- ship information (name, IMO identification number, call sign and flag),
- sailing information (last port of call, port of destination),
- description of apparent anomalies found on board.

4. Member States shall ensure that proper follow-up action is taken on apparent anomalies notified by pilots and port authorities or bodies and shall record the details of action taken.

5. The Commission may, in accordance with the regulatory procedure referred to in Article 31(2), adopt measures for the implementation of this Article, including a harmonised electronic format and procedures for the reporting of apparent anomalies by pilots and port authorities or bodies and of follow-up action taken by Member States.

*Article 24***Inspection database**

1. The Commission shall develop, maintain and update the inspection database, building upon the expertise and experience under the Paris MOU.

The inspection database shall contain all the information required for the implementation of the inspection system set

up under this Directive and shall include the functionalities set out in Annex XII.

2. Member States shall take the appropriate measures to ensure that the information on the actual time of arrival and the actual time of departure of any ship calling at their ports and anchorages, together with an identifier of the port concerned, is transferred within a reasonable time to the inspection database through the Community maritime information exchange system 'SafeSeaNet' referred to in Article 3(s) of Directive 2002/59/EC. Once they have transferred such information to the inspection database through SafeSeaNet, Member States are exempted from the provision of data in accordance with paragraphs 1.2 and 2(a) and (b) of Annex XIV to this Directive.

3. Member States shall ensure that the information related to inspections performed in accordance with this Directive is transferred to the inspection database as soon as the inspection report is completed or the detention lifted.

Within 72 hours, Member States shall ensure that the information transferred to the inspection database is validated for publication purposes.

4. On the basis of the inspection data provided by Member States, the Commission shall be able to retrieve from the inspection database any relevant data concerning the implementation of this Directive, in particular on the risk profile of the ship, on ships' due for inspections, on ships' movement data and on the inspection commitments of each Member State.

Member States shall have access to all the information recorded in the inspection database which is relevant for implementing the inspection procedures of this Directive.

Member States and third signatories to the Paris MOU shall be granted access to any data they have recorded in the inspection database and to data on ships flying their flag.

*Article 25***Exchange of information and cooperation**

Each Member State shall ensure that its port authorities or bodies and other relevant authorities or bodies provide the competent port State control authority with the following types of information in their possession:

- information notified in accordance with Article 9 and Annex III,



- information concerning ships which have failed to notify any information according to the requirements of this Directive, and to Directive 2000/59/EC of the European Parliament and of the Council of 27 November 2000 on port reception facilities for ship-generated waste and cargo residues <sup>(1)</sup> and Directive 2002/59/EC, as well as, if appropriate, with Regulation (EC) No 725/2004,
- information concerning ships which have proceeded to sea without having complied with Articles 7 or 10 of Directive 2000/59/EC,
- information concerning ships which have been denied entry or expelled from port on security grounds,
- information on apparent anomalies in accordance with Article 23.

#### Article 26

##### Publication of information

The Commission shall make available and maintain on a public website the information on inspections, detentions and refusals of access in accordance with Annex XIII, building upon the expertise and experience under the Paris MOU.

#### Article 27

##### Publication of a list of companies with a low and very low performance

The Commission shall establish and publish regularly on a public website information relating to companies whose performance, in view of determining the ship risk profile referred to in Annex I Part I, has been considered as low and very low for a period of three months or more.

The Commission shall adopt, in accordance with the regulatory procedure referred to in Article 31(2), the rules for the implementation of this Article, specifying in particular the modalities of the publication.

#### Article 28

##### Reimbursement of costs

1. Should the inspections referred to in Articles 13 and 14 confirm or reveal deficiencies in relation to the requirements of a Convention warranting the detention of a ship, all costs relating to the inspections in any normal accounting period shall be covered by the shipowner or the operator or by his representative in the port State.

2. All costs relating to inspections carried out by the competent authority of a Member State under the provisions of Articles 16 and 21(4) shall be charged to the owner or operator of the ship.

3. In the case of detention of a ship, all costs relating to the detention in port shall be borne by the owner or operator of the ship.

4. The detention shall not be lifted until full payment is made or a sufficient guarantee is given for reimbursement of the costs.

#### Article 29

##### Data to monitor implementation

Member States shall provide the Commission with the information listed in Annex XIV at the intervals stated in that Annex.

#### Article 30

##### Monitoring of compliance and performance of Member States

In order to ensure the effective implementation of this Directive and to monitor the overall functioning of the Community's port State control regime in accordance with Article 2(b)(i) of Regulation (EC) No 1406/2002, the Commission shall collect the necessary information and carry out visits to Member States.

#### Article 31

##### Committee procedure

1. The Commission shall be assisted by the Committee on Safe Seas and the Prevention of Pollution from Ships (COSS) created by Article 3 of Regulation (EC) No 2099/2002 of the European Parliament and of the Council <sup>(2)</sup>.

2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at three months.

3. Where reference is made to this paragraph, Article 5a(1) to (4) and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

#### Article 32

##### Amendment procedure

The Commission shall:

- (a) adapt the Annexes, except Annex I, in order to take into account amendments to Community legislation on maritime safety and security which have entered into force, and the Conventions, international codes and resolutions of relevant international organisations and developments in the Paris MOU;

<sup>(1)</sup> OJ L 332, 28.12.2000, p. 81.

<sup>(2)</sup> OJ L 324, 29.11.2002, p. 1.

(b) amend the definitions referring to Conventions, international codes and resolutions and Community legislation which are relevant for the purposes of this Directive.

Those measures, designed to amend non-essential elements of this Directive, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 31(3).

The amendments to the international instruments referred to in Article 2 may be excluded from the scope of this Directive, pursuant to Article 5 of Regulation (EC) No 2099/2002.

#### Article 33

##### Implementing rules

When establishing the implementing rules referred to in Articles 8(4), 10(3), 14(4), 15(4), 23(5) and 27 in accordance with the procedures referred to in Article 31(2) and (3), the Commission shall take specific care that these rules take into account the expertise and the experience gained with the inspection system in the Community and the Paris MOU region.

#### Article 34

##### Penalties

Member States shall lay down a system of penalties for the breach of national provisions adopted pursuant to this Directive and shall take all the measures necessary to ensure that those penalties are applied. The penalties provided for shall be effective, proportionate and dissuasive.

#### Article 35

##### Review

The Commission shall review the implementation of this Directive no later than 30 June 2012. The review will examine, inter alia, the fulfilment of the overall Community inspection commitment laid down in Article 5, the number of port State control inspectors in each Member State, the number of inspections carried out, and the compliance with the annual inspection commitment by each Member State and the implementation of Articles 6, 7 and 8.

The Commission shall communicate the findings of the review to the European Parliament and the Council and shall determine on the basis of the review whether it is necessary to propose an amending Directive or further legislation in this area.

#### Article 36

##### Implementation and notification

1. Member States shall adopt and publish, by 31 December 2010, the laws, regulations and administrative provisions necessary to comply with this Directive.

They shall apply those provisions from 1 January 2011.

2. When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. They shall also include a statement that references in existing laws, regulations and administrative provisions to the Directive repealed by this Directive shall be construed as references to this Directive. Member States shall determine how such reference is to be made and how that statement is to be formulated.

3. Member States shall communicate to the Commission the text of the main provisions of national law adopted in the field covered by this Directive.

4. In addition, the Commission shall inform the European Parliament and the Council on a regular basis of progress in the implementation of this Directive within the Member States, in particular with a view to a uniform application of the inspection system in the Community.

#### Article 37

##### Repeal

Directive 95/21/EC, as amended by the Directives listed in Annex XV, Part A, is hereby repealed, with effect from 1 January 2011, without prejudice to the obligations of Member States relating to the time limits for transposition into national law of the Directives set out in Annex XV, Part B.

References to the repealed Directive shall be construed as references to this Directive and shall be read in accordance with the correlation table set out in Annex XVI to this Directive.

#### Article 38

##### Entry into force

This Directive shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

#### Article 39

##### Addressees

This Directive is addressed to the Member States.

Done at Strasbourg, 23 April 2009.

For the European Parliament  
The President  
H.-G. PÖTTERING

For the Council  
The President  
P. NEČAS

## ANNEX I

**ELEMENTS OF THE COMMUNITY PORT STATE INSPECTION SYSTEM****(referred to in Article 5)**

The following elements shall be included in the Community Port State Inspection System:

**I. Ship risk profile**

The risk profile of a ship shall be determined by a combination of the following generic and historical parameters:

**1. Generic parameters****(a) Type of ship**

Passenger ships, oil and chemical tankers, gas carriers and bulk carriers shall be considered as posing a higher risk.

**(b) Age of ship**

Ships of more than 12 years old shall be considered as posing a higher risk.

**(c) Flag State performance**

(i) Ships flying the flag of a State with a high detention rate within the Community and the Paris MOU region shall be considered as posing a higher risk.

(ii) Ships flying the flag of a State with a low detention rate within the Community and the Paris MOU region shall be considered as posing a lower risk.

(iii) Ships flying the flag of a State for which an audit has been completed and, where relevant, a corrective action plan submitted, both in accordance with the Framework and procedures for the Voluntary IMO Member State Audit Scheme shall be considered as posing a lower risk. As soon as the measures referred to in Article 10(3) are adopted, the flag State of such a ship shall demonstrate compliance with the Code for the implementation of mandatory IMO instruments.

**(d) Recognised organisations**

(i) Ships which have been delivered certificates from recognised organisations having a low or very low performance level in relation with their detention rates within the Community and the Paris MOU region shall be considered as posing a higher risk.

(ii) Ships which have been delivered certificates from recognised organisations having a high performance level in relation with their detention rates within the Community and the Paris MOU region shall be considered as posing a lower risk.

(iii) Ships with certificates issued by organisations recognised under the terms of Regulation (EC) No 391/2009.

**(e) Company performance**

(i) Ships of a company with a low or very low performance as determined by its ships' deficiency and detention rates within the Community and the Paris MOU region shall be considered as posing a higher risk.

(ii) Ships of a company with a high performance as determined by its ships' deficiency and detention rates within the Community and the Paris MOU region shall be considered as posing a lower risk.

## 2. Historical parameters

- (i) Ships which have been detained more than once shall be considered as posing a higher risk.
- (ii) Ships which, during inspection(s) carried out within the period referred to in Annex II have had less than the number of deficiencies referred to in Annex II, shall be considered as posing a lower risk.
- (iii) Ships which have not been detained during the period referred to in Annex II, shall be considered as posing a lower risk.

The risk parameters shall be combined by using a weighting which reflects the relative influence of each parameter on the overall risk of the ship in order to determine the following ship risk profiles:

- high risk,
- standard risk,
- low risk.

In determining these risk profiles greater emphasis shall be given to the parameters for type of ship, flag State performance, recognised organisations and company performance.

## II. Inspection of ships

### 1. Periodic inspections

Periodic inspections shall be carried out at predetermined intervals. Their frequency shall be determined by the ship risk profile. The interval between periodic inspections of high risk ships shall not exceed six months. The interval between periodic inspections of ships of other risk profiles shall increase as the risk decreases.

Member States shall carry out a periodic inspection on:

- Any ship with a high risk profile which has not been inspected in a port or anchorage within the Community or of the Paris MOU region during the last six months. High risk ships become eligible for inspection as from the fifth month.
- Any ship with a standard risk profile which has not been inspected in a port or anchorage within the Community or of the Paris MOU region during the last 12 months. Standard risk ships become eligible for inspection as from the 10th month.
- Any ship with a low risk profile which has not been inspected in a port or anchorage within the Community or of the Paris MOU region during the last 36 months. Low risk ships become eligible for inspection as from the 24th month.

### 2. Additional inspections

Ships, to which the following overriding or unexpected factors apply, are subject to an inspection regardless of the period since their last periodic inspection. However, the need to undertake an additional inspection on the basis of unexpected factors is left to the professional judgement of the inspector.

#### 2A. Overriding factors

Ships to which the following overriding factors apply shall be inspected regardless of the period since their last periodic inspection:

- Ships which have been suspended or withdrawn from their class for safety reasons since the last inspection in the Community or in the Paris MOU region.
- Ships which have been the subject of a report or notification by another Member State.
- Ships which cannot be identified in the inspection database.

- Ships which:
  - have been involved in a collision, grounding or stranding on their way to the port,
  - have been accused of an alleged violation of the provisions on discharge of harmful substances or effluents, or
  - have manoeuvred in an erratic or unsafe manner whereby routing measures, adopted by the IMO, or safe navigation practices and procedures have not been followed.

#### 2B. Unexpected factors

Ships to which the following unexpected factors apply may be subject to inspection regardless of the period since their last periodic inspection. The decision to undertake such an additional inspection is left to the professional judgement of the competent authority:

- Ships which have not complied with the applicable version of IMO Recommendation on navigation through the entrances to the Baltic Sea.
- Ships carrying certificates issued by a formerly recognised organisation whose recognition has been withdrawn since the last inspection in the Community or in the Paris MOU region.
- Ships which have been reported by pilots or port authorities or bodies as having apparent anomalies which may prejudice their safe navigation or pose a threat of harm to the environment in accordance with Article 23 of this Directive.
- Ships which have failed to comply with the relevant notification requirements referred to in Article 9 of this Directive, in Directive 2000/59/EC, Directive 2002/59/EC and if appropriate in Regulation (EC) No 725/2004.
- Ships which have been the subject of a report or complaint by the master, a crew member, or any person or organisation with a legitimate interest in the safe operation of the ship, on-board living and working conditions or the prevention of pollution, unless the Member State concerned deems the report or complaint to be manifestly unfounded.
- Ships which have been previously detained more than three months ago.
- Ships which have been reported with outstanding deficiencies, except those for which deficiencies had to be rectified within 14 days after departure, and for deficiencies which had to be rectified before departure.
- Ships which have been reported with problems concerning their cargo, in particular noxious and dangerous cargoes.
- Ships which have been operated in a manner posing a danger to persons, property or the environment.
- Ships where information from a reliable source became known, to the effect that their risk parameters differ from those recorded and the risk level is thereby increased.

#### 3. Selection scheme

##### 3A. Priority I ships shall be inspected as follows:

- (a) An expanded inspection shall be carried out on:
  - any ship with a high risk profile not inspected in the last six months,
  - any passenger ship, oil tanker, gas or chemical tanker or bulk carrier, older than 12 years of age, with a standard risk profile not inspected in the last 12 months.
- (b) An initial or a more detailed inspection, as appropriate, shall be carried out on:
  - any ship other than a passenger ship, an oil tanker, a gas or chemical tanker or a bulk carrier, older than 12 years of age, with a standard risk profile not inspected in the last 12 months.

- (c) In case of an overriding factor:
- A more detailed or an expanded inspection, according to the professional judgement of the inspector, shall be carried out on any ship with a high risk profile and on any passenger ship, oil tanker, gas or chemical tanker or bulk carrier, older than 12 years of age.
  - A more detailed inspection shall be carried out on any ship other than a passenger ship, an oil tanker, a gas or chemical tanker or a bulk carrier, older than 12 years of age.
- 3B. Where the competent authority decides to inspect a Priority II ship, the following shall apply:
- (a) An expanded inspection shall be carried out on:
- any ship with a high risk profile not inspected in the last five months,
  - any passenger ship, oil tanker, gas or chemical tanker or bulk carrier, older than 12 years of age, with a standard risk profile not inspected in the last 10 months, or
  - any passenger ship, oil tanker, gas or chemical tanker or bulk carrier, older than 12 years of age, with a low risk profile not inspected in the last 24 months.
- (b) An initial or a more detailed inspection, as appropriate, shall be carried out on:
- any ship other than a passenger ship, an oil tanker, a gas or chemical tanker or a bulk carrier, older than 12 years of age, with a standard risk profile not inspected in the last 10 months, or
  - any ship other than a passenger ship, an oil tanker, a gas or chemical tanker or a bulk carrier, older than 12 years of age, with a low risk profile not inspected in the last 24 months.
- (c) In case of an unexpected factor:
- a more detailed or an expanded inspection according to the professional judgement of the inspector, shall be carried out on any ship with a high risk profile or any passenger ship, oil tanker, gas or chemical tanker or bulk carrier, older than 12 years of age,
  - a more detailed inspection shall be carried out on any ship other than a passenger ship, an oil tanker, a gas or chemical tanker or a bulk carrier, older than 12 years of age.
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## ANNEX II

## DESIGN OF SHIP RISK PROFILE

(referred to in Article 10(2))

Generic parameters			Profile				
			High Risk Ship (HRS)		Standard Risk Ship (SRS)	Low Risk Ship (LRS)	
Generic parameters			Criteria	Weighting points	Criteria	Criteria	
1	Type of ship		Chemical tankship Gas carrier Oil tankship Bulk carrier Passenger ship	2	neither a high risk nor a low risk ship	All types	
2	Age of ship		all types > 12 y	1		All ages	
3a	Flag	BGW-list	Black – VHR, HR, M to HR	2		White	
			Black – MR	1			
3b	IMO-Audit		-	-		Yes	
4a	Recognised organisation	Performance	H	-		-	High
			M	-		-	-
			L	Low		1	-
			VL	Very Low			-
4b	EU recognised		-	-		Yes	
5	Company	Performance	H	-		-	High
			M	-		-	-
			L	Low		2	-
			VL	Very low		-	
Historical parameters							
6	Number of deficiencies recorded in each insp. within previous 36 months	Deficiencies	Not eligible	-		≤ 5 (and at least one inspection carried out in previous 36 months)	
7	Number of detentions within previous 36 months	Detentions	≥ 2 detentions	1		No detention	

HRS are ships which meet criteria to a total value of 5 or more weighting points.

LRS are ships which meet all the criteria of the Low Risk Parameters.

SRS are ships which are neither HRS nor LRS.

## ANNEX III

## NOTIFICATION

(referred to in Article 9(1))

Information to be provided in accordance with Article 9(1):

The information listed below shall be submitted to the port authority or body or to the authority or body designated for that purpose at least three days before the expected time of arrival in the port or anchorage or before leaving the previous port or anchorage if the voyage is expected to take fewer than three days:

- (a) ship identification (name, call sign, IMO identification number or MMSI number);
  - (b) planned duration of the call;
  - (c) for tankers:
    - (i) configuration: single hull, single hull with SBT, double hull;
    - (ii) condition of the cargo and ballast tanks: full, empty, inerted;
    - (iii) volume and nature of the cargo;
  - (d) planned operations at the port or anchorage of destination (loading, unloading, other);
  - (e) planned statutory survey inspections and substantial maintenance and repair work to be carried out whilst in the port of destination;
  - (f) date of last expanded inspection in the Paris MOU region.
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## ANNEX IV

**LIST OF CERTIFICATES AND DOCUMENTS****(referred to in Article 13(1))**

1. International Tonnage Certificate (1969).
2. — Passenger Ship Safety Certificate,
  - Cargo Ship Safety Construction Certificate,
  - Cargo Ship Safety Equipment Certificate,
  - Cargo Ship Safety Radio Certificate,
  - Exemption certificate, including, where appropriate, the list of cargoes,
  - Cargo Ship Safety Certificate.
3. International Ship Security Certificate (ISSC).
4. Continuous Synopsis Record.
5. International Certificate of Fitness for Carriage of Liquefied Gases in Bulk;
  - Certificate of Fitness for the Carriage of Liquefied Gases in Bulk.
6. International Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk;
  - Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk.
7. International Oil Pollution Prevention Certificate.
8. International Pollution Prevention Certificate for the Carriage of Noxious Liquid Substances in Bulk.
9. International Load Line Certificate (1966);
  - International Load Line Exemption Certificate.
10. Oil record book, parts I and II.
11. Cargo record book.
12. Minimum Safe Manning Document.
13. Certificates or any other documents required in accordance with the provisions of the STCW 78/95.
14. Medical certificates (see ILO Convention No 73 concerning Medical Examination of Seafarers).
15. Table of shipboard working arrangements (ILO Convention No 180 and STCW 78/95).
16. Records of hours of work and rest of seafarers (ILO Convention No 180).
17. Stability information.
18. Copy of the Document of Compliance and the Safety Management Certificate issued, in accordance with the International Management Code for the Safe Operation of Ships and for Pollution Prevention (SOLAS 74, Chapter IX).
19. Certificates as to the ship's hull strength and machinery installations issued by the recognised organisation in question (only to be required if the ship maintains its class with a recognised organisation).

20. Document of compliance with the special requirements for ships carrying dangerous goods.
21. High speed craft safety certificate and permit to operate high speed craft.
22. Dangerous goods special list or manifest, or detailed stowage plan.
23. Ship's log book with respect to the records of tests and drills, including security drills, and the log for records of inspection and maintenance of lifesaving appliances and arrangements and of fire fighting appliances and arrangements.
24. Special purpose ship safety certificate.
25. Mobile offshore drilling unit safety certificate.
26. For oil tankers, the record of oil discharge monitoring and control system for the last ballast voyage.
27. The muster list, fire control plan, and for passenger ships, a damage control plan.
28. Shipboard oil pollution emergency plan.
29. Survey report files (in case of bulk carriers and oil tankers).
30. Reports of previous port State control inspections.
31. For ro ro passenger ships, information on the A/A maximum ratio.
32. Document of authorisation for the carriage of grain.
33. Cargo securing manual.
34. Garbage management plan and garbage record book.
35. Decision support system for masters of passenger ships.
36. SAR cooperation plan for passenger ships trading on fixed routes.
37. List of operational limitations for passenger ships.
38. Bulk carrier booklet.
39. Loading and unloading plan for bulk carriers.
40. Certificate of insurance or any other financial security in respect of civil liability for oil pollution damage (International Convention on Civil Liability for Oil Pollution Damage, 1992).
41. Certificates required under Directive 2009/20/EC of the European Parliament and of the Council of 23 April 2009 on the insurance of shipowners for maritime claims <sup>(1)</sup>.
42. Certificate required under Regulation (EC) No 392/2009 of the European Parliament and of the Council of 23 April 2009 on the liability of carriers of passengers by sea in the event of accidents <sup>(2)</sup>.
43. International Air Pollution Prevention Certificate.
44. International Sewage Pollution Prevention Certificate.

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<sup>(1)</sup> See page 128 of this Official Journal.

<sup>(2)</sup> See page 24 of this Official Journal.

## ANNEX V

**EXAMPLES OF 'CLEAR GROUNDS'****(referred to in Article 13(3))**

## A. Examples of clear grounds for a more detailed inspection

1. Ships identified in Annex I, Part II 2A and 2B.
2. The oil record book has not been properly kept.
3. During examination of the certificates and other documentation, inaccuracies have been revealed.
4. Indications that the crew members are unable to comply with the requirements related to on-board communication set out in Article 18 of Directive 2008/106/EC of the European Parliament and of the Council of 19 November 2008 on the minimum level of training of seafarers <sup>(1)</sup>.
5. A certificate has been fraudulently obtained or the holder of a certificate is not the person to whom that certificate was originally issued.
6. The ship has a master, officer or rating holding a certificate issued by a country which has not ratified the STCW 78/95.
7. Evidence of cargo and other operations not being conducted safely, or in accordance with IMO guidelines, e.g. the content of oxygen in the inert-gas main supply to the cargo tanks is above the prescribed maximum level.
8. Failure of the master on an oil tanker to produce the record of the oil discharge monitoring and control system for the last ballast voyage.
9. Absence of an up-to-date muster list, or crew members not aware of their duties in the event of fire or an order to abandon the ship.
10. The emission of false distress alerts not followed by proper cancellation procedures.
11. The absence of principal equipment or arrangements required by the Conventions.
12. Excessively unsanitary conditions on board the ship.
13. Evidence from the inspector's general impression and observations that serious hull or structural deterioration or deficiencies exist that may place at risk the structural, watertight or weathertight integrity of the ship.
14. Information or evidence that the master or crew is not familiar with essential shipboard operations relating to the safety of ships or the prevention of pollution, or that such operations have not been carried out.
15. The absence of a table of shipboard working arrangements or of records of hours of work or rest of seafarers.

## B. Examples of clear grounds for the control of ships on security aspects

1. The inspector may establish clear grounds for further control measures on security during the initial PSC inspection as follows:
  - 1.1. ISSC is not valid or it has expired.
  - 1.2. The ship is at a lower security level than the port.
  - 1.3. Drills related to the security of the ship have not been carried out.
  - 1.4. Records for the last 10 ship/port or ship/ship interfaces are incomplete.
  - 1.5. Evidence or observation that key members of the ship's personnel cannot communicate with each other.
  - 1.6. Evidence from observations that serious deficiencies exist in security arrangements.

<sup>(1)</sup> OJ L 323, 3.12.2008, p. 33.

- 1.7. Information from third parties such as a report or a complaint concerning security-related information.
  - 1.8. The ship holds a subsequent, consecutively issued Interim International Ship Security Certificate (ISSC) and in the professional judgement of the inspector one of the purposes of the ship or company in requesting such a certificate is to avoid full compliance with SOLAS 74 Chapter XI-2 and Part A of the ISPS Code, beyond the period of the initial Interim Certificate. ISPS Code Part A specify the circumstances when an Interim Certificate may be issued.
  2. If clear grounds as described above are established, the inspector shall immediately inform the competent security authority (unless the inspector is also an Officer Duly Authorised for Security). The competent security authority shall then decide on what further control measures are necessary taking into account the security level in accordance with Regulation 9 of SOLAS 74, Chapter XI.
  3. Clear grounds other than those above are a matter for the Officer Duly Authorised for Security.
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## ANNEX VI

**PROCEDURES FOR THE CONTROL OF SHIPS****(referred to in Article 15(1))**

Annex I, 'Port State Control Procedures', to the Paris MOU and the following instructions from the Paris MOU, in their up-to-date version:

- Instruction 33/2000/02: Operational Control on Ferries and Passenger Ships,
  - Instruction 35/2002/02: Guidelines for PSCOs on Electronic Charts,
  - Instruction 36/2003/08: Guidance for Inspection on Working and Living Conditions,
  - Instruction 37/2004/02: Guidelines in Compliance with STCW 78/95 Convention as Amended,
  - Instruction 37/2004/05: Guidelines on the Inspection of Hours of Work/Rest,
  - Instruction 37/2004/10: Guidelines for Port State Control Officers on Security Aspects,
  - Instruction 38/2005/02: Guidelines for PSCO's Checking a Voyage Data Recorder (VDR),
  - Instruction 38/2005/05: Guidelines on MARPOL 73/78 Annex I,
  - Instruction 38/2005/07: Guidelines on Control of the Condition Assessment Scheme (CAS) of Single Hull Oil Tankers,
  - Instruction 39/2006/01: Guidelines for the Port State Control Officer on the ISM-Code,
  - Instruction 39/2006/02: Guidelines for Port State Control Officers on Control of GMDSS,
  - Instruction 39/2006/03: Optimisation of Banning and Notification Checklist,
  - Instruction 39/2006/10: Guidelines for PSCOs for the Examination of Ballast Tanks and Main Power Failure Simulation (black-out test),
  - Instruction 39/2006/11: Guidance for Checking the Structure of Bulk Carriers,
  - Instruction 39/2006/12: Code of Good Practice for Port State Control Officers,
  - Instruction 40/2007/04: Criteria for Responsibility Assessment of Recognised Organisations (R/O),
  - Instruction 40/2007/09: Guidelines for Port State Control Inspections for Compliance with Annex VI of MARPOL 73/78.
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## ANNEX VII

**EXPANDED INSPECTIONS OF SHIPS****(referred to in Article 14)**

An expanded inspection concerns in particular the overall condition of the following risk areas:

- Documentation.
- Structural condition.
- Weathertight condition.
- Emergency systems.
- Radio communication.
- Cargo operations.
- Fire safety.
- Alarms.
- Living and working conditions.
- Navigation equipment.
- Life saving appliances.
- Dangerous goods.
- Propulsion and auxiliary machinery.
- Pollution prevention.

In addition, subject to their practical feasibility or any constraints relating to the safety of persons, the ship or the port, an expanded inspection shall include the verification of specific items of risk areas depending on the type of vessel inspected, as established in accordance with Article 14(3).

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## ANNEX VIII

**PROVISIONS CONCERNING REFUSAL OF ACCESS TO PORTS AND ANCHORAGES WITHIN THE COMMUNITY****(referred to in Article 16)**

1. If the conditions described in Article 16(1) are met, the competent authority of the port in which the ship is detained for the third time shall inform the master of the ship in writing that a refusal of access order will be issued which will become applicable immediately after the ship has left the port. The refusal of access order shall become applicable immediately after the ship has left the port after the deficiencies leading to the detention have been remedied.
2. The competent authority shall send a copy of the refusal of access order to the flag State administration, the recognised organisation concerned, the other Member States, and the other signatories to the Paris MOU, the Commission and the Paris MOU Secretariat. The competent authority shall also update the inspection database with information on the refusal of access without delay.
3. In order to have the refusal of access order lifted, the owner or the operator must address a formal request to the competent authority of the Member State that imposed the refusal of access order. This request must be accompanied by a document from the flag State administration issued following an on-board visit by a surveyor duly authorised by the flag State administration, showing that the ship fully conforms to the applicable provisions of the Conventions. The flag State administration shall provide evidence to the competent authority that a visit on board has taken place.
4. The request for the lifting of the refusal of access order must also be accompanied, where appropriate, by a document from the classification society which has the ship in class following an on-board visit by a surveyor from the classification society, showing that the ship conforms to the class standards stipulated by that society. The classification society shall provide evidence to the competent authority that a visit on board has taken place.
5. The refusal of access order may be lifted only after the period referred to Article 16 of this Directive has elapsed and following a re-inspection of the ship at an agreed port.

If the agreed port is located in a Member State, the competent authority of that State may, at the request of the competent authority which issued the refusal of access order, authorise the ship to enter the agreed port in order to carry out the re-inspection. In such cases, no cargo operations shall take place at the port until the refusal of access order has been lifted.

6. If the detention which led to the issue of a refusal of access order included deficiencies in the ship's structure, the competent authority which issued the refusal of access order may require that certain spaces, including cargo spaces and tanks, are made available for examination during the re-inspection.
7. The re-inspection shall be carried out by the competent authority of the Member State that imposed the refusal of access order, or by the competent authority of the port of destination with the agreement of the competent authority of the Member State that imposed the refusal of access order. The competent authority may require up to 14 days' notice for the re-inspection. Evidence shall be provided to the satisfaction of this Member State that the ship fully complies with the applicable requirements of the Conventions.
8. The re-inspection shall consist of an expanded inspection that must cover at least the relevant items of Annex VII.
9. All costs of this expanded inspection will be borne by the owner or the operator.
10. If the results of the expanded inspection satisfy the Member State in accordance with Annex VII, the refusal of access order must be lifted and the company of the ship informed thereof in writing.
11. The competent authority shall also notify its decision in writing to the flag State administration, the classification society concerned, the other Member States, the other signatories to the Paris MOU, the Commission and the Paris MOU Secretariat. The competent authority must also update the inspection database with information on the removal of the access without delay.
12. Information relating to ships that have been refused access to ports within the Community must be made available in the inspection database and published in conformity with the provisions of Article 26 and of Annex XIII.

## ANNEX IX

**INSPECTION REPORT**  
**(referred to in Article 17)**

The inspection report must contain at least the following items.

**I. General**

1. Competent authority that wrote the report
2. Date and place of inspection
3. Name of the ship inspected
4. Flag
5. Type of ship (as indicated in the Safety Management Certificate)
6. IMO identification number
7. Call sign
8. Tonnage (gt)
9. Deadweight tonnage (where relevant)
10. Year of construction as determined on the basis of the date indicated in the ship's safety certificates
11. The classification society or classification societies as well as any other organisation, where relevant, which has/have issued to this ship the classification certificates, if any
12. The recognised organisation or recognised organisations and/or any other party which has/have issued to this ship certificates in accordance with the applicable Conventions on behalf of the flag State
13. Name and address of the ship's company or the operator
14. Name and address of the charterer responsible for the selection of the ship and type of charter in the case of ships carrying liquid or solid cargoes in bulk
15. Final date of writing the inspection report
16. Indication that detailed information on an inspection or a detention may be subject to publication.

**II. Information relating to inspection**

1. Certificates issued in application of the relevant Conventions, authority or organisation that issued the certificate(s) in question, including the date of issue and expiry
2. Parts or elements of the ship that were inspected (in the case of more detailed or expanded inspection)
3. Port and date of the last intermediate or annual or renewal survey and the name of the organisation which carried out the survey
4. Type of inspection (inspection, more detailed inspection, expanded inspection)
5. Nature of the deficiencies
6. Measures taken.

**III. Additional information in the event of detention**

1. Date of detention order
  2. Date of lifting the detention order
  3. Nature of the deficiencies warranting the detention order (references to Conventions, if relevant)
  4. Indication, where relevant, of whether the recognised organisation or any other private body that carried out the survey has a responsibility in relation to the deficiencies which, alone or in combination, led to detention
  5. Measures taken.
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## ANNEX X

**CRITERIA FOR DETENTION OF A SHIP****(referred to in Article 19(3))**

## INTRODUCTION

Before determining whether deficiencies found during an inspection warrant detention of the ship involved, the inspector must apply the criteria mentioned below in points 1 and 2.

Point 3 includes examples of deficiencies that may for themselves warrant detention of the ship involved (see Article 19(4)).

Where the ground for detention is the result of accidental damage suffered on the ship's voyage to a port, no detention order shall be issued, provided that:

- (a) due account has been given to the requirements contained in Regulation I/11(c) of SOLAS 74 regarding notification to the flag State administration, the nominated surveyor or the recognised organisation responsible for issuing the relevant certificate;
- (b) prior to entering a port, the master or shipowner has submitted to the port State control authority details on the circumstances of the accident and the damage suffered and information about the required notification of the flag State administration;
- (c) appropriate remedial action, to the satisfaction of the Authority, is being taken by the ship; and
- (d) the authority has ensured, having been notified of the completion of the remedial action, that deficiencies which were clearly hazardous to safety, health or the environment have been rectified.

**1. Main criteria**

When exercising his professional judgement as to whether or not a ship should be detained the inspector must apply the following criteria:

**Timing:**

Ships which are unsafe to proceed to sea must be detained upon the first inspection irrespective of how much time the ship will stay in port.

**Criterion:**

The ship is detained if its deficiencies are sufficiently serious to merit an inspector returning to satisfy himself that they have been rectified before the ship sails.

The need for the inspector to return to the ship is a measure of the seriousness of the deficiencies. However, it does not impose such an obligation for every case. It implies that the authority must verify one way or another, preferably by a further visit, that the deficiencies have been rectified before departure.

**2. Application of main criteria**

When deciding whether the deficiencies found in a ship are sufficiently serious to merit detention the inspector must assess whether:

1. the ship has relevant, valid documentation;
2. the ship has the crew required in the Minimum Safe Manning Document.

During inspection the inspector must further assess whether the ship and/or crew is able to:

3. navigate safely throughout the forthcoming voyage;
4. safely handle, carry and monitor the condition of the cargo throughout the forthcoming voyage;

5. operate the engine room safely throughout the forthcoming voyage;
6. maintain proper propulsion and steering throughout the forthcoming voyage;
7. fight fires effectively in any part of the ship if necessary during the forthcoming voyage;
8. abandon ship speedily and safely and effect rescue if necessary during the forthcoming voyage;
9. prevent pollution of the environment throughout the forthcoming voyage;
10. maintain adequate stability throughout the forthcoming voyage;
11. maintain adequate watertight integrity throughout the forthcoming voyage;
12. communicate in distress situations if necessary during the forthcoming voyage;
13. provide safe and healthy conditions on board throughout the forthcoming voyage;
14. provide the maximum of information in case of accident.

If the answer to any of these assessments is negative, taking into account all deficiencies found, the ship must be strongly considered for detention. A combination of deficiencies of a less serious nature may also warrant the detention of the ship.

3. To assist the inspector in the use of these guidelines, there follows a list of deficiencies, grouped under relevant Conventions and/or codes, which are considered of such a serious nature that they may warrant the detention of the ship involved. This list is not intended to be exhaustive.

- 3.1. *General*

The lack of valid certificates and documents as required by the relevant instruments. However, ships flying the flag of States not party to a relevant Convention or not having implemented another relevant instrument, are not entitled to carry the certificates provided for by the Convention or other relevant instrument. Therefore, absence of the required certificates should not by itself constitute reason to detain these ships; however, in applying the 'no more favourable treatment' clause, substantial compliance with the provisions is required before the ship sails.

- 3.2. *Areas under SOLAS 74*

1. Failure of the proper operation of propulsion and other essential machinery, as well as electrical installations.
2. Insufficient cleanliness of engine room, excessive amount of oily-water mixtures in bilges, insulation of piping, including exhaust pipes in engine room contaminated by oil, improper operation of bilge pumping arrangements.
3. Failure of the proper operation of emergency generator, lighting, batteries and switches.
4. Failure of the proper operation of the main and auxiliary steering gear.
5. Absence, insufficient capacity or serious deterioration of personal life-saving appliances, survival craft and launching arrangements.
6. Absence, non-compliance or substantial deterioration of fire detection system, fire alarms, firefighting equipment, fixed fire-extinguishing installation, ventilation valves, fire dampers, quick-closing devices to the extent that they cannot comply with their intended use.
7. Absence, substantial deterioration or failure of proper operation of the cargo deck area fire protection on tankers.
8. Absence, non-compliance or serious deterioration of lights, shapes or sound signals.
9. Absence or failure of the proper operation of the radio equipment for distress and safety communication.

10. Absence or failure of the proper operation of navigation equipment, taking the provisions of SOLAS 74, Regulation V/16.2 into account.
  11. Absence of corrected navigational charts, and/or all other relevant nautical publications necessary for the intended voyage, taking into account that a type approved electronic chart display and information system (ECDIS) operating on official data may be used as a substitute for the charts.
  12. Absence of non-sparking exhaust ventilation for cargo pump rooms.
  13. Serious deficiency in the operational requirements, as described in Section 5.5 of Annex 1 to the Paris MOU.
  14. Number, composition or certification of crew not corresponding with the safe manning document.
  15. Failure to carry out the enhanced survey programme in accordance with SOLAS 74, Chapter XI, Regulation 2.
- 3.3. *Areas under the IBC Code*
1. Transport of a substance not mentioned in the Certificate of Fitness or missing cargo information.
  2. Missing or damaged high-pressure safety devices.
  3. Electrical installations not intrinsically safe or not corresponding to code requirements.
  4. Sources of ignition in hazardous locations.
  5. Contraventions of special requirements.
  6. Exceeding of maximum allowable cargo quantity per tank.
  7. Insufficient heat protection for sensitive products.
- 3.4. *Areas under the IGC Code*
1. Transport of a substance not mentioned in the Certificate of Fitness or missing cargo information.
  2. Missing closing devices for accommodation or service spaces.
  3. Bulkhead not gastight.
  4. Defective air locks.
  5. Missing or defective quick-closing valves.
  6. Missing or defective safety valves.
  7. Electrical installations not intrinsically safe or not corresponding to code requirements.
  8. Ventilators in cargo area not operable.
  9. Pressure alarms for cargo tanks not operable.
  10. Gas detection plant and/or toxic gas detection plant defective.
  11. Transport of substances to be inhibited without valid inhibitor certificate.
- 3.5. *Areas under LL 66*
1. Significant areas of damage or corrosion, or pitting of plating and associated stiffening in decks and hull affecting seaworthiness or strength to take local loads, unless proper temporary repairs for a voyage to a port for permanent repairs have been carried out.

2. A recognised case of insufficient stability.
  3. The absence of sufficient and reliable information, in an approved form, which by rapid and simple means, enables the master to arrange for the loading and ballasting of his ship in such a way that a safe margin of stability is maintained at all stages and at varying conditions of the voyage, and that the creation of any unacceptable stresses in the ship's structure are avoided.
  4. Absence, substantial deterioration or defective closing devices, hatch closing arrangements and watertight doors.
  5. Overloading.
  6. Absence of draft mark or draft mark impossible to read.
- 3.6. *Areas under MARPOL 73/78, Annex I*
1. Absence, serious deterioration or failure of proper operation of the oily-water filtering equipment, the oil discharge monitoring and control system or the 15 ppm alarm arrangements.
  2. Remaining capacity of slop and/or sludge tank insufficient for the intended voyage.
  3. Oil Record Book not available.
  4. Unauthorised discharge bypass fitted.
  5. Survey report file missing or not in conformity with Regulation 13G(3)(b) of MARPOL 73/78.
- 3.7. *Areas under MARPOL 73/78, Annex II*
1. Absence of the P&A Manual.
  2. Cargo is not categorised.
  3. No cargo record book available.
  4. Transport of oil-like substances without satisfying the requirements or without an appropriately amended certificate.
  5. Unauthorised discharge bypass fitted.
- 3.8. *Areas under MARPOL 73/78, Annex V*
1. Absence of the garbage management plan.
  2. No garbage record book available.
  3. Ship's personnel not familiar with disposal/discharge requirements of garbage management plan.
- 3.9. *Areas under the STCW 78/95 and Directive 2008/106/EC.*
1. Failure of seafarers to hold a certificate, to have an appropriate certificate, to have a valid dispensation or to provide documentary proof that an application for an endorsement has been submitted to the flag State administration.
  2. Evidence that a certificate has been fraudulently obtained or the holder of a certificate is not the person to whom that certificate was originally issued.
  3. Failure to comply with the applicable safe manning requirements of the flag State administration.
  4. Failure of navigational or engineering watch arrangements to conform to the requirements specified for the ship by the flag State administration.

5. Absence in a watch of a person qualified to operate equipment essential to safe navigation, safety radio communications or the prevention of marine pollution.
6. Failure to provide proof of professional proficiency for the duties assigned to seafarers for the safety of the ship and the prevention of pollution.
7. Inability to provide for the first watch at the commencement of a voyage and for subsequent relieving watches persons who are sufficiently rested and otherwise fit for duty.

3.10. *Areas under the ILO Conventions*

1. Insufficient food for voyage to next port.
2. Insufficient potable water for voyage to next port.
3. Excessively unsanitary conditions on board.
4. No heating in accommodation of a ship operating in areas where temperatures may be excessively low.
5. Insufficient ventilation in accommodation of a ship.
6. Excessive garbage, blockage by equipment or cargo or otherwise unsafe conditions in passageways/accommodations.
7. Clear evidence that watchkeeping and other duty personnel for the first watch or subsequent relieving watches are impaired by fatigue.

3.11. *Areas which may not warrant a detention, but where, e.g. cargo operations have to be suspended.*

Failure of the proper operation (or maintenance) of inert gas system, cargo-related gear or machinery are considered sufficient grounds for stopping cargo operation.

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## ANNEX XI

**MINIMUM CRITERIA FOR INSPECTORS****(referred to in Article 22(1) and (5))**

1. Inspectors must have appropriate theoretical knowledge and practical experience of ships and their operation. They must be competent in the enforcement of the requirements of Conventions and of the relevant port State control procedures. This knowledge and competence in enforcing international and Community requirements must be acquired through documented training programmes.
  2. Inspectors must, as a minimum, have either:
    - (a) appropriate qualifications from a marine or nautical institution and relevant seagoing experience as a certificated ship officer holding or having held a valid STCW II/2 or III/2 certificate of competency not limited as regards the operating area or propulsion power or tonnage; or
    - (b) passed an examination recognised by the competent Authority as a naval architect, mechanical engineer or an engineer related to the maritime fields and worked in that capacity for at least five years; or
    - (c) a relevant university degree or equivalent and have properly trained and qualified as ship safety inspectors.
  3. The inspector must have:
    - completed a minimum of one year's service as a flag-State inspector either dealing with surveys and certification in accordance with the Conventions or involved in the monitoring of the activities of recognised organisations to which statutory tasks have been delegated, or
    - gained an equivalent level of competence by following a minimum of one year's field training participating in Port State Control inspections under the guidance of experienced Port State Control Officers.
  4. The inspectors mentioned under 2(a) must have gained a maritime experience of at least 5 years, including periods served at sea as officers in the deck- or engine-department respectively, or as a flag State inspector or as an assistant port State control inspector. Such experience shall include a period of at least two years at sea as a deck or engine officer.
  5. The inspectors must have the ability to communicate orally and in writing with seafarers in the language most commonly spoken at sea.
  6. Inspectors not fulfilling the above criteria are also accepted if they are employed by the competent authority of a Member State for port State control at the date of adoption of this Directive.
  7. Where in a Member State inspections referred to in Article 15(1) and (2) are performed by port State control inspectors; those inspectors shall have appropriate qualifications, which shall include sufficient theoretical and practical experience in maritime security. This shall normally include:
    - (a) a good understanding of maritime security and how it is applied to the operations being examined;
    - (b) a good working knowledge of security technologies and techniques;
    - (c) a knowledge of inspection principles, procedures and techniques;
    - (d) a working knowledge of the operations being examined.
-

## ANNEX XII

**FUNCTIONALITIES OF THE INSPECTION DATABASE****(referred to in Article 24(1))**

1. The inspection database shall include at least the following functionalities:
    - incorporate inspection data of Member States and all signatories to the Paris MOU,
    - provide data on the ship risk profile and on ships due for inspections,
    - calculate the inspection commitments for each Member State,
    - produce the white as well as the grey and black list of flag States, referred to in Article 16(1),
    - produce data on the performance of companies,
    - identify the items in risk areas to be checked at each inspection.
  2. The inspection database shall have the capability to adapt to future developments and to interface with other Community maritime safety databases, including SafeSeaNet, which shall provide data on ships' actual calls to ports of Member States and, where appropriate, to relevant national information systems.
  3. A deep hyperlink shall be provided from the inspection database to the Equasis information system. Member States shall encourage that the public and private databases relating to ship inspection accessible through Equasis are consulted by the inspectors.
-

## ANNEX XIII

**PUBLICATION OF INFORMATION RELATED TO INSPECTIONS, DETENTIONS AND REFUSALS OF ACCESS  
IN PORTS AND ANCHORAGES OF MEMBER STATES****(referred to in Article 26)**

1. Information published in accordance with Article 26 must include the following:
    - (a) name of the ship;
    - (b) IMO identification number;
    - (c) type of ship;
    - (d) tonnage (gt);
    - (e) year of construction as determined on the basis of the date indicated in the ship's safety certificates;
    - (f) name and address of the company of the ship;
    - (g) in the case of ships carrying liquid or solid cargoes in bulk, the name and address of the charterer responsible for the selection of the ship and the type of charter;
    - (h) flag State;
    - (i) classification and statutory certificates issued in accordance with the relevant Conventions, and the authority or organisation that issued each one of the certificates in question, including the date of issue and expiry;
    - (j) port and date of the last intermediate or annual survey for the certificates in point (i) above and the name of the authority or organisation which carried out the survey;
    - (k) date, country, port of detention.
  2. For ships which have been detained, information published in accordance with Article 26 must also include:
    - (a) number of detentions during the previous 36 months;
    - (b) date when the detention was lifted;
    - (c) duration of detention, in days;
    - (d) the reasons for detention, in clear and explicit terms;
    - (e) indication, where relevant, of whether the recognised organisation that carried out the survey has a responsibility in relation to the deficiencies which, alone or in combination, led to detention;
    - (f) description of the measures taken in the case of a ship which has been allowed to proceed to the nearest appropriate repair yard;
    - (g) if the ship has been refused access to any port or anchorage within the Community, the reasons for the measure in clear and explicit terms.
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## ANNEX XIV

**DATA PROVIDED IN THE CONTEXT OF MONITORING IMPLEMENTATION****(referred to in Article 29)**

1. Every year Member States must provide the Commission with the following data for the preceding year by 1 April at the latest.

1.1. Number of inspectors acting on their behalf in the framework of port State control

This information must be communicated to the Commission using the following model table <sup>(1)</sup> <sup>(2)</sup>.

Port/area	Number of full-time inspectors (A)	Number of part-time inspectors (B)	Conversion of (B) to full-time (C)	Total (A+C)
Port X/or Area X ...				
Port Y/or Area Y ...				
TOTAL				

1.2. Total number of individual ships that entered their ports at national level. The figure shall be the number of ships covered by this Directive that entered their ports at national level counted only once.

2. Member States must:

(a) provide the Commission every six months with a list of calls at port of individual ships, other than regular passenger and freight ferry services, that entered their ports or which have notified to a port authority or body their arrival in an anchorage, containing for each movement of the ship its IMO identification number, its date of arrival and the port. The list shall be provided in the form of a spreadsheet programme enabling an automatic retrieval and processing of the abovementioned information. The list shall be provided within 4 months from the end of the period to which data pertained;

and

(b) provide the Commission with separate lists of regular passenger ferry services and regular freight ferry services referred to in point (a), not later than six months following the implementation of this Directive, and thereafter each time changes take place in such services. The list shall contain for each ship its IMO identification number, its name and the route covered by the ship. The list shall be provided in the form of a spreadsheet programme enabling an automatic retrieval and processing of the abovementioned information.

<sup>(1)</sup> Where the inspections carried out in the context of port State control represent only part of the inspectors' work, the total number of inspectors must be converted to a number equivalent to full-time inspectors. Where the same inspector works in more than one port or geographical area the applicable part-time equivalent must be counted in each port.

<sup>(2)</sup> This information must be provided at national level and for each port of the Member State concerned. For the purposes of this Annex, a port is taken to mean an individual port or the geographical area covered by an inspector or team of inspectors, comprising several individual ports where appropriate.

## ANNEX XV

## PART A

**Repealed Directive with its successive amendments  
(referred to in Article 37)**

Council Directive 95/21/EC  
(OJ L 157, 7.7.1995, p. 1)

Council Directive 98/25/EC  
(OJ L 133, 7.5.1998, p. 19)

Commission Directive 98/42/EC  
(OJ L 184, 27.6.1998, p. 40)

Commission Directive 1999/97/EC  
(OJ L 331, 23.12.1999, p. 67)

Directive 2001/106/EC of the European Parliament and of the Council  
(OJ L 19, 22.1.2002, p. 17)

Directive 2002/84/EC of the European Parliament and of the Council      Only Article 4  
(OJ L 324, 29.11.2002, p. 53)

## PART B

**List of time limits for transposition into national law  
(referred to in Article 37)**

Directive	Time limit for transposition
Directive 95/21/EC	30 June 1996
Directive 98/25/EC	30 June 1998
Directive 98/42/EC	30 September 1998
Directive 1999/97/EC	13 December 2000
Directive 2001/106/EC	22 July 2003
Directive 2002/84/EC	23 November 2003

## ANNEX XVI

**Correlation table**  
**(referred to in Article 37)**

Directive 95/21/EC	This Directive
Article 1, introductory wording	Article 1, introductory wording
Article 1, first indent	Article 1(a)
Article 1, second indent	Article 1(b)
–	Article 1(c)
Article 2, introductory wording	Article 2, introductory wording
Article 2(1), introductory wording	Article 2(1), introductory wording
Article 2(1), first indent	Article 2(1)(a)
Article 2(1), second indent	Article 2(1)(b)
Article 2(1), third indent	Article 2(1)(c)
Article 2(1), fourth indent	Article 2(1)(d)
Article 2(1), fifth indent	Article 2(1)(e)
Article 2(1), sixth indent	Article 2(1)(f)
Article 2(1), seventh indent	Article 2(1)(g)
Article 2(1), eighth indent	Article 2(1)(h)
Article 2(2)	Article 2(2)
–	Article 2(3)
–	Article 2(4)
Article 2(3)	Article 2(5)
Article 2(4)	–
–	Article 2(6)
–	Article 2(7)
Article 2(5)	Article 2(8)
–	Article 2(9)
–	Article 2(10)
Article 2(6)	Article 2(11)
Article 2(7)	Article 2(12)
Article 2(8)	Article 2(13)
–	Article 2(14)
Article 2(9)	Article 2(15)
–	Article 2(16)
Article 2(10)	Article 2(17)
–	Article 2(18)
–	Article 2(19)

Directive 95/21/EC	This Directive
–	Article 2(20)
–	Article 2(21)
–	Article 2(22)
Article 3(1), first subparagraph	Article 3(1), first subparagraph
–	Article 3(1), second subparagraph
–	Article 3(1), third subparagraph
Article 3(1), second subparagraph	Article 3(1), fourth subparagraph
–	Article 3(1), fifth subparagraph
–	Article 3(1), sixth subparagraph
Article 3(2) to (4)	Article 3(2) to (4)
–	Article 4(1)
Article 4	Article 4(2)
Article 5	–
–	Article 5
–	Article 6
–	Article 7
–	Article 8
–	Article 9
–	Article 10
–	Article 11
–	Article 12
Article 6(1), introductory wording	–
–	Article 13(1), introductory wording
Article 6(1)(a)	Article 13(1)(a)
–	Article 13(1)(b)
Article 6(1)(b)	Article 13(1)(c)
Article 6(2)	–
–	Article 13(2)
Article 6(3)	Article 13(3)
Article 6(4)	–
Article 7	–
Article 7a	–
Article 7b	–
–	Article 14
–	Article 15
–	Article 16
Article 8	Article 17

Directive 95/21/EC	This Directive
–	Article 18
Article 9(1) and (2)	Article 19(1) and (2)
Article 9(3), first sentence	Article 19(3)
Article 9(3), sentences 2 to 4	Article 19(4)
Article 9(4) to (7)	Article 19(5) to (8)
–	Article 19(9) and (10)
Article 9a	–
Article 10(1) to (3)	Article 20(1) to (3)
–	Article 20(4)
Article 11(1)	Article 21(1)
–	Article 21(2)
Article 11(2)	Article 21(3), first subparagraph
Article 11(3), first subparagraph	–
Article 11(3), second subparagraph	Article 21(3), second subparagraph
Article 11(4) to (6)	Article 21(4) to (6)
Article 12(1) to (3)	Article 22(1) to (3)
Article 12(4)	Article 22(4)
–	Article 22(5) to (7)
Article 13(1) to (2)	Article 23(1) and (2)
–	Article 23(3) to (5)
Article 14	–
Article 15	–
–	Article 24
–	Article 25
–	Article 26
–	Article 27
Article 16(1) and (2)	Article 28(1) and (2)
Article 16(2a)	Article 28(3)
Article 16(3)	Article 28(4)
Article 17	Article 29
–	Article 30
Article 18	Article 31
Article 19	Article 32
–	Article 33
Article 19a	Article 34
–	Article 35
Article 20	Article 36

Directive 95/21/EC	This Directive
–	Article 37
Article 21	Article 38
Article 22	Article 39
Annex I	–
–	Annex I
–	Annex II
–	Annex III
Annex II	Annex IV
Annex III	Annex V
Annex IV	Annex VI
Annex V	Annex VII
Annex VI	Annex X
Annex VII	Annex XI
–	Annex XII
Annex VIII	Annex XIII
Annex IX	Annex IX
Annex X	Annex XIV
Annex XI	Annex VIII
Annex XII	–
–	Annex XV
–	Annex XVI

**DIRECTIVE 2009/17/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**  
**of 23 April 2009**  
**amending Directive 2002/59/EC establishing a Community vessel traffic monitoring and information system**

(Text with EEA relevance)

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 European Economic and Social Committee <sup>(1)</sup>,

Having regard to the opinion of the Committee of the Regions <sup>(2)</sup>,

Acting in accordance with the procedure laid down in Article 251 of the Treaty <sup>(3)</sup>, in the light of the joint text approved by the Conciliation Committee on 3 February 2009,

Whereas:

(1) With the adoption of Directive 2002/59/EC of the European Parliament and of the Council <sup>(4)</sup>, the European Union reinforced its capacity for preventing situations posing a threat to the safety of human life at sea and to the protection of the marine environment.

(2) Since this Directive concerns the amendment of Directive 2002/59/EC, most of the obligations it contains will not be applicable to Member States without sea shores and sea ports. Consequently, the only obligations which will be applicable to Austria, the Czech Republic, Hungary, Luxembourg or Slovakia are those obligations concerning ships flying the flag of those Member States, without prejudice to Member States' duty of cooperation to ensure continuity between maritime and other modal traffic management services, in particular river information services.

(3) Under this Directive Member States that are coastal States should be able to exchange information, which they gather in the course of maritime traffic monitoring missions, which they carry out in their areas of competence. The Community maritime information exchange system 'SafeSeaNet', developed by the Commission in agreement with the Member States, comprises, on the one hand, a data exchange network and, on the other hand, a standardisation of the main information available on ships and their cargo (advance notice and reporting). It thus makes it possible to locate at source and communicate to any authority accurate and up-to-date information on ships in European waters, their movements and their dangerous or polluting cargoes, as well as marine incidents.

(4) Accordingly, in order to guarantee operational use of the information gathered in this way, it is essential that the infrastructure necessary for the data collection and exchange referred to in this Directive and implemented by the national administrations be integrated into the SafeSeaNet.

(5) Of the information notified and exchanged pursuant to Directive 2002/59/EC, that concerning the precise characteristics of dangerous or polluting goods carried by sea is particularly important. Accordingly, and in the light of recent maritime accidents, coastal authorities should be allowed easier access to the characteristics of the hydrocarbons being carried by sea, an essential factor in choosing the most suitable control techniques, and, in an emergency, provided with a direct link with those operators who have the best knowledge of the goods being carried.

(6) The automatic ship identification systems (AIS – Automatic Identification System) referred to in the International Convention for the Safety of Life at Sea of 1 November 1974 make it possible not only to improve the possibilities of monitoring these ships but above all to make them safer in close navigation situations. AIS have accordingly been integrated into the enacting terms of Directive 2002/59/EC. Considering the large number of collisions involving fishing vessels that have clearly not been seen by merchant ships or which have not seen the merchant ships around them, extension of that measure to include fishing vessels with a length of more than 15 metres is very much to be desired. In the framework of the European Fisheries Fund, financial assistance may be provided for the fitting on board of fishing vessels of safety equipment such as AIS. The International Maritime Organisation (IMO) has

<sup>(1)</sup> OJ C 318, 23.12.2006, p. 195.

<sup>(2)</sup> OJ C 229, 22.9.2006, p. 38.

<sup>(3)</sup> Opinion of the European Parliament of 25 April 2007 (OJ C 74 E, 20.3.2008, p. 533), Council Common Position of 6 June 2008 (OJ C 184 E, 22.7.2008, p. 1), Position of the European Parliament of 24 September 2008 (not yet published in the Official Journal), Council Decision of 26 February 2009 and Legislative Resolution of the European Parliament of 11 March 2009 (not yet published in the Official Journal).

<sup>(4)</sup> OJ L 208, 5.8.2002, p. 10.

recognised that the publication for commercial purposes on the internet or elsewhere of AIS data transmitted by ships could be detrimental to the safety and security of ships and port facilities and has urged its member governments, subject to the provisions of their national laws, to discourage those who make AIS data available to others for publication on the internet or elsewhere from doing so. In addition, the confidentiality of information sent to Member States pursuant to this Directive should be ensured, and the Member States should use that information in compliance with this Directive.

- (7) The obligation to fit AIS should be understood also to require that AIS be maintained in operation at all times except where international rules or standards provide for the protection of navigational information.
- (8) A Member State which so requests should be entitled to seek information from another Member State regarding a ship and dangerous or polluting goods carried by it. This information should be available through SafeSeaNet and should only be requested for reasons of maritime safety or security or the protection of the marine environment. It is therefore essential that the Commission investigate possible network and information security problems.
- (9) Directive 2002/59/EC provides that Member States are to adopt special measures in respect of ships posing a potential hazard due to their behaviour or condition. It therefore seems desirable to add to the list of these ships those which do not have satisfactory insurance cover or financial guarantees or which have been reported by pilots or port authorities as having apparent anomalies which may prejudice their safe navigation or create a risk for the environment.
- (10) In accordance with Directive 2002/59/EC, it seems necessary, in relation to the risks posed by exceptionally bad weather, to take into account the potential danger to shipping from ice formation. Therefore, where a competent authority designated by a Member State considers, on the basis of an ice forecast provided by a qualified meteorological information service, that the sailing conditions are creating a serious threat to the safety of human life or a serious threat of pollution, it should so inform the masters of the ships present in its area of competence or intending to enter or leave the port or ports in the area concerned. The authority concerned should be able to take any appropriate steps

to ensure the safety of human life at sea and to protect the environment. Member States should also have the possibility of verifying that the necessary documentation on board provides evidence that the ship complies with strength and power requirements commensurate with the ice situation in the area concerned.

- (11) Directive 2002/59/EC provides that Member States are to draw up plans to accommodate, if the situation so requires, ships in distress in their ports or in any other protected place in the best possible conditions, in order to limit the consequences of accidents at sea. However, taking into account the Guidelines on Places of Refuge for Ships in Need of Assistance annexed to Resolution A.949(23) of the International Maritime Organisation of 13 December 2003 (IMO Resolution A.949(23)), which were adopted subsequently to Directive 2002/59/EC and refer to ships in need of assistance, rather than to ships in distress, that Directive should be amended accordingly. This Directive does not affect the rules applicable to rescue operations such as those laid down by the International Convention on Maritime Search and Rescue, where the safety of human life is at stake.
- (12) To make provision for ships in need of assistance as referred to in IMO Resolution A.949(23), one or more competent authorities should be designated to take decisions with a view to minimising risks to maritime safety, the safety of human life and the environment.
- (13) On the basis of IMO Resolution A.949(23) and following the work carried out jointly by the Commission, the European Maritime Safety Agency (the Agency) and the Member States, it is necessary to lay down the basic provisions that plans for accommodating ships in need of assistance should contain in order to ensure a harmonised and effective implementation of this measure and clarify the scope of obligations incumbent on the Member States.
- (14) IMO Resolution A.949(23) is to form the basis of any plans prepared by Member States in order to respond effectively to threats posed by ships in need of assistance. However, when assessing the risks associated with such threats, Member States may, in view of their special circumstances, take into consideration other factors, such as the use of sea water for the production of potable water as well as the generation of electricity.



- (15) Seafarers are recognised as a special category of worker and, given the global nature of the shipping industry and the different jurisdictions that they may be brought into contact with, need special protection, especially in relation to contacts with public authorities. In the interests of increased maritime safety, seafarers should be able to rely on fair treatment in the event of a maritime accident. Their human rights and dignity should be preserved at all times and all safety investigations should be conducted in a fair and expeditious manner. To that end, Member States should, in accordance with their national legislation, further take into account the relevant provisions of the IMO guidelines on the fair treatment of seafarers in the event of a maritime accident.
- (16) When a ship is in need of assistance, a decision may have to be taken as regards the accommodation of that ship in a place of refuge. This is particularly important in the event of a situation that could give rise to the loss of a vessel or an environmental or navigational hazard. In such a case, it is necessary to be able to call on an authority in a Member State, depending on the internal structure of that Member State, having the required expertise and the power to take independent decisions as regards the accommodation of a ship in a place of refuge. It is also important that the decision is taken after a preliminary evaluation of the situation on the basis of the information contained in the relevant plan for accommodation of ships in a place of refuge. It is desirable that the competent authorities should be permanent in nature.
- (17) Plans for accommodating ships in need of assistance should describe precisely the decision-making chain with regard to alerting and dealing with the situation in question. The authorities concerned and their remits should be clearly described, as should the means of communication between the parties involved. The applicable procedures should ensure that an appropriate decision can be taken quickly on the basis of specific maritime expertise and adequate information available to the competent authority.
- (18) Ports which accommodate a ship should be able to rely on prompt compensation in respect of costs and any damage arising from the operation. To that end, it is important that the relevant international conventions be applied. Member States should endeavour to put in place a legal framework under which they could, in exceptional circumstances and in accordance with Community law, compensate a port or other entity for costs and economic loss suffered as a result of accommodating a ship. Moreover, the Commission should examine existing mechanisms within Member States for the compensation of potential economic loss suffered by a port or a body and should, on the basis of this examination, put forward and evaluate different policy options.
- (19) When drawing up the plans, Member States should gather information on potential places of refuge on the coast so as to allow the competent authority, in the event of an accident or incident at sea, to identify clearly and quickly the most suitable areas for accommodating ships in need of assistance. This relevant information should contain a description of certain characteristics of the sites under consideration and the equipment and installations available to make it easier to accommodate ships in need of assistance or deal with the consequences of an accident or pollution.
- (20) It is important for the list of competent authorities responsible for deciding whether to accommodate a ship in a place of refuge, and the list of authorities responsible for receiving and handling alerts, to be published appropriately. It may also prove useful for the parties involved in a maritime assistance operation, including assistance and towing companies, and the authorities of neighbouring Member States likely to be affected by an emergency at sea, to have access to relevant information.
- (21) The absence of financial insurance does not exonerate a Member State from its obligation to perform a preliminary assessment and to decide on the acceptance of the ship in a place of refuge. Though the competent authorities may verify whether the ship is covered by insurance or some other effective form of financial security permitting appropriate compensation for costs and damages associated with its accommodation in a place of refuge, the act of requesting this information must not delay the rescue operation.
- (22) The specific function of the vessel traffic monitoring and ship's routing measures is to allow Member States to obtain a true knowledge of the ships using the waters under their jurisdiction and thus enable them to take more effective action against potential risks if necessary. Sharing the information gathered helps to improve its quality and makes it easier to process.
- (23) In accordance with Directive 2002/59/EC, Member States and the Commission have made substantial progress towards harmonising electronic data exchange, in particular as regards the transport of dangerous or polluting goods. SafeSeaNet, in development since 2002, should now be established as the reference network at Community level. SafeSeaNet should aim at reducing administrative burdens and costs for industry and the Member States. It should also aim at facilitating the uniform implementation, where appropriate, of international reporting and notification rules.

- (24) The progress made in the new technologies and in particular in their space applications, such as beacon-based ship monitoring systems, imaging systems or Global Navigation Satellite System (GNSS), now makes it possible to extend traffic monitoring further offshore and thereby to ensure better coverage of European waters, including by Long Range Identification and Tracking (LRIT) systems. There will have to be full co-operation within the Community on this work if these tools are to become an integral part of the vessel traffic monitoring and information system established by Directive 2002/59/EC.
- (25) In order to enable cost savings and avoid unnecessary fitting of equipment on board ships sailing in maritime areas within the coverage of AIS fixed-based stations, Member States and the Commission should cooperate to determine the requirements concerning the fitting of equipment for transmitting LRIT information and should submit to the IMO any appropriate measures.
- (26) Publication of AIS and LRIT data transmitted by ships should not create a risk to safety, security or the protection of the environment.
- (27) In order to guarantee the best possible harmonised use at Community level of information gathered under Directive 2002/59/EC concerning maritime safety, the Commission should be able, if necessary, to process and use that information and disseminate it to the authorities designated by the Member States.
- (28) In this context, the development of the 'Equasis' system has shown how important it is to encourage a 'safe seas' culture, especially in maritime transport operators. The Commission should be able to contribute to the dissemination, particularly via this system, of any information relating to maritime safety.
- (29) Regulation (EC) No 2099/2002 of the European Parliament and of the Council of 5 November 2002 establishing a Committee on Safe Seas and the Prevention of Pollution from Ships (COSS) <sup>(1)</sup> centralises the tasks of the committees set up under the relevant Community legislation on maritime safety, prevention of pollution from ships and protection of living and working conditions on board. The existing committee should therefore be replaced by the COSS.
- (30) Amendments to the international instruments referred to should also be taken into account.
- (31) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred to the Commission <sup>(2)</sup>.
- (32) In particular, the Commission should be empowered to amend Directive 2002/59/EC in order to apply subsequent amendments to the international conventions, protocols, codes and resolutions related thereto. Since those measures are of general scope and are designed to amend non-essential elements of that Directive, inter alia by supplementing it with new non-essential elements, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.
- (33) In accordance with Regulation (EC) No 1406/2002 of the European Parliament and of the Council of 27 June 2002 establishing a European Maritime Safety Agency <sup>(3)</sup>, the Agency provides the Commission and Member States with the necessary support in implementing Directive 2002/59/EC.
- (34) In accordance with point 34 of the Interinstitutional Agreement on better law-making <sup>(4)</sup>, Member States are encouraged to draw up, for themselves and in the interests of the Community, their own tables illustrating, as far as possible, the correlation between this Directive and the transposition measures, and to make them public.
- (35) Directive 2002/59/EC should therefore be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

#### Article 1

#### Amendments

Directive 2002/59/EC is hereby amended as follows:

1. Article 2(2) shall be amended as follows:

- (a) the introductory wording shall be replaced by the following:

'Unless otherwise provided, this Directive shall not apply to:';

<sup>(1)</sup> OJ L 324, 29.11.2002, p. 1.

<sup>(2)</sup> OJ L 184, 17.7.1999, p. 23.

<sup>(3)</sup> OJ L 208, 5.8.2002, p. 1.

<sup>(4)</sup> OJ C 321, 31.12.2003, p. 1.

(b) point (c) shall be replaced by the following:

'(c) bunkers on ships below 1 000 gross tonnage and ships' stores and equipment for use on board all ships.');

2. Article 3 shall be amended as follows:

(a) point (a) shall be amended as follows:

(i) the introductory wording shall be replaced by the following:

'Relevant international instruments' means the following instruments, in their up-to-date version.;

(ii) the following indents shall be added:

— "IMO Resolution A.917(22)" means International Maritime Organisation Resolution 917(22) entitled "Guidelines for the onboard use of AIS", as amended by IMO Resolution A.956(23);

— "IMO Resolution A.949(23)" means International Maritime Organisation Resolution 949(23) entitled "Guidelines on places of refuge for ships in need of assistance";

— "IMO Resolution A.950(23)" means International Maritime Organisation Resolution 950(23) entitled "Maritime assistance services (MAS)";

— "IMO guidelines on the fair treatment of seafarers in the event of a maritime accident" means the guidelines as annexed to resolution LEG. 3(91) of the IMO Legal Committee of 27 April 2006 and as approved by the Governing Body of the ILO in its 296th session of 12 to 16 June 2006.;

(b) point (k) shall be replaced by the following:

'(k) "competent authorities" means the authorities and organisations designated by Member States to perform functions under this Directive.;

(c) the following points shall be added:

'(s) "SafeSeaNet" means the Community maritime information exchange system developed by the Commission in cooperation with the Member States to ensure the implementation of Community legislation;

(t) "scheduled service" means a series of ship crossings operated so as to serve traffic between the same two or more ports, either according to a published timetable or with crossings so regular or frequent that they constitute a recognisable systematic series;

(u) "fishing vessel" means any vessel equipped for commercial exploitation of living aquatic resources;

(v) "ship in need of assistance" means, without prejudice to the provisions of the SAR Convention concerning the rescue of persons, a ship in a situation that could give rise to its loss or an environmental or navigational hazard;

(w) "LRIT" means a system for the long-range identification and tracking of ships in accordance with SOLAS regulation V/19-1.;

3. the following Articles shall be inserted:

*Article 6a*

**Use of automatic identification systems (AIS) by fishing vessels**

Any fishing vessel with an overall length of more than 15 metres and flying the flag of a Member State and registered in the Community, or operating in the internal waters or territorial sea of a Member State, or landing its catch in the port of a Member State shall, in accordance with the timetable set out in Annex II, part I(3), be fitted with an AIS (Class A) which meets the performance standards drawn up by the IMO.

Fishing vessels equipped with AIS shall maintain it in operation at all times. In exceptional circumstances, AIS may be switched off where the master considers this necessary in the interest of the safety or security of his vessel.

*Article 6b*

**Use of systems for the long-range identification and tracking of ships (LRIT)**

1. Ships to which SOLAS regulation V/19-1 and the performance standards and functional requirements adopted by the IMO apply shall carry LRIT equipment complying with that regulation, when calling at a port of a Member State.

Member States and the Commission shall cooperate to determine the requirements concerning the fitting of equipment for transmitting LRIT information on board ships sailing in waters within the coverage of AIS fixed-based stations of Member States, and shall submit to the IMO any appropriate measures.

2. The Commission shall cooperate with Member States to establish an LRIT European Data Centre in charge of processing long-range identification and tracking information.;

4. Article 12 shall be replaced by the following:

*‘Article 12*

**Information requirements concerning the transport of dangerous goods**

1. No dangerous or polluting goods shall be offered for carriage or taken on board any ship, irrespective of its size, in the port of a Member State unless a declaration has been delivered to the master or operator before the goods are taken on board containing the following information:

- (a) the information listed in Annex I(2);
- (b) for the substances referred to in Annex I to the MARPOL Convention, the safety data sheet detailing the physico-chemical characteristics of the products, including, where applicable, their viscosity expressed in cSt at 50 °C and their density at 15 °C and the other data contained in the safety data sheet in accordance with IMO Resolution MSC.150(77);
- (c) the emergency numbers of the shipper or any other person or body in possession of information on the physico-chemical characteristics of the products and on the action to be taken in an emergency.

2. Vessels coming from a port outside the Community and calling at a port of a Member State which have dangerous or polluting goods on board shall be in possession of a declaration, as provided for by the shipper, containing the information required under paragraph 1(a), (b) and (c).

3. It shall be the duty and responsibility of the shipper to deliver to the master or operator such a declaration, and to ensure that the shipment offered for carriage is indeed the one declared in accordance with paragraph 1.;

5. in the second paragraph of Article 14, point (c) shall be replaced by the following:

- (c) upon request, through SafeSeaNet, and if needed for the purpose of maritime safety or security or the protection of the maritime environment, Member States shall be able to send information on the ship and the dangerous or polluting goods on board to the national and local

competent authorities of another Member State without delay.;

6. Article 15 shall be replaced by the following:

*‘Article 15*

**Exemptions**

1. Member States may exempt scheduled services performed between ports located on their territory from the requirements of Articles 4 and 13 provided the following conditions are met:

- (a) the company operating those scheduled services keeps and updates a list of the ships concerned and sends that list to the competent authority concerned;
- (b) for each voyage performed, the information listed in Parts 1 or 3, as appropriate, of Annex I is kept available for the competent authority upon request. The company shall establish an internal system to ensure that, upon request 24 hours a day and without delay, such information can be sent to the competent authority electronically, in accordance with Article 4(1) or Article 13(4), as appropriate;
- (c) any deviations from the estimated time of arrival at the port of destination or pilot station of three hours or more are notified to the port of arrival or to the competent authority in accordance with Article 4 or Article 13, as appropriate;
- (d) exemptions are only granted to individual vessels as regards a specific service.

For the purposes of the first subparagraph, the service shall not be regarded as a scheduled service unless it is intended to be operated for a minimum of one month.

Exemptions from the requirements of Articles 4 and 13 shall be limited to voyages of a scheduled duration of up to 12 hours.

2. When an international scheduled service is operated between two or more States, of which at least one is a Member State, any of the Member States involved may request the other Member States to grant an exemption for that service. All Member States involved, including the coastal States concerned, shall collaborate in granting an exemption to the service concerned in accordance with the conditions set out in paragraph 1.

3. Member States shall periodically check that the conditions set out in paragraphs 1 and 2 are being met. Where at least one of these conditions is no longer being met, Member States shall immediately withdraw the benefit of the exemption from the company concerned.

4. Member States shall communicate to the Commission a list of companies and ships to which an exemption has been granted under this Article, as well as any updates to that list.;

7. the following points shall be added to Article 16(1):

(d) ships which have failed to notify, or do not have, insurance certificates or financial guarantees pursuant to any Community legislation and international rules;

(e) ships which have been reported by pilots or port authorities as having apparent anomalies which may prejudice their safe navigation or create a risk for the environment.;

8. the following Article shall be inserted:

*'Article 18a*

**Measures in the event of risks posed by the presence of ice**

1. Where the competent authorities consider, in view of ice conditions, that there is a serious threat to the safety of human life at sea or to the protection of their shipping areas or coastal zones, or of the shipping areas or coastal zones of other States:

(a) they shall supply the master of a ship which is in their area of competence, or intends to enter or leave one of their ports, with appropriate information on the ice conditions, the recommended routes and the icebreaking services in their area of competence;

(b) they may, without prejudice to the duty of assistance to ships in need of assistance and other obligations flowing from relevant international rules, request that a ship which is in the area concerned and intends to enter or leave a port or terminal or to leave an anchorage area document that it satisfies the strength and power requirements commensurate with the ice situation in the area concerned.

2. The measures taken pursuant to paragraph 1 shall be based, as regards the data concerning the ice conditions, upon ice and weather forecasts provided by a qualified meteorological information service recognised by the Member State.;

9. Article 19 shall be amended as follows:

(a) the following subparagraph shall be added to paragraph 2:

'To this end they shall communicate to the competent national authorities, on request, the information referred to in Article 12.;

(b) the following paragraph shall be added:

'4. In accordance with their national law, Member States shall take into account the relevant provisions of the IMO guidelines on the fair treatment of seafarers in the event of a maritime accident in the waters under their jurisdiction.;

10. Article 20 shall be replaced by the following:

*'Article 20*

**Competent authority for the accommodation of ships in need of assistance**

1. Member States shall designate one or more competent authorities which have the required expertise and the power, at the time of the operation, to take independent decisions on their own initiative concerning the accommodation of ships in need of assistance.

2. The authority or authorities referred to in paragraph 1 may, as appropriate and in particular in the event of a threat to maritime safety and protection of the environment, take any of the measures included in the list set out in Annex IV, which is non-exhaustive.

3. The authority or authorities referred to in paragraph 1 shall meet regularly to exchange expertise and improve measures taken pursuant to this Article. They may meet at any time on account of specific circumstances.;

11. the following Articles shall be inserted:

*Article 20a*

**Plans for the accommodation of ships in need of assistance**

1. Member States shall draw up plans for the accommodation of ships in order to respond to threats presented by ships in need of assistance in the waters under their jurisdiction, including, where applicable, threats to human life and the environment. The authority or authorities referred to in Article 20(1) shall participate in drawing up and carrying out those plans.

2. The plans referred to in paragraph 1 shall be prepared after consultation of the parties concerned, on the basis of IMO Resolutions A.949(23) and A.950(23), and shall contain at least the following:

- (a) the identity of the authority or authorities responsible for receiving and handling alerts;
- (b) the identity of the competent authority for assessing the situation and taking a decision on acceptance or refusal of a ship in need of assistance in the place of refuge selected;
- (c) information on the coastline of Member States and all elements facilitating a prior assessment and rapid decision regarding the place of refuge for a ship, including a description of environmental, economic and social factors and natural conditions;
- (d) the assessment procedures for acceptance or refusal of a ship in need of assistance in a place of refuge;
- (e) the resources and installations suitable for assistance, rescue and combating pollution;
- (f) procedures for international coordination and decision-making;
- (g) the financial guarantee and liability procedures in place for ships accommodated in a place of refuge.

3. Member States shall publish the name and contact address of the authority or authorities referred to in

Article 20(1) and of the authorities appointed for receiving and handling alerts.

Member States shall communicate on request the relevant information concerning plans to neighbouring Member States.

In implementing the procedures provided for in the plans for accommodating ships in need of assistance, Member States shall ensure that relevant information is made available to the parties involved in the operations.

If requested by Member States, those receiving information in accordance with the second and third subparagraphs shall be bound by an obligation of confidentiality.

4. Member States shall inform the Commission by 30 November 2010 of the measures taken in application of this Article.

*Article 20b*

**Decision on the accommodation of ships**

The authority or authorities referred to in Article 20(1) shall decide on the acceptance of a ship in a place of refuge following a prior assessment of the situation carried out on the basis of the plans referred to in Article 20a. The authority or authorities shall ensure that ships are admitted to a place of refuge if they consider such an accommodation the best course of action for the purposes of the protection of human life or the environment.

*Article 20c*

**Financial security and compensation**

1. The absence of an insurance certificate within the meaning of Article 6 of Directive 2009/20/EC of the European Parliament and of the Council of 23 April 2009 on the insurance of shipowners for maritime claims (\*) shall not exonerate a Member State from the preliminary assessment and decision referred to in Article 20b, and shall not in itself be considered sufficient reason for a Member State to refuse to accommodate a ship in a place of refuge.

2. Without prejudice to paragraph 1, when accommodating a ship in a place of refuge, a Member State may request the ship's operator, agent or master to present a insurance certificate within the meaning of Article 6 of Directive 2009/20/EC. The act of requesting the certificate shall not lead to a delay in accommodating the ship.

*Article 20d***Examination by the Commission**

The Commission shall examine existing mechanisms within Member States for the compensation of potential economic loss suffered by a port or a body as a result of a decision taken pursuant to Article 20(1). It shall, on the basis of that examination, put forward and evaluate different policy options. By 31 December 2011, the Commission shall report to the European Parliament and to the Council on the results of the examination.

(\*) OJ L 131, 28.5.2009, p. 128;

12. the following Article shall be inserted:

*'Article 22a***SafeSeaNet**

1. Member States shall establish maritime information management systems, at national or local level, to process the information referred to in this Directive.

2. The systems set up pursuant to paragraph 1 shall allow the information gathered to be used operationally and shall satisfy, in particular, the conditions laid down in Article 14.

3. To guarantee an effective exchange of the information referred to in this Directive, Member States shall ensure that national or local systems set up to gather, process and preserve that information can be interconnected with SafeSeaNet. The Commission shall ensure that SafeSeaNet is operational on a 24 hour-a-day basis. The description and principles of SafeSeaNet are laid down in Annex III.

4. Without prejudice to paragraph 3, where operating under intra-Community agreements or in the framework of cross-border interregional or transnational projects within the Community, Member States shall ensure that information systems or networks comply with the requirements of this Directive and are compatible with and connected to SafeSeaNet.;

13. Article 23 shall be amended as follows:

(a) point (c) shall be replaced by the following:

'(c) extending the cover of the Community vessel traffic monitoring and information system, and/or updating it, with a view to enhanced identification

and monitoring of ships, taking into account developments in information and communication technologies. To this end, Member States and the Commission shall work together to put in place, where necessary, mandatory reporting systems, mandatory maritime traffic services and appropriate ship's routing systems, with a view to submitting them to the IMO for approval. They shall also collaborate, within the regional or international bodies concerned, on developing long-range identification and tracking systems;';

(b) the following point shall be added:

'(e) ensuring the interconnection and interoperability of the national systems used for managing the information referred to in Annex I, and developing and updating SafeSeaNet.;

14. the following Article shall be inserted:

*'Article 23a***Processing and management of maritime safety information**

1. The Commission shall ensure, where necessary, the processing, use and dissemination to the authorities designated by the Member States, of the information gathered under this Directive.

2. Where appropriate, the Commission shall contribute to the development and operation of systems for collecting and disseminating data relating to maritime safety, in particular through the "Equasis" system or any other equivalent public system.;

15. Article 24 shall be replaced by the following:

*'Article 24***Confidentiality of information**

1. Member States shall, in accordance with Community or national legislation, take the necessary measures to ensure the confidentiality of information sent to them pursuant to this Directive, and shall only use such information in compliance with this Directive.

2. The Commission shall investigate possible network and information security problems and propose appropriate amendments to Annex III for improving the security of the network.;

16. Articles 27 and 28 shall be replaced by the following:

*Article 27*

#### **Amendments**

1. References to Community and IMO instruments in this Directive, the definitions set out in Article 3 hereof and the Annexes hereto may be amended to bring them into line with provisions of Community or international law which have been adopted or amended or which have entered into force, in so far as such amendments do not broaden the scope of this Directive.

Those measures, designed to amend non-essential elements of this Directive, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 28(2).

2. Annexes I, III and IV may be amended in the light of experience gained with this Directive, in so far as such amendments do not broaden its scope.

Those measures, designed to amend non-essential elements of this Directive, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 28(2).

*Article 28*

#### **Committee procedure**

1. The Commission shall be assisted by the Committee on Safe Seas and the Prevention of Pollution from Ships (COSS) established by Regulation (EC) No 2099/2002 of the European Parliament and of the Council (\*).

2. Where reference is made to this paragraph, Article 5a(1) to (4) and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

(\*) OJ L 324, 29.11.2002, p. 1.;

17. in Part 4 of Annex I, indent X shall be replaced by the following:

— X. Miscellaneous:

- characteristics and estimated quantity of bunker fuel, for ships of more than 1 000 gross tonnage,

— navigational status';

18. the following point shall be added to Part I of Annex II:

#### **3. Fishing vessels**

Fishing vessels with a length of more than 15 metres overall are subject to the carrying requirement laid down in Article 6a according to the following timetable:

— fishing vessels of overall length 24 metres and upwards but less than 45 metres: not later than 31 May 2012,

— fishing vessels of overall length 18 metres and upwards but less than 24 metres: not later than 31 May 2013,

— fishing vessels of overall length exceeding 15 metres but less than 18 metres: not later than 31 May 2014.

New built fishing vessels of overall length exceeding 15 metres are subject to the carrying requirement laid down in Article 6a as from 30 November 2010.;

19. Annex III shall be replaced by the text appearing in the Annex to this Directive.

*Article 2*

#### **Transposition**

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 30 November 2010. They shall forthwith communicate to the Commission the text of those measures.

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

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

*Article 3*

#### **Entry into force**

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



*Article 4***Addressees**

This Directive is addressed to the Member States.

Done at Strasbourg, 23 April 2009.

*For the European Parliament*

*The President*

H.-G. PÖTTERING

*For the Council*

*The President*

P. NEČAS

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## ANNEX

## 'ANNEX III

**ELECTRONIC MESSAGES AND SAFESEANET****1. General concept and architecture**

The Community maritime information and exchange system, SafeSeaNet, shall enable the receipt, storage, retrieval and exchange of information for the purpose of maritime safety, port and maritime security, marine environment protection and the efficiency of maritime traffic and maritime transport.

SafeSeaNet is a specialised system established to facilitate the exchange of information in an electronic format between Member States and to provide the Commission with the relevant information in accordance with Community legislation. It is composed of a network of national SafeSeaNet systems in Member States and a SafeSeaNet central system acting as a nodal point.

The SafeSeaNet network shall link all national SafeSeaNet systems and include the SafeSeaNet central system.

**2. Management, operation, development and maintenance of SafeSeaNet****2.1. Responsibilities****2.1.1. National SafeSeaNet systems**

Member States shall establish and maintain a national SafeSeaNet system allowing for the exchange of maritime information between authorised users under the responsibility of a national competent authority (NCA).

The NCA shall be responsible for the management of the national system, which shall include the national co-ordination of data users and data providers as well as ensuring that UN LOCODES are designated and that the necessary national IT infrastructure and the procedures described in the interface and functionalities control document referred to in point 2.3 are established and maintained.

The national SafeSeaNet system shall enable the inter-connection of users authorised under the responsibility of an NCA and may be made accessible to identified shipping actors (shipowners, agents, masters, shippers and others) when authorised by the NCA, in particular in order to facilitate the electronic submission of reports in accordance with Community legislation.

**2.1.2. Central SafeSeaNet system**

The Commission is responsible for the management and development at policy level of the central SafeSeaNet system and for the oversight of the SafeSeaNet system, in cooperation with Member States, while, in accordance with Regulation (EC) No 1406/2002 of the European Parliament and of the Council <sup>(1)</sup>, the Agency, in cooperation with the Member States and the Commission, is responsible for its technical implementation.

The central SafeSeaNet system, acting as a nodal point, shall interconnect all national SafeSeaNet systems and shall establish the necessary IT infrastructure and procedures as described in the interface and functionalities control document referred to in point 2.3.

**2.2. Principles of management**

The Commission shall establish a high-level steering group, which shall adopt its rules of procedure, composed of representatives of the Member States and of the Commission to:

- make recommendations to improve the effectiveness and security of SafeSeaNet,
- provide appropriate guidance for the development of SafeSeaNet,
- assist the Commission in reviewing the performance of SafeSeaNet,
- approve the interface and functionalities control document referred to in point 2.3, and any amendments thereto.

<sup>(1)</sup> OJ L 208, 5.8.2002, p. 1.

### 2.3. *Interface and functionalities control document and SafeSeaNet technical documentation*

The Commission shall develop and maintain, in close cooperation with the Member States, an interface and functionalities control document (IFCD).

The IFCD shall describe in detail the performance requirements and procedures applicable to the national and central elements of SafeSeaNet designed to ensure compliance with the relevant Community legislation.

The IFCD shall include rules for:

- access rights guidance for data quality management,
- security specifications for data transmission and exchange, and
- the archiving of information at national and central level.

The IFCD shall indicate the means of storage and the availability of the information on dangerous or polluting goods concerning scheduled services to which an exemption has been granted in accordance with Article 15.

Technical documentation related to SafeSeaNet, such as standards for data exchange format, users' manuals and network security specifications, shall be developed and maintained by the Agency in cooperation with the Member States.

### 3. **Exchange of data through SafeSeaNet**

The system shall use industry standards and be able to interact with public and private systems used to create, provide or receive information within SafeSeaNet.

The Commission and the Member States shall cooperate in order to examine the feasibility and development of functionalities that as far as possible will ensure that the data providers, including masters, owners, agents, operators, shippers and relevant authorities, need to submit information only once. Member States shall ensure that the information submitted is available for use in all relevant reporting, notification and VTMS systems.

Electronic messages exchanged in accordance with this Directive and relevant Community legislation shall be distributed through SafeSeaNet. To this end, Member States shall develop and maintain the necessary interfaces for automatic transmission of data by electronic means to the SafeSeaNet.

Where internationally-adopted rules allow routing of LRIT information concerning third country vessels, SafeSeaNet networks shall be used to distribute amongst Member States, with an appropriate level of security, the LRIT information received in accordance with Article 6b of this Directive.

### 4. **Security and access rights**

The central and the national SafeSeaNet systems shall comply with the requirements of this Directive concerning confidentiality of information, as well as with the security principles and specifications described in the IFCD, in particular as regards access rights.

Member States shall identify all users to which a role and a set of access rights is attributed in compliance with the IFCD.'

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**DIRECTIVE 2009/18/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**of 23 April 2009**

**establishing the fundamental principles governing the investigation of accidents in the maritime transport sector and amending Council Directive 1999/35/EC and Directive 2002/59/EC of the European Parliament and of the Council**

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

prevent the recurrence of such casualties resulting in loss of life, loss of ships and pollution of the marine environment.

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

(3) The European Parliament, in its resolution of 21 April 2004 on improving safety at sea <sup>(4)</sup>, has urged the Commission to present a proposal for a directive on investigating shipping accidents.

Having regard to the proposal from the Commission,

(4) Article 2 of the United Nations Convention on the Law of the Sea of 10 December 1982 (hereinafter referred to as UNCLOS) establishes the right of coastal States to investigate the cause of any marine casualty occurring within their territorial seas which might pose a risk to life or to the environment, involve the coastal State's search and rescue authorities, or otherwise affect the coastal State.

Having regard to the opinion of the European Economic and Social Committee <sup>(1)</sup>,

Having regard to the opinion of the Committee of the Regions <sup>(2)</sup>,

(5) Article 94 of UNCLOS establishes that flag States are to cause an inquiry to be held, by or before a suitably qualified person or persons, into certain casualties or incidents of navigation on the high seas.

Acting in accordance with the procedure laid down in Article 251 of the Treaty, in the light of the joint text approved by the Conciliation Committee on 3 February 2009 <sup>(3)</sup>,

(6) Regulation I/21 of International Convention for the Safety of Life at Sea of 1 November 1974 (hereinafter referred to as SOLAS 74), the International Convention of Load Lines of 5 April 1966 and the International Convention for the Prevention of Pollution from Ships of 2 November 1973 lay down the responsibilities of flag States to conduct casualty investigations and to supply the International Maritime Organisation (IMO) with relevant findings.

Whereas:

(1) A high general level of safety should be maintained in maritime transport in Europe and every effort should be made to reduce the number of marine casualties and incidents.

(2) The expeditious holding of technical investigations into marine casualties improves maritime safety, as it helps to

(7) The Code for the Implementation of Mandatory IMO Instruments annexed to Resolution A.996(25) of the IMO Assembly of 29 November 2007 recalls the obligation of flag States to ensure that marine safety investigations are conducted by suitably qualified investigators, competent in matters relating to marine casualties and incidents. That Code further requires flag States to be prepared to provide qualified investigators for that purpose, irrespective of the location of the casualty or incident.

<sup>(1)</sup> OJ C 318, 23.12.2006, p. 195.

<sup>(2)</sup> OJ C 229, 22.9.2006, p. 38.

<sup>(3)</sup> Opinion of the European Parliament of 25 April 2007 (OJ C 74 E, 30.3.2008, p. 546), Council Common Position of 6 June 2008 (OJ C 184 E, 22.7.2008, p. 23), Position of the European Parliament of 24 September 2008 (not yet published in the Official Journal), Council Decision of 26 February 2009 and Legislative Resolution of the European Parliament of 11 March 2009 (not yet published in the Official Journal).

<sup>(4)</sup> OJ C 104 E, 30.4.2004, p. 730.

- (8) Account should be taken of the Code for the Investigation of Marine Casualties and Incidents annexed to Resolution A.849(20) of the IMO Assembly of 27 November 1997 (hereinafter referred to as the IMO Code for the Investigation of Marine Casualties and Incidents), which provides for implementation of a common approach to the safety investigation of marine casualties and incidents and for cooperation between States in identifying the contributing factors leading to marine casualties and incidents. Account should also be taken of Resolution A.861(20) of the IMO Assembly of 27 November 1997 and Resolution MSC.163(78) of the IMO Maritime Safety Committee of 17 May 2004, which provide a definition of voyage data recorders.
- (9) Seafarers are recognised as a special category of worker and, given the global nature of the shipping industry and the different jurisdictions with which they may be brought into contact, need special protection, especially in relation to contacts with public authorities. In the interests of increased maritime safety, seafarers should be able to rely on fair treatment in the event of a maritime accident. Their human rights and dignity should be preserved at all times and all safety investigations should be conducted in a fair and expeditious manner. To that end, Member States should, in accordance with their national legislation, further take into account the relevant provisions of the IMO guidelines on the fair treatment of seafarers in the event of a maritime accident.
- (10) Member States, acting in the framework of their legal systems, should protect witness statements following an accident and prevent them from being used for purposes other than safety investigations, with the objective of avoiding any discriminatory or retaliatory measures being taken against witnesses because of their participation in the investigations.
- (11) Council Directive 1999/35/EC of 29 April 1999 on a system of mandatory surveys for the safe operation of regular ro-ro ferry and high-speed passenger craft services<sup>(1)</sup> requires Member States to define, in the framework of their respective legal systems, a legal status that will enable them and any other substantially interested Member State to participate, to cooperate in, or, where provided for under the IMO Code for the Investigation of Marine Casualties and Incidents, to conduct any marine casualty or incident investigation involving a ro-ro ferry or high-speed passenger craft.
- (12) Directive 2002/59/EC of the European Parliament and of the Council of 27 June 2002 establishing a Community vessel traffic monitoring and information system<sup>(2)</sup> requires Member States to comply with the IMO Code for the Investigation of Marine Casualties and Incidents and ensure that the findings of the accident investigations are published as soon as possible after its conclusion.
- (13) Conducting safety investigations into casualties and incidents involving seagoing vessels, or other vessels in ports or other restricted maritime areas, in an unbiased manner is of paramount importance in order to effectively establish the circumstances and causes of such casualties or incidents. Such investigations should therefore be carried out by qualified investigators under the control of an independent body or entity endowed with the necessary powers in order to avoid any conflict of interest.
- (14) Member States should, in compliance with their legislation as regards the powers of the authorities responsible for the judicial inquiry and in collaboration with those authorities, where appropriate, ensure that those responsible for the technical inquiry are allowed to carry out their tasks under the best possible conditions.
- (15) This Directive should be without prejudice to Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data<sup>(3)</sup>.
- (16) Member States should ensure that their legal systems enable them and any other substantially interested Member States to participate or cooperate in, or conduct, accident investigations on the basis of the provisions of the IMO Code for the Investigation of Marine Casualties and Incidents.
- (17) In principle, each marine casualty or incident should be subject to only one investigation carried out by a Member State or a lead investigating Member State with the participation of any other substantially interested States. In exceptional duly justified cases involving two or more Member States in connection with the flag of the ship concerned, the location of the casualty or the nationality of the victims, parallel investigations could be conducted.
- (18) A Member State may delegate to another Member State the task of leading a marine casualty or incident safety investigation (hereinafter referred to as safety investigation) or specific tasks of such investigation, if mutually agreed.

<sup>(1)</sup> OJ L 138, 1.6.1999, p. 1.

<sup>(2)</sup> OJ L 208, 5.8.2002, p. 10.

<sup>(3)</sup> OJ L 281, 23.11.1995, p. 31.

- (19) Member States should make every effort not to charge for costs for assistance requested in the framework of safety investigations involving two or more Member States. Where assistance is requested from a Member State that is not involved in the safety investigation, Member States should agree on the reimbursement of costs incurred.
- (20) Under Regulation V/20 of SOLAS 74, passenger ships and ships other than passenger ships of 3 000 gross tonnage and upwards constructed on or after 1 July 2002 must carry voyage data recorders to assist in accident investigations. Given its importance in the formulation of a policy to prevent shipping accidents, such equipment should be systematically required on board ships making national or international voyages which call at Community ports.
- (21) The data provided by a voyage data recording system, as well as by other electronic devices, can be used both retrospectively after a marine casualty or incident to investigate its causes and preventively to gain experience of the circumstances capable of leading to such events. Member States should ensure that such data, when available, are properly used for both purposes.
- (22) Regulation (EC) No 1406/2002 of the European Parliament and of the Council <sup>(1)</sup> requires the European Maritime Safety Agency (hereinafter referred to as the Agency) to work with the Member States to develop technical solutions and provide technical assistance related to the implementation of Community legislation. In the field of accident investigation, the Agency has the specific task of facilitating cooperation between the Member States and the Commission in the development, with due regard to the different legal systems in the Member States, of a common methodology for investigating maritime accidents according to agreed international principles.
- (23) In accordance with Regulation (EC) No 1406/2002, the Agency facilitates cooperation in the provision of support given by the Member States in activities concerning investigations, and in analysing existing accident investigation reports.
- (24) Any relevant lessons drawn from accident investigations should be taken into account in the development or modification of a common methodology for investigating marine casualties and incidents.
- (25) The safety recommendations resulting from a safety investigation should be duly taken into account by the Member States and the Community.
- (26) Since the aim of the technical safety investigation is the prevention of marine casualties and incidents, the conclusions and the safety recommendations should in no circumstances determine liability or apportion blame.
- (27) Since the objective of this Directive, namely to improve maritime safety in the Community and thereby reduce the risk of future marine casualties, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or the effects of the action, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.
- (28) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission <sup>(2)</sup>.
- (29) In particular, the Commission should be empowered to amend this Directive in order to apply subsequent amendments to the international conventions, protocols, codes and resolutions related thereto and to adopt or modify the common methodology for investigating marine casualties and incidents. Since those measures are of general scope and are designed to amend non-essential elements of this Directive, inter alia, by supplementing it with new non-essential elements, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.
- (30) In accordance with point 34 of the Interinstitutional Agreement on better law-making <sup>(3)</sup>, Member States are encouraged to draw up, for themselves and in the interests of the Community, their own tables illustrating, as far as possible, the correlation between this Directive and the transposition measures, and to make them public,

HAVE ADOPTED THIS DIRECTIVE:

#### Article 1

##### Subject matter

1. The purpose of this Directive is to improve maritime safety and the prevention of pollution by ships, and so reduce the risk of future marine casualties, by:

<sup>(1)</sup> OJ L 208, 5.8.2002, p. 1.

<sup>(2)</sup> OJ L 184, 17.7.1999, p. 23.

<sup>(3)</sup> OJ C 321, 31.12.2003, p. 1.

(a) facilitating the expeditious holding of safety investigations and proper analysis of marine casualties and incidents in order to determine their causes; and

(b) ensuring the timely and accurate reporting of safety investigations and proposals for remedial action.

2. Investigations under this Directive shall not be concerned with determining liability or apportioning blame. However, Member States shall ensure that the investigative body or entity (hereinafter referred to as the investigative body) is not refraining from fully reporting the causes of a marine casualty or incident because fault or liability may be inferred from the findings.

#### Article 2

##### Scope

1. This Directive shall apply to marine casualties and incidents that:

(a) involve ships flying the flag of one of the Member States;

(b) occur within Member States' territorial sea and internal waters as defined in UNCLOS; or

(c) involve other substantial interests of the Member States.

2. This Directive shall not apply to marine casualties and incidents involving only:

(a) ships of war and troop ships and other ships owned or operated by a Member State and used only on government non-commercial service;

(b) ships not propelled by mechanical means, wooden ships of primitive build, pleasure yachts and pleasure craft not engaged in trade, unless they are or will be crewed and carrying more than 12 passengers for commercial purposes;

(c) inland waterway vessels operating in inland waterways;

(d) fishing vessels with a length of less than 15 metres;

(e) fixed offshore drilling units.

#### Article 3

##### Definitions

For the purposes of this Directive:

1. 'IMO Code for the Investigation of Marine Casualties and Incidents' shall mean the Code for the Investigation of Marine Casualties and Incidents annexed to Resolution

A.849(20) of the IMO Assembly of 27 November 1997, in its up-to-date version;

2. the following terms shall be understood in accordance with the definitions contained in the IMO Code for the Investigation of Marine Casualties and Incidents:

(a) 'marine casualty';

(b) 'very serious casualty';

(c) 'marine incident';

(d) 'marine casualty or incident safety investigation';

(e) 'lead investigating State';

(f) 'substantially interested State';

3. the term 'serious casualty' shall be understood in accordance with the updated definition contained in Circular MSC-MEPC.3/Circ.3 of the IMO Maritime Safety Committee and Marine Environment Protection Committee of 18 December 2008;

4. 'IMO guidelines on the fair treatment of seafarers in the event of a maritime accident' shall mean the guidelines as annexed to Resolution LEG.3(91) of the IMO Legal Committee of 27 April 2006 and as approved by the Governing Body of the International Labour Organisation in its 296th session of 12 to 16 June 2006;

5. the terms 'ro-ro ferry' and 'high-speed passenger craft' shall be understood in accordance with the definitions contained in Article 2 of Directive 1999/35/EC;

6. 'Voyage data recorder' (hereinafter referred to as 'VDR') shall be understood in accordance with the definition contained in Resolution A.861(20) of the IMO Assembly and Resolution MSC.163(78) of the IMO Maritime Safety Committee;

7. 'safety recommendation' shall mean any proposal made, including for the purposes of registration and control, by:

(a) the investigative body of the State conducting, or leading, the safety investigation on the basis of information derived from that investigation; or, where appropriate,

(b) the Commission, acting on the basis of an abstract data analysis and the results of safety investigations carried out.

*Article 4***Status of safety investigations**

1. Member States shall define, in accordance with their legal systems, the legal status of the safety investigation in such a way that such investigations can be carried out as effectively and rapidly as possible.

Member States shall ensure, in accordance with their legislation and, where appropriate, through collaboration with the authorities responsible for the judicial inquiry, that safety investigations are:

- (a) independent of criminal or other parallel investigations held to determine liability or apportion blame; and
- (b) not unduly precluded, suspended or delayed by reason of such investigations.

2. The rules to be established by the Member States shall include, in accordance with the permanent cooperation framework referred to in Article 10, provisions for allowing:

- (a) cooperation and mutual assistance in safety investigations led by other Member States, or the delegation to another Member State of the task of leading such an investigation in accordance with Article 7; and
- (b) coordination of the activities of their respective investigative bodies to the extent necessary to attain the objective of this Directive.

*Article 5***Obligation to investigate**

1. Each Member State shall ensure that a safety investigation is carried out by the investigative body referred to in Article 8 after very serious marine casualties:

- (a) involving a ship flying its flag, irrespective of the location of the casualty;
- (b) occurring within its territorial sea and internal waters as defined in UNCLOS, irrespective of the flag of the ship or ships involved in the casualty; or
- (c) involving a substantial interest of the Member State, irrespective of the location of the casualty and of the flag of the ship or ships involved.

2. In addition, in the case of serious casualties, the investigative body shall carry out a preliminary assessment in order to decide whether or not to undertake a safety investigation.

Where the investigative body decides not to undertake a safety investigation, the reasons for that decision shall be recorded and notified in accordance with Article 17(3).

In the case of any other marine casualty or incident, the investigative body shall decide whether or not a safety investigation is to be undertaken.

In the decisions referred to in the first and second subparagraphs, the investigative body shall take into account the seriousness of the marine casualty or incident, the type of vessel and/or cargo involved, and the potential for the findings of the safety investigation to lead to the prevention of future casualties and incidents.

3. The scope and practical arrangements for the conduct of safety investigations shall be determined by the investigative body of the lead investigating Member State in cooperation with the equivalent bodies of the other substantially interested States, in such manner as appears to it most conducive to achieving the objective of this Directive, and with a view to preventing future casualties and incidents.

4. When carrying out safety investigations, the investigative body shall follow the common methodology for investigating marine casualties and incidents developed pursuant to Article 2(e) of Regulation (EC) No 1406/2002. Investigators may depart from that methodology in a specific case where this can be justified as necessary, in their professional judgement, and if needed to achieve the aims of the investigation. The Commission shall adopt or modify the methodology for the purposes of this Directive, taking into account any relevant lessons drawn from safety investigations.

That measure, designed to amend non-essential elements of this Directive, *inter alia*, by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 19(3).

5. A safety investigation shall be started as promptly as is practicable after the marine casualty or incident occurs and, in any event, no later than two months after its occurrence.

*Article 6***Obligation to notify**

A Member State shall require, in the framework of its legal system, that its investigative body be notified without delay, by the responsible authorities and/or by the parties involved, of the occurrence of all casualties and incidents falling within the scope of this Directive.



*Article 7***Leading of, and participation in, safety investigations**

1. In principle, each marine casualty or incident shall be subject to only one investigation carried out by a Member State or a lead investigating Member State with the participation of any other substantially interested Member State.

In cases of safety investigations involving two or more Member States, the Member States concerned shall therefore cooperate with a view to rapidly agreeing which of them is to be the lead investigating Member State. They shall make every effort to agree on the procedures to investigate. In the framework of this agreement, other substantially interested States shall have equal rights and access to witnesses and evidence as the Member State conducting the safety investigation. They shall also have the right to see their point of view taken into consideration by the lead investigating Member State.

The conduct of parallel safety investigations into the same marine casualty or incident shall be strictly limited to exceptional cases. In such cases, Member States shall notify the Commission of the reasons for conducting such parallel investigations. Member States conducting parallel safety investigations shall cooperate with each other. In particular, the investigative bodies involved shall exchange any pertinent information gathered in the course of their respective investigations, in particular in order to reach, as far as possible, shared conclusions.

Member States shall abstain from any measure which could unduly preclude, suspend or delay the conduct of a safety investigation falling within the scope of this Directive.

2. Notwithstanding paragraph 1, each Member State shall remain responsible for the safety investigation and coordination with other substantially interested Member States until such time as it is mutually agreed which of them is to be the lead investigating State.

3. Without prejudice to its obligations under this Directive and international law, a Member State may, on a case-by-case basis, delegate by mutual agreement to another Member State the task of leading a safety investigation or specific tasks for the conduct of such an investigation.

4. When a ro-ro ferry or high-speed passenger craft is involved in a marine casualty or incident, the safety investigation procedure shall be launched by the Member State in whose territorial sea or internal waters as defined in UNCLOS the accident or incident occurs or, if occurring in other waters, by the last Member State visited by that ferry or craft. That State shall remain responsible for the safety investigation and coordination with other substantially interested Member States until it

is mutually agreed which of them is to be the lead investigating State.

*Article 8***Investigative bodies**

1. Member States shall ensure that safety investigations are conducted under the responsibility of an impartial permanent investigative body, endowed with the necessary powers, and by suitably qualified investigators, competent in matters relating to marine casualties and incidents.

In order to carry out a safety investigation in an unbiased manner, the investigative body shall be independent in its organisation, legal structure and decision-making of any party whose interests could conflict with the task entrusted to it.

Landlocked Member States which have neither ships nor vessels flying their flag will identify an independent focal point to cooperate in the investigation pursuant to Article 5(1)(c).

2. The investigative body shall ensure that individual investigators have a working knowledge of, and practical experience in, those subject areas pertaining to their normal investigative duties. Additionally, the investigative body shall ensure ready access to appropriate expertise, as necessary.

3. The activities entrusted to the investigative body may be extended to the gathering and analysis of data relating to maritime safety, in particular for prevention purposes, insofar as these activities do not affect its independence or entail responsibility in regulatory, administrative or standardisation matters.

4. Member States, acting in the framework of their respective legal systems, shall ensure that the investigators of its investigative body, or of any other investigative body to which it has delegated the task of safety investigation, where appropriate in collaboration with the authorities responsible for the judicial inquiry, be provided with any information pertinent to the conduct of the safety investigation and therefore be authorised to:

- (a) have free access to any relevant area or casualty site as well as to any ship, wreck or structure including cargo, equipment or debris;
- (b) ensure immediate listing of evidence and controlled search for and removal of wreckage, debris or other components or substances for examination or analysis;
- (c) require examination or analysis of the items referred to in point (b), and have free access to the results of such examinations or analysis;

- (d) have free access to, copy and have use of any relevant information and recorded data, including VDR data, pertaining to a ship, voyage, cargo, crew or any other person, object, condition or circumstance;
- (e) have free access to the results of examinations of the bodies of victims or of tests made on samples taken from the bodies of victims;
- (f) require and have free access to the results of examinations of, or tests made on samples taken from, people involved in the operation of a ship or any other relevant person;
- (g) interview witnesses in the absence of any person whose interests could be considered as hampering the safety investigation;
- (h) obtain survey records and relevant information held by the flag State, the owners, classification societies or any other relevant party, whenever those parties or their representatives are established in the Member State;
- (i) call for the assistance of the relevant authorities in the respective States, including flag-State and port-State surveyors, coastguard officers, vessel traffic service operators, search and rescue teams, pilots or other port or maritime personnel.

5. The investigative body shall be enabled to respond immediately on being notified at any time of a casualty, and to obtain sufficient resources to carry out its functions independently. Its investigators shall be afforded status giving them the necessary guarantees of independence.

6. The investigating body may combine its tasks under this Directive with the work of investigating occurrences other than marine casualties on condition that such investigations do not endanger its independence.

#### Article 9

##### Confidentiality

Without prejudice to Directive 95/46/EC, Member States, acting in the framework of their legal systems, shall ensure that the following records are not made available for purposes other than the safety investigation, unless the competent authority in that Member State determines that there is an overriding public interest in the disclosure of:

- (a) all witness evidence and other statements, accounts and notes taken or received by the investigative body in the course of the safety investigation;

- (b) records revealing the identity of persons who have given evidence in the context of the safety investigation;
- (c) information relating to persons involved in a marine casualty or incident which is of a particularly sensitive and private nature, including information concerning their health.

#### Article 10

##### Permanent cooperation framework

1. Member States shall, in close cooperation with the Commission, establish a permanent cooperation framework enabling their respective investigative bodies to cooperate among themselves to the extent necessary to attain the objective of this Directive.

2. The rules of procedure of the permanent cooperation framework and the organisation arrangements required therefor shall be decided in accordance with the regulatory procedure referred to in Article 19(2).

3. Within the permanent cooperation framework, the investigative bodies in the Member States shall agree, in particular, upon the best modalities of cooperation in order to:

- (a) enable investigative bodies to share installations, facilities and equipment for the technical investigation of wreckage and ship's equipment and other objects relevant to the safety investigation, including the extraction and evaluation of information from VDRs and other electronic devices;
- (b) provide each other with the technical cooperation or expertise needed to undertake specific tasks;
- (c) acquire and share information relevant for analysing casualty data and making appropriate safety recommendations at Community level;
- (d) draw up common principles for the follow-up of safety recommendations and for the adaptation of investigative methods to the development of technical and scientific progress;
- (e) manage appropriately the early alerts referred to in Article 16;
- (f) establish confidentiality rules for the sharing, in the respect of national rules, of witness evidence and the processing of data and other records referred to in Article 9, including in relations with third countries;
- (g) organise, where appropriate, relevant training activities for individual investigators;

- (h) promote cooperation with the investigative bodies of third countries and with the international maritime accidents investigation organisations in the fields covered by this Directive;
- (i) provide investigative bodies conducting safety investigations with any pertinent information.

#### Article 11

##### Costs

1. Where safety investigations involve two or more Member States, the respective activities shall be free of charge.
2. Where assistance is requested of a Member State that is not involved in the safety investigation, Member States shall agree on the reimbursement of costs incurred.

#### Article 12

##### Cooperation with substantially interested third countries

1. Member States shall cooperate, to the maximum extent possible, with other substantially interested third countries in safety investigations.
2. Substantially interested third countries shall, by mutual agreement, be allowed to join a safety investigation led by a Member State under this Directive at any stage of the investigation.
3. The cooperation of a Member State in a safety investigation conducted by a substantially interested third country shall be without prejudice to the conduct and reporting requirements of safety investigations under this Directive. Where a substantially interested third country is leading a safety investigation involving one or more Member States, Member States may decide not to carry out a parallel safety investigation, provided that the safety investigation led by the third country is conducted in accordance with the IMO Code for the Investigation of Marine Casualties and Incidents.

#### Article 13

##### Preservation of evidence

Member States shall adopt measures to ensure that the parties concerned by casualties and incidents under the scope of this Directive make every effort to:

- (a) save all information from charts, log books, electronic and magnetic recording and video tapes, including information from VDRs and other electronic devices relating to the period preceding, during and after an accident;
- (b) prevent the overwriting or other alteration of such information;

- (c) prevent interference with any other equipment which might reasonably be considered pertinent to the safety investigation of the accident;
- (d) collect and preserve all evidence expeditiously for the purposes of the safety investigations.

#### Article 14

##### Accident reports

1. Safety investigations carried out under this Directive shall result in a published report presented in a format defined by the competent investigative body and in accordance with the relevant sections of Annex I.

Investigative bodies may decide that a safety investigation which does not concern a very serious or, as the case may be, a serious marine casualty and the findings of which do not have the potential to lead to the prevention of future casualties and incidents shall result in a simplified report to be published.

2. Investigative bodies shall make every effort to make the report referred to in paragraph 1, including its conclusions and any possible recommendations, available to the public, and especially to the maritime sector, within 12 months of the date of the casualty. If it is not possible to produce the final report within that time, an interim report shall be published within 12 months of the date of the casualty.

3. The investigative body of the lead investigating Member State shall send a copy of the final, simplified or interim report to the Commission. It shall take into account the possible technical observations of the Commission on final reports not affecting the substance of the findings for improving the quality of the report in the way most conducive to achieving the objective of this Directive.

#### Article 15

##### Safety recommendations

1. Member States shall ensure that safety recommendations made by the investigative bodies are duly taken into account by the addressees and, where appropriate, be given an adequate follow-up in accordance with Community and international law.
2. Where appropriate, an investigative body or the Commission shall make safety recommendations on the basis of an abstract data analysis and of the overall results of safety investigations carried out.
3. A safety recommendation shall in no circumstances determine liability or apportion blame for a casualty.

*Article 16***Early alert system**

Without prejudice to its right to give an early alert, the investigative body of a Member State shall, at any stage of a safety investigation, if it takes the view that urgent action is needed at Community level to prevent the risk of new casualties, inform the Commission without delay of the need to give an early alert.

If necessary, the Commission shall issue a note of warning for the attention of the responsible authorities in all the other Member States, the shipping industry, and to any other relevant party.

*Article 17***European database for marine casualties**

1. Data on marine casualties and incidents shall be stored and analysed by means of a European electronic database to be set up by the Commission, which shall be known as the European Marine Casualty Information Platform (EMCIP).
2. Member States shall notify the Commission of the entitled authorities that will have access to the database.
3. The investigative bodies of the Member States shall notify the Commission on marine casualties and incidents in accordance with the format in Annex II. They shall also provide the Commission with data resulting from safety investigations in accordance with the EMCIP database scheme.
4. The Commission and the Member States shall develop the database scheme and a method for the notification of data within the appropriate timescale.

*Article 18***Fair treatment of seafarers**

In accordance with their national law, Member States shall take into account the relevant provisions of the IMO guidelines on the fair treatment of seafarers in the event of a maritime accident in the waters under their jurisdiction.

*Article 19***Committee**

1. The Commission shall be assisted by the Committee on Safe Seas and the Prevention of Pollution from Ships (COSS) established by Regulation (EC) No 2099/2002 of the European Parliament and the Council<sup>(1)</sup>.
2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at two months.

<sup>(1)</sup> OJ L 324, 29.11.2002, p. 1.

3. Where reference is made to this paragraph, Article 5a(1) to (4) and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

*Article 20***Amending powers**

The Commission may update definitions in this Directive, and the references made to Community acts and to IMO instruments in order to bring them into line with Community or IMO measures which have entered into force, subject to observance of the limits of this Directive.

Those measures, designed to amend non-essential elements of this Directive, *inter alia*, by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 19(3).

Acting in accordance with the same procedure, the Commission may also amend the Annexes.

Amendments to the IMO Code for the Investigation of Marine Casualties and Incidents may be excluded from the scope of this Directive pursuant to Article 5 of Regulation (EC) No 2099/2002.

*Article 21***Additional measures**

Nothing contained in this Directive shall prevent a Member State from taking additional measures on maritime safety which are not covered by it, provided that such measures neither infringe this Directive nor in any way adversely affect the attainment of its objective, nor jeopardise the achievement of its objective.

*Article 22***Penalties**

Member States shall lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive.

*Article 23***Implementation report**

The Commission shall, every five years, submit a report to the European Parliament and the Council on the implementation of, and compliance with, this Directive, and, if necessary, propose further measures in the light of the recommendations set out therein.

*Article 24***Amendments to existing acts**

1. Article 12 of Directive 1999/35/EC shall be deleted.
2. Article 11 of Directive 2002/59/EC shall be deleted.

*Article 25***Transposition**

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 17 June 2011.

When Member States adopt those measures, 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.

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

*Article 26***Entry into force**

This Directive shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

*Article 27***Addressees**

This Directive is addressed to the Member States.

Done at Strasbourg, 23 April 2009.

*For the European Parliament*  
*The President*  
H.-G. PÖTTERING

*For the Council*  
*The President*  
P. NEČAS

## ANNEX I

**Safety investigation report content**

## Foreword

This identifies the sole objective of the safety investigation and indicates that a safety recommendation shall in no case create a presumption of liability or blame and that the report has not been written, in terms of content and style, with the intention of it being used in legal proceedings.

(The report should make no reference to witness evidence nor link anyone who is referred to in the report to a person who has given evidence during the course of the safety investigation.)

**1. SUMMARY**

This part outlines the basic facts of the marine casualty or incident: what happened, when, where and how it happened; it also states whether any deaths, injuries, damage to the ship, cargo, third parties or environment occurred as a result.

**2. FACTUAL INFORMATION**

This part includes a number of discrete sections, providing sufficient information that the investigating body interprets to be factual, substantiate the analysis and ease understanding.

These sections include, in particular, the following information:

**2.1. Ship particulars**

Flag/register,

Identification,

Main characteristics,

Ownership and management,

Construction details,

Minimum safe manning,

Authorised cargo.

**2.2. Voyage particulars**

Ports of call,

Type of voyage,

Cargo information,

Manning.

**2.3. Marine casualty or incident information**

Type of marine casualty or incident,

Date and time,

Position and location of the marine casualty or incident,

External and internal environment,

Ship operation and voyage segment,

Place on board,

Human factors data,

Consequences (for people, ship, cargo, environment, other).

**2.4. Shore authority involvement and emergency response**

Who was involved,

Means used,

Speed of response,

Actions taken,

Results achieved.

### 3. NARRATIVE

This part reconstructs the marine casualty or incident through a sequence of events, in a chronological order leading up to, during and following the marine casualty or incident and the involvement of each actor (i.e. person, material, environment, equipment or external agent). The period covered by the narrative depends on the timing of those particular accidental events that directly contributed to the marine casualty or incident. This part also includes any relevant details of the safety investigation conducted, including the results of examinations or tests.

### 4. ANALYSIS

This part includes a number of discrete sections, providing an analysis of each accidental event, with comments relating to the results of any relevant examinations or tests conducted during the course of the safety investigation and to any safety action that might already have been taken to prevent marine casualties.

These sections should cover issues such as:

- accidental event context and environment,
- human erroneous actions and omissions, events involving hazardous material, environmental effects, equipment failures, and external influences,
- contributing factors involving person-related functions, shipboard operations, shore management or regulatory influence.

The analysis and comment enable the report to reach logical conclusions, establishing all of the contributing factors, including those with risks for which existing defences aimed at preventing an accidental event, and/or those aimed at eliminating or reducing its consequences, are assessed to be either inadequate or missing.

### 5. CONCLUSIONS

This part consolidates the established contributing factors and missing or inadequate defences (material, functional, symbolic or procedural) for which safety actions should be developed to prevent marine casualties.

### 6. SAFETY RECOMMENDATIONS

When appropriate, this part of the report contains safety recommendations derived from the analysis and conclusions and related to particular subject areas, such as legislation, design, procedures, inspection, management, health and safety at work, training, repair work, maintenance, shore assistance and emergency response.

The safety recommendations are addressed to those that are best placed to implement them, such as ship owners, managers, recognised organisations, maritime authorities, vessel traffic services, emergency bodies, international maritime organisations and European institutions, with the aim of preventing marine casualties.

This part also includes any interim safety recommendations that may have been made or any safety actions taken during the course of the safety investigation.

### 7. APPENDICES

When appropriate, the following non-exhaustive list of information is attached to the report in paper and/or electronic form:

- photographs, moving images, audio recordings, charts, drawings,
  - applicable standards,
  - technical terms and abbreviations used,
  - special safety studies,
  - miscellaneous information.
-

## ANNEX II

**MARINE CASUALTY OR INCIDENT NOTIFICATION DATA****(Part of the European Marine Casualty Information Platform)**

Note: Underlined numbers mean that data should be provided for each ship if more than one ship is involved in the marine casualty or incident.

01. Member State responsible/contact person
02. Member State investigator
03. Member State role
04. Coastal state affected
05. Number of substantially interested States
06. Substantially interested States
07. Notification entity
08. Time of the notification
09. Date of the notification
10. Name of the ship
11. IMO number/distinctive letters
12. Ship flag
13. Type of marine casualty or incident
14. Type of ship
15. Date of the marine casualty or incident
16. Time of the marine casualty or incident
17. Position – Latitude
18. Position – Longitude
19. Location of the marine casualty or incident
20. Port of departure
21. Port of destination
22. Traffic separation scheme
23. Voyage segment
24. Ship operation
25. Place on board
26. Lives lost:
  - Crew
  - Passengers
  - Other
27. Serious injuries:
  - Crew
  - Passengers
  - Other



- 28. Pollution
  - 29. Ship damage
  - 30. Cargo damage
  - 31. Other damage
  - 32. Brief description of the marine casualty or incident
  - 33. Brief description of the reasons not to undertake a safety investigation.
-

**DIRECTIVE 2009/20/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL****of 23 April 2009****on the insurance of shipowners for maritime claims****(Text with EEA relevance)**

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 European Economic and Social Committee <sup>(1)</sup>,

Having regard to the opinion of the Committee of the Regions <sup>(2)</sup>,

Acting in accordance with the procedure laid down in Article 251 of the Treaty <sup>(3)</sup>,

Whereas:

- (1) One element of Community maritime transport policy is to improve the quality of merchant shipping by making all economic operators act more responsibly.
- (2) Dissuasive measures have already been adopted under Directive 2005/35/EC of the European Parliament and of the Council of 7 September 2005 on ship source pollution and on the introduction of penalties for infringements <sup>(4)</sup>.
- (3) On 9 October 2008, the Member States adopted a statement in which they unanimously recognised the importance of the application of the 1996 Protocol to the 1976 Convention on Limitation of Liability for Maritime Claims by all Member States.
- (4) The obligation to have insurance should make it possible to ensure better protection for victims. It should also help to eliminate substandard ships and make it possible to reestablish competition between operators. Furthermore, in Resolution A.898(21), the International

Maritime Organisation invited States to urge shipowners to be properly insured.

- (5) Non compliance with the provisions of this Directive should be rectified. Directive 2009/16/EC of the European Parliament and of the Council of 23 April 2009 on port State control (recast) <sup>(5)</sup> already provides for the detention of ships in the case of absence of certificates which have to be carried on board. However, it is appropriate to provide for the possibility of expelling a ship which does not carry a certificate of insurance. The modalities of the expulsion should allow the situation to be rectified within a reasonable time period.
- (6) Since the objectives of this Directive, namely the introduction and implementation of appropriate measures in the field of maritime transport policy, cannot be sufficiently achieved by the Member States and can therefore, by reason of its scale and effects, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives,

HAVE ADOPTED THIS DIRECTIVE:

*Article 1*

**Subject matter**

This Directive lays down rules applicable to certain aspects of the obligations on shipowners as regards their insurance for maritime claims.

*Article 2*

**Scope**

1. This Directive shall apply to ships of 300 gross tonnage or more.
2. This Directive shall not apply to warships, auxiliary warships or other State owned or operated ships used for a non commercial public service.
3. This Directive shall be without prejudice to the regimes established by the instruments in force in the Member State concerned and listed in the Annex hereto.

<sup>(1)</sup> OJ C 318, 23.12.2006, p. 195.

<sup>(2)</sup> OJ C 229, 22.9.2006, p. 38.

<sup>(3)</sup> Opinion of the European Parliament of 29 March 2007 (OJ C 27 E, 31.1.2008, p. 166), Council Common Position of 9 December 2008 (OJ C 330 E, 30.12.2008, p. 7) and Position of the European Parliament of 11 March 2009 (not yet published in the Official Journal).

<sup>(4)</sup> OJ L 255, 30.9.2005, p. 11.

<sup>(5)</sup> See page 57 of this Official Journal.

*Article 3***Definitions**

For the purpose of this Directive, the following definitions shall apply:

- (a) 'shipowner' means the registered owner of a seagoing ship, or any other person such as the bareboat charterer who is responsible for the operation of the ship;
- (b) 'insurance' means insurance with or without deductibles, and comprises, for example, indemnity insurance of the type currently provided by members of the International Group of P & I Clubs, and other effective forms of insurance (including proved self insurance) and financial security offering similar conditions of cover;
- (c) '1996 Convention' means the consolidated text of the 1976 Convention on Limitation of Liability for Maritime Claims, adopted by the International Maritime Organisation (IMO), as amended by the 1996 Protocol.

*Article 4***Insurance for maritime claims**

1. Each Member State shall require that shipowners of ships flying its flag have insurance covering such ships.
2. Each Member State shall require shipowners of ships flying a flag other than its own to have insurance in place when such ships enter a port under the Member State's jurisdiction. This shall not prevent Member States, if in conformity with international law, from requiring compliance with that obligation when such ships are operating in their territorial waters.
3. The insurance referred to in paragraphs 1 and 2 shall cover maritime claims subject to limitation under the 1996 Convention. The amount of the insurance for each and every ship per incident shall be equal to the relevant maximum amount for the limitation of liability as laid down in the 1996 Convention.

*Article 5***Inspections, compliance, expulsion from ports and denial of access to ports**

1. Each Member State shall ensure that any inspection of a ship in a port under its jurisdiction in accordance with Directive 2009/16/EC, includes verification that a certificate referred to in Article 6 is carried on board.

2. If the certificate referred to in Article 6 is not carried on board, and without prejudice to Directive 2009/16/EC providing for detention of ships when safety issues are at stake, the competent authority may issue an expulsion order to the ship which shall be notified to the Commission, the other Member States and the flag State concerned. As a result of the issuing of such an expulsion order, every Member State shall refuse entry of this ship into any of its ports until the shipowner notifies the certificate referred to in Article 6.

*Article 6***Insurance certificates**

1. The existence of the insurance referred to in Article 4 shall be proved by one or more certificates issued by its provider and carried on board the ship.
2. The certificates issued by the insurance provider shall include the following information:
  - (a) name of ship, its IMO number, and port of registry;
  - (b) shipowner's name and principal place of business;
  - (c) type and duration of the insurance;
  - (d) name and principal place of business of the provider of the insurance and, where appropriate, the place of business where the insurance is established.
3. If the language used in the certificates is neither English nor French nor Spanish, the text shall include a translation into one of these languages.

*Article 7***Penalties**

For the purposes of Article 4(1), Member States shall lay down a system of penalties for the breach of national provisions adopted pursuant to this Directive and shall take all the measures necessary to ensure that those penalties are applied. The penalties provided for shall be effective, proportionate and dissuasive.

*Article 8***Reports**

Every three years, and for the first time before 1 January 2015, the Commission shall present a report to the European Parliament and to the Council on the application of this Directive.

*Article 9***Transposition**

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 1 January 2012. 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 a 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 national law which they adopt in the field covered by this Directive.

*Article 10***Entry into force**

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

*Article 11***Addressees**

This Directive is addressed to the Member States.

Done at Strasbourg, 23 April 2009.

*For the European Parliament*

*The President*

H.-G. PÖTTERING

*For the Council*

*The President*

P. NEČAS

## ANNEX

- The International Convention on Civil Liability for Oil Pollution Damage, 1992.
  - The International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 (HNS Convention).
  - The International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 ('Bunker Oil' Convention).
  - The Nairobi International Convention on the Removal of Wrecks, 2007 ('Wrecks Removal' Convention).
  - Regulation (EC) No 392/2009 of the European Parliament and of the Council of 23 April 2009 on the liability of carriers of passengers by sea in the event of accidents.
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**DIRECTIVE 2009/21/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**of 23 April 2009**

**on compliance with flag State requirements**

**(Text with EEA relevance)**

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 European Economic and Social Committee <sup>(1)</sup>,

Having regard to the opinion of the Committee of the Regions <sup>(2)</sup>,

Acting in accordance with the procedure laid down in Article 251 of the Treaty <sup>(3)</sup>,

Whereas:

- (1) The safety of Community shipping and of citizens using it and the protection of the environment should be ensured at all times.
- (2) In respect of international shipping a comprehensive framework enhancing maritime safety and the protection of the environment with regard to pollution from ships has been set up through the adoption of a number of conventions for which the International Maritime Organisation (hereinafter the IMO) is the depository.
- (3) Under the provisions of the United Nations Convention on the Law of the Sea, 1982 (UNCLOS) and of the conventions for which IMO is the depository (hereinafter the IMO Conventions), the States which are party to

those instruments are responsible for promulgating laws and regulations and for taking all other steps which may be necessary to give those instruments full and complete effect so as to ensure that, from the point of view of safety of life at sea and protection of the marine environment, a ship is fit for the service for which it is intended and is manned with competent maritime personnel.

- (4) Due account has to be taken of the Maritime Labour Convention, adopted by the International Labour Organisation (ILO) in 2006, which also addresses flag State-related obligations.
- (5) On 9 October 2008, the Member States adopted a statement in which they unanimously recognised the importance of the application of the international conventions related to flag States obligations in order to improve maritime safety and to contribute to preventing pollution by ships.
- (6) Implementation of the procedures recommended by the IMO in MSC/Circ.1140/MEPC/Circ.424 of 20 December 2004 on the transfer of ships between States should strengthen the provisions of the IMO Conventions and Community maritime safety legislation relating to a change of flag and should increase transparency in the relationship between flag States, in the interests of maritime safety.
- (7) The availability of information on ships flying the flag of a Member State, as well as on ships which have left a register of a Member State, should improve the transparency of the performance of a high-quality fleet and contribute to better monitoring of flag State obligations and to ensuring a level playing field between administrations.
- (8) In order to help Member States in further improving their performance as flag States, they should have their administration audited on a regular basis.
- (9) A quality certification of administrative procedures in accordance with the standards of the International Organisation for Standardisation (ISO) or equivalent standards should further ensure a level playing field between administrations.

<sup>(1)</sup> OJ C 318, 23.12.2006, p. 195.

<sup>(2)</sup> OJ C 229, 22.9.2006, p. 38.

<sup>(3)</sup> Opinion of the European Parliament of 29 March 2007 (OJ C 27 E, 31.1.2008, p. 140), Council Common Position of 9 December 2008 (OJ C 330 E, 30.12.2008, p. 13) and Position of the European Parliament of 11 March 2009 (not yet published in the Official Journal).

(10) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission <sup>(1)</sup>.

(11) Since the objectives of this Directive, namely the introduction and implementation of appropriate measures in the field of maritime transport policy, cannot be sufficiently achieved by the Member States and can therefore, by reason of its scale and effects, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives,

HAVE ADOPTED THIS DIRECTIVE:

#### Article 1

##### Subject matter

1. The purpose of this Directive is:

(a) to ensure that Member States effectively and consistently discharge their obligations as flag States; and

(b) to enhance safety and prevent pollution from ships flying the flag of a Member State.

2. This Directive is without prejudice to Community maritime legislation, as listed in Article 2(2) of Regulation (EC) No 2099/2002 of the European Parliament and of the Council of 5 November 2002 establishing a Committee on Safe Seas and the Prevention of Pollution from Ships (COSS) <sup>(2)</sup>, and to Council Directive 1999/63/EC of 21 June 1999 concerning the Agreement on the organisation of working time of seafarers concluded by the European Community Shipowners' Association (ECSA) and the Federation of Transport Workers' Unions in the European Union (FST) <sup>(3)</sup>.

#### Article 2

##### Scope

This Directive shall apply to the administration of the State whose flag the ship is flying.

<sup>(1)</sup> OJ L 184, 17.7.1999, p. 23.

<sup>(2)</sup> OJ L 324, 29.11.2002, p. 1.

<sup>(3)</sup> OJ L 167, 2.7.1999, p. 33.

#### Article 3

##### Definitions

For the purposes of this Directive, the following definitions shall apply:

(a) 'ship' means a ship or craft flying the flag of a Member State falling within the scope of the relevant IMO Conventions, and for which a certificate is required;

(b) 'administration' means the competent authorities of the Member State whose flag the ship is flying;

(c) 'recognised organisation' means an organisation recognised in accordance with Regulation (EC) No 391/2009 of the European Parliament and of the Council of 23 April 2009 on common rules and standards for ship inspection and survey organisations (recast) <sup>(4)</sup>;

(d) 'certificates' means statutory certificates issued in respect of the relevant IMO Conventions;

(e) 'IMO audit' means an audit conducted in accordance with the provisions of Resolution A.974(24) adopted by the IMO Assembly on 1 December 2005.

#### Article 4

##### Conditions for allowing a ship to operate upon granting the right to fly the flag of a Member State

1. Prior to allowing a ship to operate, which has been granted the right to fly its flag, the Member State concerned shall take the measures it deems appropriate to ensure that the ship in question complies with the applicable international rules and regulations. In particular, it shall verify the safety records of the ship by all reasonable means. It shall, if necessary, consult with the losing flag State in order to establish whether any outstanding deficiencies or safety issues identified by the latter remain unresolved.

2. Whenever another flag State requests information concerning a ship which was previously flying the flag of a Member State, that Member State shall promptly provide details of outstanding deficiencies and any other relevant safety-related information to the requesting flag State.

<sup>(4)</sup> See page 11 of this Official Journal.

*Article 5***Detention of a ship flying the flag of a Member State**

When the administration is informed that a ship flying the flag of the Member State concerned has been detained by a port State, it shall, according to the procedures it has established to this effect, oversee the ship being brought into compliance with the relevant IMO Conventions.

*Article 6***Accompanying measures**

Member States shall ensure that at least the following information concerning ships flying their flag is kept and remains readily accessible for the purposes of this Directive:

- (a) particulars of the ship (name, IMO number, etc.);
- (b) dates of surveys, including additional and supplementary surveys, if any, and audits;
- (c) identification of the recognised organisations involved in the certification and classification of the ship;
- (d) identification of the competent authority which has inspected the ship under port State control provisions and the dates of the inspections;
- (e) outcome of the port State control inspections (deficiencies: yes or no; detentions: yes or no);
- (f) information on marine casualties;
- (g) identification of ships which have ceased to fly the flag of the Member State concerned during the previous 12 months.

*Article 7***Flag State auditing process**

Member States shall take the necessary measures for an IMO audit of their administration at least once every seven years, subject to a positive reply of the IMO to a timely request of the Member State concerned, and shall publish the outcome of the audit in accordance with relevant national legislation on confidentiality.

This Article shall expire at the latest on 17 June 2017 or at an earlier date, as established by the Commission in accordance with the regulatory procedure referred to in Article 10(2), if a mandatory IMO Member State Audit Scheme has entered into force.

*Article 8***Quality management system and internal evaluation**

1. By 17 June 2012 each Member State shall develop, implement and maintain a quality management system for the operational parts of the flag State-related activities of its administration. Such quality management system shall be certified in accordance with the applicable international quality standards.

2. Member States which appear on the black list or which appear, for two consecutive years, on the grey list as published in the most recent annual report of the Paris Memorandum of Understanding on Port State Control (hereinafter the Paris MOU) shall provide the Commission with a report on their flag State performance no later than four months after the publication of the Paris MOU report.

The report shall identify and analyse the main reasons for the lack of compliance that led to the detentions and the deficiencies resulting in black or grey status.

*Article 9***Reports**

Every five years, and for the first time by 17 June 2012 the Commission shall present a report to the European Parliament and to the Council on the application of this Directive.

This report shall contain an assessment of the performance of the Member States as flag States.

*Article 10***Committee procedure**

1. The Commission shall be assisted by the Committee on Safe Seas and the Prevention of Pollution from Ships (COSS) established by Article 3 of Regulation (EC) No 2099/2002.

2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at two months.



*Article 11***Transposition**

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 17 June 2011 at the latest. 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 a 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 national law which they adopt in the field covered by this Directive.

*Article 12***Entry into force**

This Directive shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

*Article 13***Addressees**

This Directive is addressed to the Member States.

Done at Strasbourg, 23 April 2009.

*For the European Parliament*

*The President*

H.-G. PÖTTERING

*For the Council*

*The President*

P. NEČAS

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