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LEGISLATION DEALING WITH SAFETY  
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PART I—  
PASSENGER SHIP SAFETY

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### PART I – PASSENGER SHIP SAFETY

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**DIRECTIVE 2009/45/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**  
**of 6 May 2009**

**on safety rules and standards for passenger ships**

(Recast)

amended by Commission Directive 2010/36/EU

(consolidated version without annexes <sup>(1)</sup>)

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>(2)</sup>,

Having consulted the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the Treaty <sup>(3)</sup>,

Whereas:

- (1) Council Directive 98/18/EC of 17 March 1998 on safety rules and standards for passenger ships <sup>(4)</sup> has been substantially amended several times <sup>(5)</sup>. Since further amendments are to be made, it should be recast in the interests of clarity.
- (2) Within the framework of the common transport policy measures must be adopted to enhance safety in maritime transport.
- (3) The Community is seriously concerned about shipping casualties in which passenger ships were involved resulting in a massive loss of life. Persons using passenger ships and high-speed passenger craft throughout the Community have the right to expect and to rely on an appropriate level of safety on board.
- (4) Work equipment and personal protective equipment of workers are not covered by this Directive, because the provisions of Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work <sup>(6)</sup> and the relevant provisions of its relevant individual directives are applicable to the use of such equipment on passenger ships engaged on domestic voyages.
- (5) The provision of maritime passenger transport services between Member States has already been liberalised by Council Regulation (EEC) No 4055/86 of 22 December 1986 applying the principle of freedom to provide services to maritime transport between Member States and between Member States and third countries <sup>(7)</sup>.

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<sup>(1)</sup> Complete version is available on the website of DG MOVE, Safety and Environment, Union Legislation on Maritime Safety.

<sup>(2)</sup> OJ C 151, 17.6.2008, p. 35.

<sup>(3)</sup> Opinion of the European Parliament of 21 October 2008 (not yet published in the Official Journal) and Council Decision of 23 April 2009.

<sup>(4)</sup> OJ L 144, 15.5.1998, p. 1.

<sup>(5)</sup> See Annex IV, Part A.

<sup>(6)</sup> OJ L 183, 29.6.1989, p. 1.

<sup>(7)</sup> OJ L 378, 31.12.1986, p. 1.

The application of the principle of freedom to provide services to maritime transport within Member States (maritime cabotage) has been provided for by Council Regulation (EEC) No 3577/92<sup>(8)</sup>.

- (6) To attain a high level of safety, and to remove barriers to trade, it is necessary to establish harmonised safety standards at an appropriate level for passenger ships and craft operating domestic services. Standards for vessels operating international voyages are being developed within the International Maritime Organization (IMO). Procedures to request action at the IMO in order to bring the standards for international voyages into line with the standards of this Directive should be available.
- (7) In view, in particular, of the internal market dimension of maritime passenger transport, action at Community level is the only possible way to establish a common level of safety for ships throughout the Community.
- (8) In view of the principle of proportionality, a Directive is the appropriate legal instrument as it provides a framework for a uniform and compulsory application of the safety standards by Member States, while leaving to each Member State the right to decide the implementation tools that best fit its internal system.
- (9) In the interests of improving safety and avoiding distortions of competition the common safety requirements should apply to passenger ships and high-speed passenger craft engaged on domestic voyages in the Community, irrespective of the flag they fly. It is, however, necessary to exclude some categories of ships for which the rules of this Directive are technically unsuitable or economically unviable.
- (10) Passenger ships should be divided into different classes depending upon the range and conditions of the sea areas in which they operate. High-speed passenger craft should be categorised in accordance with the provisions of the High-Speed Craft Code established by the IMO.
- (11) The main reference framework for the safety standards should be the 1974 International Convention for the Safety of Life at Sea (the 1974 SOLAS Convention), as amended, which encompasses internationally agreed standards for passenger ships and highspeed passenger craft engaged on international voyages, as well as appropriate Resolutions adopted by the IMO and other measures complementing and interpreting that Convention.
- (12) The various classes of both new and existing passenger ships require a different approach for establishing safety requirements guaranteeing an equivalent safety level in view of the specific needs and limitations of those various classes. It is appropriate to make distinctions in the safety requirements to be respected as between new and existing ships since imposing the rules for new ships on existing ships would involve such extensive structural changes as to make them economically unviable.
- (13) The financial and technical implications arising from the upgrading of existing ships to the standards provided for by this Directive justify certain transitional periods.
- (14) In view of the substantial differences in the design, construction and use of high-speed passenger craft compared to traditional passenger ships, such craft should be required to respect special rules.
- (15) Shipborne marine equipment, complying with the provisions of Council Directive 96/98/EC of 20 December 1996 on marine equipment<sup>(9)</sup>, when installed on board a passenger ship, should not be subject to additional tests since such equipment is already subject to the standards and procedures of that Directive.
- (16) Directive 2003/25/EC of the European Parliament and of the Council of 14 April 2003 on specific stability requirements for ro-ro passenger ships<sup>(10)</sup> introduced strengthened stability requirements for ro-ro passenger vessels operating on international services to and from Community ports, and this enhanced measure should

<sup>(8)</sup> OJ L 364, 12.12.1992, p. 7.

<sup>(9)</sup> OJ L 46, 17.2.1997, p. 25.

<sup>(10)</sup> OJ L 123, 17.5.2003, p. 22.

also apply to certain categories of such vessels operating on domestic services under the same sea conditions. Failure to apply such stability requirements should be grounds for phasing out ro-ro passenger ships after a certain number of years of operation. In view of the structural modifications that the existing ro-ro passenger ships may need to undergo in order to comply with the specific stability requirements, those requirements should be introduced over a period of years in order to give the part of the industry affected sufficient time to comply: to that end, provision should be made for a phasing-in timetable for existing ships. This phasing-in timetable should not affect the enforcement of the specific stability requirements in the sea areas covered by the Annexes to the Stockholm Agreement of 28 February 1996.

- (17) It is important to apply appropriate measures to ensure access in safe conditions for persons with reduced mobility to passenger ships and high-speed passenger craft operating on domestic services in the Member States.
- (18) Subject to control under the Committee procedure, Member States may adopt additional safety requirements if justified by local circumstances, permit the use of equivalent standards, or adopt exemptions from the provisions of this Directive under certain operating conditions, or adopt safeguard measures in exceptional dangerous circumstances.
- (19) 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>(11)</sup> centralised the tasks of the committees established under the pertinent Community legislation on maritime safety, the prevention of pollution from ships and the protection of shipboard living and working conditions.
- (20) 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>(12)</sup>.
- (21) In particular, the Commission should be empowered to adapt certain provisions of this Directive, including its Annexes, to take account of developments at international level and specifically amendments to International Conventions. Since those measures are of general scope and are designed to amend nonessential elements of this Directive, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.
- (22) In order to monitor the effective implementation and enforcement of this Directive, surveys should be carried out on new and existing passenger ships and craft. Compliance with this Directive should be certified by or on behalf of the Administration of the flag State.
- (23) In order to ensure full application of this Directive, Member States should lay down a system of penalties for breach of the national provisions adopted pursuant to this Directive and should monitor compliance with the provisions of this Directive on the basis of provisions modelled on those laid down in Council Directive 95/21/EC of 19 June 1995 on port State control of shipping <sup>(13)</sup>.
- (24) The new elements introduced into this Directive only concern the committee procedures. They therefore do not need to be transposed by the Member States.
- (25) This Directive should be without prejudice to the obligations of the Member States relating to the time-limits for transposition into national law and application of the Directives set out in Annex IV, Part B,

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<sup>(11)</sup> OJ L 324, 29.11.2002, p. 1.

<sup>(12)</sup> OJ L 184, 17.7.1999, p. 23.

<sup>(13)</sup> OJ L 157, 7.7.1995, p.1.

HAVE ADOPTED THIS DIRECTIVE:

*Article 1*

**Purpose**

The purpose of this Directive is to introduce a uniform level of safety of life and property on new and existing passenger ships and high-speed passenger craft, when both categories of ships and craft are engaged on domestic voyages, and to lay down procedures for negotiation at international level with a view to a harmonisation of the rules for passenger ships engaged on international voyages.

*Article 2*

**Definitions**

For the purposes of this Directive:

- (a) 'International Conventions' means the 1974 International Convention for the Safety of Life at Sea (the 1974 SOLAS Convention), as amended, and the 1966 International Convention on Load Lines, together with the Protocols and amendments thereto;
- (b) 'Intact Stability Code' means the 'Code on Intact Stability for all types of ships covered by IMO Instruments' contained in IMO Assembly Resolution A.749(18) of 4 November 1993, as amended;
- (c) 'High Speed Craft Code' means the 'International Code for Safety of High Speed Craft' contained in IMO Resolution MSC 36 (63) of 20 May 1994, or the International Code for Safety of High-Speed Craft, 2000 (2000 HSC Code), contained in IMO Resolution MSC.97(73) of December 2000, in their up-to-date versions;
- (d) 'GMDSS' means the Global Maritime Distress and Safety System as laid down in Chapter IV of the 1974 SOLAS Convention, as amended;
- (e) 'a passenger ship' means a ship which carries more than 12 passengers;
- (f) 'ro-ro passenger ship' means a ship carrying more than 12 passengers, having ro-ro cargo spaces or special category spaces, as defined in Regulation II-2/A/2 contained in Annex I;
- (g) 'high-speed passenger craft' means a high-speed craft as defined in Regulation X/1 of the 1974 SOLAS Convention, as amended, which carries more than 12 passengers, with the exception of passenger ships engaged on domestic voyages in sea areas of Class B, C or D when:
  - (i) their displacement corresponding to the design waterline is less than 500 m<sup>3</sup>; and
  - (ii) their maximum speed, as defined in Regulation 1.4.30 of the 1994 High Speed Craft Code and Regulation 1.4.37 of the 2000 High Speed Craft Code, is less than 20 knots;
- (h) 'new ship' means a ship the keel of which was laid or which was at a similar stage of construction on or after 1 July 1998; a 'similar stage of construction' means the stage at which:
  - (i) construction identifiable with a specific ship begins; and
  - (ii) assembly of that ship has commenced comprising at least 50 tonnes or 1 % of the estimated mass of all structural material, whichever is less;
- (i) 'existing ship' means a ship which is not a new ship;
- (j) 'age' means the age of the ship, expressed in terms of the number of years after the date of its delivery;

- (k) 'passenger' means every person other than:
- (i) the master and the members of the crew or other persons employed or engaged in any capacity on board a ship on the business of that ship; and
  - (ii) a child under one year of age;
- (l) 'length of a ship', unless expressly provided otherwise, means 96 % of the total length on a water line at 85 % of the least moulded depth measured from the top of the keel, or the length from the fore side of the stem to the axis of the rudder stock on that waterline, if that be greater. In ships designed with a rake of keel the waterline on which this length is measured shall be parallel to the designed waterline;
- (m) 'bow height' means the bow height defined in Regulation 39 of the 1966 International Convention on Load Lines as the vertical distance at the forward perpendicular between the waterline corresponding to the assigned summer freeboard and the designed trim and the top of the exposed deck at side;
- (n) 'ship with a full deck' means a ship that is provided with a complete deck, exposed to weather and sea, which has permanent means of closing all openings in the weatherpart thereof and below which all openings in the sides of the ship are fitted with permanent means of at least weathertight closing;
- the complete deck may be a watertight deck or equivalent structure consisting of a non-watertight deck completely covered by a weathertight structure of adequate strength to maintain the weathertight integrity and fitted with weathertight closing appliances;
- (o) 'international voyage' means a voyage by sea from a port of a Member State to a port outside that Member State, or conversely;
- (p) 'domestic voyage' means a voyage in sea areas from a port of a Member State to the same or another port within that Member State;
- (q) 'sea area' means an area as established pursuant to Article 4(2);
- however, for the application of the provisions on radiocommunication, the definitions of sea areas will be those defined in Regulation 2, Chapter IV of the 1974 SOLAS Convention, as amended;
- (r) 'port area' means an area other than a sea area, as defined by the Member States, extending to the outermost permanent harbour works forming an integral part of the harbour system, or to the limits defined by natural geographical features protecting an estuary or similar sheltered area;
- (s) 'place of refuge' means any naturally or artificially sheltered area which may be used as a shelter by a ship or craft under conditions likely to endanger its safety;
- (t) 'Administration of the flag State' means the competent authorities of the State whose flag the ship or craft is entitled to fly;
- (u) 'host State' means a Member State to or from whose port(s) a ship or craft, flying a flag other than the flag of that Member State, is carrying out domestic voyages;
- (v) 'recognised organisation' means an organisation recognised in conformity with Article 4 of 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>(14)</sup>;
- (w) 'a mile' is 1 852 metres;

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<sup>(14)</sup> OJL 319, 12.12.1994, p. 20.

- (x) 'significant wave height' means the average height of the highest third of wave heights observed over a given period;
- (y) 'persons with reduced mobility' means anyone who has a particular difficulty when using public transport, including elderly persons, disabled persons, persons with sensory impairments and wheelchair users, pregnant women and persons accompanying small children.

### Article 3

#### Scope

1. This Directive applies to the following passenger ships and craft, regardless of their flag, when engaged on domestic voyages:

- (a) new passenger ships;
- (b) existing passenger ships of 24 metres in length and above;
- (c) high-speed passenger craft.

Each Member State, in its capacity as host State, shall ensure that passenger ships and high-speed passenger craft, flying the flag of a State which is not a Member State, fully comply with the requirements of this Directive, before they may be engaged on domestic voyages in that Member State.

2. This Directive does not apply to:

- (a) passenger ships which are:
  - (i) ships of war and troopships;
  - (ii) ships not propelled by mechanical means;
  - (iii) vessels constructed in material other than steel or equivalent and not covered by the standards concerning High Speed Craft (Resolution MSC 36 (63) or MSC.97 (73) or Dynamically Supported Craft (Resolution A.373 (X));
  - (iv) wooden ships of primitive build;
  - (v) original, and individual replicas of, historical passenger ships designed before 1965, built predominantly with the original materials;
  - (vi) pleasure yachts unless they are or will be crewed and carrying more than 12 passengers for commercial purposes; or
  - (vii) ships exclusively engaged in port areas;
- (b) high-speed passenger craft which are:
  - (i) craft of war and troopcraft;
  - (ii) pleasure craft, unless they are or will be crewed and carrying more than 12 passengers for commercial purposes; or
  - (iii) craft exclusively engaged in port areas.

*Article 4***Classes of passenger ships**

1. Passenger ships are divided into the following classes according to the sea area in which they operate:

‘Class A’ means a passenger ship engaged on domestic voyages other than voyages covered by Classes B, C and D.

‘Class B’ means a passenger ship engaged on domestic voyages in the course of which it is at no time more than 20 miles from the line of coast, where shipwrecked persons can land, corresponding to the medium tide height.

‘Class C’ means a passenger ship engaged on domestic voyages in sea areas where the probability of exceeding 2,5 metres significant wave height is smaller than 10 % over a one-year period for all-year-round operation, or over a specific restricted period of the year for operation exclusively in such period (e.g. summer period operation), in the course of which it is at no time more than 15 miles from a place of refuge, nor more than 5 miles from the line of coast, where shipwrecked persons can land, corresponding to the medium tide height.

‘Class D’ means a passenger ship engaged on domestic voyages in sea areas where the probability of exceeding 1,5 metres significant wave height is smaller than 10 % over a one-year period for all-year-round operation, or over a specific restricted period of the year for operation exclusively in such period (e.g. summer period operation), in the course of which it is at no time more than 6 miles from a place of refuge, nor more than 3 miles from the line of coast, where shipwrecked persons can land, corresponding to the medium tide height.

2. Each Member State shall:

(a) establish, and update when necessary, a list of sea areas under its jurisdiction, delimiting the zones for all-year-round operation and, where appropriate, restricted periodical operation of the classes of ships, using the criteria for classes set out in paragraph 1;

(b) publish the list in a public database available on the Internet site of the competent maritime authority;

(c) notify to the Commission the location of such information, and when modifications are made to the list.

3. For high speed passenger craft the categories defined in Chapter 1 (1.4.10) and (1.4.11) of the High Speed Craft Code 1994, or Chapter 1 (1.4.12) and (1.4.13) of the High Speed Craft Code 2000 shall apply.

*Article 5***Application**

1. Both new and existing passenger ships and high-speed passenger craft, when engaged on domestic voyages, shall comply with the relevant safety rules and standards laid down in this Directive.

2. Member States shall not withhold from operation, for reasons arising from this Directive, passenger ships or high-speed passenger craft, when engaged on domestic voyages, which comply with the requirements of this Directive, including any additional requirements imposed by a Member State in accordance with Article 9(1).

Each Member State, acting in its capacity as host State, shall recognise the High Speed Craft Safety Certificate and Permit to Operate issued by another Member State for high-speed passenger craft, when engaged on domestic voyages, or the Passenger Ship Safety Certificate referred to in Article 13 issued by another Member State for passenger ships when engaged on domestic voyages.

3. A host State may inspect a passenger ship or a high-speed passenger craft, when engaged on domestic voyages, and audit its documentation, in accordance with the provisions of Directive 95/21/EC.
4. All shipborne marine equipment, as listed in Annex A.1 to Directive 96/98/EC and complying with the provisions of the latter, shall be considered to be in conformity with the provisions of this Directive, whether or not Annex I to this Directive requires equipment to be approved and subjected to tests to the satisfaction of the Administration of the flag State.

#### *Article 6*

### **Safety requirements**

1. With regard to new and existing passenger ships of Classes A, B, C and D:
  - (a) the construction and maintenance of the hull, main and auxiliary machinery, electrical and automatic plants shall comply with the standards specified for classification by the rules of a recognised organisation, or equivalent rules used by an Administration in accordance with Article 14(2) of Directive 94/57/EC;
  - (b) the provisions of Chapters IV, including the 1988 GMDSS amendments, V and VI of the 1974 SOLAS Convention, as amended, shall apply;
  - (c) the provisions for shipborne navigational equipment of Regulations 17, 18, 19, 20 and 21, Chapter V of the 1974 SOLAS Convention, in its up-to-date version, shall apply. Shipborne navigational equipment, as listed in Annex A(1) to Directive 96/98/EC and complying with the provisions of the latter, is considered to be in conformity with the type approval requirements of Regulation 18.1, Chapter V of the 1974 SOLAS Convention.
2. With regard to new passenger ships:
  - (a) general requirements:
    - (i) new passenger ships of Class A shall comply entirely with the requirements of the 1974 SOLAS Convention, as amended, and with the specific relevant requirements specified in this Directive; for those regulations for which the 1974 SOLAS Convention, as amended, leaves the interpretation to the discretion of the Administration, the Administration of the flag State shall apply the interpretations as contained in Annex I to this Directive;
    - (ii) new passenger ships of Classes B, C, and D shall comply with the specific relevant requirements specified in this Directive;
  - (b) load line requirements:
    - (i) all new passenger ships of 24 metres in length and above shall comply with the 1966 International Convention on Load Lines;
    - (ii) criteria with a level of safety equivalent to those of the 1966 International Convention on Load Lines shall be applied, in relation to length and Class, to new passenger ships of less than 24 metres in length;
    - (iii) notwithstanding points (i) and (ii), new passenger ships of Class D are exempted from the minimum bow height requirement laid down in the 1966 International Convention on Load Lines;
    - (iv) new passenger ships of Classes A, B, C, and D shall have a full deck.
3. With regard to existing passenger ships:
  - (a) existing passenger ships of Class A shall comply with the regulations for existing passenger ships defined in the 1974 SOLAS Convention, as amended, and with the specific relevant requirements in this Directive;

for those regulations for which the 1974 SOLAS Convention, as amended, leaves the interpretation to the discretion of the Administration, the Administration of the flag State shall apply the interpretations as contained in Annex I to this Directive;

- (b) existing passenger ships of Class B shall comply with the specific relevant requirements in this Directive;
- (c) existing passenger ships of Classes C and D shall comply with the specific relevant requirements in this Directive and in respect of matters not covered by such requirements with the rules of the Administration of the flag State; such rules shall provide an equivalent level of safety to that of Chapters II-1 and II-2 of Annex I, while taking into account the specific local operational conditions related to the sea areas in which ships of such classes may operate;

before existing passenger ships of Classes C and D can be engaged on regular domestic voyages in a host State, the Administration of the flag State shall obtain concurrence of the host State on such rules;

- (d) where a Member State is of the view that rules required by the Administration of the host State pursuant to point (c) are unreasonable, it shall immediately notify the Commission thereof; the Commission shall initiate proceedings in order to take a decision in accordance with the procedure referred to in Article 11(2);
- (e) repairs, alterations and modifications of a major character and outfitting related thereto shall be in compliance with the requirements for new ships as prescribed in point (a) of paragraph 2; alterations made to an existing ship which are intended solely to achieve a higher survivability standard shall not be regarded as modifications of a major character;
- (f) the provisions of point (a), unless earlier dates are specified in the 1974 SOLAS Convention, as amended, and the provisions of points (b) and (c), unless earlier dates are specified in Annex I to this Directive, shall not be applied in relation to a ship the keel of which was laid or which was at a similar stage of construction:
  - (i) before 1 January 1940: until 1 July 2006;
  - (ii) on or after 1 January 1940 but before 31 December 1962: until 1 July 2007;
  - (iii) on or after 1 January 1963 but before 31 December 1974: until 1 July 2008;
  - (iv) on or after 1 January 1975 but before 31 December 1984: until 1 July 2009;
  - (v) on or after 1 January 1985 but before 1 July 1998: until 1 July 2010.

4. With regard to high-speed passenger craft:

- (a) high speed passenger craft constructed or subjected to repairs, alterations or modifications of a major character on or after 1 January 1996 shall comply with the requirements of Regulation X/2 and X/3 of the 1974 SOLAS Convention, unless
  - their keel was laid or they were at a similar stage of construction not later than June 1998, and
  - delivery and commissioning has taken place not later than December 1998, and
  - they fully comply with the requirements of the Code of Safety for Dynamically Supported Craft (DSC Code) in IMO Resolution A.373(X) as amended by IMO Resolution MSC.37(63);
- (b) high-speed passenger craft constructed before 1 January 1996 and complying with the requirements of the High-Speed Craft Code shall continue operation certified under that Code;

high-speed passenger craft constructed before 1 January 1996 and not complying with the requirements of the High-Speed Craft Code may not be engaged on domestic voyages unless they were already in operation on domestic voyages in a Member State on 4 June 1998, in which case they may be allowed to continue their domestic operation in that Member State; such craft shall comply with the requirements of the DSC Code;

- (c) the construction and maintenance of high-speed passenger craft and their equipment shall comply with the rules for the classification of high-speed craft of a recognised organisation, or equivalent rules used by an Administration in accordance with Article 14(2) of Directive 94/57/EC.

#### *Article 7*

### **Stability requirements and phasing-out of ro-ro passenger ships**

1. All ro-ro passenger ships of Classes A, B, and C, the keel of which was laid or which were at a similar stage of construction on or after 1 October 2004 shall comply with Articles 6, 8 and 9 of Directive 2003/25/EC.
2. All ro-ro passenger ships of Classes A and B the keel of which was laid or which were at a similar stage of construction before 1 October 2004 shall comply with Articles 6, 8 and 9 of Directive 2003/25/EC by 1 October 2010, unless they are phased out on that date or on a later date on which they reach the age of 30 years, but in any case not later than 1 October 2015.

#### *Article 8*

### **Safety requirements for persons with reduced mobility**

1. Member States shall ensure that appropriate measures are taken, based, where practicable, on the guidelines in Annex III, to enable persons with reduced mobility to have safe access to all passenger ships of Classes A, B, C and D and to all high-speed passenger craft used for public transport the keel of which was laid or which were at a similar stage of construction on or after 1 October 2004.
2. Member States shall cooperate with and consult organisations representing persons with reduced mobility on the implementation of the guidelines included in Annex III.
3. For the purpose of modification of passenger ships of Classes A, B, C and D and high-speed passenger craft used for public transport the keel of which was laid or which were at a similar stage of construction before 1 October 2004, Member States shall apply the guidelines in Annex III as far as reasonable and practicable in economic terms.

Member States shall draw up a national action plan on how the guidelines are to be applied to such ships and craft. They shall forward that plan to the Commission not later than 17 May 2005.

4. Member States shall, not later than 17 May 2006, report to the Commission on the implementation of this Article as regards all passenger ships referred to in paragraph 1, passenger ships referred to in paragraph 3 certified to carry more than 400 passengers and all high-speed passenger craft.

#### *Article 9*

### **Additional safety requirements, equivalents, exemptions and safeguard measures**

1. If a Member State or group of Member States considers that the applicable safety requirements should be improved in certain situations due to specific local circumstances and if the need therefor is demonstrated, they may, subject to the procedure laid down in paragraph 4, adopt measures to improve the safety requirements.
2. A Member State may, subject to the procedure laid down in paragraph 4, adopt measures allowing equivalents for the regulations contained in Annex I, provided that such equivalents are at least as effective as such regulations.
3. Provided there is no reduction in the level of safety and subject to the procedure laid down in paragraph 4, a Member State may adopt measures to exempt ships from certain specific requirements of this Directive

for domestic voyages to be carried out in that State, including in its archipelagic sea areas sheltered from open sea effects, under certain operating conditions, such as smaller significant wave height, restricted year period, voyages only during daylight time or under suitable climatic or weather conditions, or restricted trip duration, or proximity of rescue services.

4. A Member State which avails itself of the provisions of paragraph 1, 2 or 3 shall proceed in accordance with the second to sixth subparagraphs of this paragraph.

The Member State shall notify the Commission of the measures which it intends to adopt, including particulars to the extent necessary to confirm that the level of safety is adequately maintained.

If, within a period of six months from the notification, it is decided, in accordance with the procedure referred to in Article 11(2), that the proposed measures are not justified, the said Member State shall be required to amend or not to adopt the proposed measures.

The adopted measures shall be specified in the relevant national legislation and communicated to the Commission, which shall inform the other Member States of all particulars thereof.

Any such measures shall be applied to all passenger ships of the same Class or to craft when operating under the same specified conditions, without discrimination with regard to their flag or to the nationality or place of establishment of their operator.

The measures referred to in paragraph 3 shall apply only for as long as the ship or craft operates under the specified conditions.

5. Where a Member State considers that a passenger ship or craft operating on a domestic voyage within that State, notwithstanding the fact that it is complying with the provisions of this Directive, creates a risk of serious danger to safety of life or property, or environment, the operation of that ship or craft may be suspended or additional safety measures may be imposed, until such time as the danger is removed.

In the above circumstances the following procedure shall apply:

- (a) the Member State shall inform the Commission and the other Member States of its decision without delay, giving substantiated reasons therefor;
- (b) the Commission shall examine whether the suspension or the additional measures are justified for reasons of serious danger to safety and to the environment;
- (c) it shall be decided, in accordance with the procedure referred to in Article 11(2), whether or not the decision of the Member State to suspend the operation of such ship or craft or to impose the additional measures is justified for reasons of serious danger to safety of life or property, or to the environment, and, if the suspension or the measures are not justified, that the Member State concerned shall be required to withdraw the suspension or the measures.

#### *Article 10*

#### **Adaptations**

1. The following may be adapted in order to take account of developments at international level, in particular within the IMO:

- (a) the definitions in points (a), (b), (c), (d) and (v) of Article 2;
- (b) the provisions relating to procedures and guidelines for surveys referred to in Article 12;
- (c) the provisions concerning the 1974 SOLAS Convention, as amended, and the High-Speed Craft Code, including its subsequent amendments, laid down in Articles 4(3), 6(4), 12(3) and 13(3);

- (d) the specific references to the 'International Conventions' and IMO resolutions referred to in points (g), (m) and (q) of Article 2, point (a) of Article 3(2), points (b) and (c) of Article 6(1), point (b) of Article 6(2) and Article 13(3).
2. Annexes may be amended in order to:
- (a) apply, for the purpose of this Directive, amendments made to the International Conventions;
  - (b) improve the technical specifications thereof, in the light of experience.
3. The measures referred to in paragraphs 1 and 2 of this Article, designed to amend non-essential elements of this Directive, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 11(3).
4. The amendments to the international instruments referred to in Article 2 of this Directive may be excluded from the scope of this Directive, pursuant to Article 5 of Regulation (EC) No 2099/2002.

#### *Article 11*

#### **Committee**

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.

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 12*

#### **Surveys**

1. Each new passenger ship shall be subjected by the Administration of the flag State to the surveys specified in points (a), (b) and (c):
- (a) a survey before the ship is put into service;
  - (b) a periodical survey once every 12 months; and
  - (c) additional surveys, as the occasion arises.
2. Each existing passenger ship shall be subjected by the Administration of the flag State to the surveys specified in points (a), (b) and (c):
- (a) an initial survey, before the ship is put into service on domestic voyages in a host State, for existing ships engaged on domestic voyages in the Member State the flag of which they are entitled to fly;
  - (b) a periodical survey once every 12 months; and
  - (c) additional surveys, as the occasion arises.
3. Each high-speed passenger craft having to comply, in accordance with the provisions of Article 6(4) of this Directive, with the requirements of the High-Speed Craft Code (HSC Code), shall be made subject by the Administration of the flag State to the surveys required in that Code.

High-speed passenger craft having to comply, in accordance with Article 6(4) of this Directive, with the requirements of the DSC Code shall be made subject by the Administration of the flag State to the surveys required in the DSC Code.

4. The relevant procedures and guidelines for surveys for the Passenger Ship Safety Certificate specified in IMO Resolution A.997 (25), as amended, 'Survey guidelines under the harmonized system of survey and certification, 2007' or procedures designed to achieve the same goal, shall be followed.

5. The surveys mentioned in paragraphs 1, 2 and 3 shall be carried out exclusively by the surveyors of the Administration of the flag State itself, or of a recognised organisation or of the Member State authorised by the flag State to carry out surveys, with the purpose of ensuring that all applicable requirements of this Directive are complied with.

#### *Article 13*

### **Certificates**

1. All new and existing passenger ships shall be provided with a Passenger Ship Safety Certificate in compliance with this Directive. The certificate shall have a format as laid down in Annex II. This certificate shall be issued by the Administration of the flag State after an initial survey, as described in point (a) of Article 12(1) and point (a) of Article 12(2), has been carried out.

2. The Passenger Ship Safety Certificate shall be issued for a period not exceeding 12 months. The period of validity of the certificate may be extended by the Administration of the flag State for a period of grace of up to one month from the date of expiry stated on it. When an extension has been granted, the new period of validity of the certificate shall start from the expiry date of the existing certificate before its extension.

Renewal of the Passenger Ship Safety Certificate shall be issued after a periodical survey, as described in point (b) of Article 12(1) and point (b) of Article 12(2), has been carried out.

3. For high-speed passenger craft complying with the requirements of the HSC Code, a High Speed Craft Safety Certificate and a Permit to Operate High Speed Craft shall be issued by the Administration of the flag State, in accordance with the provisions of the HSC Code.

For high-speed passenger craft complying with the requirements of the DSC Code, a DSC Construction and Equipment Certificate and a DSC Permit to Operate shall be issued by the Administration of the flag State, in accordance with the provisions of the DSC Code.

Before issuing the Permit to Operate for high-speed passenger craft engaged on domestic voyages in a host State, the Administration of the flag State shall concur with the host State on any operational conditions associated with operation of the craft in that State. Any such conditions shall be shown by the Administration of the flag State on the Permit to Operate.

4. Exemptions granted to ships or craft under and in accordance with the provisions of Article 9(3) shall be noted on the ship's or the craft's certificate.

#### *Article 14*

### **1974 SOLAS Convention regulations**

1. With regard to passenger ships engaged on international voyages the Community shall submit requests to the IMO:
  - (a) to expedite the ongoing work within the IMO to revise the regulations of Chapters II-1, II-2 and III of the 1974 SOLAS Convention, as amended, containing issues left to the discretion of the Administration, to establish harmonised interpretations for those regulations and to adopt amendments to the latter accordingly; and

(b) to adopt measures for mandatory application of the principles underlying the provisions of MSC Circular 606 on Port State Concurrence with SOLAS Exemptions.

2. The requests referred to in paragraph 1 shall be made by the Presidency of the Council and by the Commission, on the basis of the harmonised regulations laid down in Annex I.

All Member States shall do their utmost to ensure that the IMO undertakes the development of the said regulations and measures expeditiously.

#### *Article 15*

### **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 the measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive.

#### *Article 16*

### **Notification**

Member States shall immediately notify to the Commission the main provisions of national law which they adopt in the field covered by this Directive. The Commission shall inform the other Member States thereof.

#### *Article 17*

### **Repeal**

Directive 98/18/EC, as amended by the Directives listed in Annex IV, Part A, is repealed, without prejudice to the obligations of the Member States relating to the time-limits for transposition into national law and application of the Directives set out in Annex IV, 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 in Annex V.

#### *Article 18*

### **Entry into force**

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

#### *Article 19*

### **Addressees**

This Directive is addressed to the Member States.

**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**

amended by Directive 2002/84/EC, Regulation (EC) No 219/2009 and Directive 2009/18/EC  
(consolidated version without annexes <sup>(15)</sup>)

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission <sup>(16)</sup>,

Having regard to the opinion of the Economic and Social Committee <sup>(17)</sup>,

Acting in accordance with the procedure referred to in Article 189c of the Treaty <sup>(18)</sup>,

- (1) Whereas within the framework of the common transport policy further measures must be taken to improve safety in the maritime transport of passengers;
- (2) Whereas the Community is seriously concerned by shipping accidents involving ro-ro ferries which have resulted in a massive loss of life; whereas persons using ro-ro ferries and high-speed passenger craft throughout the Community have the right to expect and to be able to rely on an appropriate level of safety;
- (3) Whereas the Council invited the Commission, in its resolution of 22 December 1994 on the safety of roll-on/roll-off passenger ferries <sup>(19)</sup>, to submit proposals for a mandatory survey and control regime for the safety of all ro-ro passenger ferries operating to or from ports of the Community, including the right of investigation of marine casualties;
- (4) Whereas in view, in particular, of the internal market dimension of maritime passenger transport, action at Community level is the most effective way of establishing a common minimum level of safety for ships throughout the Community;
- (5) Whereas action at Community level is the best way to ensure the harmonised enforcement of some principles agreed on within the International Maritime Organisation (IMO), thus avoiding distortions of competition between different Community ports and ro-ro ferries and high-speed passenger craft;
- (6) Whereas, in view of the proportionality principle, a Council Directive is the appropriate legal instrument as it provides a framework for the Member States' uniform and compulsory application of the common safety standards, while leaving each Member State the right to decide which implementation tools best fit its internal system;
- (7) Whereas the safety of ships is primarily the responsibility of flag States; whereas each Member State should ensure compliance with the safety requirements applicable to the ro-ro ferries and high speed passenger craft flying the flag of that Member State and to the companies that operate them;

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<sup>(15)</sup> Complete version is available on the website of DG MOVE, Safety and Environment, Union Legislation on Maritime Safety.

<sup>(16)</sup> OJ C 108, 7.4.1998, p. 122.

<sup>(17)</sup> OJ C 407, 28.12.1998, p. 106.

<sup>(18)</sup> Opinion of the European Parliament of 7 October 1998 (OJ C 328, 26.10.1998, p. 82), Council Common Position of 21 December 1998 (OJ C 49, 22.2.1999, p. 15) and Decision of the European Parliament of 10 February 1999 (not yet published in the Official Journal).

<sup>(19)</sup> OJ C 379, 31.12.1994, p. 8.

- (8) Whereas port State control does not provide for regular in-depth preventive surveys and verifications for ro-ro ferries and high speed passenger craft; whereas it therefore should be verified that companies and their ferries and craft comply with the safety standards agreed within the IMO and, where appropriate, at regional level, through a system of regular mandatory inspections by host States; whereas companies should be prevented from operating such ferries and craft if these inspections reveal dangerous non-conformity with these safety standards;
- (9) Whereas this Directive addresses the Member States in their capacity as host States; whereas the responsibilities exercised in that capacity are based on specific port State responsibilities that are fully in line with the 1982 United Nations Convention on the Law of the Sea (Unclos);
- (10) Whereas in the interest of improving safety and avoiding distortion of competition, the common safety standards should apply to all ro-ro ferries and high-speed passenger craft, regardless of the flag they fly, providing regular services to or from a port in the Member States both on international voyages and on domestic voyages in sea areas beyond 20 miles from a coast line where shipwrecked persons can land, while leaving the possibility to the Member States to extend the scope of application of the Directive to ro-ro ferries and high-speed passenger craft operating on domestic voyages in sea areas within 20 miles from a coast line;
- (11) Whereas it is necessary that host States check whether the ro-ro ferries and high-speed passenger craft operating to and from Community ports conform to certain harmonised requirements for certification and survey by the flag State;
- (12) Whereas those ro-ro ferries and high-speed passenger craft should also conform, at the building stage and during their entire lifetime, with the applicable classification standards as regards the construction and maintenance of their hull, main and auxiliary machinery, electrical installation and control installation and should be fitted with a voyage data recorder complying with the relevant international requirements;
- (13) Whereas host States should check that the companies providing those services operate their ro-ro ferries and high-speed passenger craft so as to guarantee maximum safety; whereas interested Member States, other than the flag State, should be allowed to participate fully in any investigation of a marine casualty;
- (14) Whereas it is fundamental to check that third flag State administrations concur with the companies' commitments to cooperate with any investigation of a marine casualty or incident and to comply with the rules of recognised organisations for classification and, where applicable, for certification; whereas such administrations should accept the use of harmonised survey and certification procedures;
- (15) Whereas, in order to ensure continuous compliance of ro-ro ferries and high-speed passenger craft with the requirements of this Directive, host States should carry out surveys prior to the start of a service and thereafter at regular intervals and whenever a significant change occurs in the operating circumstances;
- (16) Whereas in order to reduce the burden placed on companies, due account should be taken of previous verifications and surveys; ro-ro ferries and high-speed passenger craft should be exempted from surveys where it has been confirmed that they comply with this Directive for operation on similar routes and replacement ferries and craft should benefit from special arrangements; whereas ro-ro ferries and high-speed passenger craft which have been surveyed to the satisfaction of the host State should not be subjected to expanded inspections under Council Directive 95/21/EC of 19 June 1995 concerning the enforcement, in respect of shipping using Community ports and sailing in the waters under the jurisdiction of the Member States, of international standards for ship safety, pollution prevention and shipboard living and working conditions (port State control) <sup>(20)</sup>;
- (17) Whereas Member States should cooperate to exercise their responsibilities as host States;

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<sup>(20)</sup> OJ L 157, 7.7.1995, p. 1. Directive as last amended by Commission Directive 98/42/EC (OJ L 184, 27.6.1998, p. 40).

- (18) Whereas Member States might find it useful to be assisted in the performance of their tasks by recognised organisations which meet the requirements of 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 marine administrations <sup>(21)</sup>;
- (19) Whereas due account should be taken, in planning the surveys, of the operational and maintenance schedules of the ro-ro ferries and high-speed passenger craft;
- (20) Whereas Member States should ensure that their internal 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; whereas the outcome of such investigations should be made publicly available;
- (21) Whereas a set of accompanying measures in the areas of navigational guidance systems, contingency planning and local operational restrictions will further improve safety;
- (22) Whereas, in order to enable the monitoring of the application of this Directive, a database should be established based on the information derived from the surveys;
- (23) Whereas it is necessary for a committee consisting of representatives of the Member States to assist the Commission in the effective application of this Directive; whereas the Committee set up in Article 12 of Council Directive 93/75/EEC of 13 September 1993 concerning minimum requirements for vessels bound for or leaving Community ports and carrying dangerous or polluting goods <sup>(22)</sup>, can undertake that function;
- (24) Whereas certain provisions of the Directive may be adapted by that Committee to bring them into line with Community or IMO measures and to improve its regime to take into account future amendments to the 1974 International Convention for the Safety of Life at Sea (SOLAS) which have entered into force and to ensure a harmonised implementation of amendments to some IMO resolutions without broadening its scope,

HAS ADOPTED THIS DIRECTIVE:

#### *Article 1*

##### **Purpose**

The purpose of this Directive is to lay down a system of mandatory surveys which will provide a greater assurance of safe operation of regular ro-ro ferries and high-speed passenger craft services to or from ports in the Member States of the Community and to provide for

the right of Member States to conduct, participate in or cooperate with any investigation of maritime casualties or incidents on these services.

#### *Article 2*

##### **Definitions**

For the purpose of this Directive and its Annexes,

- (a) 'ro-ro ferry' shall mean a seagoing passenger vessel with facilities to enable road or rail vehicles to roll on and roll off the vessel, and carrying more than 12 passengers;
- (b) 'high Speed Passenger Craft' shall mean a high speed craft as defined in Regulation X/1 of the 1974 Solas Convention, in its up-to-date version, which carries more than 12 passengers;

<sup>(21)</sup> OJ L 319, 12.12.1994, p. 20. Directive as amended by Commission Directive 97/58/EC (OJ L 274, 7.10.1997, p. 8).

<sup>(22)</sup> OJ L 247, 5.10.1993, p. 19. Directive as last amended by Commission Directive 98/74/EC (OJ L 276, 13.10.1998, p. 7).

- (c) 'a passenger' is every person other than:
  - (i) the master and the members of the crew or other persons employed or engaged in any capacity on board a ship on the business of that ship, and
  - (ii) a child under one year of age;
- (d) '1974 Solas Convention' shall mean the International Convention for the Safety of Life at Sea, together with Protocols and amendments thereto, in its up-to-date version;
- (e) 'high Speed Craft Code' shall mean the 'International Code for Safety of High Speed Craft' contained in IMO Maritime Safety Committee Resolution MSC 36 (63) of 20 May 1994, in its up-to-date version;
- (f) 'regular service' shall mean a series of ro-ro ferry or high-speed passenger craft crossings operated so as to serve traffic between the same two or more ports, or a series of voyages from and to the same port without intermediate calls, either:
  - (i) according to a published timetable; or
  - (ii) with crossings so regular or frequent that they constitute a recognisable systematic series;
- (g) 'sea area' shall mean any sea area included in a list established in accordance with Article 4 of Council Directive 98/18/EC of 17 March 1998 on safety rules and standards for passenger ships<sup>(23)</sup>;
- (h) 'certificates' shall mean:
  - (i) for ro-ro ferries and high-speed passenger craft engaged on international voyages, the safety certificates issued under the 1974 SOLAS Convention as amended, together with the relevant records of equipment and where appropriate exemption certificates and permits to operate;
  - (ii) for ro-ro ferries and high-speed passenger craft engaged on domestic voyages, the safety certificates issued in accordance with Directive 98/18/EC together with the relevant records of equipment and where appropriate exemption certificates and permits to operate;
- (i) 'exemption certificate' shall mean any certificate issued under the provisions of Regulation I B/12(a)(vi) of the 1974 SOLAS Convention;
- (j) 'administration of the flag State' shall mean the competent authorities of the State whose flag the ro-ro ferry or the high-speed passenger craft is entitled to fly;
- (k) 'host State' shall mean a Member State to or from whose port(s) a ro-ro ferry or a high-speed passenger craft is engaged on a regular service;
- (l) 'international voyage' shall mean a voyage by sea from a port of a Member State to a port outside that Member State, or conversely;
- (m) 'domestic voyage' shall mean a voyage in sea areas from a port of a Member State to the same or another port within that Member State;
- (n) 'recognised organisation' shall mean an organisation recognised in accordance with Article 4 of Directive 94/57/EC;
- (o) 'company' shall mean a company operating one or more ro-ro ferries to which a document of compliance has been issued in compliance with Article 5(2) of Council Regulation (EC) No 3051/95 of 8 December 1995 on

<sup>(23)</sup> OJ L 144, 15.5.1998, p. 1.

the safety management of roll on roll off passenger ferries (ro-ro ferries) or a company operating high speed passenger craft, to which a document of compliance has been issued in accordance with Regulation IX/4 of the 1974 Solas Convention, in its up-to-date version;

- (p) 'Code for the investigation of marine casualties' shall mean the Code for the investigation of marine casualties and incidents adopted by the IMO by means of Assembly Resolution A.849(20) of 27 November 1997;
- (q) 'specific survey' shall mean a survey by the host State as specified in Articles 6 and 8;
- (r) 'qualified inspector' shall mean a public-sector employee or other person, duly authorised by the competent authority of a Member State to carry out surveys and inspections related to the certificates and fulfilling the criteria of qualification and independence specified in Annex V;
- (s) 'deficiency' shall mean a condition found not to be in compliance with the requirements of this Directive.

#### *Article 3*

##### **Scope**

1. This Directive shall apply to all ro-ro ferries and high-speed passenger craft operating to or from a port of a Member State on a regular service, regardless of their flag, when engaged on international voyages or on domestic voyages in sea areas covered by Class A as referred to in Article 4 of Directive 98/18/EC.

2. Member States may apply this Directive to ro-ro ferries and high-speed passenger craft engaged on domestic voyages in sea areas other than those referred to in paragraph 1. In those circumstances the relevant rules shall be applied to all ro-ro ferries or high-speed passenger craft operating under the same conditions, without discrimination in respect of flag, nationality or place of establishment of the company.

#### *Article 4*

##### **Initial verifications required in relation to ro-ro ferries and high-speed passenger craft**

1. Prior to the start of operation by a ro-ro ferry or high-speed passenger craft on a regular service, or within 12 months of the date referred to in Article 19(1) for a ro-ro ferry or high-speed passenger craft already operating a regular service on that date, host States shall check that ro-ro ferries and high-speed passenger craft:

- (a) carry valid certificates, issued by the administration of the flag State or by a recognised organisation acting on its behalf;
- (b) have been surveyed for the issue of certificates in accordance with the relevant procedures and guidelines annexed to IMO Assembly Resolution A.746(18) on survey guidelines under the harmonised system of survey and certification, as they stand at the time of adoption of this Directive or with procedures designed to achieve the same goal;
- (c) comply with the standards specified for classification by the rules of a recognised organisation, or rules accepted as equivalent by the administration of the flag State for construction and maintenance of their hull, machinery and electrical and control installation;
- (d) are fitted with a voyage data recorder (VDR) for the purpose of providing information for the benefit of a possible casualty investigation. The VDR shall meet the performance standards of IMO Assembly Resolution A.861(20) of 27 November 1997 and comply with the testing standards laid down in International Electrotechnical Commission (IEC) standard No 61996. However, for VDRs to be placed on board ro-ro ferries and high-speed passenger craft built before the entry into force of this Directive, exemptions for compliance with some of the requirements may be granted. These exemptions and the conditions under which they can be granted shall be adopted in accordance with the regulatory procedure referred to in Article 16(2);

(e) comply with specific stability requirements adopted at regional level, and transposed into their national legislation in accordance with the notification 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>(24)</sup>, when operating in that region a service covered by that national legislation, provided those requirements do not exceed those specified in the Annex on Resolution 14 (Stability Requirements Pertaining to the Agreement) of the 1995 SOLAS Conference and have been notified to the Secretary-General of the IMO, in accordance with the procedures specified in point 3 of that resolution.

2. Paragraph 1(e) shall apply to high speed passenger craft only where appropriate.

#### *Article 5*

### **Initial verifications required in relation to companies and flag States**

Prior to the start of operation by a ro-ro ferry or high-speed passenger craft on a regular service, or within 12 months of the date referred to in Article 19(1) for a ro-ro ferry or high-speed passenger craft already operating on a regular service on that date, host States shall:

1. check that companies which operate or intend to operate such a ferry or craft on regular service:
  - (a) take the necessary measures to ensure that the specific requirements laid down in Annex I are applied and provide the evidence of compliance with this paragraph and with Article 4 to the host States involved in the regular service;
  - (b) will agree in advance that host States and any substantially interested Member State may conduct, participate fully in or cooperate with any investigation of a marine casualty or incident in accordance with Article 12, and will give them access to the information retrieved from the VDR of their ferry or craft involved in such a casualty or incident.
2. Check for such a ferry or craft flying a flag other than that of a Member State, the concurrence of that flag State that it has accepted the company's commitment to meet the requirements of this Directive.

#### *Article 6*

### **Initial specific surveys**

1. Prior to the start of operation by a ro-ro ferry or high-speed passenger craft on a regular service, or within 12 months of the date referred to in Article 19(1) for a ro-ro ferry and high-speed passenger craft already operating a regular service on that date, host States shall carry out an initial specific survey, in accordance with Annexes I and III, to satisfy themselves that the ro-ro ferry or high-speed passenger craft fulfils the necessary requirements for safe operation of a regular service.
2. Where this Article is applied prior to the start of operation, host States shall set a date for the initial specific survey which is no more than one month after receipt of the evidence necessary to complete the verification under Articles 4 and 5.

#### *Article 7*

### **Special provisions**

1. When a ro-ro ferry or high-speed passenger craft is to be engaged on another regular service, a new host State shall take the utmost account of verifications and surveys previously carried out for that ferry or craft for operation on a previous regular service covered by this Directive. Provided that the new host State is satisfied with these previous

<sup>(24)</sup> OJ L 204, 21.7.1998, p. 37. Directive as amended by Directive 98/48/EC (OJ L 217, 5.8.1998, p. 18).

verifications and surveys and that they are relevant to the new operational conditions, Articles 4, 5 and 6 need not be applied prior to the ro-ro ferry or high-speed passenger craft starting operation on the new regular service.

2. Articles 4, 5 and 6 need not apply when a ro-ro ferry or high-speed passenger craft which complies with this Directive already operating a regular service covered by this Directive transfers to another regular service covered by this Directive transfers to another regular service where the route characteristics are agreed by the relevant host States to be similar, and the host States all agree that the ro-ro ferry or high-speed passenger craft fulfils all the requirements for safe operation on that service.

At the request of a company, the host States concerned may confirm in advance their agreement as to where route characteristics are similar.

3. In cases where, following unforeseen circumstances, a replacement ro-ro ferry or high-speed passenger craft must be introduced rapidly to ensure continuity of service, and paragraphs 1 and 2 are not applicable, the host State may allow the ferry or craft to start operating provided that:

- (a) a visual inspection and document check raise no concerns that the ro-ro ferry or high-speed passenger craft does not fulfil the necessary requirements for safe operation, and
- (b) the host State completes the verifications and surveys under Articles 4, 5 and 6 within one month.

#### *Article 8*

### **Regular specific surveys and other surveys**

1. Host States shall, once in every 12-month period, carry out:

- a specific survey, in accordance with Annex III, and
- a survey during a regular service, which shall aim to cover enough items listed in Annexes I, III and IV in order to satisfy the host State that the ferry or craft continues to fulfil all the necessary requirements for safe operation.

An initial specific survey in accordance with Article 6 counts as a specific survey for the purposes of this Article.

2. A host State shall carry out a specific survey in accordance with Annex III each time the ro-ro ferry or high-speed passenger craft undergoes repairs, alterations and modifications of a major character, or when there is a change in management or flag, or a transfer of class. However, in case of change in management or flag, or transfer of class, the host State may, after taking account of verifications and surveys previously issued for the ferry or craft, and provided that the safe operation of the ferry or craft is not affected by this change or transfer, dispense the ferry or craft from the specific survey required by this paragraph.

3. Should the surveys referred to in paragraph 1 confirm or reveal deficiencies in relation to the requirements of this Directive warranting a prevention of operation, all costs relating to the surveys in any normal accounting period shall be covered by the company.

#### *Article 9*

### **Notification**

Host States shall inform companies promptly, in writing, of the outcome of verifications and surveys under Articles 4, 5, 6 and 8.

### Article 10

#### Prevention of operation

1. A host State shall prevent the operation of a ro-ro ferry or high-speed passenger craft on a regular service:
  - (a) when it has been unable to confirm compliance with the requirements in Articles 4 and 5;
  - (b) whenever deficiencies are found during the surveys referred to in Articles 6 and 8 which pose an immediate danger to life, the ferry or craft, its crew and passengers;
  - (c) when there is an established failure to comply with the Community instruments listed in Annex II which poses an immediate danger of life, the ferry or craft, its crew and passengers;
  - (d) whenever it has not been consulted by the flag State on the matters referred to in Article 13(1) or (5), until the host State has established that the danger has been removed and the requirements of the Directive are met.

The host State shall inform the company in writing of the decision to prevent that ro-ro ferry or high-speed passenger craft operating, giving full reasoning.

2. However, where the ro-ro ferry or high-speed passenger craft is already operating a regular service and deficiencies are established, host States shall require the company to take the necessary measures for their prompt rectification or within a well-defined and reasonable period of time, provided they do not pose an immediate danger to the safety of the ferry or craft, its crew and passengers. After rectification of the deficiencies, the host States concerned shall verify that the rectification has been carried out to their full satisfaction. If this is not the case, they shall prevent the ferry or craft from operating.

3. Member States shall, in accordance with national legislation, establish and maintain appropriate procedures covering the right of appeal by a company against a decision to prevent operation. Appeals should be dealt with expeditiously. An appeal shall not cause the decision to be automatically suspended.

The competent authority shall duly inform the company of its right of appeal.

4. In cases where Articles 4, 5 and 6 are applied prior to the start of operation by a ro-ro ferry or high-speed passenger craft on a regular service, a decision to prevent a ship operating must be taken within one month of the initial specific survey and communicated to the company immediately.

### Article 11

#### Procedures related to initial and regular specific surveys

1. Ro-ro ferries and high-speed passenger craft that have been subject to the specific surveys to the satisfaction of the involved host State(s) shall be exempted by these host State(s) from expanded inspections referred to in Article 7(4) of Directive 95/21/EC and from expanded inspections based on the clear grounds that they belong to the category of passenger ships referred to in Article 7(1) and Annex V.A.3 of that Directive.

2. Administrations of two or more host States involved in a specific survey of the same ship or craft shall cooperate with each other. The specific surveys shall be carried out by a team composed of qualified inspectors of the involved host State(s). Wherever there is a need for qualitative assessment of the fulfilment of class-related provisions, host States shall ensure the necessary expertise is included in the team, where appropriate by including a surveyor of a recognised organisation. The inspectors shall report deficiencies to the administrations of the host States. The host State shall communicate this information to the flag State, if that State is not a host State involved in the survey.

3. An involved host State may agree to carry out a survey at the request of another involved host State.

4. Host States, when requested by companies, shall invite the administration of the flag State which is not a host State to be represented in any specific survey under the provisions of this Directive.
5. Host States, in planning a survey in accordance with Articles 6 and 8, shall take due account of the operational and maintenance schedule of the ferry or craft.
6. The findings of the specific surveys shall be recorded in a report of which the format shall be established in accordance with the regulatory procedure referred to in Article 16(2).
7. In case of persistent disagreement between host States on the fulfilment of the requirements of Articles 4 and 5(1), the administration of any host State involved in a specific survey shall immediately notify to the Commission the reasons of the disagreement.
8. The Commission shall immediately start proceedings in order to take a decision in accordance with the regulatory procedure referred to in Article 16(2).

#### *Article 13*

#### **Accompanying measures**

1. Member States issuing or recognising an exemption certificate shall work together with the involved host State or administration of the flag State to resolve any disagreement concerning the suitability of the exemptions prior to the initial specific survey.
2. Member States should operate shore-based navigational guidance systems and other information schemes in accordance with IMO Resolution A.795(19) to assist ro-ro ferries and high-speed passenger craft in the safe conduct of the regular service, or part of it, for the safety of which they bear responsibility.
3. Each Member State shall provide to the Commission copies of the survey reports referred to in Article 11(6), with the IMO identification number where applicable. The Commission may, in accordance with the regulatory procedure referred to in Article 16(2), decide on appropriate means for allocating an identification number to other vessels. If two or more host States are involved in the regular service, the data may be provided by one of these host States. The Commission shall set up and maintain a database containing the information provided. Conditions of access to the database shall be decided in accordance with the regulatory procedure referred to in Article 16(2).
4. Member States shall ensure that companies operating ro-ro ferries or high-speed passenger craft on regular services to or from their ports are able to maintain and implement an integrated system of contingency planning for shipboard emergencies. To this end they shall make use of the framework provided by IMO Assembly Resolution A.852(20) on guidelines for a structure of an integrated system of contingency. If two or more Member States are involved as host States in the regular service they shall jointly establish a plan for the different routes.
5. Member States shall ensure that they have been fully involved in their capacity as host State by the administration of the flag State, before the issuance of the permit to operate high speed craft, in accordance with the provisions of paragraph 1.9.3 of the High-speed Craft Code. They shall ensure that operational restrictions required by local situations, necessary to protect life, natural resources and coastal activities are established or maintained and they shall take measures to ensure the enforcement of these restrictions.

#### *Article 14*

#### **Cooperation between host States**

Host States involved in the same regular service shall liaise with each other when applying this Directive.

*Article 15***Supporting measures**

The Member States shall inform third States which have either flag State responsibilities or responsibilities similar to those of a host State for ro-ro ferries and high-speed passenger craft falling under the scope of this Directive and operating between a port of a Member State and a port of a third State of the requirements imposed by this Directive on any company providing a regular service to or from a port of the Community.

*Article 16***Committee procedure**

1. The Commission shall be assisted by the Committee on Safe Seas and the Prevention of Pollution from Ships (COSS) set up by Article 3 of Regulation (EC) No 2099/2002 of the European Parliament and of the Council <sup>(25)</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.

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 17***Amendment procedure**

The Annexes to this Directive, the definitions, the references to Community instruments and references to IMO instruments may be adapted to the extent necessary to bring them into line with Community or IMO measures which have entered into force, but without broadening the scope of this Directive.

The Annexes may also be adapted when it is necessary to improve the arrangements established by this Directive, but without broadening 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 16(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 18***Penalties**

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

*Article 19***Application**

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than 1 December 2000 and forthwith inform the Commission thereof.

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<sup>(25)</sup> OJL 324, 29.11.2002, p. 1.

2. The provisions of Article 4(1)(d) shall be applied no later than 30 months after the publication date of IEC standard No 61996 or by 1 January 2001, whichever of these dates comes later.
3. When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by the Member States.
4. The Member States shall immediately notify to the Commission all provisions of domestic law which they adopt in the field governed by this Directive. The Commission shall inform the other Member States thereof.

*Article 20*

**Assessment of application**

Three years after the date referred to in Article 19(1), the Commission shall assess, on the basis of information to be provided by the Member States in accordance with Article 13, the application of this Directive.

*Article 21*

**Entry into force**

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

*Article 22*

**Addressees**

This Directive is addressed to the Member States.

**DIRECTIVE 2003/25/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL  
of 14 April 2003**

**on specific stability requirements for ro-ro passenger ships**

amended by Commission Directive 2005/12/EC and Regulation No 1137/2008

(consolidated version without annexes <sup>(26)</sup>)

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 <sup>(27)</sup>,

Having regard to the Opinion of the European Economic and Social Committee <sup>(28)</sup>,

Having consulted the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the Treaty <sup>(29)</sup>,

Whereas:

- (1) Within the framework of the common transport policy further measures should be taken to improve safety in maritime transport of passengers.
- (2) The Community wishes to avoid by all appropriate means shipping accidents involving ro-ro passenger ships and resulting in loss of life.
- (3) The survivability of ro-ro passenger ships following collision damage, as determined by their damage stability standard, is an essential factor for the safety of passengers and crew and is particularly relevant for search and rescue operations; the most dangerous problem for the stability of a ro-ro passenger ship with an enclosed ro-ro deck, following collision damage, is the one posed by the effect of a build up of significant amounts of water on that deck.
- (4) Persons using ro-ro passenger ships and crew employed on board such vessels throughout the Community should have the right to demand the same high level of safety regardless of the area in which ships operate.
- (5) In view of the internal market dimension of maritime transport of passengers, action at Community level is the most effective way of establishing a common minimum level of safety for ships throughout the Community.
- (6) Action at Community level is the best way to ensure the harmonised enforcement of principles agreed on within the International Maritime Organisation (IMO), thus avoiding distortions of competition between the operators of ro-ro passenger ships operating in the Community.
- (7) General stability requirements for ro-ro passenger ships in damaged condition were established at international level by the 1990 Safety of Life at Sea (SOLAS 90) Conference and were included in Regulation II-1/B/8 of the SOLAS Convention (SOLAS 90 standard). These requirements are applicable in the entire Community owing

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<sup>(26)</sup> Complete version is available on the website of DG MOVE, Safety and Environment, Union Legislation on Maritime Safety.

<sup>(27)</sup> OJ C 20 E, 28.1.2003, p. 21

<sup>(28)</sup> Opinion delivered on 11 December 2002 (not yet published in the Official Journal).

<sup>(29)</sup> Opinion of the European Parliament of 7 November 2002 (not yet published in the Official Journal), and Council Decision of 17 March 2003.

to the direct application to international voyages of the SOLAS Convention and the application to domestic voyages of Council Directive 98/18/EC of 17 March 1998 on safety rules and standards for passenger ships<sup>(30)</sup>.

- (8) The SOLAS 90 damage stability standard implicitly includes the effect of water entering the ro-ro deck in a sea state of the order of 1,5 m significant wave height.
- (9) IMO Resolution 14 of the 1995 SOLAS Conference, allowed IMO members to conclude regional agreements if they consider that prevailing sea conditions and other local conditions require specific stability requirements in a designated area.
- (10) Eight northern European countries, including seven Member States, agreed in Stockholm on 28 February 1996 to introduce a higher stability standard for ro-ro passenger ships in damaged condition in order to take into account the effect of water accumulation on the ro-ro deck and to enable the ship to survive in more severe states than the SOLAS 90 standard, up to 4 m significant wave heights.
- (11) Under this agreement, known as the Stockholm Agreement, the specific stability standard is directly related to the sea area in which the vessel operates and more particularly to the significant wave height recorded in the area of operation; the significant wave height of the area where the ship operates determines the height of water on the car deck that would arise following the occurrence of accidental damage.
- (12) At the conclusion of the Conference at which the Stockholm Agreement was adopted, the Commission noted that the Agreement was not applicable in other parts of the Community and announced its intention to examine the prevailing local conditions under which ro-ro passenger ships sail in all European waters and to take appropriate initiatives.
- (13) The Council entered a statement in the minutes of the 2 074th Council meeting of 17 March 1998 stressing the need to ensure the same level of safety for all passenger ferries operating in similar conditions, whether on international or on domestic voyages.
- (14) In its Resolution of 5 October 2000 on the sinking of the Greek ferry 'Samina'<sup>(31)</sup>, the European Parliament expressly stated that it awaited the evaluation by the Commission of the effectiveness of the Stockholm Agreement and other measures for improving the stability and safety of passenger ships.
- (15) Following an expert study by the Commission, the wave height conditions in south European waters were found to be similar to those in the north. While meteorological conditions may be generally more favourable in the south, the stability standard determined in the context of the Stockholm Agreement is based solely on the significant wave height parameter and the way this influences the accumulation of water on the ro-ro deck.
- (16) The application of Community safety standards regarding the stability requirements for ro-ro passenger ships is essential for the safety of these vessels and has to be part of the common maritime safety framework.
- (17) In the interests of improving safety and avoiding distortion of competition, the common safety standards regarding stability should apply to all ro-ro passenger ships, regardless of the flag that they fly, providing regular services to or from a port in the Member States on international voyages.
- (18) The safety of ships is primarily the responsibility of flag States and therefore each Member State should ensure compliance with the safety requirements applicable to the ro-ro passenger ships flying the flag of that Member State.

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<sup>(30)</sup> OJ L 144, 15.5.1998, p. 1; Directive as last amended by Directive 2002/84/EC of the European Parliament and of the Council (OJ L 324, 29.11.2002, p. 53)

<sup>(31)</sup> OJ C 178, 22.6.2001, p. 288

- (19) Member States should also be addressed in their capacity as host States. The responsibilities exercised in that capacity are based on specific port State responsibilities that are fully in line with the 1982 United Nations Convention on the Law of the Sea (Unclos).
- (20) The specific stability requirements introduced by this Directive should be based on a method, as set out in the Annexes to the Stockholm Agreement, which calculates the height of water on the ro-ro deck following collision damage in relation to two basic parameters: the ship's residual freeboard and the significant wave height in the sea area where the ship operates.
- (21) Member States should determine and publicise the significant wave heights in the sea areas crossed by ro-ro passenger ships on regular service to or from their ports. For international routes the significant wave heights should, wherever applicable and possible, be established in agreement between the States at both ends of the route. Significant wave heights for seasonal operation in the same sea areas may also be determined.
- (22) Every ro-ro passenger ship engaged in voyages within the scope of this Directive should fulfil the stability requirements in relation to the significant wave heights determined for its area of operation. It should carry a certificate of compliance issued by the Administration of the flag State, which should be accepted by all other Member States.
- (23) The SOLAS 90 Standard provides a level of safety equivalent to the specific stability requirements established by this Directive for ships operating in sea areas where the significant wave height is equal to or less than 1,5 m.
- (24) In view of the structural modifications that the existing ro-ro passenger ships may need to undergo in order to comply with the specific stability requirements, those requirements should be introduced over a period of years in order to allow to the part of the industry affected sufficient time to comply: to that end, a phasing-in timetable for existing ships should be provided. This phasing-in timetable should not affect the enforcement of the specific stability requirements in the sea areas covered by the Annexes to the Stockholm Agreement.
- (25) Article 4(1)(e) of 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>(32)</sup> provides that host States are to check that ro-ro passenger ferries and high-speed passenger craft comply with specific stability requirements adopted at regional level and transposed into their national legislation, when these ships operate a service covered by that national legislation in the region concerned.
- (26) High-speed passenger craft as defined in Regulation 1 of Chapter X of the SOLAS Convention, as amended, should not be required to comply with the provisions of this Directive, provided that they comply entirely with the provisions of the IMO 'International code for safety of high-speed craft', as amended.
- (27) 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>(33)</sup>.
- (28) Since the objective of the proposed action, namely to safeguard human life at sea by improving the survivability of ro-ro passenger ships in the event of damage, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and 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,

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<sup>(32)</sup> OJ L 138, 1.6.1999, p. 1. Directive as amended by Directive 2002/84/EC of the European Parliament and of the Council.

<sup>(33)</sup> OJ L 184, 17.7.1999, p. 23.

HAVE ADOPTED THIS DIRECTIVE:

*Article 1*

**Purpose**

The purpose of this Directive is to lay down a uniform level of specific stability requirements for ro-ro passenger ships, which will improve the survivability of this type of vessel in case of collision damage and provide a high level of safety for the passengers and the crew.

*Article 2*

**Definitions**

For the purpose of this Directive, the following definitions shall apply:

- (a) 'ro-ro passenger ship' means a ship carrying more than 12 passengers, having ro-ro cargo spaces or special category spaces, as defined in Regulation II-2/3 of the SOLAS Convention, as amended;
- (b) 'new ship' means a ship the keel of which is laid or which is at a similar stage of construction on or after 1 October 2004; a similar stage of construction means the stage at which:
  - (i) construction identifiable with a specific ship begins; and
  - (ii) assembly of that ship has commenced comprising at least 50 tonnes or 1 % of the estimated mass of structural material, whichever is less;
- (c) 'an existing ship' means a ship which is not a new ship;
- (d) 'a passenger' is every person other than the master and the members of the crew or other persons employed or engaged in any capacity on board a ship on the business of that ship and other than a child under one year of age;
- (e) 'international Conventions' means the 1974 International Convention for the Safety of Life at Sea (the SOLAS Convention), and the 1966 International Convention on Load Lines, together with Protocols and amendments thereto in force;
- (f) 'regular service' means a series of ro-ro passenger ship crossings serving traffic between the same two or more ports, which is operated either:
  - (i) according to a published timetable; or
  - (ii) with crossings so regular or frequent that they constitute a recognisable systematic series;
- (g) 'Stockholm Agreement' means the Agreement concluded at Stockholm on 28 February 1996 in pursuance of SOLAS 95 Conference Resolution 14 'Regional agreements on specific stability requirements for ro-ro passenger ships', adopted on 29 November 1995;
- (h) 'administration of flag State' means the competent authorities of the State whose flag the ro-ro passenger ship is entitled to fly;
- (i) 'host State' means a Member State to or from whose ports a ro-ro passenger ship is engaged on a regular service;
- (j) 'international voyage' means a sea voyage from a port of a Member State to a port outside that Member State, or vice versa;

- (k) 'specific stability requirements' means the stability requirements set out in Annex I;
- (l) 'significant wave height' ('hs') is the average height of the highest third of wave heights observed over a given period;
- (m) 'residual freeboard' ('fr') is the minimum distance between the damaged ro-ro deck and the final waterline at the location of the damage, without taking into account the additional effect of the sea water accumulated on the damaged ro-ro deck.

#### *Article 3*

##### **Scope**

1. This Directive shall apply to all ro-ro passenger ships operating to or from a port of a Member State on a regular service, regardless of their flag, when engaged on international voyages.
2. Each Member State, in its capacity as host State, shall ensure that ro-ro passenger ships, flying the flag of a State which is not a Member State, comply fully with the requirements of this Directive before they may be engaged on voyages from or to ports of that Member State in accordance with Article 4 of Directive 1999/35/EC.

#### *Article 4*

##### **Significant wave heights**

The significant wave heights (hs) shall be used for determining the height of water on the car deck when applying the specific stability requirements contained in Annex I. The figures of significant wave heights shall be those which are not exceeded by a probability of more than 10 % on a yearly basis.

#### *Article 5*

##### **Sea areas**

1. Host States shall establish, not later than 17 May 2004, a list of sea areas crossed by ro-ro passenger ships operating on regular service to or from their ports as well as the corresponding values of significant wave heights in these areas.
2. The sea areas and the applicable values of the significant wave height in these areas shall be defined by agreement between the Member States or, wherever applicable and possible, between Member States and third countries at both ends of the route. Where the ship's route crosses more than one sea area, the ship shall satisfy the specific stability requirements for the highest value of significant wave height identified for these areas.
3. The list shall be notified to the Commission and published in a public database available in the internet site of the competent maritime authority. The location of such information as well as any updates to the list and the reasons for such updates shall also be notified to the Commission.

#### *Article 6*

##### **Specific stability requirements**

1. Without prejudice to the requirements of Regulation II-1/B/8 of the SOLAS Convention (SOLAS 90 standard) relating to watertight subdivision and stability in damaged condition, all ro-ro passenger ships referred to in Article 3(1) shall comply with the specific stability requirements set out in Annex I to this Directive.
2. For ro-ro passenger ships operating exclusively in sea areas where the significant wave height is equal to or lower than 1,5 metres, compliance with the requirements of the regulation referred to in paragraph 1 shall be considered equivalent to compliance with the specific stability requirements set out in Annex I.
3. In applying the requirements set out in Annex I, Member States shall use the guidelines set out in Annex II, in so far as this is practicable and compatible with the design of the ship in question.

*Article 7***Introduction of the specific stability requirements**

1. New ro-ro passenger ships shall comply with the specific stability requirements as set out in Annex I.
2. Existing ro-ro passenger ships, with the exception of those ships to which Article 6(2) applies, shall comply with the specific stability requirements as set out in Annex I not later than 1 October 2010.

Existing ro-ro passenger ships which on 17 May 2003 are in compliance with the requirements of the regulation referred to in Article 6(1) shall comply with the specific stability requirements as set out in Annex I not later than 1 October 2015.

3. This Article shall be without prejudice to Article 4(1)(e) of Directive 1999/35/EC.

*Article 8***Certificates**

1. All new and existing ro-ro passenger ships flying the flag of a Member State shall carry a certificate confirming compliance with the specific stability requirements established in Article 6 and Annex I.

This certificate, which shall be issued by the administration of the flag State and may be combined with other related certificates, will indicate the significant wave height up to which the ship can satisfy the specific stability requirements.

The certificate shall remain valid as long as the ship operates in an area with the same or a lower value of significant wave height.

2. Each Member State acting in its capacity as host State shall recognise certificates issued by another Member State in pursuance of this Directive.
3. Each Member State acting in its capacity as host State shall accept certificates issued by a third country certifying that a ship complies with the specific stability requirements established.

*Article 9***Seasonal and short-time period operations**

1. If a shipping company operating a regular service on a year-round basis wishes to introduce additional ro-ro passenger ships to operate for a shorter period on that service, it shall notify the competent authority of the host State or States not later than one month before the said ships are operated on that service. However, in cases where, following unforeseen circumstances, a replacement ro-ro passenger ship must be introduced rapidly to ensure continuity of service, Directive 1999/35/EC shall apply.
2. If a shipping company wishes to operate seasonally a regular service for a shorter time period not exceeding six months a year, it shall notify the competent authority of the host State or States not later than three months before such operation takes place.
3. Where such operations take place under conditions of lower significant wave height than those established for the same sea area for all-year-round operation, the significant wave height value applicable for this shorter time period may be used by the competent authority for determining the height of water on the deck when applying the specific stability requirements contained in Annex I. The value of the significant wave height applicable for this shorter time period shall be agreed between the Member States or, wherever applicable and possible, between Member States and third countries at both ends of the route.

4. Following agreement of the competent authority of the host State or States for operations within the meaning of paragraphs 1 and 2, the ro-ro passenger ship which undertakes such operations shall be required to carry a certificate confirming compliance with the provisions of this Directive, as provided for in Article 8(1).

#### Article 10

### **Adaptations**

The Annexes to this Directive may be amended by the Commission in order to take account of developments at international level, in particular in the International Maritime Organisation (IMO), and to improve the effectiveness of this Directive in the light of experience and technical progress. 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 11(2).

#### Article 11

### **Committee procedure**

1. The Commission shall be assisted by the Committee on Safe Seas and the Prevention of Pollution from Ships (COSS) set up by Article 3 of Regulation (EC) No 2099/2002 of the European Parliament and of the Council <sup>(34)</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 12

### **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 the measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive.

#### Article 13

### **Implementation**

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 17 November 2004. They shall forthwith inform the Commission thereof.

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

#### Article 14

### **Entry into force**

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

#### Article 15

### **Addressees**

This Directive is addressed to the Member States.

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<sup>(34)</sup> OJ L 324, 29.11.2002, p. 1.

**COUNCIL DIRECTIVE 98/41/EC**  
**of 18 June 1998**  
**on the registration of persons sailing on board passenger ships operating to or from ports**  
**of the Member States of the Community**  
amended by Directive 2002/84/EC and Regulation No 1137/2008  
(consolidated version)

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission <sup>(35)</sup>,

Having regard to the opinion of the Economic and Social Committee <sup>(36)</sup>,

Acting in accordance with the procedure laid down in Article 189c of the Treaty <sup>(37)</sup>,

- (1) Whereas within the framework of the common transport policy further measures must be taken to enhance safety in maritime transport;
- (2) Whereas the Community is seriously concerned by shipping accidents involving passenger ships which have resulted in massive loss of life, particularly those involving the *Herald of Free Enterprise* and the *Estonia*; whereas persons using passenger ships and high-speed passenger craft throughout the Community have the right to expect and to be able to rely on an appropriate level of safety and upon an adequate information system which will facilitate search and rescue and the efficient handling of the aftermath of any accident that might occur;
- (3) Whereas it is necessary to ensure that the number of passengers on board a passenger ship does not exceed the number for which the ship and its safety equipment have been certified; whereas companies should be able to inform the search and rescue services of the number of persons involved in an accident;
- (4) Whereas information must be compiled on passengers and crew in order to facilitate search and rescue and the efficient handling of the aftermath of an accident, i.e. identifying the persons involved, providing clearer information on related legal issues and contributing to more appropriate medical care for rescued persons; whereas such information would prevent unnecessary anxiety on the part of relatives and other persons concerned regarding persons on board passenger ships involved in marine accidents in waters for which Member States bear responsibility under the 1979 International Convention on Maritime Search and Rescue (SAR);
- (5) Whereas passengers should therefore be counted and registered before any ship departs;
- (6) Whereas Chapter III of the International Convention on the Safety of Life at Sea (the SOLAS Convention) provides for the counting and registration of all persons on board all passenger ships sailing on international voyages, from 1 July 1997 and 1 January 1999 respectively, while permitting Administrations to exempt passenger ships sailing in sheltered waters from those requirements and from the requirement to register if the scheduled voyages of such ships render it impracticable for them to prepare such records; whereas

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<sup>(35)</sup> OJ C 31, 31.1.1997, p. 5 and OJ C 275, 11.9.1997, p. 7.

<sup>(36)</sup> OJ C 206, 7.7.1997, p. 111.

<sup>(37)</sup> Opinion of the European Parliament of 29 May 1997 (OJ C 138, 16.6.1998, p. 31), Council common position of 11 December 1997 (OJ C 23, 23.1.1998, p. 17), and Decision of the European Parliament of 11 March 1998 (OJ C 104, 6. 4. 1998).

that Chapter of the SOLAS Convention does not apply to domestic voyages and leaves important points of interpretation to the discretion of individual Member States;

- (7) Whereas this Directive is in accordance with the right of Member States to impose on passenger ships sailing to or from their ports certain requirements more stringent than those laid down in the SOLAS Convention;
- (8) Whereas in view, in particular, of the internal-market dimension of maritime passenger transport, action at Community level is the most effective way of establishing a common minimum level of safety for ships throughout the Community;
- (9) Whereas, in view of the principle of proportionality a Council Directive is the appropriate legal instrument as it provides a framework for the Member States' uniform and compulsory application of safety standards while leaving each Member State the right to decide which implementation tools best fit its internal system;
- (10) Whereas a Member State can ensure compliance with the safety rules applicable on the part of passenger ships flying its flag and the companies that operate them; whereas those rules should not be imposed upon ships operating between ports in third countries; whereas the provisions of the SOLAS Convention apply to those voyages;
- (11) Whereas the only way of ensuring the safe and efficient handling of the aftermath of accidents for all passenger ships, irrespective of their flags, operating or wishing to operate from their ports, is for the Member States to require effective compliance with the relevant rules as a condition of operating from their ports; whereas the granting of exemptions from those rules cannot be left solely to the flag State since only the port State is in a position to determine the requirements for the best possible search and rescue operations for passenger ships sailing to and from a port;
- (12) Whereas in order to harmonise safety protection and avoid distortions of competition, Member States should not, for reasons other than those mentioned in this Directive, grant exemptions or derogations from the relevant SOLAS provisions on 'information on passengers' for voyages starting from or arriving at Community ports;
- (13) Whereas for reasons of practicability and to avoid distortion of competition, a uniform approach must be established to determine the voyages for which the registration of all persons on board should be mandatory; whereas the twenty-mile threshold is the result of taking into consideration general principles and specific points of concern endorsed by all Member States;
- (14) Whereas, for specific operational reasons, the counting of persons on board passenger ships crossing the Strait of Messina might, for a limited period of time, be done in a simpler way than individual counting; whereas Member States should enjoy the possibility of granting some relaxation from the obligation to communicate to the shore the number of persons in the case of passenger ships operating on regular services of short duration carried out exclusively in protected sea areas, as defined in this Directive; whereas passenger ships operating exclusively in protected sea areas constitute a more limited risk and should, therefore, enjoy the possibility of exemption; whereas in certain specific circumstances it may be impracticable for shipping companies to register persons on board and therefore a derogation from the obligation to register could be permitted under specific circumstances and well defined conditions;
- (15) Whereas the collection and processing of data concerning named individuals must be carried out in accordance with the principles of data protection laid down in Directive 95/46/EC <sup>(38)</sup>; whereas, in particular, individuals should be fully informed at the time of collection of the purposes for which the data are required, and the data should be retained only for a very short period which should not in any case be any longer than necessary for the purposes of this Directive;

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<sup>(38)</sup> OJL 281, 23.11.1995, p. 31.

- (16) Whereas it is necessary that a committee consisting of representatives of the Member States assist the Commission in the effective application of this Directive; whereas the committee set up by Article 12 of Directive 93/75/EEC <sup>(39)</sup> can assume that function;
- (17) Whereas certain provisions of this Directive may be adapted by that Committee to take into account future amendments to the SOLAS Convention that have entered into force,

HAS ADOPTED THIS DIRECTIVE:

*Article 1*

The purpose of this Directive shall be to enhance the safety and possibilities of rescue of passengers and crew on board passenger ships operating to or from ports in Member States of the Community and to ensure that search and rescue and the aftermath of any accident which may occur can be dealt with more effectively.

*Article 2*

For the purposes of this Directive:

- 'persons' shall mean all people on board irrespective of age,
- 'passenger ship' shall mean a sea-going ship or a sea-going highspeed craft which carries more than twelve passengers,
- 'high-speed craft' shall mean a high-speed craft as defined in Regulation 1 of Chapter X of the 1974 SOLAS Convention, in its up-to-date version,
- 'company' shall mean the owner of a passenger ship or any other organisation or person such as the manager or the bareboat charterer, who has assumed responsibility for operating the passenger ship from the owner,
- 'ISM Code' shall mean the International Management Code for the Safe Operation of Ships and for Pollution Prevention adopted by the International Maritime Organization (IMO) through Assembly Resolution A.741(18) of 4 November 1993,
- 'passenger registrar' shall mean the responsible shore-based person designated by a company to fulfil the ISM Code obligations or a shore-based person designated by a company as responsible for the keeping of information on persons who have embarked on a company passenger ship,
- 'designated authority' shall mean the competent authority of the Member State responsible for search and rescue or concerned with the aftermath of an accident,
- 'a mile' is 1 852 metres,
- 'protected sea area' shall mean a sea area sheltered from open sea effects where a ship is at no time more than six miles from a place of refuge where shipwrecked persons can land and in which the proximity of search and rescue facilities is ensured,
- 'regular service' shall mean a series of ship crossings operated so as to serve traffic between the same two or more ports, either:
  - (a) according to a published timetable, or
  - (b) with crossings so regular or frequent that they constitute a recognizable systematic series,
- 'third country' shall mean any country which is not a Member State.

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<sup>(39)</sup> OJ L 247, 5.10.1993, p. 19.

*Article 3*

This Directive shall apply to passenger ships with the exception of:

- ships of war and troop ships, and
- pleasure yachts unless they are or will be crewed and carry more than twelve passengers for commercial purposes.

*Article 4*

1. All persons on board any passenger ship which departs from a port located in a Member State shall be counted before that passenger ship departs.
2. Before the passenger ship departs the number of persons on board shall be communicated to the master of the passenger ship and to the company's passenger registrar or to a shore-based company system that performs the same function.

*Article 5*

1. The following information shall be recorded regarding every passenger ship that departs from a port located in a Member State to undertake a voyage of more than twenty miles from the point of departure:
  - the family names of the persons on board,
  - their forenames or initials,
  - their sex,
  - an indication of the category of age (adult, child or infant) to which each person belongs, or the age, or the year of birth,
  - when volunteered by a passenger, information concerning the need for special care or assistance in emergency situations.
2. That information shall be collected before departure and communicated not later than thirty minutes after the passenger ship's departure to the company's passenger registrar or to a shore-based company system that performs the same function.

*Article 6*

1. Each Member State shall, as regards every passenger ship that flies its flag and departs from a port located outwith the Community and is bound for a port located within the Community, require the company to ensure that the information specified in Articles 4(1) and 5(1) is provided as laid down in Articles 4(2) and 5(2).
2. Each Member State shall, as regards every passenger ship that flies the flag of a third country and departs from a port located outwith the Community and is bound for a port located within the Community, require the company to ensure that the information specified in Articles 4(1) and 5(1) is collected and maintained so that it is available to the designated authority when needed for purposes of search and rescue and in the aftermath of an accident.
3. Where under the relevant SOLAS provisions a Member State grants an exemption or derogation relating to the information concerning passengers to a ship flying its flag arriving at a port located within the Community from a port located outwith the Community, it may do so only under the conditions laid down for exemptions or derogations in this Directive.

#### *Article 7*

Before a passenger ship departs from a port located in a Member State its master shall ensure that the number of persons on board does not exceed the number the passenger ship is permitted to carry.

#### *Article 8*

Each company assuming responsibility for operating a passenger ship shall, where required under Articles 4 and 5:

- set up a system for the registration of passenger information. The system shall meet the criteria laid down in Article 11,
- appoint a passenger registrar responsible for the keeping and the transmission of that information should an emergency occur or in the aftermath of an accident.

The company shall ensure that the information required by this Directive is at all times readily available for transmission to the designated authority for search and rescue purposes in the event of an emergency or in the aftermath of an accident.

Personal data collected in accordance with Article 5 shall not be kept longer than necessary for the purposes of this Directive.

The company shall ensure that information concerning persons who have declared a need for special care or assistance in emergency situations is properly recorded and communicated to the master before the passenger ship departs.

#### *Article 9*

1. A Member State from a port in which a passenger ship departs may lower the twenty-mile threshold laid down in Article 5.

Any decision lowering that threshold for journeys between two ports in different Member States shall be taken jointly by those two Member States.

2. (a) When implementing Article 4(1) the Italian Republic may, for regular services crossing the Strait of Messina, adopt provisions for counting the maximum number of persons permitted to be carried on board a passenger ship carrying passenger-train carriages and road vehicles on the basis of the maximum number of passengers authorised to be carried by train carriages and all other vehicles on board, if the persons cannot be counted individually for operational reasons. The application of this provision shall be limited to a period of four years. Any extension shall be decided, in accordance with paragraph 3, in the light of the experience gained.
  - (b) A Member State from a port in which a ship departs may exempt passenger ships operating, exclusively in protected sea areas, regular services of less than one hour between port calls from the obligation laid down in Article 4(2) to communicate the number of persons on board to the passenger registrar or to a shore-based company system that performs the same function.
  - (c) A Member State may exempt passenger ships sailing, exclusively in protected sea areas, between two ports or from and to the same port without intermediate calls from the obligations laid down in Article 5.
3. In the circumstances set out in paragraph 2, the following procedure shall apply:
- (a) the Member State shall without delay inform the Commission of its decision to grant an exemption or a derogation from the relevant provisions of Articles 4 and 5 giving substantive reasons therefor;
  - (b) if within six months of such notification the Commission considers that that decision is not justified or could have adverse effects on competition, it may, acting in accordance with the procedure laid down in 2 Article 13(2), require the Member State to amend or withdraw its decision.

4. For regular services in an area where the annual probability of the significant wave height's exceeding two metres is less than 10 %, and

- if the voyage does not exceed about thirty miles from the point of departure or
- where the primary purpose of the service is to provide regular links to outlying communities for customary purposes,

a Member State from a port in which passenger ships sail on domestic voyages or two Member States between ports in which passenger ships sail may request the Commission, if they consider it impracticable for companies to record the information specified in Article 5(1) to derogate, wholly or partly, from this requirement.

To this end, evidence of such impracticability shall be provided. In addition, it shall be demonstrated that in the area where such ships operate, shore-based navigational guidance and reliable weather forecasts are provided and that adequate and sufficient search and rescue facilities are available. Derogations granted under this paragraph may not have any adverse effect on competition.

A decision shall be taken in accordance with the procedure laid down in Article 13(2).

5. A Member State shall not, under the provisions of this Directive, exempt or grant derogations to any passenger ship sailing from its ports and flying the flag of a third country that is a contracting party to the SOLAS Convention which under the relevant SOLAS provisions does not agree to the application of such exemptions.

#### *Article 10*

The registration systems set up in accordance with Article 8 shall be approved by the Member States. Member States shall at least carry out random checks on the proper functioning of the registration systems set up pursuant to this Directive within their territories.

Each Member State shall designate the authority to which the companies covered by Article 8 shall communicate the information required by this Directive.

#### *Article 11*

1. For the purposes of this Directive registration systems shall meet the following functional criteria:

(i) *readability*:

the required data must be in a format that is easy to read,

(ii) *availability*:

the required data must be easily available to the designated authorities for which the information contained in the system is relevant,

(iii) *facilitation*:

the system must be designed in such a way that no undue delay is caused for passengers embarking and/or disembarking the vessel,

(iv) *security*:

the data must be appropriately protected against accidental or unlawful destruction or loss and unauthorised alteration, disclosure or access.

2. A multiplicity of systems on the same or similar routes is to be avoided.

#### Article 12

Without prejudice to the procedures for amending the SOLAS Convention, this Directive may be amended in order to ensure the application, for the purposes of this Directive and without broadening its scope, of amendments to the SOLAS Convention relating to the registration systems which have entered into force after the adoption 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 13(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 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>(40)</sup>.

#### Article 13

1. The Commission shall be assisted by the Committee on Safe Seas and the Prevention of Pollution from Ships (COSS) set up by Article 3 of Regulation (EC) No 2099/2002.

2. Where reference is made to this paragraph, Articles 5 and 7 of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission <sup>(41)</sup> shall apply, having regard to the provisions of Article 8 thereof.

The period provided for in Article 5(6) of Decision 1999/468/EC shall be set at two 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 14

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

#### Article 15

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 1 January 1999. They shall forthwith inform the Commission thereof. Article 5 shall be applied no later than 1 January 2000.

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

3. The Member States shall immediately communicate to the Commission the texts of all provisions of national law which they adopt in the field governed by this Directive. The Commission shall inform the other Member States thereof.

#### Article 16

This Directive shall enter into force on the twentieth day after its publication.

#### Article 17

This Directive is addressed to the Member States.

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<sup>(40)</sup> OJ L 324, 29.11.2002, p. 1.

<sup>(41)</sup> OJ L 184, 17.7.1999, p. 23.



PART II —  
TECHNICAL SAFETY  
REQUIREMENTS

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### PART II – TECHNICAL SAFETY REQUIREMENTS

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**DIRECTIVE 2014/90/EU ON MARINE EQUIPMENT**  
and repealing Council Directive 96/98/EC

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 100(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee <sup>(1)</sup>,

After consulting the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure <sup>(2)</sup>,

Whereas:

- (1) The global dimension of shipping calls for the Union to apply and support the international regulatory framework for maritime safety. The international maritime safety conventions require flag States to ensure that the equipment carried on board ships complies with certain safety requirements as regards design, construction and performance, and to issue the relevant certificates. To that end, detailed performance and testing standards for certain types of marine equipment have been developed by the International Maritime Organization (IMO) and by the international and European standardisation bodies.
- (2) The international instruments leave a significant margin of discretion to the flag administrations. In the absence of harmonisation, this leads to varying levels of safety for products which the competent national authorities have certified as complying with those conventions and standards; as a result, the smooth functioning of the internal market is affected as it becomes difficult for the Member States to accept equipment certified in another Member State to be placed on board ships flying their flags without further verification.
- (3) Harmonisation by the Union resolves these problems. Council Directive 96/98/EC <sup>(3)</sup> thus laid down common rules to eliminate differences in the implementation of international standards by means of a clearly identified set of requirements and uniform certification procedures.
- (4) There are various other instruments of Union law which lay down requirements and conditions, inter alia, in order to ensure the free movement of goods within the internal market or for environmental purposes, for certain products which are similar in nature to equipment used on board ships but which do not meet the international standards – which may substantially differ from the internal legislation of the Union and are in constant evolution. Those products cannot therefore be certified by the Member States in accordance with the relevant international maritime safety conventions. Equipment to be placed onboard EU ships in accordance with international safety standards should therefore be regulated exclusively by this Directive, which should in any event be considered the *lex specialis*; furthermore, a specific marking should be established to indicate that equipment bearing that mark complies with the requirements laid down in the relevant international conventions and instruments which have entered into force.

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<sup>(1)</sup> OJ C 161, 6.6.2013, p. 93.

<sup>(2)</sup> Position of the European Parliament of 15 April 2014 (not yet published in the Official Journal) and decision of the Council of 23 July 2014.

<sup>(3)</sup> Council Directive 96/98/EC of 20 December 1996 on marine equipment (OJ L 46, 17.2.1997, p. 25).

- (5) As well as setting out detailed performance and testing standards for marine equipment, the international instruments sometimes allow for measures that deviate from the prescriptive requirements but which, under certain conditions, are suitable to satisfy the intent of those requirements. The International Convention for the Safety of Life at Sea (SOLAS), 1974, allows for alternative designs and arrangements which could be applied by individual Member States acting under their own responsibility.
- (6) Experience in the implementation of Directive 96/98/EC has shown that it is necessary to take additional measures in order to enhance the implementation and enforcement mechanisms of that Directive and simplify the regulatory environment while guaranteeing that IMO requirements are applied and implemented in a harmonised way across the Union.
- (7) Requirements should therefore be established for marine equipment to meet the safety standards laid down in the applicable international instruments, including the relevant testing standards, in order to ensure that equipment which complies with those requirements can circulate unimpeded within the internal market and be placed on board ships flying the flag of any Member State.
- (8) In order to allow for fair competition in the development of marine equipment, every effort should be made to promote the use of open standards in order to make them available freely or at a nominal charge, and permissible to all to copy, distribute and use for no fee or at a nominal fee.
- (9) Decision No 768/2008/EC of the European Parliament and of the Council <sup>(4)</sup> lays down common principles and reference provisions intended to apply across sectoral legislation in order to provide a coherent basis for revision or recasts of that legislation. That Decision constitutes a general framework of a horizontal nature for future legislation harmonising the conditions for the marketing of products and a reference text for existing legislation. That general framework provides appropriate solutions to the problems identified in the implementation of Directive 96/98/EC. It is therefore necessary to incorporate the definitions and reference provisions of Decision No 768/2008/EC into this Directive by making the adaptations which are required by the specific features of the marine equipment sector.
- (10) In order to provide market surveillance authorities with additional, specific means to facilitate their task, an electronic tag could supplement or replace the wheel mark in due time.
- (11) The responsibilities of the economic operators should be laid down in a way which is proportionate and nondiscriminatory for those economic operators who are established within the Union, taking into account the fact that a significant proportion of the marine equipment falling within the scope of this Directive may never be imported and distributed in the territory of the Member States.
- (12) Given that marine equipment is placed on board ships at the time of their construction or repair all over the world, market surveillance becomes particularly difficult and cannot be effectively supported by border controls. Therefore, the respective obligations of Member States and of economic operators within the Union should be clearly specified. Member States should ensure that only compliant equipment is installed on board ships flying their flags and that this obligation is fulfilled through issuance, endorsement or renewal of the certificates of such ships by the flag State administration under the international conventions, as well as through national market surveillance arrangements in place in accordance with the Union market surveillance framework laid down in Chapter III of Regulation (EC) No 765/2008 of the European Parliament and of the Council <sup>(5)</sup>. Member States should be supported in fulfilling those obligations by the information systems made available by the Commission for the assessment, notification and monitoring of bodies authorised to

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<sup>(4)</sup> Decision No 768/2008/EC of the European Parliament and of the Council of 9 July 2008 on a common framework for the marketing of products, and repealing Council Decision 93/465/EEC (OJ L 218, 13.8.2008, p. 82).

<sup>(5)</sup> Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products (OJ L 218, 13.8.2008, p. 30).

carry out conformity assessment tasks, the sharing of information in relation to approved marine equipment, applications withdrawn or refused, and non-compliance of equipment.

- (13) In the first instance, the affixing of the wheel mark to the marine equipment by the manufacturer or, where relevant, the importer should be the guarantee pursuant to their obligations under this Directive that the equipment is compliant and may be placed on the market with a view to being placed on board an EU ship. Thereafter, certain provisions are necessary for the safe continuation and applicability of the wheel mark after it has been affixed and for the effective discharge of the task of national market surveillance authorities. The manufacturer or, where relevant, the importer or the distributor, should be obliged to provide the competent authorities with full and truthful information in relation to the equipment it has wheel marked to ensure that marine equipment remains safe. The manufacturer should be obliged to cooperate with market surveillance authorities, including as regard standards against which it has manufactured and certified equipment, and should also exercise due diligence in relation to marine equipment it places on the market. In this regard, a manufacturer located outside the Union should appoint an authorised representative in order to ensure cooperation with competent national authorities.
- (14) Compliance with international testing standards could best be demonstrated by means of conformity assessment procedures such as those laid down in Decision No 768/2008/EC. However, only those conformity assessment procedures which meet the requirements of the international instruments should be made available to manufacturers.
- (15) In order to ensure a fair and efficient procedure when examining suspected non-compliance, the Member States should be encouraged to take all measures conducive to an exhaustive and objective evaluation of the risks; if the Commission is satisfied that this condition has been met, it should not be obliged to repeat that evaluation when reviewing the restrictive measures adopted by the Member States as regards non-compliant equipment.
- (16) When performing its investigative duties with regard to notified bodies, the Commission should keep Member States informed and should cooperate with them as far as possible, taking due account of its independent role.
- (17) When the surveillance authorities of a Member State consider that marine equipment covered by this Directive is liable to present a risk to maritime safety, to health or to the environment, they should carry out evaluations or tests in relation to the equipment concerned. In cases where a risk is detected, the Member State should call upon the economic operator concerned to take the appropriate corrective action, or even to withdraw or recall the equipment concerned.
- (18) The use of marine equipment not bearing the wheel mark should be allowed in exceptional circumstances, especially when it is not possible for a ship to obtain equipment bearing the wheel mark in a port or installation outside the Union or when equipment bearing the wheel mark is not available in the market.
- (19) It is necessary to ensure that the attainment of the objectives of this Directive is not impaired by the absence of international standards or serious weaknesses or anomalies in existing standards, including testing standards, for specific items of marine equipment falling within the scope of this Directive. It is also necessary to identify the specific items of marine equipment which could benefit from electronic tagging. Moreover, it is necessary to keep up to date a non-essential element of this Directive, namely the references to standards as referred to in Annex III, when new standards become available. The power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should therefore be delegated to the Commission in respect of the adoption, under certain conditions and on an interim basis, of harmonised technical specifications and testing standards and in order to amend those references. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.
- (20) In order to meet the objectives of this Directive, the international instruments should be uniformly implemented in the internal market. It is therefore necessary, for each item of marine equipment for which

the approval of the flag State is required by the international conventions, to identify in a clear and timely way the design, construction and performance requirements as well as the associated testing standards laid down in the international instruments for that equipment, and to adopt common criteria and procedures, including timeframes, for the implementation of those requirements and standards by notified bodies, Member State authorities and economic operators, including any operator responsible for placing equipment on board an EU ship. It is also necessary to ensure that the attainment of the objectives of this Directive is not impaired by shortcomings in the applicable technical specifications and testing standards or in cases where the IMO has failed to produce appropriate standards for marine equipment falling within the scope of this Directive.

- (21) The international instruments, with the exception of testing standards, should automatically apply in their up-to-date version. In order to mitigate the risk that the introduction of new testing standards into Union legislation causes disproportionate difficulties for the Union fleet and for economic operators, from the standpoint of clarity and legal certainty, the entry into force of such new testing standards should not be automatic but, rather, should be explicitly indicated by the Commission.
- (22) In order to ensure uniform conditions for the implementation of this Directive, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council <sup>(6)</sup>.
- (23) In order to facilitate a harmonised, rapid and simple implementation of this Directive, implementing acts adopted pursuant to this Directive should take the form of Commission Regulations.
- (24) In line with established practice, the committee referred to in this Directive can play a useful role in examining matters concerning the application of this Directive raised either by its chair or by a representative of a Member State in accordance with its rules of procedure.
- (25) When matters relating to this Directive, other than its implementation or infringements, are being examined, for example, in a Commission expert group, the European Parliament should, in line with existing practice, receive full information and documentation and, where appropriate, an invitation to attend meetings.
- (26) The Commission is assisted by the European Maritime Safety Agency, in accordance with Regulation (EC) No 1406/2002 of the European Parliament and of the Council <sup>(7)</sup>, in the effective implementation of relevant binding legal acts of the Union and in the performance of the tasks therein entrusted to the Commission.
- (27) The competent authorities and all economic operators should make all possible efforts to facilitate written communication in accordance with international practice, with a view to finding common means of communication.
- (28) Since the objectives of this Directive, namely to enhance safety at sea and the prevention of marine pollution through the uniform application of the relevant international instruments relating to equipment to be placed on board ships, and to ensure the free movement of such equipment within the Union, cannot be sufficiently achieved by the Member States but can rather, by reason of the scale of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. 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.
- (29) The measures to be adopted represent a major modification of the provisions of Directive 96/98/EC and therefore, in the interests of clarity, that Directive should be repealed and replaced by this Directive,

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<sup>(6)</sup> Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

<sup>(7)</sup> Regulation (EC) No 1406/2002 of the European Parliament and of the Council of 27 June 2002 establishing a European Maritime Safety Agency (OJ L 208, 5.8.2002, p. 1).

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER 1  
**GENERAL PROVISIONS**

*Article 1*

**Objective**

The objective of this Directive is to enhance safety at sea and to prevent marine pollution through the uniform application of the relevant international instruments relating to marine equipment to be placed on board EU ships, and to ensure the free movement of such equipment within the Union.

*Article 2*

**Definitions**

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

- (1) 'marine equipment' means equipment falling within the scope of this Directive in accordance with Article 3;
- (2) 'EU ship' means a ship flying the flag of a Member State and falling within the scope of the international conventions;
- (3) 'international conventions' means the following conventions, together with their protocols and codes of mandatory application, adopted under the auspices of the International Maritime Organization (IMO), which have entered into force and which lay down specific requirements for the approval by the flag State of equipment to be placed on board ships:
  - the 1972 Convention on the International Regulations for Preventing Collisions at Sea (Colreg),
  - the 1973 International Convention for the Prevention of Pollution from Ships (Marpol),
  - the 1974 International Convention for the Safety of Life at Sea (Solas);
- (4) 'testing standards' means the testing standards for marine equipment set by:
  - the International Maritime Organization (IMO),
  - the International Organization for Standardization (ISO),
  - the International Electrotechnical Commission (IEC),
  - the European Committee for Standardization (CEN),
  - the European Committee for Electrotechnical Standardization (Cenelec),
  - the International Telecommunication Union (ITU),
  - the European Telecommunications Standards Institute (ETSI),
  - the Commission, in accordance with Article 8 and Article 27(6) of this Directive,
  - the regulatory authorities recognised in the mutual recognition agreements to which the Union is a party;
- (5) 'international instruments' means the international conventions, together with the resolutions and circulars of the IMO giving effect to those conventions in their up-to-date version, and the testing standards;

- (6) 'wheel mark' means the symbol referred to in Article 9 and set out in Annex I or, as appropriate, the electronic tag referred to in Article 11;
- (7) 'notified body' means an organisation designated by the competent national administration of a Member State in accordance with Article 17;
- (8) 'making available on the market' means any supply of marine equipment on the Union market in the course of a commercial activity, whether in return for payment or free of charge;
- (9) 'placing on the market' means the first making available of marine equipment on the Union market;
- (10) 'manufacturer' means any natural or legal person who manufactures marine equipment or has marine equipment designed or manufactured, and markets that equipment under its name or trademark;
- (11) 'authorised representative' means any natural or legal person established within the Union who has received a written mandate from a manufacturer to act on its behalf in relation to specified tasks;
- (12) 'importer' means any natural or legal person established within the Union who places marine equipment from a third country on the Union market;
- (13) 'distributor' means any natural or legal person in the supply chain, other than the manufacturer or the importer, who makes marine equipment available on the market;
- (14) 'economic operators' means the manufacturer, the authorised representative, the importer and the distributor;  
(15) 'accreditation' means accreditation as defined in point 10 of Article 2 of Regulation (EC) No 765/2008;
- (16) 'national accreditation body' means national accreditation body as defined in point 11 of Article 2 of Regulation (EC) No 765/2008;
- (17) 'conformity assessment' means the process carried out by the notified bodies, in accordance with Article 15, demonstrating whether marine equipment complies with the requirements laid down in this Directive;
- (18) 'conformity assessment body' means a body that performs conformity assessment activities including calibration, testing, certification and inspection;
- (19) 'recall' means any measure aimed at achieving the return of marine equipment that has already been placed on board EU ships or purchased with the intention of being placed on board EU ships;
- (20) 'withdrawal' means any measure aimed at preventing marine equipment in the supply chain from being made available on the market;
- (21) 'EU declaration of conformity' means a statement issued by the manufacturer in accordance with Article 16;
- (22) 'product' means an item of marine equipment.

### *Article 3*

#### **Scope**

1. This Directive shall apply to equipment placed or to be placed on board an EU ship and for which the approval of the flag State administration is required by the international instruments, regardless of whether the ship is situated in the Union at the time when it is fitted with the equipment.
2. Notwithstanding the fact that the equipment referred to in paragraph 1 may also fall within the scope of instruments of Union law other than this Directive, that equipment shall, for the purpose set out in Article 1, be subject only to this Directive.

*Article 4***Requirements for marine equipment**

1. Marine equipment that is placed on board an EU ship on or after the date referred to in the second subparagraph of Article 39(1) shall meet the design, construction and performance requirements of the international instruments as applicable at the time when that equipment is placed on board.
2. Compliance of marine equipment with the requirements referred to in paragraph 1 shall be demonstrated solely in accordance with the testing standards and by means of the conformity assessment procedures referred to in Article 15.
3. The international instruments shall apply, without prejudice to the conformity checking procedure set out in Article 5 of Regulation (EC) No 2099/2002 of the European Parliament and of the Council <sup>(8)</sup>.
4. The requirements and standards referred to in paragraphs 1 and 2 shall be implemented in a uniform manner, in accordance with Article 35(2).

*Article 5***Application**

1. When Member States issue, endorse or renew the certificates of the ships flying their flag as required by the international conventions, they shall ensure that the marine equipment on board those ships complies with the requirements of this Directive.
2. Member States shall take the necessary measures to ensure that marine equipment on board ships flying their flag complies with the requirements in the international instruments which are applicable to equipment already placed on board. Implementing powers shall be conferred upon the Commission to ensure the uniform application of those measures, in accordance with Article 35(3).

*Article 6***Functioning of the internal market**

Member States shall not prohibit the placing on the market or the placing on board an EU ship of marine equipment which complies with this Directive, nor refuse to issue the certificates relating thereto to the ships flying their flag, or to renew the said certificates.

*Article 7***Transfer of a ship to the flag of a Member State**

1. In the case of a non-EU ship which is to be transferred to the flag of a Member State, that ship shall, during transfer, be subject to inspection by the receiving Member State to verify that the actual condition of its marine equipment corresponds to its safety certificates and either complies with this Directive and bears the wheel mark or is equivalent, to the satisfaction of that Member State's administration, to marine equipment certified in accordance with this Directive as of 18 September 2016.
2. In cases where the date of installation on board of marine equipment cannot be established, Member States may determine satisfactory requirements of equivalence, taking into account relevant international instruments.
3. Unless the equipment either bears the wheel mark or the administration considers it to be equivalent, it shall be replaced.

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<sup>(8)</sup> 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) (OJ L 324, 29.11.2002, p. 1.).

4. Marine equipment which is considered equivalent pursuant to this Article shall be issued with a certificate by the Member State which shall at all times be carried with the equipment. That certificate shall give the flag Member State's permission for the equipment to be retained on board the ship and impose any restrictions or lay down any provisions relating to the use of the equipment.

#### *Article 8*

### **Standards for marine equipment**

1. Without prejudice to Directive 98/34/EC of the European Parliament and the Council <sup>(9)</sup>, as amended by Regulation (EU) No 1025/2012 of the European Parliament and of the Council <sup>(10)</sup>, the Union shall pursue the development by the IMO and by standardisation bodies of appropriate international standards, including detailed technical specifications and testing standards, for marine equipment whose use or installation on board ships is deemed necessary to enhance maritime safety and the prevention of marine pollution. The Commission shall monitor such development on a regular basis.

2. In the absence of an international standard for a specific item of marine equipment, in exceptional circumstances where duly justified by an appropriate analysis and in order to remove a serious and unacceptable threat to maritime safety, to health or to the environment and taking into account any ongoing work at IMO level, the Commission shall be empowered to adopt, by means of delegated acts in accordance with Article 37, harmonised technical specifications and testing standards for that specific item of marine equipment.

It is of particular importance that the Commission carry out consultations with experts, including Member States' experts, during the preparation of such delegated acts.

Those technical specifications and testing standards shall apply on an interim basis until such time as the IMO has adopted a standard for that specific item of marine equipment.

3. In exceptional circumstances where duly justified by an appropriate analysis and if it is necessary to remove an identified unacceptable threat to maritime safety, to health or to the environment due to a serious weakness or anomaly in an existing standard for a specific item of marine equipment indicated by the Commission pursuant to Article 35(2) or (3) and taking into account any ongoing work at IMO level, the Commission shall be empowered to adopt, by means of delegated acts in accordance with Article 37, harmonised technical specifications and testing standards for that specific item of marine equipment, to the extent necessary to remedy the serious weakness or anomaly only.

It is of particular importance that the Commission carry out consultations with experts, including Member States' experts, during the preparation of such delegated acts.

Those technical specifications and testing standards shall apply on an interim basis until such time as the IMO has reviewed the standard applicable to that specific item of marine equipment.

4. The technical specifications and standards adopted in accordance with paragraphs 2 and 3 shall be made accessible free of charge by the Commission.

<sup>(9)</sup> Directive 98/34/EC of the European Parliament and the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations (OJ L 204, 21.7.1998, p. 37).

<sup>(10)</sup> Regulation (EU) No 1025/2012 of the European Parliament and of the Council of 25 October 2012 on European standardisation, amending Council Directives 89/686/EEC and 93/15/EEC and Directives 94/9/EC, 94/25/EC, 95/16/EC, 97/23/EC, 98/34/EC, 2004/22/EC, 2007/23/EC, 2009/23/EC and 2009/105/EC of the European Parliament and of the Council and repealing Council Decision 87/95/EEC and Decision No 1673/2006/EC of the European Parliament and of the Council (OJ L 316, 14.11.2012, p. 12).

## CHAPTER 2 THE WHEEL MARK

### Article 9

#### **The wheel mark**

1. Marine equipment the compliance of which with the requirements laid down in this Directive has been demonstrated in accordance with the relevant conformity assessment procedures shall have the wheel mark affixed to it.
2. The wheel mark shall not be affixed to any other product.
3. The form of the wheel mark to be used shall be as set out in Annex I.
4. Use of the wheel mark shall be subject to the general principles set out in paragraphs 1 and 3 to 6 of Article 30 of Regulation (EC) No 765/2008, where any reference to the CE marking shall be construed as a reference to the wheel mark.

### Article 10

#### **Rules and conditions for affixing the wheel mark**

1. The wheel mark shall be affixed visibly, legibly and indelibly to the product or to its data plate and, where relevant, embedded in its software. Where that is not possible or not warranted on account of the nature of the product, it shall be affixed to the packaging and to the accompanying documents.
2. The wheel mark shall be affixed at the end of the production phase.
3. The wheel mark shall be followed by the identification number of the notified body, where that body is involved in the production control phase, and by the year in which the mark is affixed.
4. The identification number of the notified body shall be affixed by the body itself or, under its instructions, by the manufacturer or the manufacturer's authorised representative.

### Article 11

#### **Electronic tag**

1. In order to facilitate market surveillance and prevent the counterfeiting of specific items of marine equipment referred to in paragraph 3, manufacturers may use an appropriate and reliable form of electronic tag instead of, or in addition to, the wheel mark. In such a case, Articles 9 and 10 shall apply, as appropriate, *mutatis mutandis*.
2. The Commission shall carry out a cost-benefit analysis concerning the use of the electronic tag as a supplement to, or a replacement of, the wheel mark.
3. The Commission may adopt delegated acts, in accordance with Article 37, in order to identify the specific items of marine equipment which can benefit from electronic tagging. It is of particular importance that the Commission carry out consultations with experts, including Member States' experts, during the preparation of such delegated acts.
4. Implementing powers shall be conferred upon the Commission in order to lay down, in the form of Commission Regulations and in accordance with the examination procedure referred to in Article 38(2), appropriate technical criteria as regards the design, performance, affixing and use of electronic tags.
5. For the equipment identified in accordance with paragraph 3, the wheel mark may, within three years after the date of adoption of the appropriate technical criteria referred to in paragraph 4, be supplemented by an appropriate and reliable form of electronic tag.

6. For the equipment identified in accordance with paragraph 3, the wheel mark may be replaced, five years after the date of adoption of the appropriate technical criteria referred to in paragraph 4, by an appropriate and reliable form of electronic tag.

### CHAPTER 3 OBLIGATIONS OF ECONOMIC OPERATORS

#### *Article 12*

#### **Obligations of manufacturers**

1. By affixing the wheel mark, manufacturers shall take on responsibility for guaranteeing that the marine equipment to which the mark is affixed has been designed and manufactured in accordance with the technical specifications and standards implemented in accordance with Article 35(2), and shall assume the obligations laid down in paragraphs 2 to 9 of this Article.
2. Manufacturers shall draw up the required technical documentation and have the applicable conformity assessment procedures carried out.
3. Where the compliance of marine equipment with the applicable requirements has been demonstrated by the conformity assessment procedure, manufacturers shall draw up an EU declaration of conformity in accordance with Article 16 and affix the wheel mark in accordance with Articles 9 and 10.
4. Manufacturers shall keep the technical documentation and the EU declaration of conformity referred to in Article 16 for at least 10 years after the wheel mark has been affixed and in no case for a period shorter than the expected life of the marine equipment concerned.
5. Manufacturers shall ensure that procedures are in place for series production to remain in conformity. Changes in marine equipment design or characteristics and changes in the requirements in the international instruments as referred to in Article 4, on the basis of which conformity of marine equipment is declared, shall be taken into account. When necessary in accordance with Annex II, manufacturers shall have a new conformity assessment carried out.
6. Manufacturers shall ensure that their products bear a type, batch or serial number or other element allowing their identification, or, where the size or nature of the product does not allow it, that the required information is provided on the packaging or in a document accompanying the product or both, as appropriate.
7. Manufacturers shall indicate their name, registered trade name or registered trade mark and the address at which they can be contacted on the product or, where that is not possible, on its packaging or in a document accompanying the product or both, as appropriate. The address must indicate a single point at which the manufacturer can be contacted.
8. Manufacturers shall ensure that the product is accompanied by instructions and all necessary information for safe installation on board and safe use of the product, including limitations of use, if any, that can be easily understood by the users, together with any other documentation required by the international instruments or testing standards.
9. Manufacturers who consider or have reason to believe that a product to which they have affixed the wheel mark is not in conformity with the applicable design, construction and performance requirements and with the testing standards implemented in accordance with Article 35(2) and (3), shall immediately take the necessary corrective measures to bring that product into conformity, to withdraw it or to recall it, if appropriate. In addition, where the product presents a risk, manufacturers shall immediately inform the competent national authorities of the Member States, giving details, in particular, of the non-compliance and of any corrective measures taken.
10. Manufacturers shall, further to a reasoned request from a competent authority, promptly provide it with all the information and documentation necessary to demonstrate the conformity of the product, in a language which can

be easily understood by or is acceptable to that authority, grant that authority access to their premises for market surveillance purposes in accordance with Article 19 of Regulation (EC) No 765/2008 and provide samples or access to samples in accordance with Article 25(4) of this Directive. They shall cooperate with that authority, at its request, on any action taken to eliminate the risks posed by products which they have placed on the market.

#### *Article 13*

### **Authorised representatives**

1. A manufacturer who is not located in the territory of at least one Member State shall, by a written mandate, appoint an authorised representative for the Union and shall indicate in the mandate the name of the authorised representative and the address at which it can be contacted.
2. Fulfilment of the obligations laid down in Article 12(1) and the drawing-up of technical documentation shall not form part of the authorised representative's mandate.
3. An authorised representative shall perform the tasks specified in the mandate received from the manufacturer. The mandate shall allow the authorised representative to do at least the following:
  - (a) keep the EU declaration of conformity and the technical documentation at the disposal of national surveillance authorities for at least 10 years after the wheel mark has been affixed and in no case for a period shorter than the expected life of the marine equipment concerned;
  - (b) further to a reasoned request from a competent authority, provide that authority with all the information and documentation necessary to demonstrate the conformity of a product;
  - (c) cooperate with the competent authorities, at their request, on any action taken to eliminate the risks posed by products covered by its mandate.

#### *Article 14*

### **Other economic operators**

1. Importers shall indicate their name, registered trade name or registered trade mark and the address at which they can be contacted on the product or, where that is not possible, on its packaging or in a document accompanying the product or both, as appropriate.
2. Importers and distributors shall, further to a reasoned request from a competent authority, provide it with all the information and documentation necessary to demonstrate the conformity of a product in a language which can be easily understood by, or is acceptable to, that authority. They shall cooperate with that authority, at its request, on any action taken to eliminate the risks posed by products which they have placed on the market.
3. An importer or distributor shall be considered a manufacturer for the purposes of this Directive and shall be subject to the obligations of the manufacturer under Article 12, where it places marine equipment on the market or on board an EU ship under its name or trademark or modifies marine equipment already placed on the market in such a way that compliance with the applicable requirements may be affected.
4. For a period of at least 10 years after the wheel mark has been affixed and in no case for a period shorter than the expected life of the marine equipment concerned, economic operators shall, on request, identify the following to the market surveillance authorities:
  - (a) any economic operator who has supplied them with a product;
  - (b) any economic operator to whom they have supplied a product.

CHAPTER 4  
**CONFORMITY ASSESSMENT AND NOTIFICATION  
OF CONFORMITY ASSESSMENT BODIES**

*Article 15*

**Conformity assessment procedures**

1. The conformity assessment procedures shall be as set out in Annex II.
2. Member States shall ensure that the manufacturer or the manufacturer's authorised representative has the conformity assessment carried out, through a notified body, for a specific item of marine equipment, by using one of the options provided by means of implementing acts adopted by the Commission in accordance with the examination procedure referred to in Article 38(2), from among one of the following procedures:
  - (a) where the EC type-examination (module B) is to be used, before being placed on the market, all marine equipment shall be subject to:
    - production-quality assurance (module D); or
    - product-quality assurance (module E); or
    - product verification (module F);
  - (b) where sets of marine equipment are produced individually or in small quantities and not in series or in mass, the conformity assessment procedure may be the EC unit verification (module G).
3. The Commission shall, by means of the information system made available for that purpose, keep an up to date list of approved marine equipment and applications withdrawn or refused and shall make that list available to interested parties.

*Article 16*

**EU declaration of conformity**

1. The EU declaration of conformity shall state that the fulfilment of the requirements laid down in accordance with Article 4 has been demonstrated.
2. The EU declaration of conformity shall follow the model structure set out in Annex III to Decision No 768/2008/EC. It shall contain the elements specified in the relevant modules set out in Annex II to this Directive and shall be kept up to date.
3. By drawing up the EU declaration of conformity, the manufacturer shall assume the responsibility and the obligations referred to in Article 12(1).
4. When marine equipment is placed on board an EU ship, a copy of the EU declaration of conformity covering the equipment concerned shall be provided to the ship, and shall be kept on board until the said equipment is removed from the ship. It shall be translated by the manufacturer into the language or languages required by the flag Member State, including at least a language commonly used in the maritime transport sector.
5. A copy of the EU declaration of conformity shall be provided to the notified body or to the bodies which carried out the relevant conformity assessment procedures.

*Article 17***Notification of conformity assessment bodies**

1. Member States shall, by means of the information system made available by the Commission for that purpose, notify the Commission and the other Member States of bodies authorised to carry out conformity assessment tasks under this Directive.
2. Notified bodies shall comply with the requirements laid down in Annex III.

*Article 18***Notifying authorities**

1. Member States shall designate a notifying authority that shall be responsible for setting up and carrying out the necessary procedures for the assessment and notification of conformity assessment bodies and the monitoring of notified bodies, including compliance with Article 20.
2. Notified bodies shall be monitored at least every two years. The Commission may choose to participate as an observer in the monitoring exercise.
3. Member States may decide that the assessment and monitoring referred to in paragraph 1 are to be carried out by a national accreditation body.
4. Where the notifying authority delegates or otherwise entrusts the assessment, notification or monitoring referred to in paragraph 1 to a body which is not a governmental entity, that body shall be a legal entity and shall comply *mutatis mutandis* with the requirements laid down in Annex V. In addition, it shall have in place arrangements to cover liability arising out of its activities.
5. The notifying authority shall take full responsibility for the tasks performed by the body referred to in paragraph 4.
6. The notifying authority shall comply with the requirements laid down in Annex V.

*Article 19***Information obligation on notifying authorities**

1. Member States shall inform the Commission of their procedures for the assessment and notification of conformity assessment bodies and the monitoring of such bodies, and of any changes thereto.
2. The Commission shall, by means of the information system made available for that purpose, make that information publicly available.

*Article 20***Subsidiaries of, and subcontracting by, notified bodies**

1. Where a notified body subcontracts specific tasks connected with conformity assessment or has recourse to a subsidiary, it shall ensure that the subcontractor or the subsidiary meets the requirements set out in Annex III and shall inform the notifying authority accordingly.
2. Notified bodies shall take full responsibility for the tasks performed by subcontractors or subsidiaries wherever these are established.
3. Activities may be subcontracted or carried out by a subsidiary only with the agreement of the client.

4. Notified bodies shall keep at the disposal of the notifying authority the relevant documents concerning the assessment of the qualifications of the subcontractor or the subsidiary and the work carried out by such subcontractor or subsidiary under this Directive.

#### *Article 21*

### **Changes to notifications**

1. Where a notifying authority has ascertained, or has been informed, that a notified body no longer meets the requirements laid down in Annex III, or that it is failing to fulfil its obligations under this Directive, the notifying authority shall restrict, suspend or withdraw notification as appropriate, depending on the seriousness of the failure to meet those requirements or fulfil those obligations. It shall, by means of the information system made available by the Commission for that purpose, immediately inform the Commission and the other Member States accordingly.
2. In the event of restriction, suspension or withdrawal of notification, or where the notified body has ceased its activity, the notifying Member State shall take appropriate steps to ensure that the files of that body are either processed by another notified body or kept available for the responsible notifying and market surveillance authorities at their request.

#### *Article 22*

### **Challenges to the competence of notified bodies**

1. The Commission shall investigate all cases where it doubts, based on the information available to it or brought to its attention, the competence of a notified body or the continued fulfilment by a notified body of the requirements and responsibilities to which it is subject.
2. The notifying Member State shall provide the Commission, on request, with all information relating to the basis for the notification or the maintenance of the competence of the body concerned.
3. The Commission shall ensure that all sensitive information obtained in the course of its investigations is treated confidentially.
4. Where the Commission ascertains that a notified body does not meet, or no longer meets, the requirements for its notification, it shall without delay inform the notifying Member State accordingly and request it to take the necessary corrective measures without delay, including de-notification if necessary.

#### *Article 23*

### **Operational obligations of notified bodies**

1. Notified bodies shall carry out conformity assessments or have them carried out in accordance with the procedures provided for in Article 15.
2. Where a notified body finds that the obligations laid down in Article 12 have not been met by a manufacturer, it shall require that manufacturer to take appropriate corrective measures without delay and shall not issue a conformity certificate.
3. Where, in the course of monitoring conformity following the issue of a conformity certificate, a notified body finds that a product no longer complies, it shall require the manufacturer to take appropriate corrective measures without delay and shall suspend or withdraw the certificate if necessary. Where corrective measures are not taken or do not have the required effect, the notified body shall restrict, suspend or withdraw the certificate, as appropriate.

#### *Article 24*

### **Obligation of notified bodies to provide information**

1. Notified bodies shall inform the notifying authority of the following:
  - (a) any refusal, restriction, suspension or withdrawal of a conformity certificate;

- (b) any circumstances affecting the scope of, and the conditions for, notification;
- (c) any request for information which they have received from market surveillance authorities regarding conformity assessment activities;
- (d) on request, conformity assessment activities performed within the scope of their notification and any other activity performed, including cross-border activities and subcontracting.

2. Notified bodies shall provide the Commission and the Member States, on request, with relevant information concerning issues relating to negative and positive conformity assessment results. Notified bodies shall provide the other notified bodies carrying out conformity assessment activities covering the same products with information concerning negative and, on request, positive conformity assessment results.

## CHAPTER 5

### UNION MARKET SURVEILLANCE, CONTROL OF PRODUCTS, SAFEGUARD PROVISIONS

#### *Article 25*

#### **EU market surveillance framework**

1. As regards marine equipment, the Member States shall undertake market surveillance in accordance with the EU market surveillance framework laid down in Chapter III of Regulation (EC) No 765/2008, subject to paragraphs 2 and 3 of this Article.
2. National market surveillance infrastructures and programmes shall take into account the specific features of the marine equipment sector, including the various procedures carried out as part of the conformity assessment, and in particular the responsibilities placed on the flag State administration by the international conventions.
3. Market surveillance may include documentary checks as well as checks of marine equipment which bears the wheel mark, whether or not it has been placed on board ships. Checks of marine equipment already placed on board shall be limited to such examination as can be carried out while the equipment concerned remains fully functional on board.
4. Where the market surveillance authorities of a Member State, as defined in Regulation (EC) No 765/2008, intend to carry out sample checks, they may, when it is reasonable and practicable to do so, request the manufacturer to make the necessary samples available or to give on-the-spot access to the samples at the manufacturer's own cost.

#### *Article 26*

#### **Procedure for dealing with marine equipment presenting a risk at national level**

1. Where the market surveillance authorities of a Member State have sufficient reason to believe that marine equipment covered by this Directive presents a risk to maritime safety, to health or to the environment, they shall carry out an evaluation in relation to the marine equipment concerned covering all the requirements laid down in this Directive. The relevant economic operators shall cooperate as necessary with the market surveillance authorities.

Where, in the course of that evaluation, the market surveillance authorities find that the marine equipment does not comply with the requirements laid down in this Directive, they shall without delay require the relevant economic operator to take all appropriate corrective actions to bring the marine equipment into compliance with those requirements, to withdraw the marine equipment from the market, or to recall it within such reasonable period, commensurate with the nature of the risk, as they may prescribe.

The market surveillance authorities shall inform the relevant notified body accordingly.

Article 21 of Regulation (EC) No 765/2008 shall apply to the measures referred to in the second subparagraph of this paragraph.

2. Where the market surveillance authorities consider that non-compliance is not restricted to their national territory or to ships flying their flag, they shall inform the Commission and the other Member States, by means of the information system made available by the Commission for market surveillance purposes, of the results of the evaluation carried out under paragraph 1 and of the actions which they have required the economic operator to take.

3. The economic operator shall ensure that all appropriate corrective action is taken in respect of all the products concerned that it has made available on the market throughout the Union or, as the case may be, placed or delivered to be placed on board EU ships.

4. Where the relevant economic operator does not take adequate corrective action within the period prescribed by the market surveillance authorities in accordance with the second subparagraph of paragraph 1, or otherwise fails to meet its obligations under this Directive, the market surveillance authorities shall take all appropriate provisional measures to prohibit or restrict the marine equipment being made available on their national market or placed on board ships flying their flag, to withdraw the product from that market or to recall it.

The market surveillance authorities shall inform the Commission and the other Member States, without delay, of those measures.

5. The information on the measures taken by the market surveillance authorities referred to in paragraph 4 shall include all available details, in particular the data necessary for the identification of the non-compliant marine equipment, the origin of the product, the nature of the alleged non-compliance and the risk involved, the nature and duration of the national measures taken and the arguments put forward by the economic operator concerned. In particular, the market surveillance authorities shall indicate whether the non-compliance is due to either:

- (a) failure of the marine equipment to comply with the applicable design, construction and performance requirements as laid down pursuant to Article 4;
- (b) non-compliance with the testing standards referred to in Article 4 during the conformity assessment procedure;
- (c) shortcomings in those testing standards.

6. Member States other than the Member State initiating the procedure shall without delay inform the Commission and the other Member States of any measures adopted and of any additional information at their disposal relating to the non-compliance of the marine equipment concerned, and, in the event of disagreement with the notified national measure, of their objections.

7. Where, within four months of receipt of the information concerning the measures taken by the market surveillance authorities, as referred to in paragraph 4, no objection has been raised by a Member State or by the Commission in respect of a provisional measure taken by a Member State, that measure shall be deemed justified.

8. Member States shall ensure that appropriate restrictive measures in respect of the marine equipment concerned, such as withdrawal of the product from their market, are taken without delay.

#### *Article 27*

#### **EU safeguard procedure**

1. Where, on completion of the procedure set out in Article 26(3) and (4), objections are raised against a measure taken by a Member State, or where the Commission considers that a national measure may be contrary to Union legislation, the Commission shall without delay enter into consultation with the Member States and the relevant

economic operator or operators and shall evaluate the relevant national measure. On the basis of the results of that evaluation, the Commission shall decide whether or not the relevant national measure is justified.

2. For the purposes of paragraph 1, where the Commission is satisfied that the procedure followed in the adoption of the national measure is appropriate for an exhaustive and objective evaluation of the risk and that the national measure complies with Article 21 of Regulation (EC) No 765/2008, it may limit itself to examining the appropriateness and proportionality of the relevant national measure in relation to the said risk.

3. The Commission shall address its decision to all Member States and shall immediately communicate it to them and to the relevant economic operator or operators.

4. If the relevant national measure is considered justified, all Member States shall take the measures necessary to ensure that the non-compliant marine equipment is withdrawn from their market, and, where necessary, recalled. They shall inform the Commission accordingly.

5. If the relevant national measure is considered unjustified, the Member State concerned shall withdraw it.

6. Where the non-compliance of the marine equipment is attributed to shortcomings in the testing standards referred to in Article 4, the Commission may, in order to fulfil the objective of this Directive, confirm, modify or revoke a national safeguard measure by means of implementing acts in accordance with the examination procedure referred to in Article 38(2).

The Commission shall furthermore be empowered to adopt, by means of delegated acts in accordance with the procedure referred to in Article 37, interim harmonised requirements and testing standards for that specific item of marine equipment. The criteria laid down in Article 8(3) shall apply accordingly. These requirements and testing standards shall be made accessible free of charge by the Commission.

7. Where the testing standard concerned is a European standard, the Commission shall inform the relevant European standardisation body or bodies and shall bring the matter before the committee set up by Article 5 of Directive 98/34/EC. That committee shall consult the relevant European standardisation body or bodies and deliver its opinion without delay.

#### Article 28

### **Compliant products which present a risk to maritime safety, to health or to the environment**

1. Where, having performed an evaluation under Article 26(1), a Member State finds that marine equipment which is in compliance with this Directive nevertheless presents a risk to maritime safety, to health or to the environment, it shall require the economic operator concerned to take all appropriate measures to ensure that the marine equipment concerned, when placed on the market, no longer presents that risk, to withdraw the marine equipment from the market or to recall it within such reasonable period, commensurate with the nature of the risk, as it may prescribe.

2. The economic operator shall ensure that corrective action is taken in respect of all the products concerned that it has made available on the market throughout the Union or placed on board EU ships.

3. The Member State shall immediately inform the Commission and the other Member States. The information provided shall include all available details, in particular the data necessary for the identification of the marine equipment concerned, the origin and the supply chain of the marine equipment, the nature of the risk involved and the nature and duration of the national measures taken.

4. The Commission shall without delay enter into consultation with the Member States and the relevant economic operator or operators and shall evaluate the national measures taken. On the basis of the results of that evaluation, the Commission shall decide whether or not the measure is justified and shall where necessary propose appropriate measures. Article 27(2) shall apply *mutatis mutandis* for this purpose.

5. The Commission shall address its decision to all Member States and shall immediately communicate it to them and to the relevant economic operator or operators.

#### *Article 29*

#### **Formal non-compliance**

1. Without prejudice to Article 26, where a Member State makes one of the following findings, it shall require the relevant economic operator to put an end to the non-compliance concerned:

- (a) the wheel mark has been affixed in violation of Article 9 or Article 10;
- (b) the wheel mark has not been affixed;
- (c) the EU declaration of conformity has not been drawn up;
- (d) the EU declaration of conformity has not been drawn up correctly;
- (e) technical documentation is either not available or not complete;
- (f) the EU declaration of conformity has not been sent to the ship.

2. Where the non-compliance referred to in paragraph 1 persists, the Member State concerned shall take all appropriate measures to restrict or to prohibit the marine equipment being made available on the market or to ensure that it is recalled or withdrawn from the market.

#### *Article 30*

#### **Exemptions based on technical innovation**

1. In exceptional circumstances of technical innovation, the flag State administration may permit marine equipment which does not comply with the conformity assessment procedures to be placed on board an EU ship if it is established by trial or otherwise to the satisfaction of the flag State administration that such equipment meets the objectives of this Directive.

2. The trial procedures shall in no way discriminate between marine equipment produced in the flag Member State and marine equipment produced in other States.

3. Marine equipment covered by this Article shall be given a certificate by the flag Member State which shall at all times be carried with the equipment and which gives the flag Member State's permission for the equipment to be placed on board the ship and imposes any restrictions or lays down any provisions relating to the use of the equipment.

4. Where a Member State allows marine equipment covered by this Article to be placed on board an EU ship, that Member State shall forthwith communicate the particulars thereof together with the reports of all relevant trials, assessments and conformity assessment procedures to the Commission and to the other Member States.

5. Within 12 months of receipt of the communication referred to in paragraph 4, the Commission, if it considers that the conditions laid down in paragraph 1 are not met, may require the Member State concerned to withdraw the permission granted within a specified deadline. For this purpose, the Commission shall act by means of implementing acts. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 38(2).

6. Where a ship with marine equipment on board which is covered by paragraph 1 is transferred to another Member State, the receiving flag Member State may take the necessary measures, which may include tests and practical demonstrations, to ensure that the equipment is at least as effective as equipment which does comply with the conformity assessment procedures.

*Article 31***Exemptions for testing or evaluation**

A flag State administration may permit marine equipment which does not comply with the conformity assessment procedures or which is not covered by Article 30 to be placed on board an EU ship for reasons of testing or evaluation, if the following cumulative conditions are complied with:

- (a) the marine equipment shall be given a certificate by the flag Member State which shall at all times be carried with the equipment, state that Member State's permission for the equipment to be placed on board the EU ship, impose all necessary restrictions and lay down any other appropriate provisions as regards the use of the equipment concerned;
- (b) the permission shall be limited to the period considered by the flag State as being necessary to complete the testing, which should be as short as possible;
- (c) the marine equipment shall not be relied on in place of equipment which meets the requirements of this Directive and shall not replace such equipment, which shall remain on board the EU ship in working order and ready for immediate use.

*Article 32***Exemptions in exceptional circumstances**

1. In exceptional circumstances, which shall be duly justified to the flag State administration, when marine equipment needs to be replaced in a port outside the Union where it is not practicable in terms of reasonable time, delay and cost to place on board equipment which bears the wheel mark, other marine equipment may be placed on board subject to paragraphs 2 to 4.
2. The marine equipment placed on board shall be accompanied by documentation issued by a Member State of the IMO which is a party to the relevant conventions, certifying compliance with the relevant IMO requirements.
3. The flag State administration shall be informed at once of the nature and characteristics of such other marine equipment.
4. The flag State administration shall, at the earliest opportunity, ensure that the marine equipment referred to in paragraph 1, along with its testing documentation, complies with the relevant requirements of the international instruments and of this Directive.
5. Where it has been demonstrated that specific marine equipment bearing the wheel mark is not available on the market, the flag Member State may authorise other marine equipment to be placed on board, subject to paragraphs 6 to 8.
6. The authorised marine equipment shall comply, as much as possible, with the requirements and testing standards referred to in Article 4.
7. The marine equipment placed on board shall be accompanied by an interim certificate of approval issued by the flag Member State or by another Member State, stating the following:
  - (a) the equipment bearing the wheel mark which the certified equipment is due to replace;
  - (b) the exact circumstances under which the certificate of approval has been issued, and in particular the unavailability in the market of equipment bearing the wheel mark;
  - (c) the exact design, construction and performance requirements against which the equipment has been approved by the certifying Member State;
  - (d) the testing standards applied, if any, in the relevant approval procedures.

8. The Member State issuing an interim certificate of approval shall inform the Commission forthwith. If the Commission considers that the conditions of paragraphs 6 and 7 have not been met, it may require that Member State to revoke that certificate or take other appropriate measures by means of implementing acts. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 38(2).

## CHAPTER 6 FINAL PROVISIONS

### *Article 33*

#### **Exchange of experience**

The Commission shall provide for the organisation of exchanges of experience between the Member States' national authorities responsible for notification policy, especially as regards market surveillance.

### *Article 34*

#### **Coordination of notified bodies**

1. The Commission shall ensure that appropriate coordination and cooperation between notified bodies are put in place and properly operated in the form of a sectoral group of notified bodies.
2. Member States shall ensure that the bodies notified by them participate in the work of the sectoral group, directly or by means of designated representatives.

### *Article 35*

#### **Implementing measures**

1. The Member States shall, by means of the information system made available by the Commission for that purpose, notify to the Commission the name and contact details of the authorities in charge of the implementation of this Directive. The Commission shall draw up, periodically update and make public a list of those authorities.
2. For each item of marine equipment for which the approval of the flag State administration is required by the international conventions, the Commission shall indicate by means of implementing acts the respective design, construction and performance requirements and the testing standards provided for in the international instruments. When adopting those acts, the Commission shall explicitly indicate the dates from which those requirements and testing standards are to apply, including the dates for placing on the market and placing on board, in accordance with the international instruments, and taking into consideration timeframes for ship-building. The Commission may also specify the common criteria and detailed procedures for their application.
3. The Commission shall, by means of implementing acts, indicate the respective design, construction and performance requirements newly provided for in the international instruments and which apply to equipment already placed on board, in order to ensure that equipment placed on board EU ships complies with the international instruments.
4. The Commission shall set up and maintain a database containing at least the following information:
  - (a) the list and essential details of the conformity certificates issued pursuant to this Directive, as provided by the notified bodies;
  - (b) the list and essential details of the declarations of conformity issued pursuant to this Directive, as provided by the manufacturers;
  - (c) an up-to-date list of the applicable international instruments, and of the requirements and testing standards applicable by virtue of Article 4(4);

- (d) the list and full text of the criteria and procedures referred to in paragraph 2;
- (e) the requirements and conditions for electronic tagging referred to in Article 11, when applicable;
- (f) any other useful information with a view to facilitating correct implementation of this Directive by the Member States, the notified bodies and the economic operators.

That database shall be made accessible to the Member States. It shall also be made available to the public for information purposes only.

5. The implementing acts referred to in this Article shall be adopted in the form of Commission Regulations in accordance with the examination procedure referred to in Article 38(2).

#### *Article 36*

### **Amendments**

The Commission shall be empowered to adopt delegated acts in accordance with Article 37 in order to update the references to standards, as referred to in Annex III, when new standards become available.

#### *Article 37*

### **Exercise of the delegation**

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Articles 8, 11, 27 and 36 shall be conferred on the Commission for a period of five years from 17 September 2014. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.
3. The delegation of power referred to in Articles 8, 11, 27 and 36 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
5. A delegated act adopted pursuant to Articles 8, 11, 27 and 36 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

#### *Article 38*

### **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. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply. Where the committee delivers no opinion, the Commission shall not adopt the draft implementing act and the third subparagraph of Article 5(4) of Regulation (EU) No 182/2011 shall apply.

*Article 39***Transposition**

1. Member States shall adopt and publish, by 18 September 2016 at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.

They shall apply those provisions from 18 September 2016.

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

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 40***Repeal**

1. Directive 96/98/EC is repealed with effect from 18 September 2016.

2. The requirements and testing standards for marine equipment applicable on 18 September 2016 pursuant to the provisions of national law adopted by the Member States in order to comply with Directive 96/98/EC shall continue to apply until the entry into force of the implementing acts referred to in Article 35(2).

3. References to the repealed Directive shall be construed as references to this Directive.

*Article 41***Entry into force**

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

*Article 42***Addressees**

This Directive is addressed to the Member States.

Done at Brussels, 23 July 2014.

*For the European Parliament*

*The President*

M. SCHULZ

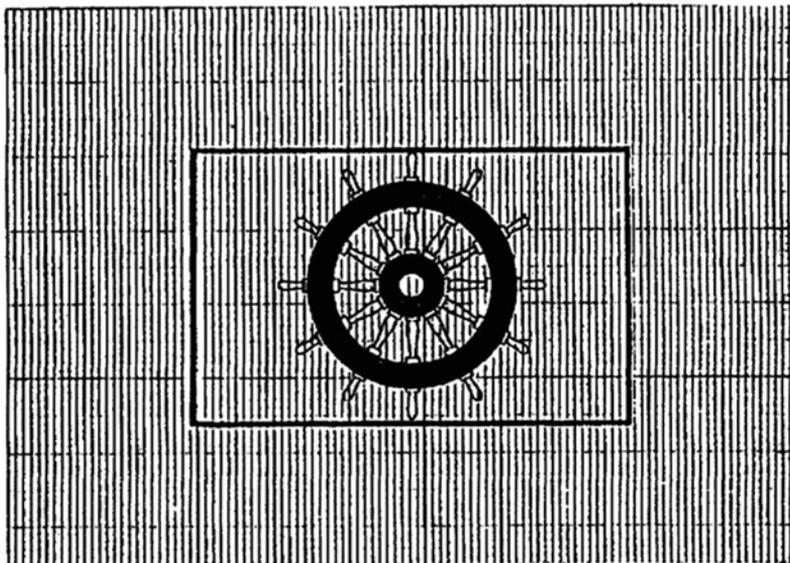
*For the Council*

*The President*

S. GOZI

ANNEX I  
WHEEL MARK

The mark of conformity must take the following form:



If the wheel mark is reduced or enlarged the proportions given in the graduated drawing must be respected.

The various components of the wheel mark must have substantially the same vertical dimension, which may not be less than 5 mm.

That minimum dimension may be waived for small devices.

ANNEX II  
CONFORMITY ASSESSMENT PROCEDURES

I. MODULE B: EC TYPE-EXAMINATION

1. EC type-examination is the part of a conformity assessment procedure in which a notified body examines the technical design of marine equipment and verifies and attests that the technical design of the marine equipment meets the relevant requirements.
2. EC type-examination may be carried out in either of the following manners:
  - examination of a specimen, representative of the production envisaged, of the complete product (production type);
  - assessment of the adequacy of the technical design of the marine equipment through examination of the technical documentation and supporting evidence referred to in point 3, plus examination of specimens, representative of the production envisaged, of one or more critical parts of the product (combination of production type and design type).
3. The manufacturer shall lodge an application for EC type-examination with a single notified body of its choice.

The application shall include:+

- the name and address of the manufacturer and, if the application is lodged by the authorised representative, its name and address as well;
- a written declaration that the same application has not been lodged with any other notified body;
- the technical documentation. The technical documentation shall make it possible to assess the conformity of the marine equipment with the applicable requirements of the international instruments as referred to in Article 4, and shall include an adequate analysis and assessment of the risk(s). The technical documentation shall specify the applicable requirements and shall cover, as far as relevant for the assessment, the design, manufacture and operation of the marine equipment. The technical documentation shall contain, wherever applicable, at least the following elements:
  - (a) a general description of the marine equipment;
  - (b) conceptual design and manufacturing drawings and schemes of components, sub-assemblies, circuits, etc.;
  - (c) descriptions and explanations necessary for the understanding of those drawings and schemes and of the operation of the marine equipment;
  - (d) a list of the requirements and testing standards which are applicable to the marine equipment concerned in accordance with this Directive, together with a description of the solutions adopted to meet those requirements;
  - (e) results of design calculations made, examinations carried out, etc.; and
  - (f) test reports;
- the specimens representative of the production envisaged. The notified body may request further specimens if needed for carrying out the test programme;
- the supporting evidence for the adequacy of the technical design solution. This supporting evidence shall mention any documents that have been used. The supporting evidence shall include, where necessary,

the results of tests carried out by the appropriate laboratory of the manufacturer, or by another testing laboratory on the manufacturer's behalf and under its responsibility.

4. The notified body shall:

For the marine equipment:

4.1. examine the technical documentation and supporting evidence to assess the adequacy of the technical design of the marine equipment;

For the specimen(s):

4.2. verify that the specimen(s) have been manufactured in conformity with the technical documentation, and identify the elements which have been designed in accordance with the applicable provisions of the relevant requirements and testing standards, as well as the elements which have been designed without applying the relevant provisions of those standards;

4.3. carry out appropriate examinations and tests, or have them carried out, in accordance with this Directive;

4.4. agree with the manufacturer on a location where the examinations and tests will be carried out.

5. The notified body shall draw up an evaluation report that records the activities undertaken in accordance with point 4 and their outcomes. Without prejudice to its obligations vis-à-vis the notifying authorities, the notified body shall release the content of that report, in full or in part, only with the agreement of the manufacturer.

6. Where the type meets the requirements of the specific international instruments that apply to the marine equipment concerned, the notified body shall issue an EC type-examination certificate to the manufacturer. The certificate shall contain the name and address of the manufacturer, the conclusions of the examination, the conditions (if any) for its validity and the necessary data for identification of the approved type. The certificate may have one or more annexes attached.

The certificate and its annexes shall contain all relevant information to allow the conformity of manufactured products with the examined type to be evaluated and to allow for in-service control.

Where the type does not satisfy the applicable requirements of the international instruments, the notified body shall refuse to issue an EC type-examination certificate and shall inform the applicant accordingly, giving detailed reasons for its refusal.

7. If the approved type no longer complies with the applicable requirements, the notified body shall determine whether further testing or a new conformity assessment procedure is necessary.

The manufacturer shall inform the notified body that holds the technical documentation relating to the EC type-examination certificate of all modifications to the approved type that may affect the conformity of the marine equipment with the requirements of the relevant international instruments or the conditions for validity of the certificate. Such modifications shall require additional approval in the form of an addition to the original EC type-examination certificate.

8. Each notified body shall inform its notifying authorities concerning the EC type-examination certificates and/or any additions thereto which it has issued or withdrawn, and shall, periodically or upon request, make available to its notifying authorities the list of certificates and/or any additions thereto refused, suspended or otherwise restricted.

Each notified body shall inform the other notified bodies concerning the EC type-examination certificates and/or any additions thereto which it has refused, withdrawn, suspended or otherwise restricted, and, upon request, concerning the certificates and/or additions thereto which it has issued.

The Commission, the Member States and the other notified bodies may, on request, obtain a copy of the EC type-examination certificates and/or additions thereto. On request, the Commission and the Member States may obtain a copy of the technical documentation and the results of the examinations carried out by the notified body. The notified body shall keep a copy of the EC type-examination certificate, its annexes and additions, as well as the technical file including the documentation submitted by the manufacturer, until the expiry of the validity of the certificate.

9. The manufacturer shall keep a copy of the EC type-examination certificate, its annexes and additions together with the technical documentation at the disposal of the national authorities for at least 10 years after the wheel mark has been affixed on the last product manufactured and in no case for a period shorter than the expected life of the marine equipment concerned.

10. The manufacturer's authorised representative may lodge the application referred to in point 3 and fulfil the obligations set out in points 7 and 9, provided that they are specified in the mandate.

## II. MODULE D: CONFORMITY TO TYPE BASED ON QUALITY ASSURANCE OF THE PRODUCTION PROCESS

1. Conformity to type based on quality assurance of the production process is the part of a conformity assessment procedure whereby the manufacturer fulfils the obligations laid down in points 2 and 5, and ensures and declares on its sole responsibility that the marine equipment concerned is in conformity with the type described in the EC type-examination certificate and that it satisfies the requirements of the international instruments that apply to it.

### 2. Manufacturing

The manufacturer shall operate an approved quality system for production, final product inspection and testing of the products concerned as specified in point 3, and shall be subject to surveillance as specified in point 4.

### 3. Quality system

3.1. The manufacturer shall lodge an application for assessment of its quality system with the notified body of its choice, for the marine equipment concerned.

The application shall include:

- the name and address of the manufacturer and, if the application is lodged by the authorised representative, its name and address as well;
- a written declaration that the same application has not been lodged with any other notified body;
- all relevant information for the marine equipment category envisaged;
- the documentation concerning the quality system;
- the technical documentation of the approved type and a copy of the EC type-examination certificate.

3.2. The quality system shall ensure that the products are in conformity with the type described in the EC type-examination certificate and that they comply with the requirements of the international instruments that apply to them.

All the elements, requirements and provisions adopted by the manufacturer shall be documented in a systematic and orderly manner in the form of written policies, procedures and instructions. The quality system documentation shall permit a consistent interpretation of the quality programmes, plans, manuals and records.

It shall, in particular, contain an adequate description of:

- the quality objectives and the organisational structure, responsibilities and powers of the management with regard to product quality;
  - the corresponding manufacturing, quality control and quality assurance techniques, processes and systematic actions that will be used;
  - the examinations and tests that will be carried out before, during and after manufacture, and the frequency with which they will be carried out;
  - the quality records, such as inspection reports and test data, calibration data, qualification reports on the personnel concerned, etc.; and
  - the means of monitoring the achievement of the required product quality and the effective operation of the quality system.
- 3.3. The notified body shall assess the quality system to determine whether it satisfies the requirements referred to in point 3.2.

In addition to experience in quality management systems, the auditing team shall have at least one member with experience of evaluation in the relevant marine equipment field and marine equipment technology concerned, and knowledge of the applicable requirements of the international instruments. The audit shall include an assessment visit to the manufacturer's premises. The auditing team shall review the technical documentation referred to in the fifth indent of point 3.1 in order to verify the manufacturer's ability to identify the relevant requirements of the international instruments and to carry out the necessary examinations with a view to ensuring compliance of the product with those requirements.

The decision shall be notified to the manufacturer. The notification shall contain the conclusions of the audit and the reasoned assessment decision.

- 3.4. The manufacturer shall undertake to fulfil the obligations arising out of the quality system as approved and to maintain it so that it remains adequate and efficient.
- 3.5. The manufacturer shall keep the notified body that has approved the quality system informed of any intended change to the quality system.

The notified body shall evaluate any proposed changes and decide whether the modified quality system will continue to satisfy the requirements referred to in point 3.2 or whether a re-assessment is necessary.

It shall notify the manufacturer of its decision. The notification shall contain the conclusions of the examination and the reasoned assessment decision.

#### 4. Surveillance under the responsibility of the notified body

- 4.1. The purpose of surveillance is to make sure that the manufacturer duly fulfils the obligations arising out of the approved quality system.
- 4.2. The manufacturer shall, for assessment purposes, allow the notified body access to the manufacture, inspection, testing and storage sites, and shall provide it with all necessary information, in particular:
- the quality system documentation;
  - the quality records, such as inspection reports and test data, calibration data, qualification reports on the personnel concerned, etc.

- 4.3. The notified body shall carry out periodic audits to make sure that the manufacturer maintains and applies the quality system, and shall provide the manufacturer with an audit report.
- 4.4. In addition, the notified body may pay unexpected visits to the manufacturer, except where, under national law, and for defence or security reasons, certain restrictions apply to such visits. During such visits the notified body may, if necessary, carry out product tests, or have them carried out, in order to verify that the quality system is functioning correctly. The notified body shall provide the manufacturer with a visit report and, if tests have been carried out, with a test report.
5. Conformity marking and declaration of conformity
- 5.1. The manufacturer shall affix the wheel mark referred to in Article 9, and, under the responsibility of the notified body referred to in point 3.1, the latter's identification number to each individual product that is in conformity with the type described in the EC type-examination certificate and that satisfies the applicable requirements of the international instruments.
- 5.2. The manufacturer shall draw up a written declaration of conformity for each product model and keep it at the disposal of the national authorities for at least 10 years after the wheel mark has been affixed on the last product manufactured and in no case for a period shorter than the expected life of the marine equipment concerned. The declaration of conformity shall identify the marine equipment model for which it has been drawn up.

A copy of the declaration of conformity shall be made available to the relevant authorities upon request.

6. The manufacturer shall keep at the disposal of the competent authorities, for at least 10 years after the wheel mark has been affixed on the last product manufactured and in no case for a period shorter than the expected life of the marine equipment concerned:
- the documentation referred to in point 3.1;
  - the change referred to in point 3.5, as approved;
  - the decisions and reports of the notified body referred to in points 3.5, 4.3 and 4.4.

7. Each notified body shall inform its notifying authorities of quality system approvals issued or withdrawn, and shall, periodically or upon request, make available to its notifying authorities the list of quality system approvals refused, suspended or otherwise restricted.

Each notified body shall inform the other notified bodies of quality system approvals which it has refused, suspended, withdrawn or otherwise restricted, and, upon request, of quality system approvals which it has issued.

#### 8. Authorised representative

The manufacturer's obligations set out in points 3.1, 3.5, 5 and 6 may be fulfilled by its authorised representative, on its behalf and under its responsibility, provided that they are specified in the mandate.

### III. MODULE E: CONFORMITY TO TYPE BASED ON PRODUCT QUALITY ASSURANCE

1. Conformity to type based on product quality assurance is that part of a conformity assessment procedure whereby the manufacturer fulfils the obligations laid down in points 2 and 5, and ensures and declares on its sole responsibility that the marine equipment concerned is in conformity with the type described in the EC type-examination certificate and that it satisfies the requirements of the international instruments that apply to it.

#### 2. Manufacturing

The manufacturer shall operate an approved quality system for final product inspection and testing of the products concerned as specified in point 3, and shall be subject to surveillance as specified in point 4.

### 3. Quality system

3.1. The manufacturer shall lodge an application for assessment of its quality system with the notified body of its choice, for the marine equipment concerned.

The application shall include:

- the name and address of the manufacturer and, if the application is lodged by the authorised representative, its name and address as well;
- a written declaration that the same application has not been lodged with any other notified body;
- all relevant information for the marine equipment category envisaged;
- the documentation concerning the quality system; and
- the technical documentation of the approved type and a copy of the EC type-examination certificate.

3.2. The quality system shall ensure compliance of the products with the type described in the EC type-examination certificate and with the applicable requirements of the international instruments.

All the elements, requirements and provisions adopted by the manufacturer shall be documented in a systematic and orderly manner in the form of written policies, procedures and instructions. The quality system documentation shall permit a consistent interpretation of the quality programmes, plans, manuals and records.

It shall, in particular, contain an adequate description of:

- the quality objectives and the organisational structure, responsibilities and powers of the management with regard to product quality;
- the examinations and tests that will be carried out after manufacture;
- the quality records, such as inspection reports and test data, calibration data, qualification reports on the personnel concerned, etc.;
- the means of monitoring the effective operation of the quality system.

3.3. The notified body shall assess the quality system to determine whether it satisfies the requirements referred to in point 3.2.

In addition to experience in quality management systems, the auditing team shall have at least one member with experience of evaluation in the relevant marine equipment field and marine equipment technology concerned, and knowledge of the applicable requirements of the international instruments. The audit shall include an assessment visit to the manufacturer's premises. The auditing team shall review the technical documentation referred to in the fifth indent of point 3.1, in order to verify the manufacturer's ability to identify the relevant requirements of the international instruments and to carry out the necessary examinations with a view to ensuring compliance of the product with those requirements.

The decision shall be notified to the manufacturer. The notification shall contain the conclusions of the audit and the reasoned assessment decision.

3.4. The manufacturer shall undertake to fulfil the obligations arising out of the quality system as approved and to maintain it so that it remains adequate and efficient.

- 3.5. The manufacturer shall keep the notified body that has approved the quality system informed of any intended change to the quality system.

The notified body shall evaluate any proposed changes and decide whether the modified quality system will continue to satisfy the requirements referred to in point 3.2 or whether a re-assessment is necessary.

It shall notify the manufacturer of its decision. The notification shall contain the conclusions of the examination and the reasoned assessment decision.

#### 4. Surveillance under the responsibility of the notified body

- 4.1. The purpose of surveillance is to make sure that the manufacturer duly fulfils the obligations arising out of the approved quality system.

- 4.2. The manufacturer shall, for assessment purposes, allow the notified body access to the manufacture, inspection, testing and storage sites, and shall provide it with all necessary information, in particular:

- the quality system documentation;
- the quality records, such as inspection reports and test data, calibration data, qualification reports on the personnel concerned, etc.

- 4.3. The notified body shall carry out periodic audits to make sure that the manufacturer maintains and applies the quality system, and shall provide the manufacturer with an audit report.

- 4.4. In addition, the notified body may pay unexpected visits to the manufacturer, except where, under national law, and for defence or security reasons, certain restrictions apply to such visits. During such visits the notified body may, if necessary, carry out product tests, or have them carried out, in order to verify that the quality system is functioning correctly. The notified body shall provide the manufacturer with a visit report and, if tests have been carried out, with a test report.

#### 5. Conformity marking and declaration of conformity

- 5.1. The manufacturer shall affix the wheel mark referred to in Article 9, and, under the responsibility of the notified body referred to in point 3.1, the latter's identification number to each individual product that is in conformity with the type described in the EC type-examination certificate and that satisfies the applicable requirements of the international instruments.

- 5.2. The manufacturer shall draw up a written declaration of conformity for each product model and keep it at the disposal of the national authorities for at least 10 years after the wheel mark has been affixed on the last product manufactured and in no case for a period shorter than the expected life of the marine equipment concerned. The declaration of conformity shall identify the marine equipment model for which it has been drawn up.

A copy of the declaration of conformity shall be made available to the relevant authorities upon request.

6. The manufacturer shall keep at the disposal of the competent authorities, for at least 10 years after the wheel mark has been affixed on the last product manufactured and in no case for a period shorter than the expected life of the marine equipment concerned:

- the documentation referred to in point 3.1;
- the change referred to in point 3.5, as approved;
- the decisions and reports of the notified body referred to in points 3.5, 4.3 and 4.4.

7. Each notified body shall inform its notifying authorities of quality system approvals issued or withdrawn, and shall, periodically or upon request, make available to its notifying authorities the list of quality system approvals refused, suspended or otherwise restricted.

Each notified body shall inform the other notified bodies of quality system approvals which it has refused, suspended or withdrawn, and, upon request, of quality system approvals which it has issued.

#### 8. Authorised representative

The manufacturer's obligations set out in points 3.1, 3.5, 5 and 6 may be fulfilled by its authorised representative, on its behalf and under its responsibility, provided that they are specified in the mandate.

### IV. MODULE F: CONFORMITY TO TYPE BASED ON PRODUCT VERIFICATION

1. Conformity to type based on product verification is the part of a conformity assessment procedure whereby the manufacturer fulfils the obligations laid down in points 2, 5.1 and 6, and ensures and declares on its sole responsibility that the products concerned, which have been subject to the provisions of point 3, are in conformity with the type described in the EC type-examination certificate and that they satisfy the requirements of the international instruments that apply to them.

#### 2. Manufacturing

The manufacturer shall take all measures necessary so that the manufacturing process and its monitoring ensure conformity of the manufactured products with the approved type described in the EC type-examination certificate and with the requirements of the international instruments that apply to them.

#### 3. Verification

A notified body chosen by the manufacturer shall carry out appropriate examinations and tests in order to check the conformity of the products with the approved type described in the EC type-examination certificate and with the appropriate requirements of the international instruments.

The examinations and tests to check the conformity of the products with the appropriate requirements shall be carried out, at the choice of the manufacturer, either by examination and testing of every product as specified in point 4 or by examination and testing of the products on a statistical basis as specified in point 5.

#### 4. Verification of conformity by examination and testing of every product

4.1. All products shall be individually examined and tested in accordance with this Directive, in order to verify conformity with the approved type described in the EC type-examination certificate and with the appropriate requirements of the international instruments.

4.2. The notified body shall issue a certificate of conformity in respect of the examinations and tests carried out, and shall affix its identification number to each approved product or have it affixed under its responsibility.

The manufacturer shall keep the certificates of conformity available for inspection by the national authorities for at least 10 years after the wheel mark has been affixed on the last product manufactured and in no case for a period shorter than the expected life of the marine equipment concerned.

#### 5. Statistical verification of conformity

5.1. The manufacturer shall take all measures necessary so that the manufacturing process and its monitoring ensure the homogeneity of each lot produced, and shall present its products for verification in the form of homogeneous lots.

- 5.2. A random sample shall be taken from each lot. All products in a sample shall be individually examined and tested in accordance with this Directive, in order to ensure their conformity with the applicable requirements of the international instruments and to determine whether the lot is accepted or rejected.
- 5.3. If a lot is accepted, all products of the lot shall be considered approved, except for those products from the sample that have been found not to satisfy the tests.

The notified body shall issue a certificate of conformity in respect of the examinations and tests carried out, and shall affix its identification number to each approved product or have it affixed under its responsibility.

The manufacturer shall keep the certificates of conformity at the disposal of the national authorities for at least 10 years after the wheel mark has been affixed on the last product manufactured and in no case for a period shorter than the expected life of the marine equipment concerned.

- 5.4. If a lot is rejected, the notified body or the competent authority shall take appropriate measures to prevent that lot being placed on the market. In the event of the frequent rejection of lots, the notified body may suspend the statistical verification and take appropriate measures.

## 6. Conformity marking and declaration of conformity

- 6.1. The manufacturer shall affix the wheel mark referred to in Article 9, and, under the responsibility of the notified body referred to in point 3, the latter's identification number to each individual product that is in conformity with the approved type described in the EC type-examination certificate and that satisfies the applicable requirements of the international instruments.
- 6.2. The manufacturer shall draw up a written declaration of conformity for each product model and keep it at the disposal of the national authorities for at least 10 years after the wheel mark has been affixed on the last product manufactured and in no case for a period shorter than the expected life of the marine equipment concerned. The declaration of conformity shall identify the marine equipment model for which it has been drawn up.

A copy of the declaration of conformity shall be made available to the relevant authorities upon request.

7. If the notified body agrees and under its responsibility, the manufacturer may affix the notified body's identification number to the products during the manufacturing process.

## 8. Authorised representative

The manufacturer's obligations may be fulfilled by its authorised representative, on its behalf and under its responsibility, provided that they are specified in the mandate. An authorised representative may not fulfil the manufacturer's obligations set out in points 2 and 5.1.

## V. MODULE G: CONFORMITY BASED ON UNIT VERIFICATION

1. Conformity based on unit verification is the conformity assessment procedure whereby the manufacturer fulfils the obligations laid down in points 2, 3 and 5 and ensures and declares on its sole responsibility that the product concerned, which has been subject to the provisions of point 4, is in conformity with the requirements of the international instruments that apply to it.

## 2. Technical documentation

The manufacturer shall draw up the technical documentation and make it available to the notified body referred to in point 4. The documentation shall make it possible to assess the product's conformity with the relevant requirements, and shall include an adequate analysis and assessment of the risk(s). The technical documentation shall specify the applicable requirements and shall cover, as far as relevant for the assessment, the design, manufacture and operation of the product. The technical documentation shall, wherever applicable, contain at least the following elements:

- a general description of the product;
- conceptual design and manufacturing drawings and schemes of components, sub-assemblies, circuits, etc.;
- descriptions and explanations necessary for the understanding of those drawings and schemes and the operation of the product;
- a list of the requirements and testing standards which are applicable to the marine equipment concerned in accordance with this Directive, together with a description of the solutions adopted to meet those requirements;
- results of design calculations made, examinations carried out; and
- test reports.

The manufacturer shall keep the technical documentation at the disposal of the relevant national authorities for at least 10 years after the wheel mark has been affixed on the last product manufactured and in no case for a period shorter than the expected life of the marine equipment concerned.

### 3. Manufacturing

The manufacturer shall take all measures necessary so that the manufacturing process and its monitoring ensure conformity of the manufactured product with the applicable requirements of the international instruments.

### 4. Verification

A notified body chosen by the manufacturer shall carry out appropriate examinations and tests in accordance with this Directive, in order to check the conformity of the product with the applicable requirements of the international instruments.

The notified body shall issue a certificate of conformity in respect of the examinations and tests carried out and shall affix its identification number to the approved product, or have it affixed under its responsibility.

The manufacturer shall keep the certificates of conformity at the disposal of the national authorities for at least 10 years after the wheel mark has been affixed on the last product manufactured and in no case for a period shorter than the expected life of the marine equipment concerned.

### 5. Conformity marking and declaration of conformity

5.1. The manufacturer shall affix the wheel mark referred to in Article 9 and, under the responsibility of the notified body referred to in point 4, the latter's identification number to each product that satisfies the applicable requirements of the international instruments.

5.2. The manufacturer shall draw up a written declaration of conformity and keep it at the disposal of the national authorities for at least 10 years after the wheel mark has been affixed on the last product manufactured and in no case for a period shorter than the expected life of the marine equipment concerned. The declaration of conformity shall identify the product for which it has been drawn up.

A copy of the declaration of conformity shall be made available to the relevant authorities upon request.

### 6. Authorised representative

The manufacturer's obligations set out in points 2 and 5 may be fulfilled by its authorised representative, on its behalf and under its responsibility, provided that they are specified in the mandate.

## ANNEX III

**REQUIREMENTS TO BE MET BY CONFORMITY ASSESSMENT BODIES IN ORDER TO BECOME NOTIFIED BODIES**

1. For the purposes of notification, a conformity assessment body shall meet the requirements laid down in points 2 to 11.
2. A conformity assessment body shall be established under national law and have legal personality.
3. A conformity assessment body shall be a third-party body independent of the organisation or the marine equipment which it assesses.
4. A body belonging to a business association or professional federation representing undertakings involved in the design, manufacturing, provision, assembly, use or maintenance of marine equipment which it assesses, may, on condition that its independence and the absence of any conflict of interest are demonstrated, be considered a conformity assessment body.
5. A conformity assessment body, its top-level management and the personnel responsible for carrying out the conformity assessment tasks shall not be the designer, manufacturer, supplier, installer, purchaser, owner, user or maintainer of the marine equipment which is assessed, nor the authorised representative of any of those parties. This shall not preclude the use of assessed products that are necessary for the operations of the conformity assessment body or the use of such products for personal purposes.
6. A conformity assessment body, its top-level management and the personnel responsible for carrying out the conformity assessment tasks shall not be directly involved in the design, manufacture or construction, the marketing, installation, use or maintenance of that marine equipment, or represent the parties engaged in those activities. They shall not engage in any activity that may conflict with their independence of judgement or integrity in relation to conformity assessment activities for which they are notified. This shall apply, in particular, to consultancy services.
7. Conformity assessment bodies shall ensure that the activities of their subsidiaries or subcontractors do not affect the confidentiality, objectivity or impartiality of their conformity assessment activities.
8. Conformity assessment bodies and their personnel shall carry out the conformity assessment activities with the highest degree of professional integrity and the requisite technical competence in the specific field and shall be free from all pressures and inducements, particularly of a financial nature, which might influence their judgement or the results of their conformity assessment activities, especially as regards persons or groups of persons with an interest in the results of those activities.
9. A conformity assessment body shall be capable of carrying out all the conformity assessment tasks assigned to it under this Directive and in relation to which it has been notified, whether those tasks are carried out by the conformity assessment body itself or on its behalf and under its responsibility.
10. At all times and for each conformity assessment procedure and each kind, category or sub-category of marine equipment in relation to which it has been notified, a conformity assessment body shall have at its disposal the necessary:
  - (a) personnel with technical knowledge and sufficient and appropriate experience to perform the conformity assessment tasks;
  - (b) descriptions of procedures in accordance with which conformity assessment is carried out, ensuring the transparency of those procedures and the possibility of reproducing them. It shall have in place appropriate policies and procedures that distinguish between tasks that it carries out as a notified body and other activities;

- (c) procedures for the performance of activities which take due account of the size of an undertaking, the sector in which it operates, its structure, the degree of complexity of the marine equipment technology in question and the mass or serial nature of the production process.

11. A conformity assessment body shall have the means necessary to perform the technical and administrative tasks connected with the conformity assessment activities in an appropriate manner, and shall have access to all necessary equipment and facilities.

12. The personnel responsible for carrying out conformity assessment activities shall have the following:

- (a) sound technical and vocational training covering all the conformity assessment activities in relation to which the conformity assessment body has been notified;
- (b) satisfactory knowledge of the requirements of the assessments they carry out and adequate authority to carry out those assessments;
- (c) appropriate knowledge and understanding of the applicable requirements and testing standards and of the relevant provisions of Union legislation on harmonisation and of the regulations implementing that legislation;
- (d) the ability to draw up certificates, records and reports demonstrating that assessments have been carried out.

13. The impartiality of the conformity assessment bodies, of their top-level management and of the assessment personnel shall be guaranteed.

14. The remuneration of the top-level management and of the assessment personnel of a conformity assessment body shall not depend on the number of assessments carried out or on the results of those assessments.

15. Conformity assessment bodies shall take out liability insurance unless liability is assumed by the State in accordance with national law, or the Member State itself is directly responsible for the conformity assessment.

16. The personnel of a conformity assessment body shall observe professional secrecy with regard to all information obtained in carrying out their tasks under this Directive or pursuant to any provision of national law giving effect to it, except in relation to the competent authorities of the Member States in which its activities are carried out. Proprietary rights shall be protected.

17. Conformity assessment bodies shall participate in, or ensure that their assessment personnel are informed of, the relevant standardisation activities and the activities of the notified body coordination group established under this Directive, and shall apply as general guidance the administrative decisions and documents produced as a result of the work of that group.

18. Conformity assessment bodies shall meet the requirements of standard EN ISO/IEC 17065:2012.

19. Conformity assessment bodies shall ensure that testing laboratories used for conformity assessment purposes meet the requirements of standard EN ISO/IEC 17025:2005.

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ANNEX IV  
**NOTIFICATION PROCEDURE**

1. Application for notification

- 1.1. A conformity assessment body shall submit an application for notification to the notifying authority of the Member State in which it is established.
- 1.2. That application shall be accompanied by a description of the conformity assessment activities, the conformity assessment module or modules and the marine equipment for which that body claims to be competent, as well as by an accreditation certificate, where one exists, issued by a national accreditation body attesting that the conformity assessment body fulfils the requirements laid down in Annex III.
- 1.3. Where the conformity assessment body concerned cannot provide an accreditation certificate, it shall provide the notifying authority with all the documentary evidence necessary for the verification, recognition and regular monitoring of its compliance with the requirements laid down in Annex III.

2. Notification procedure

- 2.1. Notifying authorities may notify only conformity assessment bodies which have satisfied the requirements laid down in Annex III.
  - 2.2. They shall notify the Commission and the other Member States using the electronic notification tool developed and managed by the Commission.
  - 2.3. The notification shall include full details of the conformity assessment activities, the conformity assessment module or modules and marine equipment concerned and the relevant attestation of competence.
  - 2.4. Where a notification is not based on an accreditation certificate as referred to in section 1, the notifying authority shall provide the Commission and the other Member States with documentary evidence which attests to the conformity assessment body's competence and the arrangements in place to ensure that that body will be monitored regularly and will continue to satisfy the requirements laid down in Annex III.
  - 2.5. The body concerned may perform the activities of a notified body only where no objections are raised by the Commission or the other Member States within two weeks of a notification where an accreditation certificate is used or within two months of a notification where accreditation is not used.
  - 2.6. Only a body referred to in point 2.5 shall be considered a notified body for the purposes of this Directive.
  - 2.7. The Commission and the other Member States shall be notified of any subsequent relevant changes to the notification.
3. Identification numbers and lists of notified bodies
- 3.1. The Commission shall assign an identification number to a notified body.
  - 3.2. It shall assign a single such number even where the notified body is recognised as notified under several legislative acts of the Union.
  - 3.3. The Commission shall make publicly available the list of the bodies notified under this Directive, including the identification numbers that have been allocated to them and the activities for which they have been notified.
  - 3.4. The Commission shall ensure that that list is kept up to date.
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ANNEX V  
**REQUIREMENTS TO BE MET BY NOTIFYING AUTHORITIES**

1. A notifying authority shall be established in such a way that no conflict of interest with conformity assessment bodies occurs.
  2. A notifying authority shall be organised and operated in such a way as to safeguard the objectivity and impartiality of its activities.
  3. A notifying authority shall be organised in such a way that each decision relating to notification of a conformity assessment body is taken by competent persons different from those who carried out the assessment.
  4. A notifying authority shall not offer or provide, on a commercial or competitive basis, any activities that conformity assessment bodies perform or any consultancy services.
  5. A notifying authority shall safeguard the confidentiality of the information it obtains.
  6. A notifying authority shall have a sufficient number of competent personnel at its disposal for the proper performance of its tasks.
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**Regulation (EU) No 530/2012 of the European Parliament and  
of the Council of 13 June 2012  
on the accelerated phasing-in of double-hull  
or equivalent design requirements for single-hull oil tankers**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European

Union, and in particular Article 100(2) thereof,

Having regard to the proposal from the European Commission, After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee <sup>(1)</sup>,

After consulting the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure <sup>(2)</sup>,

Whereas:

- (1) Regulation (EC) No 417/2002 of the European Parliament and of the Council of 18 February 2002 on the accelerated phasing-in of double-hull or equivalent design requirements for single-hull oil tankers <sup>(3)</sup> has been substantially amended several times <sup>(4)</sup>. Since further amendments are necessary, that Regulation should be recast in the interests of clarity.
- (2) Within the framework of the common transport policy, measures should be taken to enhance safety and prevent pollution in maritime transport.
- (3) The Union is seriously concerned by shipping accidents involving oil tankers and the associated pollution of its coast-lines and harm to its fauna and flora and other marine resources.
- (4) In its communication on a common policy on safe seas, the Commission underlined the request of the extraordinary Council on Environment and Transport of 25 January 1993 to support the action in the International Maritime Organisation (IMO) on the reduction of the safety gap between new and existing ships by upgrading and/or phasing out existing ships.
- (5) By its Resolution of 8 June 1993 on a common policy on safe seas <sup>(5)</sup>, the Council fully supported the objectives of the Commission communication.
- (6) In its Resolution of 11 March 1994 on a common policy on safe seas <sup>(6)</sup>, the European Parliament welcomed the Commission communication and called in particular for action to be taken to improve tanker safety standards.

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<sup>(1)</sup> OJ C 43, 15.2.2012, p. 98

<sup>(2)</sup> Position of the European Parliament of 23 May 2012 (not yet published in the Official Journal) and decision of the Council of 7 June 2012.

<sup>(3)</sup> OJ L 64, 7.3.2002, p. 1.

<sup>(4)</sup> See Annex I.

<sup>(5)</sup> OJ C 271, 7.10.1993, p. 1

<sup>(6)</sup> OJ C 91, 28.3.1994, p. 301.

- (7) In its Resolution of 20 January 2000 on the oil slick disaster caused by the wreck of the Erika <sup>(17)</sup>, the European Parliament welcomed any efforts by the Commission to bring forward the date by which oil tankers will be obliged to have a double-hull construction.
- (8) In its Resolution of 21 November 2002 on the 'Prestige' oil tanker disaster off the coast of Galicia <sup>(18)</sup>, the European Parliament called for stronger measures that can enter into force more rapidly, and stated that this new disaster has again underlined the need for effective action at international and Union level in order to significantly improve maritime safety.
- (9) The IMO has established, in the International Convention for the Prevention of Pollution from Ships, 1973 and the Protocol of 1978 related thereto (MARPOL 73/78), internationally agreed pollution prevention rules affecting the design and operation of oil tankers. Member States are Parties to MARPOL 73/78.
- (10) According to Article 3.3 of MARPOL 73/78, that Convention does not apply to warships, naval auxiliary or other ships owned or operated by a State and used only for government non-commercial services.
- (11) Comparison of tanker age and accident statistics shows increasing accident rates for older ships. It has been internationally agreed that the adoption of the 1992 amendments to MARPOL 73/78 requiring the application of the double-hull or equivalent design standards to existing single-hull oil tankers when they reach a certain age will provide those oil tankers with a higher degree of protection against accidental oil pollution in the event of collision or stranding.
- (12) It is in the Union's interest to adopt measures to ensure that oil tankers entering into ports and offshore terminals or anchoring in an area under the jurisdiction of Member States and oil tankers flying the flags of Member States comply with Regulation 20 of Annex I to MARPOL 73/78 as revised in 2004 by Resolution MEPC 117(52) adopted by the IMO's Marine Environment Protection Committee (MEPC) in order to reduce the risk of accidental oil pollution in European waters.
- (13) Resolution MEPC 114(50), adopted on 4 December 2003, introduced a new Regulation 21 into Annex I to MARPOL 73/78 on the prevention of oil pollution from oil tankers when carrying heavy grade oil (HGO) which bans the carriage of HGO in single-hull oil tankers. Paragraphs 5, 6 and 7 of Regulation 21 provide for the possibility of exemptions from the application of certain provisions of that Regulation. The statement by the Italian Presidency of the European Council on behalf of the European Union, recorded in the official report of the MEPC on its 50th session (MEPC 50/3), expresses a political commitment to refrain from making use of those exemptions.
- (14) Amendments to MARPOL 73/78 adopted by the IMO on 6 March 1992 entered into force on 6 July 1993. Those measures impose double-hull or equivalent design requirements for oil tankers delivered on or after 6 July 1996 aimed at preventing oil pollution in the event of collision or stranding. Within those amendments, a phasing-out scheme for single-hull oil tankers delivered before that date took effect from 6 July 1995 requiring oil tankers delivered before 1 June 1982 to comply with the double-hull or equivalent design standards not later than 25 years and, in some cases, 30 years after the date of their delivery. Such existing single-hull oil tankers would not be allowed to operate beyond 2005 and, in some cases, 2012 unless they comply with the double-hull or equivalent design requirements of Regulation 19 of Annex I to MARPOL 73/78. For existing single-hull oil tankers delivered after 1 June 1982 or those delivered before 1 June 1982 and which have been converted to comply with the requirements of MARPOL 73/78 on segregated ballast tanks and their protective location, this deadline will be reached at the latest in 2026.
- (15) Important amendments to Regulation 20 of Annex I to MARPOL 73/78 were adopted on 27 April 2001 by the 46th session of the MEPC by Resolution MEPC 95(46) and on 4 December 2003 by Resolution MEPC 111(50)

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<sup>(17)</sup> OJ C 304, 24.10.2000, p. 198.

<sup>(18)</sup> OJ C 25 E, 29.1.2004, p. 415.

in which a new accelerated phasing-out scheme for single-hull oil tankers was introduced. The respective final dates by which oil tankers must comply with Regulation 19 of Annex I to MARPOL 73/78 depend on the size and age of the ship. Oil tankers in that scheme are therefore divided into three categories according to their tonnage, construction and age. All these categories, including the lowest one, Category 3, are important for trade within the Union.

- (16) The final date by which a single-hull oil tanker is to be phased out is the anniversary of the date of delivery of the ship, according to a schedule starting in 2003 until 2005 for Category 1 oil tankers, and until 2010 for Category 2 and Category 3 oil tankers.
- (17) Regulation 20 of Annex I to MARPOL 73/78 introduces a requirement that all single-hull oil tankers may only continue to operate subject to compliance with a Condition Assessment Scheme (CAS), adopted on 27 April 2001 by Resolution MEPC 94(46) as amended by Resolution MEPC 99(48) of 11 October 2002 and by Resolution MEPC 112(50) of 4 December 2003. The CAS imposes an obligation that the flag State administration issues a Statement of Compliance and is involved in the CAS survey procedures. The CAS is designed to detect structural weaknesses in ageing oil tankers and should apply to all oil tankers above the age of 15 years.
- (18) Regulation 20.5 of Annex I to MARPOL 73/78 allows for an exception for Category 2 and Category 3 oil tankers to operate, under certain circumstances, beyond the time limit of their phasing-out. Regulation 20.8.2 of the same Annex gives the right for Parties to MARPOL 73/78 to deny entry into the ports or offshore terminals under their jurisdiction to oil tankers allowed to operate under this exception. Member States have declared their intention to use this right. Any decision to have recourse to this right should be communicated to the IMO.
- (19) It is important to ensure that the provisions of this Regulation do not lead to the safety of crew or oil tankers in search of a safe haven or a place of refuge being endangered.
- (20) In order to allow shipyards in Member States to repair single-hull oil tankers, Member States may make exceptions to allow entry into their ports of such vessels, provided they are not carrying any cargo.
- (21) It is very unlikely that the IMO would modify the content of the relevant Regulations in MARPOL 73/78 and Resolutions MEPC 111(50) and 94(46) adopted by the MEPC referred to in this Regulation. However, non-substantial amendments, such as renumbering, could be introduced in those texts. In order to keep this Regulation updated with the most recent developments of relevant international law, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission only in respect of such amendments in so far as they do not broaden the scope of this Regulation. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and Council,

HAVE ADOPTED THIS REGULATION:

#### *Article 1*

#### **Purpose**

The purpose of this Regulation is to establish an accelerated phasing-in scheme for the application of the double-hull or equivalent design requirements of MARPOL 73/78, as defined in Article 3 of this Regulation, to single-hull oil tankers, and to ban the transport to or from ports of the Member States of heavy grade oil in single-hull oil tankers.

## Article 2

### Scope

1. This Regulation shall apply to oil tankers of 5 000 tonnes deadweight and above:
  - (a) which fly the flag of a Member State;
  - (b) irrespective of their flag, which enter or leave a port or offshore terminal or anchor in an area under the jurisdiction of a Member State.

For the purposes of Article 4(3), this Regulation shall apply to oil tankers of 600 tonnes deadweight and above.

2. This Regulation shall not apply to any warship, naval auxiliary or other ship, owned or operated by a State and used, for the time being, only on government non-commercial service. Member States shall, so far as is reasonable and practicable, endeavour to respect this Regulation for the ships referred to in this paragraph.

## Article 3

### Definitions

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

- (1) 'MARPOL 73/78' means the International Convention for the Prevention of Pollution from Ships, 1973, as amended by the Protocol of 1978 relating thereto, in their up-to-date versions;
- (2) 'oil tanker' means an oil tanker as defined in Regulation 1.5 of Annex I to MARPOL 73/78;
- (3) 'deadweight' means deadweight as defined in Regulation 1.23 of Annex I to MARPOL 73/78;
- (4) 'Category 1 oil tanker' means an oil tanker of 20 000 tonnes deadweight or above and carrying crude oil, fuel oil, heavy diesel oil or lubricating oil as cargo or of 30 000 tonnes deadweight or above and carrying oil other than the above and which does not comply with the requirements in Regulations 18.1 to 18.9, 18.12 to 18.15, 30.4, 33.1, 33.2, 33.3, 35.1, 35.2 and 35.3 of Annex I to MARPOL 73/78;
- (5) 'Category 2 oil tanker' means an oil tanker of 20 000 tonnes deadweight or above and carrying crude oil, fuel oil, heavy diesel oil or lubricating oil as cargo or of 30 000 tonnes deadweight or above and carrying oil other than the above and which complies with the requirements in Regulations 18.1 to 18.9, 18.12 to 18.15, 30.4, 33.1, 33.2, 33.3, 35.1, 35.2 and 35.3 of Annex I to MARPOL 73/78 and is fitted with segregated ballast tanks protectively located (SBT/PL);
- (6) 'Category 3 oil tanker' means an oil tanker of 5 000 tonnes deadweight or above but less than that specified in points (4) and (5);
- (7) 'single-hull oil tanker' means an oil tanker which does not comply with the double-hull or equivalent design requirements in Regulations 19 and 28.6 of Annex I to MARPOL 73/78;
- (8) 'double-hull oil tanker' means an oil tanker:
  - (a) of 5 000 tonnes deadweight or above, complying with the double-hull or equivalent design requirements in Regulations 19 and 28.6 of Annex I to MARPOL 73/78 or with the requirements in Regulation 20.1.3 thereof; or
  - (b) of 600 tonnes deadweight or above but less than 5 000 tonnes deadweight, fitted with double-bottom tanks or spaces complying with Regulation 19.6.1 of Annex I to MARPOL 73/78 and wing tanks or spaces arranged in accordance with Regulation 19.3.1 thereof and complying with the requirement as to distance w in Regulation 19.6.2 thereof;

- (9) 'age' means the age of the ship, expressed in number of years from its date of delivery;
- (10) 'heavy diesel oil' means diesel oil as defined in Regulation 20 of Annex I to MARPOL 73/78;
- (11) 'fuel oil' means heavy distillates of crude oil or residues therefrom or blends of such materials as defined in Regulation 20 of Annex I to MARPOL 73/78;
- (12) 'heavy grade oil' means:
- (a) crude oils of a density at 15 °C of over 900 kg/m<sup>3</sup> (corresponding to an API grade of less than 25,7);
  - (b) oils other than crude oils and of a density at 15 °C of over 900 kg/m<sup>3</sup> or a kinematic viscosity at 50 °C of over 180 mm<sup>2</sup>/s (corresponding to a kinematic viscosity of over 180 cSt);
  - (c) bitumen and tar and emulsions thereof.

#### *Article 4*

### **Compliance with the double-hull or equivalent design requirements by single-hull oil tankers**

1. No oil tanker shall be allowed to operate under the flag of a Member State, nor shall any oil tanker, irrespective of its flag, be allowed to enter into ports or offshore terminals under the jurisdiction of a Member State unless such tanker is a double-hull oil tanker.
2. Notwithstanding paragraph 1, oil tankers of Category 2 or Category 3 which are equipped only with double bottoms or double sides not used for the transport of oil and extending for the whole length of the cargo tank, or with double-hulled spaces not used for the transport of oil and extending for the whole length of the cargo tank, but which do not meet the conditions for exemption from the provisions of Regulation 20.1.3 of Annex I to MARPOL 73/78, may continue to be operated, but not beyond the anniversary of the date of delivery of the ship in the year 2015 or the date on which the ship reaches the age of 25 years from its date of delivery, whichever is the sooner.
3. No oil tanker carrying heavy grade oil shall be allowed to fly the flag of a Member State unless such tanker is a double-hull oil tanker.

No oil tanker carrying heavy grade oil, irrespective of its flag, shall be allowed to enter or leave ports or offshore terminals or to anchor in areas under the jurisdiction of a Member State, unless such tanker is a double-hull oil tanker.

4. Oil tankers operated exclusively in ports and inland navigation may be exempted from paragraph 3 provided that they are duly certified under inland waterway legislation.

#### *Article 5*

### **Compliance with the Condition Assessment Scheme**

Irrespective of its flag, a single-hull oil tanker above 15 years of age shall not be allowed to enter or leave ports or offshore terminals or anchor in areas under the jurisdiction of a Member State unless such tanker complies with the Condition Assessment Scheme referred to in Article 6.

#### *Article 6*

### **Condition Assessment Scheme**

For the purposes of Article 5, the Condition Assessment Scheme adopted by Resolution MEPC 94(46) of 27 April 2001 as amended by Resolution MEPC 99(48) of 11 October 2002 and by Resolution MEPC 112(50) of 4 December 2003, shall apply.

*Article 7***Final date**

After the anniversary of the date of delivery of the ship in 2015, the following shall no longer be allowed:

- (a) the continued operation, in accordance with Regulation 20.5 of Annex I to MARPOL 73/78, of Category 2 and Category 3 oil tankers under the flag of a Member State;
- (b) the entry into the ports or offshore terminals under the jurisdiction of a Member State of other Category 2 and Category 3 oil tankers, irrespective of the fact that they continue to operate under the flag of a third State in accordance with Regulation 20.5 of Annex I to MARPOL 73/78.

*Article 8***Exemptions for ships in difficulty or for ships to be repaired**

By way of derogation from Articles 4, 5 and 7, the competent authority of a Member State may, subject to national provisions, allow, under exceptional circumstances, an individual ship to enter or leave a port or offshore terminal or anchor in an area under the jurisdiction of that Member State, when:

- (a) an oil tanker is in difficulty and in search of a place of refuge;
- (b) an unloaded oil tanker is proceeding to a port of repair.

*Article 9***Notification to the IMO**

1. Each Member State shall inform the IMO of its decision to deny entry to oil tankers, pursuant to Article 7 of this Regulation, operating in accordance with Regulation 20.5 of Annex I to MARPOL 73/78 into the ports or offshore terminals under its jurisdiction, on the basis of Regulation 20.8.2 of Annex I to MARPOL 73/78.
2. Each Member State shall notify the IMO if it allows, suspends, withdraws or declines the operation of a Category 1 or a Category 2 oil tanker entitled to fly its flag, in accordance with Article 5 of this Regulation, on the basis of Regulation 20.8.1 of Annex I to MARPOL 73/78.

*Article 10***Amendment procedure**

1. The Commission shall be empowered to adopt delegated acts in accordance with Article 11 concerning the alignment of the references in this Regulation to the non-substantial amendments, such as renumbering, adopted by the IMO to the Regulations of Annex I to MARPOL 73/78, as well as to Resolutions MEPC 111(50) and 94(46) as amended by Resolutions MEPC 99(48) and 112(50), in so far as such amendments do not broaden the scope of this Regulation.
2. The amendments to MARPOL 73/78 may be excluded from the scope of this Regulation, pursuant to Article 5 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) and amending the Regulations on maritime safety and the prevention of pollution from ships<sup>(19)</sup>.

*Article 11***Exercise of the delegation**

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this article.

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<sup>(19)</sup> OJ L 324, 29.11.2002, p. 1.

2. The power to adopt the delegated acts referred to in Article 10(1) shall be conferred on the Commission for a period of five years from 20 July 2012. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.

3. The delegation of power referred to in Article 10(1) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

5. A delegated act adopted pursuant to Article 10(1) shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of two months of notification of that act to the European Parliament and to the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

#### Article 12

#### **Repeal**

Regulation (EC) No 417/2002 is repealed. References to the repealed Regulation shall be construed as references to this Regulation and shall be read in accordance with the correlation table in Annex II.

#### Article 13

#### **Entry into force**

This Regulation shall enter into force on the twentieth day following that of 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, 13 June 2012.

*For the European Parliament*

*The President*

M. SCHULZ

*For the Council*

*The President*

N. WAMMEN

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## ANNEX I

**Repealed Regulation with list of its successive amendments**

(referred to in Article 12)

Regulation (EC) No 417/2002 of the European Parliament and of the Council  
(OJ L 64, 7.3.2002, p. 1)

Regulation (EC) No 2099/2002 of the European Parliament and of the Council      Only Article 11  
(OJ L 324, 29.11.2002, p. 1)

Regulation (EC) No 1726/2003 of the European Parliament and of the Council  
(OJ L 249, 1.10.2003, p. 1)

Commission Regulation (EC) No 2172/2004 (OJ L 371, 18.12.2004, p. 26)

Regulation (EC) No 457/2007 of the European Parliament and of the Council  
(OJ L 113, 30.4.2007, p. 1)

Regulation (EC) No 219/2009 of the European Parliament and of the Council      Only point 7.4 of the Annex  
(OJ L 87, 31.3.2009, p. 109)

Commission Regulation (EC) No 1163/2009 (OJ L 314, 1.12.2009, p. 13)

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ANNEX II  
Correlation Table

Regulation (EC) No 417/2002	This Regulation
Article 1	Article 1
Article 2(1), introductory words	Article 2(1), introductory words
Article 2(1), first subparagraph, first indent	Article 2(1), first subparagraph, point (b)
Article 2(1), first subparagraph, second indent	Article 2(1), first subparagraph, point (a)
Article 2(1), second subparagraph	Article 2(1), second subparagraph
Article 2(2)	Article 2(2)
Article 3	Article 3
Article 4(1) introductory words	Article 4(1)
Article 4(1), point (a)	—
Article 4(1), point (b)	—
Article 4(2)	Article 4(2)
Article 4(3)	Article 4(3)
Article 4(4)	Article 4(4)
Article 4(5)	—
Article 4(6)	—
Article 5	Article 5
Article 6	Article 6
Article 7, introductory words	Article 7, introductory words
Article 7, first indent	Article 7(a)
Article 7, second indent	Article 7(b)
Article 7, final words	Article 7, introductory words
Article 8(1), introductory wording	Article 8, introductory wording
Article 8(1), first indent	Article 8(a)
Article 8(1), second indent	Article 8(b)
Article 8(2)	—
Article 9(1)	—
Article 9(2)	Article 9(1)
Article 9(3)	Article 9(2)
Article 10	—
Article 11	Article 10
—	Article 11
—	
—	

Article 12	Article 12, first paragraph
—	Article 12, second paragraph
Article 13	Article 13
—	Annex I
—	Annex II

**DIRECTIVE 2001/96/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL  
of 4 December 2001**

**establishing harmonised equipments and procedures for the safe loading and unloading of bulk carriers**

amended by Directive 2002/84/EC and Regulation (EC) No 1137/2008

(consolidated version)

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 <sup>(20)</sup>,

Having regard to the opinion of the Economic and Social Committee <sup>(21)</sup>,

Having consulted the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the Treaty <sup>(22)</sup>,

Whereas:

- (1) In view of the high number of shipping accidents involving bulk carriers with an associated loss of human lives, further measures should be taken to enhance safety in maritime transport within the framework of the common transport policy.
- (2) Assessments of the causes of bulk carrier casualties indicate that loading and unloading of solid bulk cargoes, if not properly conducted, can contribute to the loss of bulk carriers, either by over-stressing the ship's structure or by mechanically damaging its structural members in the cargo holds. The protection of the safety of bulk carriers can be enhanced through the adoption of measures aimed at reducing the risk of structural damage and losses due to improper loading and unloading operations.
- (3) At international level, the International Maritime Organisation (the 'IMO'), through a number of Assembly Resolutions, has adopted recommendations on the safety of bulk carriers addressing ship/port interface issues in general and loading and unloading operations in particular.
- (4) By Assembly Resolution A.862(20), the IMO adopted a Code of Practice for the Safe Loading and Unloading of Bulk Barriers ('the BLU Code'), and urged contracting governments to implement this Code at the earliest possible opportunity and to inform IMO of any non-compliance. In the Resolution, the IMO further urged contracting governments in whose territories solid bulk cargo loading and unloading terminals are situated to introduce laws so that a number of key principles necessary for the implementation of this Code could be enforced.
- (5) The impact of loading and unloading operations on bulk carrier safety, in view of the global character of trade in dry cargo in bulk, has transboundary implications. The development of action to prevent the foundering of bulk carriers due to improper loading and unloading practices is therefore best done at Community level by establishing harmonised requirements and procedures to implement the IMO recommendations laid down in the Assembly Resolution A.862(20) and the BLU Code.

<sup>(20)</sup> OJ C 311 E, 31.10.2000, p. 240 and OJ C 180 E, 26.6.2001, p. 273.

<sup>(21)</sup> OJ C 14, 16.1.2001, p. 37.

<sup>(22)</sup> Opinion of the European Parliament of 13 February 2001 (OJ C 276, 1.10.2001, p. 38), Council Common Position of 27 June 2001 (not yet published in the Official Journal) and Decision of the European Parliament of 25 October 2001 (not yet published in the Official Journal).

- (6) In view of the subsidiarity principle set out in Article 5 of the Treaty, a Directive is the appropriate legal instrument as it provides a framework for the Member States' uniform and compulsory application of the requirements and procedures for the safe loading and unloading of bulk carriers, while leaving each Member State the right to decide which implementation tools best fit its internal system. In accordance with the principle of proportionality, this Directive does not go beyond what is necessary for the objectives pursued.
- (7) The safety of bulk carriers and their crews can be enhanced by reducing the risks of improper loading and unloading at dry bulk cargo terminals. This can be implemented by establishing harmonised procedures for cooperation and communication between ship and terminal and by laying down suitability requirements for ships and terminals.
- (8) In the interests of enhancing bulk carrier safety and avoiding distortion of competition, the harmonised procedures and suitability criteria should apply to all bulk carriers, irrespective of the flag they fly, and to all terminals in the Community at which, under normal circumstances, such carriers call for the purpose of loading or unloading solid bulk cargoes.
- (9) Bulk carriers calling at terminals for the loading or unloading of solid bulk cargoes should be suitable for that purpose. Equally, terminals should also be suitable for receiving and loading or unloading visiting bulk carriers. For these purposes suitability criteria have been established in the BLU Code.
- (10) Terminals should, in the interests of enhancing cooperation and communication with the ship's master on matters relating to the loading and unloading of solid bulk cargoes, appoint a terminal representative responsible for such operations in the terminal and make information books with the terminal's and port's requirements available to the masters. There are, for this purpose, provisions in the BLU Code.
- (11) The development, implementation and maintenance of a quality management system by the terminals would ensure that the cooperation and communication procedures and the actual loading and unloading by the terminal are planned and executed in accordance with a harmonised framework that is internationally recognised and auditable. In view of its international recognition, the quality management system should be compatible with the ISO 9000 series of standards adopted by the International Standardisation Organisation. To allow new terminals sufficient time to achieve the relevant certification, it is important to ensure that a temporary authorisation to operate is available to them for a limited period of time.
- (12) For the purpose of ensuring that loading and unloading operations are carefully prepared, agreed and conducted in order to avoid endangering the safety of the ship or crew, the responsibilities of the master and the terminal representative should be laid down. To this end, relevant provisions can be found in the 1974 International Convention for the Safety of Life at Sea (1974 SOLAS Convention), IMO Assembly Resolution A.862(20) and the BLU Code. For the same purpose, procedures for the preparation, agreement and conduct of loading or unloading operations can be based on the provisions of those international instruments.
- (13) In the general interests of the Community, in deflecting sub-standard shipping from its ports, the terminal representative should notify apparent deficiencies on board a bulk carrier which could prejudice the safety of loading or unloading operations.
- (14) It is necessary that the competent authorities of the Member States prevent or halt loading or unloading operations whenever they have clear indications that ship or crew safety is endangered by these operations. The authorities should also intervene in the interests of safety in the event of disagreement between the master and the terminal representative as to the application of these procedures. The safety-related action of the competent authorities should not be dependent on commercial interests related to terminals.
- (15) It is necessary to lay down procedures for the purpose of reporting damage to ships incurred during loading or unloading operations to the appropriate bodies, such as the relevant classification societies, and of repairing such damage if necessary. Where such damage could impair the safety or seaworthiness of the ship,

the decision as to the necessity and urgency of repairs should be taken by the port State control authorities in consultation with the administration of the flag State. In view of the technical expertise necessary to take such a decision, the authorities should have the right to call upon a recognised organisation to inspect the damage and to advise them on any need for repairs.

- (16) Enforcement of this Directive should be enhanced by efficient monitoring and verification procedures in the Member States. Reporting the results of this monitoring effort will provide valuable information on the effectiveness of the harmonised requirements and procedures laid down in this Directive.
- (17) In IMO Assembly Resolution A.797(19) of 23 November 1995 on the safety of ships carrying solid bulk cargoes it is requested that port State authorities submit confirmation that loading and unloading terminals for solid bulk cargoes comply with the IMO Codes and recommendations on ship/shore cooperation. Notification of the adoption of this Directive to the IMO will provide an appropriate response to this request and a clear signal to the international maritime community that the Community is committed to supporting the efforts undertaken at international level to enhance the safe loading and unloading of bulk carriers.
- (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>(23)</sup>.
- (19) It should be possible to amend certain provisions of this Directive in accordance with that procedure, so as to bring them into line with international and Community instruments adopted, amended or entering into force after the entry into force of this Directive and for the implementation of the procedures laid down in this Directive, without broadening its scope.
- (20) Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work <sup>(24)</sup> and its relevant individual Directives are applicable to the work relating to the loading and unloading of bulk carriers,

HAVE ADOPTED THIS DIRECTIVE:

#### *Article 1*

#### **Purpose**

The purpose of this Directive is to enhance the safety of bulk carriers calling at terminals in the Member States in order to load or unload solid bulk cargoes, by reducing the risks of excessive stresses and physical damage to the ship's structure during loading or unloading, through the establishment of:

1. harmonised suitability requirements for those ships and terminals; and
2. harmonised procedures for cooperation and communication between those ships and terminals.

#### *Article 2*

#### **Scope**

This Directive shall apply to:

1. all bulk carriers, irrespective of their flag, calling at a terminal for the loading or unloading of solid bulk cargoes; and
2. all terminals in the Member States visited by bulk carriers falling under the scope of this Directive.

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

<sup>(24)</sup> OJ L 183, 29.6.1989, p. 1.

Without prejudice to the provisions of Regulation VI/7 of the 1974 SOLAS Convention, this Directive shall not apply to facilities that only in exceptional circumstances are used for loading and unloading dry cargo in bulk into or from bulk carriers, and shall not apply in cases where the loading or unloading is carried out solely with the equipment of the bulk carrier concerned.

### Article 3

#### Definitions

For the purposes of this Directive:

1. 'international conventions' shall mean the conventions in force on 4 December 2001, as defined in Article 2(1) of Council Directive 95/21/EC <sup>(25)</sup>;
2. '1974 SOLAS Convention' shall mean the International Convention for the Safety of Life at Sea, together with the Protocols and amendments thereto, in its up-to-date version;
3. 'BLU Code' shall mean the Code of Practice for the Safe Loading and Unloading of Bulk Carriers, as contained in the Annex to IMO Assembly Resolution A.862(20) of 27 November 1997, as it stands on 4 December 2001;
4. 'bulk carrier' shall bear the meaning given to it in Regulation IX/1.6 of the 1974 SOLAS Convention and interpreted by Resolution 6 of the 1997 SOLAS Conference, namely:
  - a ship constructed with single deck, top-side tanks and hopper-side tanks in cargo spaces and intended primarily to carry dry cargo in bulk, or
  - an ore carrier, meaning a sea-going single deck ship having two longitudinal bulkheads and a double bottom throughout the cargo region and intended for the carriage of ore cargoes in the centre holds only, or
  - a combination carrier as defined in Regulation II-2/3.27 of the 1974 SOLAS Convention;
5. 'dry cargo in bulk' or 'solid bulk cargo' shall mean solid bulk cargo as defined in Regulation XII/1.4 of the 1974 SOLAS Convention, excluding grain;
6. 'grain' shall bear the meaning given to it in Regulation VI/8.2 of the 1974 SOLAS Convention;
7. 'terminal' shall mean any fixed, floating or mobile facility equipped and used for the loading or unloading of dry cargo in bulk into or from bulk carriers;
8. 'terminal operator' shall mean the owner of a terminal, or any organisation or person to whom the owner has transferred the responsibility for loading or unloading operations conducted at the terminal for a particular bulk carrier;
9. 'terminal representative' shall mean any person appointed by the terminal operator, who has the overall responsibility for, and authority to, control the preparation, the conduct and the completion of loading or unloading operations conducted by the terminal for a particular bulk carrier;
10. 'master' shall mean the person who has command over a bulk carrier or a ship's officer designated by the master for the loading or unloading operations;

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<sup>(25)</sup> Council Directive 95/21/EC of 19 June 1995 concerning the enforcement, in respect of shipping using Community ports and sailing in the waters under the jurisdiction of the Member States, of international standards for ship safety, pollution prevention and shipboard living and working conditions (port State control) (OJ L 157, 7.7.1995, p. 1). Directive as last amended by Commission Directive 1999/97/EC (OJ L 331, 23.12.1999, p. 67).

11. 'recognised organisation' shall mean an organisation recognised in accordance with Article 4 of Council Directive 94/57/EC <sup>(26)</sup>;
12. 'administration of the flag State' shall mean the competent authorities of the State whose flag the bulk carrier is entitled to fly;
13. 'port State control authority' shall mean the competent authority of a Member State empowered to apply the control provisions of Directive 95/21/EC;
14. 'competent authority' shall mean a national, regional or local public authority in the Member State empowered by national legislation to implement and enforce the requirements of this Directive;
15. 'cargo information' shall mean the cargo information required by Regulation VI/2 of the 1974 SOLAS Convention;
16. 'loading or unloading plan' shall mean a plan as referred to in Regulation VI/7.3 of the 1974 SOLAS Convention and having the format as contained in Appendix 2 of the BLU Code;
17. 'ship/shore safety checklist' shall mean the checklist as referred to in section 4 of the BLU Code and having the format as contained in Appendix 3 of the BLU Code;
18. 'solid bulk cargo density declaration' shall mean the information on the density of the cargo to be provided in compliance with Regulation XII/10 of the 1974 SOLAS Convention.

*Article 4*

**Requirements in relation to the operational suitability of bulk carriers**

Member States shall make the necessary arrangements to ensure that terminal operators are satisfied with the operational suitability of bulk carriers for loading or unloading of solid bulk cargoes, by checking compliance with the provisions of Annex I.

*Article 5*

**Requirements in relation to the suitability of terminals**

Member States shall satisfy themselves that terminal operators ensure that, as concerns terminals for which they assume responsibilities under this Directive:

1. the terminals comply with the provisions of Annex II;
2. terminal representative(s) is (are) appointed;
3. information books are prepared containing the requirements of the terminal and competent authorities and information on the port and terminal as listed in Appendix 1, paragraph 1.2, of the BLU Code, and that these books are made available to the masters of bulk carriers calling at the terminal for loading or unloading solid bulk cargoes; and
4. a quality management system is developed, implemented and maintained. Such quality management system shall be certified in accordance with the ISO 9001:2000 standards or an equivalent standard fulfilling at least all aspects of ISO 9001:2000, and it shall be audited in accordance with the guidelines of the ISO 10011:1991 or equivalent standard

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<sup>(26)</sup> 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 (OJ L 319, 12.12.1994, p. 20). Directive as amended by Commission Directive 97/58/EC (OJ L 274, 7.10.1997, p. 8).

fulfilling all aspects of ISO 10011:1991. Directive 98/34/EC<sup>(27)</sup> shall be complied with in relation to the said equivalent standards.

A transitional period of three years from the entry into force of this Directive shall be granted to set up the quality management system and one additional year to obtain the certification of the system.

#### *Article 6*

### **Temporary authorisation**

By way of derogation from the requirements of Article 5(4), a temporary authorisation to operate, valid for no more than 12 months, may be issued by the competent authority for newly established terminals. The terminal must however demonstrate its plan to implement a quality management system in accordance with the ISO 9001:2000 standard or equivalent standard, as set out in Article 5(4).

#### *Article 7*

### **Responsibilities of masters and terminal representatives**

Member States shall make the necessary arrangements to ensure that the following principles concerning the responsibilities of masters and terminal representatives are respected and applied:

1. Responsibilities of the master:
  - (a) the master shall be responsible at all times for the safe loading and unloading of the bulk carrier under his command;
  - (b) the master shall, well in advance of the ship's estimated time of arrival at the terminal, provide the terminal with the information set out in Annex III;
  - (c) before any solid bulk cargo is loaded, the master shall ensure that he has received the cargo information required by Regulation VI/2.2 of the 1974 SOLAS Convention, and, where required, a solid bulk cargo density declaration. This information shall be contained in a cargo declaration form as set out in Appendix 5 of the BLU Code;
  - (d) prior to the start of and during loading or unloading the master shall discharge the duties listed in Annex IV.
2. Responsibilities of the terminal representative:
  - (a) upon receipt of the ship's initial notification of its estimated time of arrival, the terminal representative shall provide the master with the information mentioned in Annex V;
  - (b) the terminal representative shall be satisfied that the master has been advised as early as possible of the information contained in the cargo declaration form;
  - (c) the terminal representative shall without delay notify the master and the port State control authority of apparent deficiencies he has noted on board a bulk carrier which could endanger the safe loading or unloading of solid bulk cargoes;
  - (d) prior to the start of and during loading or unloading, the terminal representative shall discharge the duties listed in Annex VI.

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<sup>(27)</sup> 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 (OJ L 204, 21.7.1998, p. 37). Directive as amended by Directive 98/48/EC (OJ L 217, 5.8.1998, p. 18).

*Article 8***Procedures between bulk carriers and terminals**

Member States shall ensure that the following procedures are applied in respect of the loading or unloading of bulk carriers with solid bulk cargoes.

1. Before solid bulk cargoes are loaded or unloaded, the master shall agree with the terminal representative on the loading or unloading plan in accordance with the provisions of Regulation VI/7.3 of the 1974 SOLAS Convention. The loading or unloading plan shall be prepared in the form laid down in Appendix 2 of the BLU Code, it shall contain the IMO number of the bulk carrier concerned, and the master and the terminal representative shall confirm their agreement to the plan by signing it.

Any change to the plan, which according to either party may affect the safety of the vessel or crew, shall be prepared, accepted and agreed by both parties in the form of a revised plan.

The agreed loading or unloading plan and any subsequent agreed revisions shall be kept by the ship and the terminal for a period of six months for the purpose of any necessary verification by the competent authorities.

2. Before loading or unloading is commenced, the ship/shore safety checklist shall be completed and signed jointly by the master and the terminal representative in accordance with the guidelines of Appendix 4 of the BLU Code.

3. An effective communication between the ship and the terminal shall be established and maintained at all times, capable of responding to requests for information on the loading or unloading process and to ensure prompt compliance should the master or the terminal representative order the loading or unloading operations to be suspended.

4. The master and the terminal representative shall conduct the loading or unloading operations in accordance with the agreed plan. The terminal representative shall be responsible for the loading or unloading of the solid bulk cargo as regards the hold order, quantity and rate of loading or unloading stated on that plan. He shall not deviate from the agreed loading or unloading plan, otherwise than by prior consultation and written agreement with the master.

5. On completion of the loading or unloading, the master and the terminal representative shall agree in writing that the loading or unloading has been done in accordance with the loading or unloading plan, including any agreed changes. In the case of unloading, such agreement shall include a record that the cargo holds have been emptied and cleaned to the master's requirements and shall record any damage suffered by the ship and any repairs carried out.

*Article 9***Role of the competent authorities**

1. Without prejudice to the rights and obligations of the master provided under Regulation VI/7.7 of the 1974 SOLAS Convention, Member States shall ensure that their competent authorities prevent or halt the loading or unloading of solid bulk cargoes whenever they have clear indications that the safety of the ship or crew would be endangered thereby.

2. In cases where the competent authority is informed of disagreement between the master and the terminal representative as to the application of the procedures provided for in Article 8, the competent authority shall intervene where this is required in the interests of safety and/or the marine environment.

*Article 10***Repair of damage incurred during loading or unloading**

1. If damage to the ship's structure or equipment occurs during loading or unloading, it shall be reported by the terminal representative to the master and, if necessary, repaired.

2. If the damage could impair the structural capability or watertight integrity of the hull, or the ship's essential engineering systems, the administration of the flag State, or an organisation recognised by it and acting on its behalf,

and the port State control authority shall be informed by the terminal representative and/or the master. The decision as to whether immediate repair is necessary or whether it can be deferred shall be taken by the port State control authority, due account being taken of the opinion, if any, of the administration of the flag State, or the organisation recognised by it and acting on its behalf, and of the opinion of the master. Where immediate repair is considered necessary, it shall be carried out to the satisfaction of the master and the competent authority before the ship leaves the port.

3. For the purpose of taking the decision referred to in paragraph 2, a port State control authority may rely upon a recognised organisation to undertake the inspection of the damage and to advise on the necessity of carrying-out repairs or their deferral.

4. This Article applies without prejudice to Directive 95/21/EC.

#### *Article 11*

### **Verification and reporting**

1. Member States shall regularly verify that terminals comply with the requirements of Article 5(1), Article 7(2) and Article 8. The procedure of verification shall include the carrying-out of unannounced inspections during loading or unloading operations.

In addition, Member States shall verify that terminals comply with the requirements of Article 5(4), at the end of the period provided for therein, and for newly established terminals at the end of the period provided in Article 6.

2. Member States shall provide the Commission every three years with a report on the results of such verification. The report shall also provide an assessment of the effectiveness of the harmonised procedures for cooperation and communication between bulk carriers and terminals as provided for in this Directive. The report shall be transmitted at the latest by 30 April of the year following the period of three calendar years upon which it reports.

#### *Article 12*

### **Evaluation**

The Commission shall submit an evaluation report on the operation of the system as provided for in this Directive to the European Parliament and the Council, on the basis of the reports of the Member States provided for in Article 11(2). This report shall also include an assessment of whether it is necessary to continue the reporting by the Member States referred to in Article 11(2).

#### *Article 13*

### **Notification to the IMO**

The Presidency of the Council, acting on behalf of the Member States, and the Commission shall jointly inform the IMO of the adoption of this Directive, whereby reference shall be made to paragraph 1.7 of the Annex to IMO Resolution A.797(19).

#### *Article 14*

### **Committee procedure**

1. The Commission shall be assisted by the Committee on Safe Seas and the Prevention of Pollution from Ships (COSS) set up by Article 3 of Regulation (EC) No 2099/2002 of the European Parliament and of the Council <sup>(28)</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.

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<sup>(28)</sup> OJ L 324, 29.11.2002, p. 1.

*Article 15***Amendment procedure**

1. The definitions set out in points 1 to 6 and 15 to 18 of Article 3, the references to international conventions and codes and to IMO Resolutions and Circulars, the references to ISO standards and the references to Community instruments and the Annexes thereto may be amended in order to bring them into line with international and Community instruments which have been adopted, amended or brought into force after the adoption of this Directive, provided that the scope of this Directive is not thereby broadened. 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 14(2).
2. The Commission may amend Article 8 and the Annexes for the implementation of the procedures laid down in this Directive, and may amend or repeal the reporting obligations referred to in Articles 11(2) and 12, provided that such provisions 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 14(2).
3. The amendments to the international instruments referred to in Article 3 may be excluded from the scope of this Directive, pursuant to Article 5 of Regulation (EC) No 2099/2002.

*Article 16***Penalties**

The 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 17***Implementation and application**

1. Member States shall adopt and publish, before 5 August 2003, the provisions necessary to comply with this Directive. They shall forthwith inform the Commission thereof.

They shall apply those provisions from 1 March 2004.

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

2. Member States shall notify to the Commission the provisions of their national law which they adopt in the field governed by this Directive.

*Article 18***Entry into force**

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

*Article 19***Addressees**

This Directive is addressed to the Member States.

## ANNEX I

**REQUIREMENTS IN RELATION TO THE OPERATIONAL SUITABILITY OF BULK CARRIERS FOR  
LOADING AND UNLOADING SOLID BULK CARGOES**

*(as referred to in Article 4)*

Bulk carriers calling in terminals in the Member States for the loading or unloading of solid bulk cargoes shall be checked for compliance with the following requirements.

1. They shall be provided with cargo holds and hatch openings of sufficient size and such a design to enable the solid bulk cargo to be loaded, stowed, trimmed and unloaded satisfactorily.
2. They shall be provided with the cargo hold hatch identification numbers as used in the loading or unloading plan. The location, size and colour of these numbers shall be clearly visible to and identifiable by the operator of the terminal loading or unloading equipment.
3. Their cargo hold hatches, hatch operating systems and safety devices shall be in good functional order and used only for their intended purpose.
4. List indicating lights, if fitted, shall be tested prior to loading or unloading and proved to be operational.
5. If required to have an approved loading instrument on board, this instrument shall be certified and operational to carry out stress calculations during loading or unloading.
6. Propulsion and auxiliary machinery shall be in good functional order.
7. Deck equipment related to mooring and berthing operations shall be operable and in good order and condition.

## ANNEX II

**REQUIREMENTS IN RELATION TO THE SUITABILITY OF TERMINALS FOR LOADING AND UNLOADING SOLID BULK CARGOES**

*(as referred to in Article 5(1))*

1. Terminals shall only accept bulk carriers for loading or unloading of solid bulk cargoes at their terminal that can safely berth alongside the loading or unloading installation, taking into consideration water depth at the berth, maximum size of the ship, mooring arrangements, fendering, safe access and possible obstructions to loading or unloading operations.
2. Terminal loading and unloading equipment shall be properly certified and maintained in good order, in compliance with the relevant regulations and standards, and only operated by duly qualified and, if appropriate, certified personnel.
3. Terminal personnel shall be trained in all aspects of safe loading and unloading of bulk carriers commensurate with their responsibilities. The training shall be designed to provide familiarity with the general hazards of loading and unloading of solid bulk cargoes and the adverse effect improper loading and unloading operations may have on the safety of the ship.
4. Terminal personnel involved in the loading and unloading operations shall be provided with and use personnel protective equipment and shall be duly rested to avoid accidents due to fatigue.

ANNEX III  
**INFORMATION TO BE PROVIDED BY THE MASTER TO THE TERMINAL**  
*(as referred to in Article 7(1)(b))*

1. The ship's estimated time of arrival off the port as early as possible. This advice shall be updated as appropriate.
2. At the time of the initial time of arrival advice:
  - (a) name, call sign, IMO number, flag, port of registry;
  - (b) loading or unloading plan, stating the quantity of cargo, stowage by hatches, loading or unloading order and the quantity to be loaded in each pour or unloaded in each stage of the discharge;
  - (c) arrival and proposed departure draughts;
  - (d) time required for ballasting or de-ballasting;
  - (e) ship's length overall, beam, and length of the cargo area from the forward coaming of the forward-most hatch to the after coaming of the aft-most hatch into which cargo is to be loaded or from which cargo is to be unloaded;
  - (f) distance from the waterline to the first hatch to be loaded or unloaded and the distance from the ship's side to the hatch opening;
  - (g) location of the ship's accommodation ladder;
  - (h) air draught;
  - (i) details and capacities of ship's cargo-handling gear, if any;
  - (j) number and type of mooring lines;
  - (k) specific requests, such as for trimming or continuous measurement of the water content of the cargo;
  - (l) details of any necessary repairs which may delay berthing, the commencement of loading or unloading, or may delay the ship sailing on completion of loading or unloading;
  - (m) any other information related to the ship requested by the terminal.

## ANNEX IV

**DUTIES OF THE MASTER PRIOR TO AND DURING LOADING OR UNLOADING OPERATIONS**

*(as referred to in Article 7(1)(d))*

Prior to and during loading or unloading operations the master shall ensure that:

1. the loading or unloading of cargo and the discharge or intake of ballast water is under the control of the ship's officer in charge;
2. the disposition of cargo and ballast water is monitored throughout the loading or unloading process to ensure that the ship's structure is not overstressed;
3. the ship shall be kept upright or, if a list is required for operational reasons, it shall be kept as small as possible;
4. the ship remains securely moored, taking due account of local weather conditions and forecasts;
5. sufficient officers and crew are retained on board to attend to the adjustment of the mooring lines or for any normal or emergency situation, having regard to the need of the crew to have sufficient rest periods to avoid fatigue;
6. the terminal representative is made aware of the cargo trimming requirements, which shall be in accordance with the procedures of the IMO Code of Safe Practice for Solid Bulk Cargoes;
7. the terminal representative is made aware of the requirements for harmonisation between de-ballasting or ballasting and cargo loading or unloading rates for his ship and of any deviation from the de-ballasting or ballasting plan or any other matter which may affect cargo loading or unloading;
8. the ballast water is discharged at rates which conform to the agreed loading plan and does not result in flooding of the quay or of adjacent craft. Where it is not practical for the ship to completely discharge its ballast water prior to the trimming stage in the loading process, he agrees with the terminal representative on the times at which loading may need to be suspended and the duration of such suspensions;
9. there is agreement with the terminal representative as to the actions to be taken in the event of rain, or other change in the weather, when the nature of the cargo would pose a hazard in the event of such a change;
10. no hot work is carried out on board or in the vicinity of the ship while the ship is alongside the berth, except with the permission of the terminal representative and in accordance with any requirements of the competent authority;
11. close supervision of the loading or unloading operation and of the ship during final stages of the loading or unloading;
12. the terminal representative is warned immediately if the loading or unloading process has caused damage, has created a hazardous situation, or is likely to do so;
13. the terminal representative is advised when final trimming of the ship has to commence in order to allow for the conveyor system to run-off;
14. the unloading of the port side closely matches that of the starboard side in the same hold to avoid twisting the ship's structure;
15. when ballasting one or more holds, account is taken of the possibility of the discharge of flammable vapours from the holds and precautions are taken before any hot work is permitted adjacent to or above these holds.

ANNEX V  
**INFORMATION TO BE PROVIDED BY THE TERMINAL TO THE MASTER**  
*(as referred to in Article 7(2)(a))*

1. The name of the berth at which loading or unloading will take place and the estimated times for berthing and completion of loading or unloading <sup>(29)</sup>.
2. Characteristics of loading or unloading equipment, including the terminal's nominal loading or unloading rate and the number of loading or unloading heads to be used, as well as the estimated time required to complete each pour or — in the case of unloading — the estimated time required for each stage of the discharge.
3. Features on the berth or jetty the master may need to be aware of, including the position of fixed and mobile obstructions, fenders, bollards and mooring arrangements.
4. Minimum depth of water alongside the berth and in approach and departure channels <sup>(29)</sup>.
5. Water density at the berth.
6. Maximum distance between the water line and the top of the cargo hatch covers or coamings, whichever is relevant to the loading or unloading operation, and the maximum air draught.
7. Arrangements for gangways and access.
8. Which side of the ship is to be alongside the berth.
9. Maximum allowable speed of approach to the jetty and availability of tugs, their type and bollard pull.
10. The loading sequence for different parcels of cargo, and any other restrictions if it is not possible to take the cargo in any order or any hold to suit the ship.
11. Any properties of the cargo to be loaded which may present a hazard when placed in contact with cargo or residues on board.
12. Advance information on the proposed loading or unloading operations or changes to existing plans for loading or unloading.
13. If the terminal's loading or unloading equipment is fixed, or has any limits to its movement.
14. Mooring lines required.
15. Warning of unusual mooring arrangements.
16. Any restrictions on ballasting or de-ballasting.
17. Maximum sailing draught permitted by the competent authority.
18. Any other item related to the terminal requested by the master.

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<sup>(29)</sup> Information on estimated times for berthing and departure and on minimum water depth at the berth shall be progressively updated and passed to the master on receipt of successive ETA advice. Information on minimum water depth in approach and departure channels shall be provided by the terminal or the competent authority, as appropriate.

## ANNEX VI

**DUTIES OF THE TERMINAL REPRESENTATIVE PRIOR TO AND DURING LOADING OR UNLOADING OPERATIONS**

*(as referred to in Article 7(2)(d))*

Prior to the start of and during loading or unloading operations the terminal representative shall:

1. provide the master with the names and procedures for contacting the terminal personnel or shipper's agent who will have the responsibility for the loading or unloading operation and with whom the master will have contact.
2. take all precautionary measures to avoid damage to the ship by the loading or unloading equipment and inform the master if damage occurs.
3. ensure the ship is kept upright or, if a list is required for operational reasons, it shall be kept as small as possible.
4. ensure the unloading of the port side closely matches that of the starboard side in the same hold to avoid twisting the ship.
5. in the case of high density cargoes, or when the individual grab loads are large, alert the master that there may be high, localised impact loads on the ship's structure until the tank top is completely covered by cargo, especially when high free-fall drops are permitted and special care is taken at the start of the loading operation in each cargo holds.
6. ensure that there is agreement between the master and the terminal representative at all stages and in relation to all aspects of the loading or unloading operations and that the master is advised on any change to the agreed loading rate, and at the completion of each pour of the weight loaded.
7. maintain a record of the weight and disposition of the cargo loaded or unloaded and ensure that the weights in the holds do not deviate from the agreed loading or unloading plan.
8. ensure that the cargo is trimmed, when loading or unloading, to the master's requirements.
9. ensure that the quantities of cargo required to achieve the departure draft and trim shall allow for all cargo on the terminal's conveyor systems to be run off and empty on completion of a loading. For that purpose the terminal representative shall advise the master of the nominal tonnage contained on the terminal's conveyor system and any requirements for clearing the conveyor system on completion of the loading.
10. in the case of unloading, give the master the maximum warning when it is intended to increase, or to reduce, the number of unloading heads used and advise the master when unloading is considered to be completed from each hold.
11. ensure that no hot work is carried out on board or in the vicinity of the ship while the ship is alongside the berth, except with the permission of the master and in accordance with any requirements of the competent authority.

**COUNCIL REGULATION (EC) NO 2978/94**  
**of 21 November 1994**  
**on the implementation of IMO resolution A.747(18) on the application of tonnage measurement**  
**of ballast spaces in segregated ballast oil tankers**  
amended by Regulation (EC) No 2099/2002 and Regulation (EC) No 1882/2003  
(consolidated version)

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission <sup>(30)</sup>,

Having regard to the opinion of the Economic and Social Committee <sup>(31)</sup>,

Acting in accordance with the procedure referred to in Article 189c of the Treaty <sup>(32)</sup>,

Whereas operational and accidental pollution by sea-going oil tankers is still occurring and the transport of oil by tankers of conventional oil tank design poses a continuous threat to the marine environment;

Whereas internationally agreed rules for the design and operation of environmentally-friendly oil tankers were established under the auspices of the International Maritime Organization (IMO);

Whereas the operation of environmentally-friendly oil tankers benefits both coastal States and the industry;

Whereas international conventions contain requirements for the certification of oil tankers; whereas the method of measuring the tonnage of segregated ballast tanks in oil tankers has been developed further by the IMO;

Whereas all but one of the Member States have ratified and implemented the International Convention for the Prevention of Pollution from Ships, 1973 and the Protocol of 1978 related thereto (Marpol 73/78); whereas all Member States have ratified and implemented the International Convention on Tonnage Measurement of Ships, 1969;

Whereas Resolution A.722(17) adopted by the Assembly of IMO on 6 November 1991 and its successor, Resolution A.747(18) on the application of tonnage measurement of segregated ballast tanks in oil tankers, adopted by the Assembly of IMO on 4 November 1993, express a general desire to encourage the design of environmentally-friendly tankers and the use of segregated ballast tanks in oil tankers;

Whereas in Resolution A.747(18) the IMO Assembly (i) invited Governments to advise the port and harbour authorities to apply its recommendation of deducting the tonnage of the segregated ballast tanks when assessing fees based on the gross tonnage for all tankers with segregated ballast capacity in accordance with Regulation 13 of Annex I of Marpol 73/78 and (ii) invited Governments also to advise pilotage authorities to take action in accordance with the recommendation;

Whereas the Council recognized the need for intensified action, as appropriate, at Community or national level to ensure an adequate response to the requirements of maritime safety and the prevention of marine pollution; whereas it is desirable to promote the use of double hull oil tankers or oil tankers of an alternative design fulfilling

<sup>(30)</sup> OJ No C 5, 7. 1. 1994, p. 4.

<sup>(31)</sup> OJ No C 295, 22. 10. 1994, p. 26.

<sup>(32)</sup> Opinion of the European Parliament of 3 May 1994, Council common position of 19 September 1994 (OJ No C 301, 27. 10. 1994, p. 34) and Decision of the European Parliament of 16 November 1994 (not yet published in the Official Journal).

the requirements of Regulation 13F of Annex I of Marpol 73/78 as amended on 6 March 1992, as well as segregated ballast oil tankers;

Whereas double hull oil tankers and oil tankers of an alternative design should be treated for the purpose of this Regulation as if their segregated ballast tanks complied with Regulation 13 of Annex I of Marpol 73/78;

Whereas it is inappropriate to penalize shipowners and operators for using oil tankers which are environmentally-friendly in design and operation;

Whereas, in particular, the charging of dues on the tonnage of segregated ballast tanks of oil tankers, where those tanks are not used for the carriage of cargo, constitutes a financial disadvantage for those who have taken an important step towards a cleaner environment;

Whereas, for economic reasons, individual harbour authorities are reluctant to be placed at a disadvantage by being the only ones to implement the IMO Resolution;

Whereas IMO Resolutions A.722(17) and A.747(18) have been agreed, but not implemented by all Member States;

Whereas for the purpose of protecting the marine environment from pollution by oil tankers of a conventional design, there should be unified implementation in the Community of internationally agreed rules concerning the charging of levies on oil tankers by port and harbour authorities and pilotage authorities;

Whereas, in order to avoid distortion of competition within the Community and to reach efficient and cost-effective solutions, concerted action for unified implementation of the internationally agreed rules, in accordance with the principle of subsidiarity, can best be established by means of a Regulation;

Whereas the flag State or other bodies issuing the International Oil Pollution Prevention Certificate and the International Tonnage Certificate (1969), as well as the shipowners and persons who charge levies on oil tankers must work together in implementing IMO Resolution A.747(18) in order to enhance protection of the marine environment;

Whereas systems have already been established in some Member States for reducing levies on environmentally-friendly vessels on a basis other than IMO Resolution A.747(18); whereas in accordance with the spirit of that Resolution, an alternative scheme for tonnage-based fees should be provided for consisting in a percentage differential from the normal tariff, so that the average difference will be at least the same as that which is envisaged by the Resolution; whereas it should furthermore be ensured that segregated ballast oil tankers are always given no less favourable treatment even where fees are not calculated on the basis of tonnage,

HAS ADOPTED THIS REGULATION:

#### *Article 1*

Port and harbour authorities and pilotage authorities within the Community shall, in accordance with the provisions of this Regulation:

- (a) implement within the Community IMO Resolution A.747(18) on the application of tonnage measurements of segregated ballast tanks in oil tankers, adopted by the Assembly of the International Maritime Organization (IMO) on 4 November 1993, whose Annex is contained in Annex I to this Regulation, in order to encourage the use of oil tankers with segregated ballast tanks, including double hull oil tankers and oil tankers of an alternative design; or
- (b) apply reduction schemes for levies charged on segregated ballast oil tankers different from, but in the spirit of, IMO Resolution A.747(18).

*Article 2*

This Regulation shall apply to oil tankers which:

- can carry segregated ballast in specially appointed tanks,
- are designed, built adapted, equipped and operated as segregated ballast oil tankers including double hull oil tankers and oil tankers of an alternative design,
- meet the requirements of the International Convention on Tonnage Measurement of Ships 1969, and
- hold the International Tonnage Certificate, (1969).

*Article 3*

1. For the purpose of this Regulation:

- (a) 'oil tanker' means a ship which complies with the definition of an oil tanker in Regulation 1 (4) of Annex I to Marpol 73/78;
- (b) 'segregated ballast' means the ballast which complies with the definition of segregated ballast in Regulation 1 (17) in Annex I to Marpol 73/78;
- (c) 'segregated ballast tank' means a tank exclusively used for the carriage of segregated ballast;
- (d) 'segregated ballast oil tanker' means an oil tanker provided with segregated ballast tanks and certified by the government of the flag State or by other bodies entitled to do so on its behalf as an oil tanker provided with segregated ballast tanks. This compliance must be clearly stated by such authority in the relevant paragraph of the supplement to the International Oil Pollution Prevention Certificate;
- (e) 'double hull oil tanker' means a segregated ballast oil tanker built in accordance with the requirements laid down in Regulation 13F (3) of Annex I to Marpol 73/78;
- (f) 'oil tanker of an alternative design' means a segregated ballast oil tanker built in accordance with the requirements laid down in Regulation 13 F (4) and (5) of Annex I to Marpol 73/78;
- (g) 'marpol 73/78' means the International Convention for the Prevention of Pollution from Ships, 1973, as amended by the Protocol of 1978 relating thereto, in their up-to-date versions;
- (h) 'port and harbour authority' is a public or private person which charges fees to ships for providing facilities and services to shipping;
- (i) 'pilotage authority' is a public or private person entitled to render pilotage services to shipping;
- (j) 'gross tonnage' means the measure of the overall size of a ship determined in accordance with the provisions of the International Convention on Tonnage Measurement of Ships, 1969;
- (k) 'reduced gross tonnage' is the gross tonnage of an oil tanker arrived at when the gross tonnage of the segregated ballast tanks, as determined in accordance with the formula given in paragraph 4 of Annex I to this Regulation is deducted from the entire gross tonnage of the vessel.

2. Annex II contains the definitions given by Marpol 73/78 to the terms in paragraph 1 (a), (b), (e) and (f).

#### Article 4

When issuing the International Tonnage Certificate (1969) for a segregated ballast oil tanker, which has been measured in accordance with the rules of the International Convention on Tonnage Measurement of Ships, 1969, the competent body shall insert, for the purpose of this Regulation, under the heading 'Remarks' a statement conforming to paragraph 3 of Annex I to this Regulation and specifying:

- (i) the tonnage of the segregated ballast tanks of the ship; this tonnage shall be calculated in accordance with the method and the procedure set out in paragraph 4 of Annex I to this Regulation; and
- (ii) the reduced gross tonnage of the vessel.

#### Article 5

1. When assessing fees for oil tankers fully or partly based on the figure of gross tonnage (GT) of the vessel, port and harbour authorities and pilotage authorities shall exclude the tonnage of the segregated ballast tanks of an oil tanker, so as to base their calculations on the reduced gross tonnage indicated under the heading 'Remarks' of the International Tonnage Certificate (1969) of the vessel.

2. Alternatively, port and harbour authorities and pilotage authorities shall ensure that the fee for an oil tanker falling within the scope of this Regulation as provided for in Article 2 is at least 17 % lower than the fee for a tanker without segregated ballast tanks of the same gross tonnage.

Port and harbour authorities and pilotage authorities already applying, on 13 June 1994, a flat rate system as provided for in the first subparagraph, but based on a lower percentage, shall apply the figure of 17 % as a minimum not later than 1 January 1997.

3. Where the fees are assessed other than on the basis of gross tonnage, port and harbour authorities as well as pilotage authorities shall ensure that segregated ballast oil tankers receive treatment no less favourable than when fees are calculated in accordance with paragraphs 1 or 2.

4. Port and harbour authorities and pilotage authorities shall apply, for all segregated ballast oil tankers, only one of the systems mentioned in paragraphs 1, 2 and 3.

#### Article 6

Annex I to this Regulation may be amended in accordance with the procedure laid down in Article 7 in order to take into account amendments to Resolution A.747(18) of the IMO and to relevant international Conventions which have entered into force.

The amendments to the international instruments referred to in Article 3 may be excluded from the scope of this Regulation, pursuant to Article 5 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>(33)</sup>.

#### Article 7

1. The Commission shall be assisted by a committee. The committee shall meet at the invitation of the Commission whenever deemed necessary for the application of this Regulation.

2. Where reference is made to this Article, Articles 5 and 7 of Decision 1999/468/EC <sup>(34)</sup> shall apply, having regard to the provisions of Article 8 thereof.

<sup>(33)</sup> OJ L 324, 29.11.2002, p. 1.

<sup>(34)</sup> Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission (OJ L 184, 17.7.1999, p. 23).

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

3. The Committee shall adopt its rules of procedure.

#### Article 8

1. Member States shall, in due time, but before 31 December 1995, adopt such laws, regulations or administrative provisions as may be necessary for the implementation of this Regulation.

Such measures shall cover, *inter alia*, the organization, procedure and means of control.

2. The Member States shall send to the Commission annually all available information concerning the application of this Regulation, including breaches committed by their port and harbour authorities and pilotage authorities.
3. When Member States adopt measures as referred to in paragraph 1, they shall contain a reference to this Regulation or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.
4. The Member States shall immediately communicate to the Commission all provisions of domestic law which they adopt in the field governed by this Regulation. The Commission shall inform the other Member States thereof.

#### Article 9

1. The Commission shall review the implementation of this Regulation annually after receiving reports from Member States as prescribed in Article 8.
2. The Commission shall present an evaluation report on the operation of the system as provided for in Article 5 (2) to the European Parliament and the Council by 31 December 1998.

#### Article 10

This Regulation shall enter into force on 1 January 1996.

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

## ANNEX I

**Tonnage measurement of segregated ballast tanks in oil tankers**

In order to use a unified base for the application of tonnage measurement of segregated ballast tanks in oil tankers, administrations, bodies recognized to issue international certificates and persons who charge levies on oil tankers shall accept the following principles:

1. The ship is certified as a segregated ballast oil tanker as stated in paragraph 5 of the supplement to the International Oil Pollution Prevention Certificate and the location of the segregated ballast tanks is indicated under paragraph 5.2 of the supplement.
2. Segregated ballast tanks are those tanks exclusively used for the carriage of segregated water ballast, as defined in Regulation 1 (17) of Annex I of Marpol 73/78. The segregated ballast tanks should have a separate ballast pumping and piping system arranged for the intake and discharge of ballast water from and to the sea only. There should be no piping connections from segregated ballast tanks to the fresh water system. No segregated ballast tank should be used for the carriage of any cargo or for storage of ship's stores or material.
3. In the International Tonnage Certificate (1969) under 'Remarks' an entry is made for the tonnage of segregated ballast tanks in oil tankers as follows:

'The segregated ballast tanks comply with Regulation 13 of Annex I of the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto, and the total tonnage of such tanks exclusively used for the carriage of segregated water ballast is...

The reduced gross tonnage which should be used for the calculation of tonnage based fees is ...'

4. The tonnage of segregated ballast tanks mentioned above shall be calculated according to the following formula:

$$K_1 \times V_B$$

where:

$K_1$  =  $0,2 + 0,02 \log_{10} V$  (or as tabulated in Appendix 2 of the International Convention on Tonnage Measurement of Ships, 1969).

$V$  = the total volume of all enclosed spaces of the ship in cubic metres as defined in Regulation 3 of the International Convention on Tonnage Measurement of Ships, 1969.

$V_B$  = the total volume of segregated ballast tanks in cubic metres measured in accordance with Regulation 6 of the International Convention on Tonnage Measurement of Ships, 1969.

## ANNEX II

**Definitions given by Marpol 73/78 to the terms  
in Article 3 (1) (a), (b), (e) and (f)**

*Re paragraph 1 (a):*

'Oil tankers' means a ship constructed or adapted primarily to carry oil in bulk in its cargo spaces and includes combination carriers and any 'chemical tanker' as defined in Annex II of the present Convention, when it is carrying a cargo or part cargo of oil in bulk.

'Combination carrier' means a ship designed to carry either oil or solid cargoes in bulk.

'Chemical tanker' means a ship constructed or adapted primarily to carry a cargo of noxious liquid substances in bulk and includes an 'oil tanker' as defined in Annex I of the present Convention when carrying a cargo or part cargo of noxious liquid substances in bulk.

*Re paragraph 1 (b):*

'Segregated ballast' means the ballast water introduced into a tank which is completely separated from the cargo oil and oil fuel system and which is permanently allocated to the carriage of ballast or to the carriage of ballast or cargoes other than oil or noxious substances as variously defined in the Annexes of the present Convention.

*Re paragraph 1 (e):*

'Double hull oil tanker' means an oil tanker of which the entire cargo tank length shall be protected by ballast tanks or spaces other than cargo and fuel oil tanks.

*Re paragraph 1 (f):*

'Oil tanker of an alternative design' means:

- an oil tanker, the design of which is such that the cargo and vapour pressure exerted on the bottom shell plating forming a single boundary between the cargo and the sea does not exceed the external hydrostatic water pressure,
- an oil tanker which is designed according to methods that ensure at least the same level of protection against oil pollution in the event of collision or stranding and are approved in principle by the Marine Environment Protection Committee based on guidelines developed by the International Maritime Organization.

**COUNCIL DIRECTIVE 97/70/EC**  
**of 11 December 1997**

**setting up a harmonised safety regime for fishing vessels of 24 metres in length and over**

amended by Commission Directive 1999/19/EC, Commission Directive 2002/35/EC, Directive 2002/84/EC  
and Regulation (EC) No 219/2009  
(consolidated without annexes <sup>(35)</sup>)

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission <sup>(36)</sup>,

Having regard to the opinion of the Economic and Social Committee <sup>(37)</sup>,

Acting in accordance with the procedure referred to in Article 189c of the Treaty <sup>(38)</sup>,

- (1) Whereas Community action in the sector of maritime transport should aim at the improvement of maritime safety;
- (2) Whereas the Torremolinos Protocol relating to the Torremolinos International Convention for the Safety of Fishing Vessels 1977, hereinafter referred to as the 'Torremolinos Protocol' was adopted on 2 April 1993;
- (3) Whereas the enforcement of this Protocol at Community level for fishing vessels flying the flag of a Member State or operating in the internal waters or territorial sea of a Member State or landing their catch in a port of a Member State will enhance the safety of such fishing vessels as various national legislations do not yet require the safety level established by the Protocol; whereas such a common safety level will, by harmonising the different and varying national safety requirements, ensure that competition will take place on an equal level for fishing vessels operating in the same area without compromising safety standards;
- (4) Whereas, in view, in particular, of the internal market dimension, action at Community level is the most effective way to establish a common safety level for fishing vessels throughout the Community;
- (5) Whereas a Council Directive is the appropriate legal instrument as it provides a framework for a uniform and compulsory application of the safety standards by Member States, while leaving to each Member State the choice of form and methods, that best fit its internal system;
- (6) Whereas several important chapters of the Torremolinos Protocol apply only to fishing vessels of 45 metres in length and over; whereas limiting the application of the Protocol at Community level only to such vessels would create a safety gap between the latter and smaller fishing vessels between 24 and 45 metres in length, and would therefore distort competition;
- (7) Whereas Article 3(4) of that Protocol states that each Party shall determine which of its regulations for which the length limit is greater than 24 metres should apply, wholly or in part, to a fishing vessel of 24 metres in length or over but less than the prescribed length limit and entitled to fly a flag of that Party; whereas Article 3(5) of that Protocol states that Parties shall endeavour to establish uniform standards for these fishing vessels operating in the same region;

<sup>(35)</sup> Complete version is available on the website of DG MOVE, Safety and Environment, Union Legislation on Maritime Safety.

<sup>(36)</sup> OJ C 292, 4.10.1996, p. 29.

<sup>(37)</sup> OJ C 66, 3.3.1997, p. 31.

<sup>(38)</sup> Opinion of the European Parliament of 24 April 1997 (OJ C 150, 19.5.1997, p. 30), Council Common Position of 30 June 1997 (OJ C 246, 12.8.1997, p. 1) and Decision of the European Parliament of 6 November 1997 (OJ C 358, 24.11.1997).

- (8) Whereas, in order to enhance safety and to avoid distortions of competition, the aim must be pursued of applying the safety rules of this Directive to all fishing vessels of 24 metres in length and over, operating in the fishing zones of the Community, irrespective of the flag they fly; whereas this must be achieved, for fishing vessels flying the flag of third States operating in the internal waters or territorial sea of a Member State or landing their catch in a port of a Member State, in accordance with the general rules of international law;
- (9) Whereas the relevant provisions of Council Directives adopted under the social policy of the Community must continue to apply;
- (10) Whereas Member States should, for all those reasons, apply to new and, where required, to existing fishing vessels of 45 metres in length and over the provisions of the Annex to the Torremolinos Protocol, taking account of the relevant provisions listed in Annex I to this Directive; whereas Member States should also apply the provisions of Chapters IV, V, VII and IX of the Annex to the Torremolinos Protocol, as adapted by Annex II to this Directive, to all new vessels of 24 metres in length and over but less than 45 metres flying their flag;
- (11) Whereas specific requirements, as set out in Annex III, can be justified for reasons relating to specific regional circumstances, such as geographical and climatic conditions; whereas such provisions have been developed for operation in the northern and southern zones, respectively;
- (12) Whereas, in order to further increase the level of safety, vessels flying the flag of a Member State should comply with the specific requirements set out in Annex IV;
- (13) Whereas fishing vessels flying the flag of third States should not be allowed to operate in the internal waters or territorial sea of a Member State or to land their catch in a Member State's port, and therefore compete with vessels flying the flag of a Member State, unless their flag State has certified that they comply with the technical provisions laid down in this Directive;
- (14) Whereas equipment complying with the requirements of Council Directive 96/98/EC of 20 December 1996 on marine equipment <sup>(39)</sup>, when installed on board fishing vessels should be automatically recognised to be in conformity with the specific provisions imposed on such equipment in this Directive, since the requirements of Directive 96/98/EC are at least equivalent to those of the Torremolinos Protocol and this Directive;
- (15) Whereas Member States could encounter local circumstances which justify the application of specific safety measures to all fishing vessels operating in certain areas; whereas they may also consider it appropriate to adopt exemptions from, or equivalent requirements to, the provisions of the Annex to the Torremolinos Protocol; whereas they should be entitled to adopt such measures subject to control under the Committee procedure;
- (16) Whereas at present there are no uniform international technical standards for fishing vessels as regards their hull strength, main and auxiliary machinery and electrical and automatic plants; whereas such standards may be fixed according to the rules of recognised organisations or national administrations;
- (17) Whereas, for the control of the effective implementation and enforcement of this Directive, Member States should carry out surveys and issue a certificate of compliance to fishing vessels which comply with the specific requirements of this Directive;
- (18) Whereas, in order to ensure full application of this Directive, and in accordance with the procedure established in Article 4 of the Torremolinos Protocol, fishing vessels should be subject to port State control; whereas a Member State may undertake controls also on board fishing vessels of third countries which are not operating in the internal waters or territorial sea of a Member State nor landing their catch in the ports of a Member

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<sup>(39)</sup> OJ L 46, 17.2.1997, p. 25.

State, when they are in a port of that Member State, in order to verify that they comply with that Protocol, once it has entered into force;

- (19) Whereas it is necessary for a committee composed of the representatives of the Member States to assist the Commission in the effective application of this Directive; whereas the committee set up in Article 12 of Council Directive 93/75/EEC of 13 September 1993 concerning minimum requirements for vessels bound for or leaving Community ports and carrying dangerous or polluting goods <sup>(40)</sup>, can take on this task;
- (20) Whereas, in order to ensure a consistent implementation of this Directive, certain provisions may be adapted through this committee to take account of relevant developments at international level;
- (21) Whereas the International Maritime Organisation (IMO) should be informed of this Directive in accordance with the Torremolinos Protocol;
- (22) Whereas, in order to ensure full application of this Directive, Member States should lay down a system of penalties for breaching the national provisions adopted pursuant to this Directive,

HAS ADOPTED THIS DIRECTIVE:

#### *Article 1*

#### **Purpose**

1. The purpose of this Directive is to lay down safety standards for seagoing fishing vessels of 24 metres in length and over, both new, and existing, in so far as the Annex to the Torremolinos Protocol applies to the latter, 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 their catch in the port of a Member State.

Recreational craft engaged in non-commercial fishing are excluded from the scope of this Directive.

2. This Directive is without prejudice to the provisions of Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work <sup>(41)</sup>, its individual Directives and, in particular Council Directive 93/103/EC of 23 November 1993 concerning the minimum health and safety requirements for work on board fishing vessels (13th individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC) <sup>(42)</sup>.

#### *Article 2*

#### **Definitions**

For the purpose of this Directive:

1. 'fishing vessel' or 'vessel' means any vessel equipped or used commercially for catching fish or other living resources of the sea;
2. 'new fishing vessel' means a fishing vessel for which:
- (a) on or after 1 January 1999 the building or major conversion contract is placed; or

<sup>(40)</sup> OJ L 247, 5.10.1993, p. 19. Directive as last amended by Directive 96/39/EC (OJ L 196, 7.8.1996, p. 7).

<sup>(41)</sup> OJ L 183, 29.6.1989, p. 1.

<sup>(42)</sup> OJ L 307, 13.12.1993, p. 1.

- (b) the building or major conversion contract has been placed before 1 January 1999, and which is delivered three years or more after that date; or
- (c) in the absence of a building contract, on or after 1 January 1999:
  - the keel is laid, or
  - construction identifiable with a specific ship begins, or
  - assembly has commenced comprising at least 50 tonnes or 1 % of the estimated mass of all structural material, whichever is less;
- 3. 'existing fishing vessel' means a fishing vessel which is not a new fishing vessel;
- 4. 'Torremolinos Protocol' means the Torremolinos Protocol relating to the Torremolinos International Convention for the Safety of Fishing Vessels, 1977, together with the amendments thereto;
- 5. 'Certificate' means the certificate of compliance referred to in Article 6;
- 6. 'length' means, unless provided otherwise, 96 % of the total length on a waterline at 85 % of the least moulded depth measured from the keel line, or the length from the foreside of the stem to the axis of the rudder stock on that waterline, if that be greater. In vessels designed with rake of keel the waterline on which this length is measured shall be parallel to the designed waterline;
- 7. 'operating' means catching or catching and processing fish or other living resources of the sea without prejudice to the right of innocent passage in the territorial sea and the freedom of navigation in the 20. mile exclusive economic zone;
- 8. 'recognised organisation' means an organisation recognised in conformity with Article 4 of 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>(43)</sup>.

### *Article 3*

#### **General requirements**

1. Member States shall ensure that the provisions of the Annex to the Torremolinos Protocol are applied to the fishing vessels concerned flying their flag, unless Annex I to this Directive provides otherwise.

Unless provided otherwise in this Directive, existing fishing vessels shall comply with the relevant requirements of the Annex to the Torremolinos Protocol not later than 1 July 1999.

2. Member States shall ensure that those requirements in Chapters IV, V, VII and IX of the Annex to the Torremolinos Protocol which apply to vessels of 45 metres in length and over are also applied to new fishing vessels of 24 metres in length and over, flying their flag, unless Annex II to this Directive provides otherwise.

3. However, Member States shall ensure that vessels flying their flag operating in specific areas shall comply with the provisions for the relevant areas, as defined in Annex III.

4. Member States shall ensure that vessels flying their flag shall comply with the specific safety requirements laid down in Annex IV.

5. Member States shall prohibit fishing vessels flying the flag of a third country from operating in their internal waters or territorial sea or landing their catch in their ports unless they are certified by their flag State administration to comply with the requirements referred to in paragraphs 1, 2, 3 and 4 and in Article 5.

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<sup>(43)</sup> OJ L 319, 12.12.1994, p. 20.

6. Marine equipment listed in Annex A.1 to Directive 96/98/EC and complying with the requirements of the latter, when placed on board a fishing vessel to comply with the provisions of this Directive, shall be automatically considered to be in conformity with such provisions, whether or not these provisions require that the equipment must be approved and subjected to tests to the satisfaction of the administration of the flag State.

#### *Article 4*

### **Specific requirements, exemptions and equivalents**

1. If a Member State or a group of Member States considers that certain situations due to specific local circumstances or the vessel's particulars require specific safety measures for fishing vessels operating in a certain area, and if the need therefor is demonstrated, they may, subject to the procedure in paragraph 4, adopt such specific safety measures to take account of local circumstances such as the nature and climatic conditions of the waters these vessels operate in, the length of their journeys, or their particulars, such as their construction material.

The measures adopted shall be added in Annex III.

2. Member States shall apply the provisions of Regulation 3, paragraph 3 of Chapter 1 of the Annex to the Torremolinos Protocol, for adopting measures containing exemptions, subject to the procedure laid down in paragraph 4 of this Article.

3. Member States may adopt measures allowing equivalents in accordance with Regulation 4, paragraph 1 of Chapter 1 of the Annex to the Torremolinos Protocol, subject to the procedure laid down in paragraph 4 of this Article.

4. A Member State which avails itself of the provisions of paragraphs 1, 2 or 3 shall follow the following procedure:
- (a) The Member State shall notify the Commission of the measures which it intends to adopt, including particulars to the extent necessary to confirm that the level of safety is adequately maintained.
  - (b) If, within a period of six months from the notification, it is decided, in accordance with the regulatory procedure referred to in Article 9(2), that the proposed measures are not justified, the said Member State may be required to amend or not to adopt the proposed measures.
  - (c) The adopted measures shall be specified in the relevant national legislation and communicated to the Commission, which shall inform the other Member States of all particulars thereof.
  - (d) Any of such measures shall be applied to all fishing vessels when operating under the same specified conditions, without discrimination with regard to their flag or to the nationality of their operator.
  - (e) The measures referred to in paragraph 2 shall only apply as long as the fishing vessel operates under the specified conditions.

#### *Article 5*

### **Standards for design, construction and maintenance**

The standards for the design, construction and maintenance of hull, main and auxiliary machinery, electrical and automatic plants of a fishing vessel shall be the rules in force at the date of its construction, specified for classification by a recognised organisation or used by an administration.

For new vessels, these rules shall be in accordance with the procedure and subject to the conditions laid down in Article 14(2) of Directive 94/57/EC.

#### *Article 6*

### **Surveys and certificates**

1. Member States shall issue to fishing vessels flying their flag and complying with Articles 3 and 5, a certificate of compliance with the terms of this Directive, supplemented by a record of equipment and, where appropriate, exemption

certificates. The certificate of compliance, record of equipment and exemption certificate shall have a format as laid down in Annex V. The certificates shall be issued by the administration of the flag State or by a recognised organisation acting on its behalf after an initial survey, carried out by the exclusive surveyors either of the administration of the flag State itself or of a recognised organisation or of the Member State authorised by the flag State to carry out surveys, in accordance with Regulation 6, paragraph (1)(a) of Chapter 1 of the Annex to the Torremolinos Protocol.

2. The periods of validity of the certificates referred to in paragraph 1 shall not exceed those established in Regulation 11 of Chapter 1 of the Annex to the Torremolinos Protocol. Renewal of the certificate of compliance, shall be issued after periodical surveys, in accordance with Regulation 6 of Chapter 1 of the Annex to the Torremolinos Protocol, have been carried out.

#### *Article 7*

### **Control provisions**

1. Fishing vessels operating in the internal waters or territorial sea of a Member State or landing their catch in its ports and not being fishing vessels flying the flag of that Member State shall be subject to control by the Member State, in accordance with Article 4 of the Torremolinos Protocol and without discrimination with regard to flag or nationality of the operator, in order to verify that they comply with this Directive.

2. Fishing vessels, which are not operating in the internal waters or territorial sea of a Member State nor landing their catch in the ports of a Member State and flying the flag of another Member State, shall be subject to control by the Member State, when in its ports, in accordance with Article 4 of the Torremolinos Protocol and without discrimination with regard to flag or nationality of the operator, in order to verify that they comply with this Directive.

3. Fishing vessels flying the flag of a third State, which are not operating in the internal waters or territorial sea of a Member State nor landing their catch in the ports of a Member State, shall be subject to control by the Member State, when in its ports, in accordance with Article 4 of the Torremolinos Protocol, in order to verify their compliance with the Torremolinos Protocol, once it has entered into force.

#### *Article 8*

### **Adaptations**

The following adaptations, designed to amend non-essential elements of this Directive, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 9(3):

- (a) provisions may be adopted and incorporated for:
  - a harmonised interpretation of those provisions of the Annex to the Torremolinos Protocol which have been left to the discretion of the administrations of individual contracting parties, as far as necessary to ensure their consistent implementation in the Community,
  - the implementation of this Directive without broadening its scope,
- (b) Articles 2, 3, 4, 6 and 7 of this Directive may be adapted and its Annexes may be amended in order to apply, for the purpose of this Directive, subsequent amendments to the Torremolinos Protocol which have entered into force after the adoption of this Directive.

The amendments to the international instrument referred to in Article 2(4) may be excluded from the scope of this Directive, pursuant to Article 5 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>(44)</sup>.

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<sup>(44)</sup> OJ L 324, 29.11.2002, p. 1.

*Article 9***Committee procedure**

1. The Commission shall be assisted by the Committee on Safe Seas and the Prevention of Pollution from Ships (COSS) set up by Article 3 of Regulation (EC) No 2099/2002 of the European Parliament and of the Council (1).
  2. Where reference is made to this paragraph, Articles 5 and 7 of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission <sup>(45)</sup> 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.
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 10***Notification to IMO**

The Presidency of the Council and the Commission shall inform the IMO of the adoption of this Directive, whereby reference shall be made to Article 3(5) of the Torremolinos Protocol.

*Article 11***Penalties**

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

*Article 12***Implementation**

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 1 January 1999. They shall forthwith inform the Commission thereof.

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

2. Member States shall immediately communicate to the Commission all provisions of domestic law which they adopt in the field governed by this Directive. The Commission shall inform the other Member States thereof.

*Article 13***Entry into force**

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

*Article 14***Addressees**

This Directive is addressed to the Member States.

<sup>(45)</sup> OJ L 184, 17.7.1999, p. 23.

**REGULATION (EC) No 336/2006 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**  
**of 15 February 2006**  
**on the implementation of the International Safety Management Code within the Community**  
**and repealing Council Regulation (EC) No 3051/95**  
(Text with EEA relevance <sup>(46)</sup>)

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>(47)</sup>,

After consulting the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the Treaty <sup>(48)</sup>,

Whereas:

- (1) The International Management Code for the Safe Operation of Ships and for Pollution Prevention, hereinafter referred to as 'the ISM Code', was adopted by the International Maritime Organisation (IMO) in 1993. This Code gradually became mandatory for most ships sailing on international voyages with the adoption in May 1994 of Chapter IX 'Management for the Safe Operation of Ships' of the International Convention for the Safety of Life at Sea (SOLAS), 1974.
- (2) The ISM Code was amended by the IMO by Resolution MSC.104(73), adopted on 5 December 2000.
- (3) Guidelines on Implementation of the ISM Code by Administrations were adopted by IMO Resolution A.788(19) on 23 November 1995. These Guidelines were amended by Resolution A.913(22), adopted on 29 November 2001.
- (4) Council Regulation (EC) No 3051/95 of 8 December 1995 on the safety management of roll-on/roll-off passenger ferries (ro-ro ferries) <sup>(49)</sup> made the ISM Code mandatory at Community level with effect from 1 July 1996 for all ro-ro passenger ferries operating on a regular service to and from ports of the Member States, on both domestic and international voyages and regardless of their flag. This was a first step towards ensuring uniform and coherent implementation of the ISM Code in all Member States.
- (5) On 1 July 1998 the ISM Code became mandatory under the provisions of Chapter IX of SOLAS for companies operating passenger ships, including high-speed passenger craft, oil tankers, chemical tankers, gas carriers, bulk carriers and cargo high-speed craft of 500 gross tonnage and upwards, on international voyages.
- (6) On 1 July 2002 the ISM Code became mandatory for companies operating other cargo ships and mobile offshore drilling units of 50. gross tonnage and upwards, on international voyages.

<sup>(46)</sup> Complete version is available on the website of DG MOVE, Safety and Environment, Union Legislation on Maritime Safety.

<sup>(47)</sup> OJ C 302, 7.12.2004, p. 20.

<sup>(48)</sup> Opinion of the European Parliament of 10 March 2004 (OJ C 102 E, 28.4.2004, p. 565), Council Common Position of 18 July 2005 (OJ C 264 E, 25.10.2005, p. 28) and Position of the European Parliament of 13 December 2005 (not yet published in the Official Journal).

<sup>(49)</sup> ) OJ L 320, 30.12.1995, p. 14. Regulation as last amended by Regulation (EC) No 2099/2002 of the European Parliament and of the Council (OJ L 324, 29.11.2002, p. 1).

- (7) The safety of human life at sea and the protection of the environment may be effectively enhanced by applying the ISM Code strictly and on a mandatory basis.
- (8) It is desirable to apply directly the ISM Code to ships flying the flag of a Member State as well as to ships, regardless of their flag, engaged exclusively on domestic voyages or on a regular shipping service operating to or from ports of the Member States.
- (9) The adoption of a new Regulation with direct applicability should ensure the enforcement of the ISM Code on the understanding that it is left to the Member States to decide whether to implement the Code for ships, regardless of their flag, operating exclusively in port areas.
- (10) Consequently, Regulation (EC) No 3051/95 should be repealed.
- (11) If a Member State considers it difficult in practice for companies to comply with specific provisions of Part A of the ISM Code for certain ships or categories of ships exclusively engaged on domestic voyages in that Member State, it may derogate wholly or partly from those provisions by imposing measures ensuring equivalent achievement of the objectives of the Code. It may, for such ships and companies, establish alternative certification and verification procedures.
- (12) It is necessary to take into account Council Directive 95/21/EC of 19 June 1995 on port State control of shipping <sup>(50)</sup>.
- (13) It is also necessary to take into account 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>(51)</sup>, in order to define the recognised organisations for the purpose of this Regulation, and Council Directive 98/18/EC of 17 March 1998 on safety rules and standards for passenger ships <sup>(52)</sup>, for the purpose of establishing the scope of application of this Regulation as regards passenger ships engaged on domestic voyages.
- (14) The measures necessary for amending Annex II 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>(53)</sup>.
- (15) Since the objectives of this Regulation, namely to enhance the safety management and safe operation of ships as well as the prevention of pollution from ships, 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,

HAVE ADOPTED THIS REGULATION:

#### *Article 1*

#### **Objective**

The objective of this Regulation is to enhance the safety management and safe operation of ships as well as the prevention of pollution from ships, referred to in Article 3(1), by ensuring that companies operating those ships comply with the ISM Code by means of:

<sup>(50)</sup> OJ L 157, 7.7.1995, p. 1. Directive as last amended by Directive 2002/84/EC of the European Parliament and of the Council (OJ L 324, 29.11.2002, p. 53)

<sup>(51)</sup> OJ L 319, 12.12.1994, p. 20. Directive as last amended by Directive 2002/84/EC.

<sup>(52)</sup> OJ L 144, 15.5.1998, p. 1. Directive as last amended by Commission Directive 2003/75/EC (OJ L 190, 30.7.2003, p. 6).

<sup>(53)</sup> OJ L 184, 17.7.1999, p. 23.

- (a) the establishment, implementation and proper maintenance by companies of the shipboard and shore-based safety management systems; and
- (b) the control thereof by flag and port State administrations.

#### *Article 2*

#### **Definitions**

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

- (1) 'the ISM Code' means the International Management Code for the Safe Operation of Ships and for Pollution Prevention adopted by the International Maritime Organisation by Assembly Resolution A.741(18) of 4 November 1993, as amended by Maritime Safety Committee Resolution MSC.104(73) of 5 December 2000 and set out in Annex I to this Regulation, in its up-to-date version;
- (2) 'recognised organisation' means a body recognised in accordance with Directive 94/57/EC;
- (3) 'company' means the owner of the ship or any other organisation or person, such as the manager or the bareboat charterer, who has assumed responsibility for the operation of the ship from the shipowner and who, on assuming such responsibility, has agreed to take over all the duties and responsibilities imposed by the ISM Code;
- (4) 'passenger ship' means a ship, including a high-speed craft, carrying more than 12 passengers, or a passenger submersible craft;
- (5) 'passenger' means every person other than:
  - (a) the master and the members of the crew or other persons employed or engaged in any capacity on board a ship on the business of that ship; and
  - (b) a child under one year of age;
- (6) 'high-speed craft' means a high-speed craft as defined in Regulation X-1/2 of SOLAS, in its up-to-date version. For high-speed passenger craft, the limitations indicated in Article 2(f) of Directive 98/18/EC shall apply;
- (7) 'cargo ship' means a ship, including a high-speed craft, which is not a passenger ship;
- (8) 'international voyage' means a voyage by sea from a port of a Member State or any other State to a port outside that State, or vice versa;
- (9) 'domestic voyage' means a voyage in sea areas from a port of a Member State to the same or another port within that Member State;
- (10) 'regular shipping service' means a series of ship crossings operated so as to serve traffic between the same two or more points, either:
  - (a) according to a published timetable; or
  - (b) with crossings so regular or frequent that they constitute a recognisable systematic series;
- (11) 'ro-ro passenger ferry' means a seagoing passenger vessel as defined in Chapter II-1 of SOLAS, in its up-to-date version;
- (12) 'passenger submersible craft' means a passenger-carrying mobile vessel which primarily operates under water and relies on surface support, such as a surface ship or shore-based facilities, for monitoring and for one or more of the following:

- (a) recharging of power supply;
  - (b) recharging high pressure air;
  - (c) recharging life-support;
- (13) 'mobile offshore drilling unit' means a vessel capable of engaging in drilling operations for the exploration for or exploitation of resources beneath the seabed such as liquid or gaseous hydrocarbons, sulphur or salt;
- (14) 'gross tonnage' means the gross tonnage of a ship determined in accordance with the International Convention on Tonnage Measurement of Ships, 1969 or, in the case of ships engaged exclusively on domestic voyages and not measured in accordance with the said Convention, the gross tonnage of the ship determined in accordance with national tonnage measurement regulations.

#### *Article 3*

#### **Scope**

1. This Regulation shall apply to the following types of ships and to companies operating them:
  - (a) cargo ships and passenger ships, flying the flag of a Member State, engaged on international voyages;
  - (b) cargo ships and passenger ships engaged exclusively on domestic voyages, regardless of their flag;
  - (c) cargo ships and passenger ships operating to or from ports of the Member States, on a regular shipping service, regardless of their flag;
  - (d) mobile offshore drilling units operating under the authority of a Member State.
2. This Regulation shall not apply to the following types of ships or to the companies operating them:
  - (a) ships of war and troopships 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, unless they are or will be crewed and carrying more than 12 passengers for commercial purposes;
  - (c) fishing vessels;
  - (d) cargo ships and mobile offshore drilling units of less than 500 gross tonnage;
  - (e) passenger ships, other than ro-ro passenger ferries, in sea areas of Class C and D as defined in Article 4 of Directive 98/18/EC.

#### *Article 4*

#### **Compliance**

Member States shall ensure that all companies operating ships falling within the scope of this Regulation comply with the provisions of this Regulation.

#### *Article 5*

#### **Safety management requirements**

The ships referred to in Article 3(1) and the companies operating them shall comply with the requirements of Part A of the ISM Code.

*Article 6***Certification and verification**

For the purposes of certification and verification, Member States shall comply with the provisions of Part B of the ISM Code.

*Article 7***Derogation**

1. A Member State may, if it considers it difficult in practice for companies to comply with paragraphs 6, 7, 9, 11 and 12 of Part A of the ISM Code for certain ships or categories of ships exclusively engaged on domestic voyages in that Member State, derogate wholly or partly from those provisions by imposing measures ensuring equivalent achievement of the objectives of the Code.
2. A Member State may, for ships and companies for which a derogation has been adopted by virtue of paragraph 1, if it considers it difficult in practice to apply the requirements laid down in Article 6, establish alternative certification and verification procedures.
3. In the circumstances set out in paragraph 1 and, if applicable, paragraph 2, the following procedure shall apply:
  - (a) the Member State concerned shall notify the Commission of the derogation and of the measures which it intends to adopt;
  - (b) if, within six months of the notification, it is decided, in accordance with the procedure referred to in Article 12(2), that the proposed derogation is not justified or that the proposed measures are not sufficient, the Member State shall be required to amend or refrain from adopting the proposed provisions;
  - (c) the Member State shall make any adopted measures public with a direct reference to paragraph 1 and, if applicable, paragraph 2.
4. Following a derogation under paragraph 1 and, if applicable, paragraph 2, the Member State concerned shall issue a certificate in accordance with the second subparagraph of Annex II, Part B, Section 5, indicating the applicable operational limitations.

*Article 8***Validity, acceptance and recognition of certificates**

1. The Document of Compliance shall remain valid for up to five years from the date of its issue. The Safety Management Certificate shall remain valid for up to five years from the date of its issue.
2. In cases of renewal of the Document of Compliance and the Safety Management Certificate, the relevant provisions of Part B of the ISM Code shall apply.
3. Member States shall accept Documents of Compliance, Interim Documents of Compliance, Safety Management Certificates and Interim Safety Management Certificates issued by the administration of any other Member State or on behalf of this administration by a recognised organisation.
4. Member States shall accept Documents of Compliance, Interim Documents of Compliance, Safety Management Certificates and Interim Safety Management Certificates issued by, or on behalf of, the administrations of third countries.

However, for ships engaged on a regular shipping service, compliance with the ISM Code by the Documents of Compliance, Interim Documents of Compliance, Safety Management Certificates and Interim Safety Management Certificates issued on behalf of administrations of third countries shall be verified, by any appropriate means, by or

on behalf of the Member State(s) concerned, unless they were issued by the administration of a Member State or by a recognised organisation.

*Article 9*

**Penalties**

Member States shall lay down the rules on penalties applicable to infringements of this Regulation and shall take all the measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive.

*Article 10*

**Reporting**

1. Member States shall report to the Commission every two years on the implementation of this Regulation.
2. The Commission shall, in accordance with the procedure referred to in Article 12(2), establish a harmonised specimen form for such reports.
3. The Commission shall, with the assistance of the European Maritime Safety Agency and within six months of receiving the reports from Member States, prepare a consolidated report concerning the implementation of this Regulation, with any proposed measures, if appropriate. This report shall be addressed to the European Parliament and the Council.

*Article 11*

**Amendments**

1. Amendments to the ISM Code may be excluded from the scope of this Regulation pursuant to Article 5 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>(54)</sup>.
2. Adaptations to Annex II, 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(3).

*Article 12*

**Committee procedure**

1. The Commission shall be assisted by the Committee on Safe Seas and the Prevention of Pollution from Ships (COSS) set up by Article 3 of Regulation (EC) No 2099/2002 of the European Parliament and of the Council <sup>(55)</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 provided for in Article 5(6) of Decision 1999/468/EC shall be set at two 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 13*

**Repeal**

1. Regulation (EC) No 3051/95 shall be repealed with effect from 24 March 2006.

<sup>(54)</sup> OJ L 324, 29.11.2002, p. 1. Regulation as amended by Commission Regulation (EC) No 415/2004 (OJ L 68, 6.3.2004, p. 10).

<sup>(55)</sup> “ OJ L 324, 29.11.2002, p. 1.

2. Interim Documents of Compliance, Interim Safety Management Certificates, Documents of Compliance and Safety Management Certificates issued before 24 March 2006 shall remain valid until their expiry or until their next endorsement.

*Article 14*

**Entry into force**

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

As concerns cargo and passenger ships, which are not already required to comply with the ISM Code, this Regulation shall apply as from 24 March 2008.

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



PART III —  
VESSEL TRAFFIC MONITORING  
AND REPORTING  
FORMALITIES

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### **PART III – VESSEL TRAFFIC MONITORING AND REPORTING FORMALITIES**

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**DIRECTIVE 2002/59/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ESTABLISHING  
A COMMUNITY VESSEL TRAFFIC MONITORING AND INFORMATION SYSTEM**

and repealing Council Directive 93/75/EEC, amended by Directive 2009/17/EC, Directive 2009/18/EC,

Commission Directive 2011/15/EU and Commission Directive 2014/100/EU

(consolidated version without annexes <sup>(1)</sup>)

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 <sup>(2)</sup>,

Having regard to the Opinion of the Economic and Social Committee <sup>(3)</sup>,

Having regard to the opinion of the Committee of the Regions <sup>(4)</sup>,

Acting in accordance with the procedure indicated in Article 251 of the Treaty <sup>(5)</sup>,

Whereas:

- (1) In its communication of 24 February 1993 on a common policy on safe seas, the Commission indicated that one objective at Community level was the introduction of a mandatory information system to give Member States rapid access to all important information relating to the movements of ships carrying dangerous or polluting materials and to the precise nature of their cargo.
- (2) Council Directive 93/75/EEC of 13 September 1993 concerning minimum requirements for vessels bound for or leaving Community ports and carrying dangerous or polluting goods <sup>(6)</sup> introduced a system whereby the competent authorities receive information regarding ships bound for or leaving a Community port and carrying dangerous or polluting goods, and regarding incidents at sea. That Directive requires the Commission to produce new proposals for the introduction of a fuller reporting system for the Community, possibly covering ships transiting along the coasts of Member States.
- (3) The Council Resolution of 8 June 1993 on a common policy on safe seas <sup>(7)</sup> agreed that the main objectives of Community action included the adoption of a fuller information system.
- (4) Setting up a Community vessel traffic monitoring and information system should help to prevent accidents and pollution at sea and to minimise their impact on the marine and coastal environment, the economy and the health of local communities. The efficiency of maritime traffic, and in particular of the management of ships' calls into ports, also depends on ships giving sufficient advance notice of their arrival.

<sup>(1)</sup> Complete version is available on the website of DG MOVE, Safety and Environment, Union Legislation on Maritime Safety.

<sup>(2)</sup> OJ C 120 E, 24.4.2001, p. 67 and OJ C 362 E, 18.12.2001, p. 255.

<sup>(3)</sup> OJ C 221, 7.8.2001, p. 54.

<sup>(4)</sup> OJ C 357, 14.12.2001, p. 1.

<sup>(5)</sup> Opinion of the European Parliament of 14 June 2001 (OJ C 53 E, 28.2.2002, p. 304), Council Common Position of 19 December 2001 (OJ C 58 E, 5.3.2002, p. 14) and Decision of the European Parliament of 10 April 2002 (not yet published in the Official Journal). Council Decision of 25 June 2002.

<sup>(6)</sup> OJ L 247, 5.10.1993, p. 19. Directive as last amended by Commission Directive 98/74/EC (OJ L 276, 13.10.1998, p. 7).

<sup>(7)</sup> OJ C 271, 7.10.1993, p. 1.

- (5) Several mandatory ship reporting systems have been set up along Europe's coasts, in accordance with the relevant rules adopted by the International Maritime Organisation (IMO). It ought to be ensured that ships comply with the reporting requirements in force under these systems.
- (6) Vessel traffic services and ships' routing systems have also been introduced and are playing an important part in the prevention of accidents and pollution in certain shipping areas which are congested or hazardous for shipping. It is necessary that ships use vessel traffic services and that they follow the rules applicable to ships' routing systems approved by the IMO.
- (7) Key technological progress has been made in the area of onboard equipment allowing automatic identification of ships (AIS systems) for enhanced ship monitoring, as well as voyage data recording (VDR systems or 'black boxes') to facilitate investigations following accidents. Given its importance in the formulation of a policy to prevent shipping accidents, such equipment should be made compulsory on board ships making national or international voyages which call at Community ports. The data provided by a VDR system can be used both after an accident to investigate its causes and preventively to learn the necessary lessons from such situations. Member States should encourage the use of such data for both purposes.
- (8) Member States should ensure that the coastal stations of the competent authorities have available, in addition to appropriate technical equipment, sufficient and properly qualified staff.
- (9) Accurate knowledge of dangerous or polluting goods being carried on board ships and of other relevant safety information, such as information relating to navigational incidents, is essential to the preparation and effectiveness of operations to tackle pollution or the risk of pollution at sea. Ships leaving or bound for Member States' ports must notify this information to the competent authorities or port authorities of those Member States.
- (10) To streamline and accelerate the transmission and utilisation of what may be huge amounts of information on cargo, such information ought to be sent, whenever practicable, electronically to the competent authority or port authority concerned. For the same reasons, exchanges of information between the competent authorities of the Member States should take place electronically.
- (11) Where the companies concerned have, to the satisfaction of the Member States, introduced internal procedures to ensure that information required by the Directive is sent to the competent authority without delay, it must be possible to exempt scheduled services between two or more States, of which at least one is a Member State, from the reporting requirement for each voyage.
- (12) Because of their behaviour or condition, some ships pose potential risks to the safety of shipping and the environment. Member States should pay particular attention to the monitoring of such ships, take the appropriate measures to prevent any worsening of the risk they pose, and send any relevant information they possess on these ships to the other Member States concerned. Such appropriate measures could be measures provided for by port State control activities.
- (13) Member States need to guard against the threats to maritime safety, to the safety of individuals and to the marine and coastal environment created by incidents, accidents or certain other situations at sea and by the presence of polluting slicks or packages drifting at sea. To this end, masters of ships sailing within Member States' search and rescue region/exclusive economic zone or equivalent, should report such occurrences to the coastal authorities, supplying all appropriate information. In the light of their specific situation, Member States should be given flexibility in choosing which of the abovementioned geographical areas should be covered by the reporting obligation.
- (14) In the event of an incident or accident at sea, full and complete cooperation by the parties involved in the carriage contributes significantly to the effectiveness of operations by the competent authorities.
- (15) Where a competent authority designated by a Member State considers, upon a sea state and weather forecast provided by a qualified meteorological information service, that exceptionally bad weather or sea conditions are creating a serious threat for the safety of human life or of pollution, it should inform the master of a

ship, which intends to enter or leave the port, of the situation and may take any other appropriate measures. Without prejudice to the duty of assistance to ships in distress, these might include a prohibition to enter or to leave port, until the situation returns to normal. In the event of a possible risk to safety or of pollution and taking into account the specific situation in the port concerned, the competent authority may recommend ships not to leave the port. If the master chooses to leave the port, he/she does so in any case under his/her own responsibility and should state the reasons for his/her decision.

- (16) Non-availability of a place of refuge may have serious consequences in the event of an accident at sea. Member States should therefore draw up plans whereby ships in distress may, if the situation so requires, be given refuge in their ports or any other sheltered area in the best conditions possible. Where necessary and feasible, these plans should include the provision of adequate means and facilities for assistance, salvage and pollution response. Ports accommodating a ship in distress should be able to rely on prompt compensation for any costs and damage involved in this operation. The Commission should therefore examine the possibilities for introducing an adequate system of compensation for ports in the Community accommodating a ship in distress and the feasibility of requiring a ship coming to a Community port to be adequately insured.
- (17) A framework for cooperation between the Member States and the Commission needs to be established to enhance the implementation of the monitoring and information system for maritime traffic, with proper communication links being established between the competent authorities and ports of the Member States. Moreover, the coverage of the ship identification and monitoring system needs to be supplemented in those shipping areas of the Community where it is insufficient. In addition, information management centres ought to be set up in the Community's maritime regions so as to facilitate the exchange or sharing of useful data in relation to traffic monitoring and the implementation of this Directive. The Member States and the Commission should also endeavour to cooperate with third countries to achieve these objectives.
- (18) The effectiveness of this Directive depends greatly on the Member States enforcing its implementation strictly. To this end, Member States must regularly carry out appropriate inspections or any other action required to ensure that the communication links established to meet the requirements of this Directive are operating satisfactorily. A system of sanctions should also be introduced to ensure that the parties concerned comply with the reporting and equipment carrying requirements laid down by this Directive.
- (19) 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>(8)</sup>.
- (20) Certain provisions of this Directive may be amended by that procedure so as to take account of the development of Community and international instruments and of experience gained in implementing this Directive, in so far as such amendments do not broaden the scope of the Directive. A useful tool for the Commission to evaluate the experience gained in implementing the Directive is an adequate reporting by Member States on such implementation.
- (21) The provisions of Directive 93/75/EEC are significantly reinforced, extended and amended by this Directive. Accordingly, Directive 93/75/EEC should be repealed.
- (22) Since the objectives of the proposed action, namely the enhancing of the safety and efficiency of maritime traffic, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the proposed 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 those objectives,

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<sup>(8)</sup> OJ L 184, 17.7.1999, p. 23.

HAVE ADOPTED THIS DIRECTIVE:

*Article 1*

**Purpose**

The purpose of this Directive is to establish in the Community a vessel traffic monitoring and information system with a view to enhancing the safety and efficiency of maritime traffic, improving the response of authorities to incidents, accidents or potentially dangerous situations at sea, including search and rescue operations, and contributing to a better prevention and detection of pollution by ships.

Member States shall monitor and take all necessary and appropriate measures to ensure that the masters, operators or agents of ships, as well as shippers or owners of dangerous or polluting goods carried on board such ships, comply with the requirements under this Directive.

*Article 2*

**Scope**

1. This Directive applies to ships of 300 gross tonnage and upwards, unless stated otherwise.
2. Unless otherwise provided, this Directive shall not apply to:
  - (a) warships, naval auxiliaries and other ships owned or operated by a Member State and used for non-commercial public service;
  - (b) fishing vessels, traditional ships and recreational craft with a length of less than 45 metres;
  - (c) bunkers on ships below 1 000 gross tonnage and ships' stores and equipment for use on board all ships.

*Article 3*

**Definitions**

For the purpose of this Directive

- (a) 'Relevant international instruments' means the following instruments, in their up-to-date version:
  - MARPOL means the International Convention for the Prevention of Pollution from Ships, 1973 and the 1978 Protocol thereto;
  - SOLAS means the International Convention for the Safety of Life at Sea, together with the protocols and amendments thereto;
  - the International Convention on Tonnage Measurement of Ships, 1969;
  - the International Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 1969 and its 1973 Protocol relating to Intervention on the High Seas in Cases of Pollution by Substances other than Oil;
  - SAR Convention means the International Convention on Maritime Search and Rescue, 1979;
  - ISM Code means the International Safety Management Code;
  - IMDG Code means the International Maritime Dangerous Goods Code;
  - IBC Code means the IMO International Code for the construction and equipment of ships carrying dangerous chemicals in bulk;

- IGC Code means the IMO International Code for the construction and equipment of ships carrying liquefied gases in bulk;
  - BC Code means the IMO Code of Safe Practice for Solid Bulk Cargoes;
  - INF Code means the IMO Code for the Safe Carriage of Irradiated Nuclear Fuel, Plutonium and High-Level Radioactive Wastes in Flasks on board Ships;
  - IMO Resolution A.851(20) means International Maritime Organisation Resolution 851(20) entitled 'General principles for ship reporting systems and ship reporting requirements, including guidelines for reporting incidents involving dangerous goods, harmful substances and/or marine pollutants';
  - 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) 'operator' means the owner or manager of a ship;
- (c) 'agent' means any person mandated or authorised to supply information on behalf of the operator of the ship;
- (d) 'shipper' means any person by whom or in whose name or on whose behalf a contract of carriage of goods has been concluded with a carrier;
- (e) 'company' means a company within the meaning of Regulation 1(2) of Chapter IX of the SOLAS Convention;
- (f) 'ship' means any sea-going vessel or craft;
- (g) 'dangerous goods' means:
- goods classified in the IMDG Code,
  - dangerous liquid substances listed in Chapter 17 of the IBC Code,
  - liquefied gases listed in Chapter 19 of the IGC Code,
  - solids referred to in Appendix B of the BC Code.

Also included are goods for the carriage of which appropriate preconditions have been laid down in accordance with paragraph 1.1.3 of the IBC Code or paragraph 1.1.6 of the IGC Code;

- (h) 'polluting goods' means:
- oils as defined in Annex I to the MARPOL Convention,
  - noxious liquid substances as defined in Annex II to the MARPOL Convention,
  - harmful substances as defined in Annex III to the MARPOL Convention;

- (i) 'cargo transport unit' means a road freight vehicle, a railway freight wagon, a freight container, a road tank vehicle, a railway wagon, or portable tank;
- (j) 'address' means the name and the communication links whereby contact may, where necessary, be made with the operator, agent, port authority, competent authority or any other authorised person or body in possession of detailed information regarding the ship's cargo;
- (k) 'competent authorities' means the authorities and organisations designated by Member States to perform functions under this Directive;
- (l) 'port authority' means the competent authority or body designated by Member States for each port to receive and pass on information reported pursuant to this Directive;
- (m) 'place of refuge' means a port, the part of a port or another protective berth or anchorage or any other sheltered area identified by a Member State for accommodating ships in distress;
- (n) 'coastal station' means any of the following, designated by Member States pursuant to this Directive: a vessel traffic service; a shore-based installation responsible for a mandatory reporting system approved by the IMO; or a body responsible for coordinating search and rescue operations or operations to tackle pollution at sea;
- (o) 'vessel traffic service (VTS)' means a service designed to improve the safety and efficiency of vessel traffic and to protect the environment, which has the capability to interact with the traffic and to respond to traffic situations developing in the VTS area;
- (p) 'ship's routing system' means any system of one or more routes or routing measures aimed at reducing the risk of casualties; it includes traffic separation schemes, two-way routes, recommended tracks, areas to be avoided, inshore traffic zones, roundabouts, precautionary areas and deep-water routes;
- (q) 'traditional ships' means all kinds of historical ships and their replicas including those designed to encourage and promote traditional skills and seamanship, that together serve as living cultural monuments, operated according to traditional principles of seamanship and technique;
- (r) 'casualty' means a casualty within the meaning of the IMO Code for the investigation of marine casualties and incidents;
- (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.

## TITLE I

**SHIP REPORTING AND MONITORING***Article 4***Notification prior to entry into ports of the Member States**

1. The operator, agent or master of a ship bound for a port of a Member State shall notify the information in Annex I(1) to the port authority:
  - (a) at least twenty-four hours in advance; or
  - (b) at the latest, at the time the ship leaves the previous port, if the voyage time is less than twenty-four hours; or
  - (c) if the port of call is not known or it is changed during the voyage, as soon as this information is available.
2. Ships coming from a port outside the Community and bound for a port of a Member State carrying dangerous or polluting goods, shall comply with the notification obligations of Article 13.

*Article 5***Monitoring of ships entering the area of mandatory ship reporting systems**

1. The Member State concerned shall monitor and take all necessary and appropriate measures to ensure that all ships entering the area of a mandatory ship reporting system, adopted by the IMO according to Regulation 11 Chapter V of the SOLAS Convention and operated by one or more States, of which at least one is a Member State, in accordance with the relevant guidelines and criteria developed by the IMO, comply with that system in reporting the information required without prejudice to additional information required by a Member State in accordance with IMO Resolution A.851(20).
2. When submitting a new mandatory ship reporting system to the IMO for adoption or a proposal to amend an existing reporting system, a Member State shall include in its proposal at least the information referred to in Annex I(4).

*Article 6***Use of automatic identification systems**

1. Any ship calling at a port of a Member State must, in accordance with the timetable set out in Annex II(I), be fitted with an AIS which meets the performance standards drawn up by the IMO.
2. Ships fitted with an AIS, shall maintain it in operation at all times except where international agreements, rules or standards provide for the protection of navigational information.

*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.

*Article 7***Use of ship's routing systems**

1. Member States shall monitor and take all necessary and appropriate measures to ensure that all ships entering the area of a mandatory ships' routing system adopted by the IMO according to Regulation 10 Chapter V of the SOLAS Convention and operated by one or more States, of which at least one is a Member State, use the system in accordance with the relevant guidelines and criteria developed by the IMO.

2. When implementing a ship's routing system, which has not been adopted by the IMO, under their responsibility, Member States shall take into account, wherever possible, the guidelines and criteria developed by the IMO and promulgate all information necessary for the safe and effective use of the ship's routing system.

*Article 8***Monitoring of the compliance of ships with vessel traffic services**

Member States shall monitor and take all necessary and appropriate measures to ensure that:

- (a) ships entering the area of applicability of a VTS operated by one or more States, of which at least one is a Member State, within their territorial sea and based on the guidelines developed by the IMO, participate in, and comply with, the rules of that VTS;
- (b) ships flying the flag of a Member State or ships bound for a port of a Member State and entering the area of applicability of such a VTS outside the territorial sea of a Member State and based on the guidelines developed by the IMO, comply with the rules of that VTS;
- (c) ships flying the flag of a third State and not bound for a port in a Member State entering a VTS area outside the territorial sea of a Member State, follow the rules of that VTS wherever possible. Member States should report to the flag State concerned any apparent serious breach of those rules in such a VTS area.

*Article 9***Infrastructure for ship reporting systems, ships' routing systems and vessel traffic services**

1. Member States shall take all necessary and appropriate measures to provide themselves gradually, on a time-schedule compatible with the timetable set out in Annex II(l), with appropriate equipment and shorebased installations for receiving and utilising the AIS information taking into account a necessary range for transmission of the reports.

2. The process of building up all necessary equipment and shore-based installations for implementing this Directive shall be completed by the end of 2007. Member States shall ensure that the appropriate equipment for relaying the information to, and exchanging it between, the national systems of Member States shall be operational at the latest one year thereafter.

3. Member States shall ensure that the coastal stations in charge of monitoring the compliance with vessel traffic services and ships' routing systems have sufficient and properly qualified staff available, as well as appropriate means of communication and ship monitoring and that they operate in accordance with the relevant IMO guidelines.

#### *Article 10*

### **Voyage data recorder systems**

1. Member States shall monitor and take all necessary and appropriate measures to ensure that ships calling at a port of a Member State are fitted with a voyage data recorder (VDR) system in accordance with the rules laid down in Annex II(II). Any exemptions granted to ro-ro ferries or high-speed passenger craft under Article 4(1)(d) of 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>(9)</sup> shall terminate on 5 August 2002.

2. Data which have been collected from a VDR system shall be made available to the Member State concerned in the event of an investigation following a casualty occurring within the waters under the jurisdiction of a Member State. Member States shall ensure that such data are used in the investigation and are properly analysed. Member States shall ensure that the findings of the investigation are published as soon as possible after its conclusion.

## TITLE II

### **NOTIFICATION OF DANGEROUS OR POLLUTING GOODS ON BOARD SHIPS (HAZMAT)**

#### *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.286(86);
- (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.

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<sup>(9)</sup> OJ L 138, 1.6.1999, p. 1.

### Article 13

#### **Notification of dangerous or polluting goods carried on board**

1. The operator, agent or master of a ship, irrespective of its size, carrying dangerous or polluting goods and leaving a port of a Member State shall, at the latest at the moment of departure, notify the information indicated in Annex I(3) to the competent authority designated by that Member State.
2. The operator, agent or master of a ship, irrespective of its size, carrying dangerous or polluting goods coming from a port located outside the Community and bound for a port of a Member State or an anchorage located in a Member State's territorial waters shall, at the latest upon departure from the loading port or as soon as the port of destination or the location of the anchorage is known, if this information is unavailable at the moment of departure, notify the information indicated in Annex I(3) to the competent authority of the Member State in which the first port of destination or anchorage is located.
3. Member States may put in place a procedure authorising the operator, agent or master of a ship referred to in paragraphs 1 and 2 to notify the information listed in Annex I(3) to the port authority of the port of departure or destination in the Community, as appropriate.

The procedure put in place must ensure that the competent authority has access to the information indicated in Annex I(3) at all times should it be needed. To this end, the port authority concerned shall retain the information listed in Annex I(3) long enough for it to be usable in the event of an incident or accident at sea. The port authority shall take the necessary measures to provide this information electronically and without delay to the competent authority, 24 hours a day upon request.

4. The operator, agent or master of the ship must communicate the cargo information indicated in Annex I(3) to the port authority or the competent authority.

The information must be transferred electronically whenever practicable. The electronic message exchange must use the syntax and procedures set out in Annex III.

### Article 14

#### **Computerised exchange of data between Member States**

Member States shall cooperate to ensure the interconnection and interoperability of the national systems used to manage the information indicated in Annex I.

Communication systems set up pursuant to the first subparagraph must display the following features:

- (a) data exchange must be electronic and enable messages notified in accordance with Article 13 to be received and processed;
- (b) the system must allow information to be transmitted 24 hours a day;
- (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.

### 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.

### TITLE III

## MONITORING OF HAZARDOUS SHIPS AND INTERVENTION IN THE EVENT OF INCIDENTS AND ACCIDENTS AT SEA

### Article 16

#### Transmission of information concerning certain ships

1. Ships meeting the criteria set out below shall be considered to be ships posing a potential hazard to shipping or a threat to maritime safety, the safety of individuals or the environment:

- (a) ships which, in the course of their voyage:
  - have been involved in incidents or accidents at sea as referred to in Article 17; or
  - have failed to comply with the notification and reporting requirements imposed by this Directive; or
  - have failed to comply with the applicable rules in ships' routing systems and VTS placed under the responsibility of a Member State;
- (b) ships in respect of which there is proof or presumptive evidence of deliberate discharges of oil or other infringements of the MARPOL Convention in waters under the jurisdiction of a Member State;

- (c) ships which have been refused access to ports of the Member States or which have been the subject of a report or notification by a Member State in accordance with Annex I-1 to Council Directive 95/21/EC of 19 June 1995 on port State control of shipping <sup>(10)</sup>;
  - (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.
2. Coastal stations holding relevant information on the ships referred to in paragraph 1 shall communicate it to the coastal stations concerned in the other Member States located along the planned route of the ship.
3. Member States shall ensure that the information communicated to them under paragraph 2 is transmitted to the relevant port authorities and/or any other authority designated by the Member State. Within the limits of their available staff capacity, Member States shall carry out any appropriate inspection or verification in their ports either on their own initiative or at the request of another Member State, without prejudice to any port State control obligation. They shall inform all Member States concerned of the results of the action they take.

#### *Article 17*

#### **Reporting of incidents and accidents at sea**

1. Without prejudice to international law and with a view to preventing or mitigating any significant threat to maritime safety, the safety of individuals or the environment, Member States shall monitor and take all appropriate measures to ensure that the master of a ship sailing within their search and rescue region/exclusive economic zone or equivalent, immediately reports to the coastal station responsible for that geographical area:
- (a) any incident or accident affecting the safety of the ship, such as collision, running aground, damage, malfunction or breakdown, flooding or shifting of cargo, any defects in the hull or structural failure;
  - (b) any incident or accident which compromises shipping safety, such as failures likely to affect the ship's manoeuvrability or seaworthiness, or any defects affecting the propulsion system or steering gear, the electrical generating system, navigation equipment or communications equipment;
  - (c) any situation liable to lead to pollution of the waters or shore of a Member State, such as the discharge or threat of discharge of polluting products into the sea;
  - (d) any slick of polluting materials and containers or packages seen drifting at sea.
2. The report message sent in application of paragraph 1 shall include at least the ship's identity, its position, the port of departure, the port of destination, the address from which information may be obtained on the dangerous and polluting goods carried on board, the number of persons aboard, details of the incident and any relevant information referred to in IMO Resolution A.851(20).

#### *Article 18*

#### **Measures in the event of exceptionally bad weather**

1. Where the competent authorities designated by Member States consider, in the event of exceptionally bad weather or sea conditions, that there is a serious threat of pollution of their shipping areas or coastal zones, or of the shipping areas or coastal zones of other States, or that the safety of human life is in danger:

<sup>(10)</sup> OJ L 157, 7.7.1995, p. 1. Directive as last amended by Directive 2001/106/EC of the European Parliament and of the Council (OJ L 19, 22.1.2002, p. 17).

- (a) they should, where possible, fully inform the master of a ship which is in the port area concerned, and intends to enter or leave that port, of the sea state and weather conditions and, when relevant and possible, of the danger they may present to his/her ship, the cargo, the crew and the passengers;
- (b) they may take, without prejudice to the duty of assistance to ships in distress and in accordance with Article 20, any other appropriate measures, which may include a recommendation or a prohibition either for a particular ship or for ships in general to enter or leave the port in the areas affected, until it has been established that there is no longer a risk to human life and/or to the environment;
- (c) they shall take appropriate measures to limit as much as possible or, if necessary, prohibit the bunkering of ships in their territorial waters.

2. The master shall inform the company of the appropriate measures or recommendations referred to under paragraph 1. These do not however prejudice the decision of the master on the basis of his/her professional judgement corresponding to the SOLAS Convention. Where the decision taken by the master of the ship is not in accordance with the measures referred to under paragraph 1, he/she shall inform the competent authorities of the reasons for his/her decision.

3. The appropriate measures or recommendations, referred to under paragraph 1, shall be based upon a sea state and weather forecast provided by a qualified meteorological information service recognised by the Member State.

#### *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.

#### *Article 19*

### **Measures relating to incidents or accidents at sea**

1. In the event of incidents or accidents at sea as referred to in Article 17, Member States shall take all appropriate measures consistent with international law, where necessary to ensure the safety of shipping and of persons and to protect the marine and coastal environment.

Annex IV sets out a non-exhaustive list of measures available to Member States pursuant to this Article.

2. The operator, the master of the ship and the owner of the dangerous or polluting goods carried on board must, in accordance with national and international law, cooperate fully with the competent national authorities, at the latter's request, with a view to minimising the consequences of an incident or accident at sea.

To this end they shall communicate to the competent national authorities, on request, the information referred to in Article 12.

3. The master of a ship to which the provisions of the ISM Code are applicable shall, in accordance with that Code, inform the company of any incident or accident, as referred to in Article 17(1), which occurs at sea. As soon as it has been informed of such a situation, the company must contact the competent coastal station and place itself at its disposal as necessary.

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.

#### *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.

#### *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 <sup>(1)</sup> 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.

#### *Article 21*

### **Information of the parties concerned**

1. The competent coastal station of the Member State concerned shall, as necessary, broadcast within the relevant areas any incident or accident notified under Article 17(1) and information with regard to any ship that poses a threat to maritime safety, the safety of individuals or the environment.

2. Competent authorities holding information notified in accordance with Articles 13 and 17 shall make adequate arrangements to provide such information at any time upon request for safety reasons by the competent authority of another Member State.

3. Any Member State the competent authorities of which have been informed, pursuant to this Directive or in some other way, of facts which involve or increase the risk for another Member State of a hazard being posed to certain shipping areas and coastal zones, shall take the appropriate measures to inform any interested Member State thereof

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<sup>(1)</sup> OJ L 131, 28.5.2009, p. 128.

as soon as possible and consult it regarding the action being envisaged. Where appropriate, Member States shall cooperate with a view to pooling the arrangements for joint action.

Each Member State shall make the necessary arrangements to use fully the reports which ships are required to transmit to them pursuant to Article 17.

#### TITLE IV ACCOMPANYING MEASURES

##### *Article 22*

#### **Designation and publication of a list of competent bodies**

1. Each Member State shall designate the competent authorities, port authorities and coastal stations to which the notifications required by this Directive must be made.
2. Each Member State shall ensure that the shipping industry is properly informed and regularly updated, notably via nautical publications, regarding the authorities and stations designated pursuant to paragraph 1, including where appropriate the geographical area for which they are competent, and the procedures laid down for notifying the information required by this Directive.
3. Member States shall send the Commission a list of the authorities and stations they designate pursuant to paragraph 1, as well as any updating thereof.

##### *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 intraCommunity 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.

##### *Article 23*

#### **Cooperation between Member States and the Commission**

Member States and the Commission shall cooperate in attaining the following objectives:

- (a) making optimum use of the information notified pursuant to this Directive, notably by developing appropriate telematic links between coastal stations and port authorities with a view to exchanging data relating to ships' movements, their estimated times of arrival in ports and their cargo;

- (b) developing and enhancing the effectiveness of telematic links between the coastal stations of the Member States with a view to obtaining a clearer picture of traffic, improving the monitoring of ships in transit, and harmonising and, as far as possible, streamlining the reports required from ships en route;
- (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;
- (d) drawing up, if appropriate, concerted plans to accommodate ships in distress;
- (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.

#### *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.

#### *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.

#### *Article 25*

### **Monitoring the implementation of this Directive and sanctions**

1. Member States shall carry out regular inspections and any other action required to check the functioning of the shore-based telematic systems set up to meet the requirements of this Directive, and in particular their capacity to meet the requirements of receiving or sending without delay, 24 hours a day, information notified pursuant to Articles 13 and 15.
2. Member States shall lay down a system of sanctions for the breach of national provisions adopted pursuant to this Directive and shall take all the measures necessary to ensure that those sanctions are applied. The sanctions thus provided shall be effective, proportionate and dissuasive.
3. Member States shall, without delay, inform the flag State and any other State concerned of measures taken in respect of ships not flying their flag pursuant to Articles 16 and 19 and to paragraph 2 of this Article.
4. Where a Member State finds, on the occasion of an incident or accident at sea referred to in Article 19, that the company has not been able to establish and maintain a link with the ship or with the coastal stations concerned, it shall so inform the State which issued the ISM document of compliance and associated safety management certificate, or on whose behalf it was issued.

Where the seriousness of the failure shows the existence of a major incidence of non-compliance in the functioning of the safety management system of a company established in a Member State, the Member State which issued the document of compliance or safety management certificate to the ship shall immediately take the necessary measures against the company concerned with the view to having the document of compliance and the associated safety management certificate withdrawn.

#### *Article 26*

#### **Evaluation**

1. Member States must report to the Commission by 5 February 2007 on the progress in implementing this Directive and, in particular, the provisions of Articles 9, 10, 18, 20, 22, 23 and 25. Member States must report to the Commission by 31 December 2009 on the full implementation of the Directive.
2. On the basis of the reports referred to in paragraph 1, the Commission shall report to the European Parliament and to the Council six months thereafter on the implementation of this Directive. In its reports, the Commission shall ascertain whether and to what extent the provisions of this Directive as implemented by the Member States are helping to increase the safety and efficiency of maritime transport and prevent pollution by ships.
3. The Commission shall examine the need for, and feasibility of, measures at Community level aimed at facilitating the recovery of, or compensation for, costs and damage incurred for the accommodation of ships in distress, including appropriate requirements for insurance or other financial security.

The Commission shall report to the European Parliament and to the Council by 5 February 2007 the results of such examination.

### **FINAL PROVISIONS**

#### *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 <sup>(12)</sup>.

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<sup>(12)</sup> OJ L 324, 29.11.2002, p. 1.

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 29*

1. Member States shall adopt the laws, regulations and administrative provisions necessary to comply with this Directive by 5 February 2004 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 reference on the occasion of their official publication. The methods of making such a reference shall be laid down by Member States.

2. Member States shall notify to the Commission the provisions of their national legislation which they adopted in the field governed by this Directive.

*Article 30*

Council Directive 93/75/EEC is hereby repealed as from 5 February 2004.

*Article 31*

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

*Article 32*

This Directive is addressed to the Member States.

**DIRECTIVE 2010/65/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**  
**of 20 October 2010**  
**on reporting formalities for ships arriving in and/or departing from ports of the Member States**  
and repealing Directive 2002/6/EC  
(version without annexes <sup>(13)</sup>)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 100(2) thereof,

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Economic and Social Committee <sup>(14)</sup>,

Having regard to the opinion of the Committee of the Regions <sup>(15)</sup>,

Acting in accordance with the ordinary legislative procedure <sup>(16)</sup>,

Whereas:

- (1) Directive 2002/6/EC of the European Parliament and of the Council of 18 February 2002 on reporting formalities for ships arriving in and/or departing from ports of the Member States of the Community <sup>(17)</sup> requires Member States to accept certain standardised forms (FAL forms) in order to facilitate traffic, as defined by the International Maritime Organisation (IMO) Convention on Facilitation of International Maritime Traffic (FAL Convention), adopted on 9 April 1965, as amended.
- (2) For the facilitation of maritime transport and in order to reduce the administrative burdens for shipping companies, the reporting formalities required by legal acts of the Union and by Member States need to be simplified and harmonised to the greatest extent possible. However, this Directive should be without prejudice to the nature and content of the information required, and should not introduce any additional reporting requirements for ships not already under such obligation according to legislation applicable in Member States. It should deal solely with how the information procedures can be simplified and harmonised, and how the information could be gathered more effectively.
- (3) The transmission of data required upon arrival in and/or departure from ports under 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>(18)</sup>, 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>(19)</sup>, Regulation (EC) No 725/2004 of the European Parliament and of the Council of 31 March 2004 on enhancing ship and port facility security <sup>(20)</sup>, Directive 2009/16/EC of the European Parliament and of the Council of 23 April 2009 on port State control <sup>(21)</sup>, and, where appropriate, the International Maritime Dangerous Goods Code adopted

<sup>(13)</sup> Complete version is available on the website of DG MOVE, Safety and Environment, Union Legislation on Maritime Safety.

<sup>(14)</sup> OJ C 128, 18.5.2010, p. 131.

<sup>(15)</sup> OJ C 211, 4.9.2009, p. 65.

<sup>(16)</sup> Position of the European Parliament of 6 July 2010 (not yet published in the Official Journal) and decision of the Council of 12 October 2010.

<sup>(17)</sup> OJ L 67, 9.3.2002, p. 31.

<sup>(18)</sup> OJ L 332, 28.12.2000, p. 81.

<sup>(19)</sup> OJ L 208, 5.8.2002, p. 10.

<sup>(20)</sup> OJ L 129, 29.4.2004, p. 6.

<sup>(21)</sup> OJ L 131, 28.5.2009, p. 57.

in 1965, with the amendments thereto adopted and having entered into force, covers the information required by FAL forms. Therefore, where that information corresponds to the requirements in the above-mentioned legal acts, FAL forms should be accepted for providing it.

- (4) In view of the global dimension of maritime transport, legal acts of the Union must take account of IMO requirements if simplification is to take place.
- (5) Member States should deepen the cooperation between the competent authorities, such as their customs, border control, public health and transport authorities in order to continue to simplify and harmonise reporting formalities within the Union and make the most efficient use of electronic data transmission and information exchange systems, with a view to the, as far as possible, simultaneous elimination of barriers to maritime transport and the achievement of a European maritime transport space without barriers.
- (6) Detailed statistics on maritime transport should be available to assess the efficiency of and the need for policy measures aiming at facilitating maritime traffic within the Union, taking into account the need not to create unnecessary additional requirements with regard to the collection of statistics by the Member States and to make full use of Eurostat. For the purposes of this Directive, it would be important to collect relevant data concerning ship traffic within the Union and/or ships calling at third country ports or in free zones.
- (7) It should be easier for shipping companies to benefit from the status of 'authorised regular shipping service' in line with the objective of the Commission communication of 21 January 2009 entitled 'Communication and action plan with a view to establishing a European maritime transport space without barriers'.
- (8) Widespread use should be made of electronic means of data transmission for all reporting formalities as soon as possible and by 1 June 2015 at the latest, building on the international standards developed by the FAL Convention, whenever practicable. In order to streamline and accelerate the transmission of potentially very large amounts of information, electronic formats for reporting formalities should be used, whenever practicable. Within the Union, the provision of information in FAL forms in paper format should be the exception and should be accepted only for a limited period of time. Member States are encouraged to use administrative means, including economic incentives, to promote the use of electronic formats. For the above-mentioned reasons exchange of information between the competent authorities of the Member States should take place electronically. In order to facilitate such a development, electronic systems need to be technically interoperable to a greater extent and as far as possible by the same deadline to ensure the smooth functioning of the European maritime transport space without barriers.
- (9) Parties involved in trade and transport should be able to lodge standardised information and documents via an electronic single window to fulfil reporting formalities. Individual data elements should only be submitted once.
- (10) The SafeSeaNet systems established at national and Union level should facilitate the reception, exchange and distribution of information between the information systems of Member States on maritime activity. To facilitate maritime transport and to reduce the administrative burdens for maritime transport, the SafeSeaNet system should be interoperable with other systems of the Union for reporting formalities. The SafeSeaNet system should be used for additional exchange of information for the facilitation of maritime transport. Reporting formalities regarding information for solely national purposes should not need to be introduced in the SafeSeaNet system.
- (11) When adopting new Union measures, it should be ensured that Member States can maintain the electronic transmission of data and are not required to use paper formats.
- (12) The full benefits of electronic data transmission can only be achieved where there is smooth and effective communication between SafeSeaNet, e-Customs and the electronic systems for entering or calling up data.

To that end, in order to limit the administrative burdens, recourse should be had in the first instance to the applicable standards.

- (13) FAL forms are regularly updated. This Directive should therefore refer to the version of these forms that is currently in force. Any information required by Member States' legislation which goes beyond the requirements of the FAL Convention should be communicated in a format to be developed on the basis of FAL Convention standards.
- (14) This Directive should not affect Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code<sup>(22)</sup>, Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code<sup>(23)</sup>, Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code)<sup>(24)</sup>, or national legislation in the area of border control for those Member States which do not apply the Schengen border control acquis, and Regulation (EC) No 450/2008 of the European Parliament and of the Council of 23 April 2008 laying down the Community Customs Code (Modernised Customs Code)<sup>(25)</sup>.
- (15) In the interest of making the electronic transmission of information standard and for the facilitation of maritime transport, Member States should extend the use of electronic means of transmitting data according to an adequate timetable, and should, in cooperation with the Commission, discuss the possibility of harmonising the use of electronic means of transmitting data. To this end, consideration should be given to the work of the High Level Steering Group for the SafeSeaNet system as regards the SafeSeaNet road map, when adopted, and to the concrete funding requirements and respective allocation of Union financial means for the development of electronic transmission of data.
- (16) Ships operating between ports situated in the customs territory of the Union should be exempt from the obligation to send the information referred to in the FAL forms, where the ships do not come from, call at or are headed towards a port situated outside that territory or a free zone subject to type I controls within the meaning of customs legislation, without prejudice to the applicable legal acts of the Union and the information Member States may request in order to protect internal order and security and to enforce customs, fiscal, immigration, environmental or sanitary laws.
- (17) Exemptions from administrative formalities should also be permitted on the basis of the ship's cargo, not merely on the basis of its destination and/or place of departure. This is necessary to ensure that additional formalities for ships that have called at a port in a third country or a free zone are minimised. The Commission should examine this issue within the framework of the report to the European Parliament and the Council on the functioning of this Directive.
- (18) A new temporary form should be introduced in order to harmonise the information required for the prior Declaration of Security provided for by Regulation (EC) No 725/2004.
- (19) National language requirements are often an obstacle to the development of the coastal shipping network. The Member States should make all possible efforts to facilitate written and oral communication in maritime traffic between Member States, in accordance with international practice, with a view to finding common means of communication.
- (20) The Commission should be empowered to adopt delegated acts in accordance with Article 290 of the Treaty on the Functioning of the European Union in respect of the Annex to this Directive. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level.

<sup>(22)</sup> OJ L 302, 19.10.1992, p. 1

<sup>(23)</sup> OJ L 253, 11.10.1993, p. 1.

<sup>(24)</sup> OJ L 105, 13.4.2006, p. 1.

<sup>(25)</sup> OJ L 145, 4.6.2008, p. 1.

- (21) The various legal acts of the Union requiring, for example, pre-notification formalities at the entry into ports, such as Directive 2009/16/EC, may impose different time limits for the accomplishment of these pre-notification formalities. The Commission should examine the possibility of shortening and harmonising these time-limits, taking advantage of ongoing progress in electronic data processing in the framework of the report to the European Parliament and the Council on the functioning of this Directive which should contain, if appropriate, a legislative proposal.
- (22) Within the framework of the report to the European Parliament and the Council on the functioning of this Directive, the Commission should consider how far the purpose of this Directive, namely the simplification of administrative formalities for ships arriving in and/or departing from ports of the Member States, should be extended to the areas inland of those ports, particularly to river transport, with a view to the quicker and smoother movement of maritime traffic inland and a lasting solution to congestion in and around seaports.
- (23) Since the objectives of this Directive, in particular to facilitate maritime transport in a harmonised way across the Union, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of the action, be better achieved at Union level, the Union may take measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. 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.
- (24) According to the case-law of the Court of Justice of the European Union, where transposition of a directive is pointless for reasons of geography, this transposition is not mandatory. Therefore, requirements foreseen in this Directive are not relevant for Member States which do not have any ports at which ships falling under the scope of this Directive normally can call.
- (25) The measures stipulated in this Directive help achieve the objectives of the Lisbon Agenda.
- (26) Access to SafeSeaNet and to other electronic systems should be regulated in order to protect commercial and confidential information and without prejudice to the applicable law on the protection of commercial data and, in respect of personal data, 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>(26)</sup> and to Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data <sup>(27)</sup>. The Member States and the Union institutions and bodies should pay particular attention to the need to protect commercial and confidential information through appropriate access control systems.
- (27) In accordance with point 34 of the Interinstitutional Agreement on better law-making <sup>(28)</sup>, Member States are encouraged to draw up, for themselves and in the interest of the Union, their own tables, which will, as far as possible, illustrate the correlation between this Directive and the transposition measures, and to make them public.
- (28) In the interest of clarity, Directive 2002/6/EC should be replaced by this Directive,

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<sup>(26)</sup> OJ L 281, 23.11.1995, p. 31.

<sup>(27)</sup> OJ L 8, 12.1.2001, p. 1.

<sup>(28)</sup> OJ C 321, 31.12.2003, p. 1.

HAVE ADOPTED THIS DIRECTIVE:

*Article 1*

**Subject matter and scope**

1. The purpose of this Directive is to simplify and harmonise the administrative procedures applied to maritime transport by making the electronic transmission of information standard and by rationalising reporting formalities.
2. This Directive shall apply to the reporting formalities applicable to maritime transport for ships arriving in and ships departing from ports situated in Member States.
3. This Directive shall not apply to ships exempted from reporting formalities.

*Article 2*

**Definitions**

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

- (a) 'reporting formalities' means the information set out in the Annex which, in accordance with the legislation applicable in a Member State, must be provided for administrative and procedural purposes when a ship arrives in or departs from a port in that Member State;
- (b) 'FAL Convention' means the IMO Convention on Facilitation of International Maritime Traffic, adopted on 9 April 1965, as amended;
- (c) 'FAL forms' means the standardised forms, as provided for in the FAL Convention;
- (d) 'ship' means any seagoing vessel or craft;
- (e) 'SafeSeaNet' means the Union maritime information exchange system as defined in Directive 2002/59/EC;
- (f) 'electronic transmission of data' means the process of transmitting information that has been encoded digitally, using a revisable structured format which can be used directly for storage and processing by computers.

*Article 3*

**Harmonisation and coordination of reporting formalities**

1. Each Member State shall take measures to ensure that the reporting formalities are requested in a harmonised and coordinated manner within that Member State.
2. The Commission shall, in cooperation with the Member States, develop mechanisms for the harmonisation and coordination of reporting formalities within the Union.

*Article 4*

**Notification prior to arrival into ports**

Subject to specific provisions on notification provided for in the applicable legal acts of the Union or under international legal instruments applicable to maritime transport and binding on the Member States, including provisions on control of persons and goods, Member States shall ensure that the master or any other person duly authorised by the operator of the ship provides notification, prior to arriving in a port situated in a Member State, of the information required under the reporting formalities to the competent authority designated by that Member State:

- (a) at least 24 hours in advance; or
- (b) at the latest, at the time the ship leaves the previous port, if the voyage time is less than 24 hours; or

- (c) if the port of call is not known or it is changed during the voyage, as soon as this information is available.

#### Article 5

### Electronic transmission of data

1. Member States shall accept the fulfilment of reporting formalities in electronic format and their transmission via a single window as soon as possible and in any case no later than 1 June 2015.

This single window, linking SafeSeaNet, e-Customs and other electronic systems, shall be the place where, in accordance with this Directive, all information is reported once and made available to various competent authorities and the Member States.

2. Without prejudice to the relevant format set out in the FAL Convention, the format referred to in paragraph 1 shall comply with Article 6.

3. Where reporting formalities are required by legal acts of the Union and to the extent necessary for the good functioning of the single window established pursuant to paragraph 1, the electronic systems referred to in paragraph 1 must be interoperable, accessible and compatible with the SafeSeaNet system established in accordance with Directive 2002/59/EC and, where applicable, with the computer systems stipulated in Decision No 70/2008/EC of the European Parliament and of the Council of 15 January 2008 on a paperless environment for customs and trade<sup>(29)</sup>.

4. Without prejudice to specific provisions on customs and border control set out in Regulation (EEC) No 2913/92 and Regulation (EC) No 562/2006, Member States shall consult economic operators and inform the Commission of progress made using the methods stipulated in Decision No 70/2008/EC.

#### Article 6

### Exchange of data

1. Member States shall ensure that information received in accordance with the reporting formalities provided in a legal act of the Union is made available in their national SafeSeaNet systems and shall make relevant parts of such information available to other Member States via the SafeSeaNet system. Unless otherwise provided by a Member State, this shall not apply to information received pursuant to Regulation (EEC) No 2913/92, Regulation (EEC) No 2454/93, Regulation (EC) No 562/2006 and Regulation (EC) No 450/2008.

2. Member States shall ensure that the information received in accordance with paragraph 1 is accessible, upon request, to the relevant national authorities.

3. The underlying digital format of the messages to be used within national SafeSeaNet systems in accordance with paragraph 1 shall be established in accordance with Article 22a of Directive 2002/59/EC.

4. Member States may provide relevant access to the information referred to in paragraph 1 either through a national single window via an electronic data exchange system or through the national SafeSeaNet systems.

#### Article 7

### Information in FAL forms

Member States shall accept FAL forms for the fulfilment of reporting formalities. Member States may accept that information required in accordance with a legal act of the Union is provided in a paper format until 1 June 2015 only.

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<sup>(29)</sup> OJ L 23, 26.1.2008, p. 21.

*Article 8***Confidentiality**

1. Member States shall, in accordance with the applicable legal acts of the Union or national legislation, take the necessary measures to ensure the confidentiality of commercial and other confidential information exchanged in accordance with this Directive.
2. Member States shall take particular care to protect commercial data collected under this Directive. In respect of personal data, Member States shall ensure that they comply with Directive 95/46/EC. The Union institutions and bodies shall ensure that they comply with Regulation (EC) No 45/2001.

*Article 9***Exemptions**

Member States shall ensure that ships falling within the scope of Directive 2002/59/EC and operating between ports situated in the customs territory of the Union, but which do not come from, call at or are headed towards a port situated outside that territory or a free zone subject to type I controls under customs legislation, are exempt from the obligation to send the information referred to in the FAL forms, without prejudice to the applicable legal acts of the Union and the possibility that Member States may request information in the FAL forms referred to in points 1 to 6 of Part B of the Annex to this Directive which is necessary to protect internal order and security and to enforce customs, fiscal, immigration, environmental or sanitary laws.

*Article 10***Amendment procedure**

1. The Commission may adopt delegated acts, in accordance with Article 290 of the Treaty on the Functioning of the European Union, as regards the Annex to this Directive, so as to ensure that account is taken of any relevant changes to the FAL forms introduced by the IMO. These amendments shall not have the effect of widening the scope of this Directive.
2. For the delegated acts referred to in this Article, the procedures set out in Articles 11, 12 and 13 shall apply.

*Article 11***Exercise of the delegation**

1. The power to adopt the delegated acts referred to in Article 10 shall be conferred on the Commission for a period of 5 years from 18 November 2010. The Commission shall make a report in respect of the delegated powers at the latest 6 months before the end of the 5-year period. The delegation of power shall be automatically extended for periods of an identical duration, unless the European Parliament or the Council revokes it in accordance with Article 12.
2. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
3. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in Articles 12 and 13.

*Article 12***Revocation of the delegation**

1. The delegation of powers referred to in Article 10 may be revoked by the European Parliament or by the Council at any time.
2. The institution which has commenced an internal procedure for deciding whether to revoke the delegation of powers shall endeavour to inform the other institution and the Commission within a reasonable time before the final

decision is taken, indicating the delegated powers which could be subject to revocation and possible reasons for a revocation.

3. The decision of revocation shall put an end to the delegation of the powers specified in that decision. It shall take effect immediately or at a later date specified therein. It shall not affect the validity of the delegated acts already in force. It shall be published in the *Official Journal of the European Union*.

#### Article 13

### Objections to delegated acts

1. The European Parliament or the Council may object to a delegated act within a period of 2 months from the date of notification.

At the initiative of the European Parliament or the Council that period shall be extended by 2 months.

2. Where, on expiry of the initial 2-month period or, if applicable, the extended period, neither the European Parliament nor the Council has objected to the delegated act, it shall be published in the *Official Journal of the European Union* and enter into force on the date stated therein.

The delegated act may be published in the *Official Journal of the European Union* and enter into force before the expiry of the initial 2-month period or, if applicable, the extended period where the European Parliament and the Council have both informed the Commission of their intention not to raise objections.

3. Where the European Parliament or the Council objects to a delegated act, it shall not enter into force. The institution which objects shall state the reasons for objecting to the delegated act.

#### Article 14

### Transposition

1. Member States shall adopt and publish, by 19 May 2012 the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.

They shall apply those provisions from 19 May 2012.

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

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 15

### Report

The Commission shall report to the European Parliament and the Council, by 19 November 2013, on the functioning of this Directive, including on the:

- (a) possibility of extending the simplification introduced by this Directive to cover inland waterway transport;
- (b) compatibility of the River Information Services with the electronic data transmission process referred to in this Directive;

- (c) progress towards harmonisation and coordination of reporting formalities that has been achieved under Article 3;
- (d) feasibility of avoiding or simplifying formalities for ships that have called at a port in a third country or free zone;
- (e) available data concerning ship traffic/movement within the Union, and/or calling at third country ports or in free zones.

The report shall, if appropriate, be accompanied by a legislative proposal.

*Article 16*

**Repeal of Directive 2002/6/EC**

Directive 2002/6/EC shall be repealed as of 19 May 2012. Any references to the repealed Directive shall be construed as references to this Directive.

*Article 17*

**Addressees**

This Directive is addressed to the Member States.

Done at Strasbourg, 20 October 2010.

*For the European Parliament*

*The President*

J. BUZEK

*For the Council*

*The President*

O. CHASTEL

# PART IV — SEAFARERS

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### PART IV – SEAFARERS

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**DIRECTIVE 2008/106/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**  
**of 19 November 2008**

**on the minimum level of training of seafarers**

(recast)

amended by Directive 2012/35/EU

(consolidated version without annexes <sup>(1)</sup>)

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>(2)</sup>,

After consulting the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the Treaty <sup>(3)</sup>,

Whereas:

- (1) Directive 2001/25/EC of the European Parliament and of the Council of 4 April 2001 on the minimum level of training of seafarers <sup>(4)</sup> has been significantly amended on several occasions <sup>(5)</sup>. Now that new amendments are being made to that Directive, it is desirable, for reasons of clarity, that the provisions in question should be recast.
- (2) Actions to be taken at Community level in the field of maritime safety and pollution prevention at sea should be in line with internationally agreed rules and standards.
- (3) In order to maintain and develop the level of knowledge and skills in the maritime sector in the Community, it is important to pay appropriate attention to maritime training and the status of seafarers in the Community.
- (4) A consistent level of training for the award of vocational competency certificates to seafarers should be ensured in the interests of maritime safety.
- (5) Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications <sup>(6)</sup> applies to maritime occupations covered by this Directive. It will help promote compliance with the obligations laid down in the Treaty abolishing obstacles to the free movement of persons and services between Member States.
- (6) The mutual recognition of diplomas and certificates provided for under Directive 2005/36/EC does not always ensure a standardised level of training for all seafarers serving on board vessels flying the flag of a Member State. This is, however, vital from the viewpoint of maritime safety.

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<sup>(1)</sup> Complete version is available on the website of DG MOVE, Safety and Environment, Union Legislation on Maritime Safety.

<sup>(2)</sup> OJ C 151, 17.6.2008, p. 35.

<sup>(3)</sup> Opinion of the European Parliament of 17 June 2008 (not yet published in the Official Journal) and Council Decision of 20 October 2008.

<sup>(4)</sup> OJ L 136, 18.5.2001, p. 17.

<sup>(5)</sup> See Annex III, Part A.

<sup>(6)</sup> OJ L 255, 30.9.2005, p. 22.

- (7) It is therefore essential to define a minimum level of training for seafarers in the Community. That level should be based on the standards of training already agreed at international level, namely the International Maritime Organisation (IMO) Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW Convention), as revised in 1995. All Member States are Parties to that Convention.
- (8) Member States may establish standards higher than the minimum standards laid down in the STCW Convention and this Directive.
- (9) The Regulations of the STCW Convention annexed to this Directive should be supplemented by the mandatory provisions contained in Part A of the Seafarers' Training, Certification and Watchkeeping Code (STCW Code). Part B of the STCW Code contains recommended guidance intended to assist Parties to the STCW Convention and those involved in implementing, applying or enforcing its measures to give the Convention full and complete effect in a uniform manner.
- (10) For the enhancement of maritime safety and pollution prevention at sea, provisions on minimum rest periods for watchkeeping personnel should be established in this Directive in accordance with the STCW Convention. Those provisions should be applied without prejudice to the provisions of 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>(7)</sup>.
- (11) Member States should take and enforce specific measures to prevent and penalise fraudulent practices associated with certificates of competency as well as pursue their efforts within the IMO to achieve strict and enforceable agreements on the worldwide combating of such practices.
- (12) In order to enhance maritime safety and prevent loss of human life and maritime pollution, communication among crew members on board ships sailing in Community waters should be improved.
- (13) Personnel on board passenger ships nominated to assist passengers in emergency situations should be able to communicate with the passengers.
- (14) Crews serving on board tankers carrying noxious or polluting cargo should be capable of coping effectively with accident prevention and emergency situations. It is paramount that a proper communication link between the master, officers and ratings is established, covering the requirements provided for in this Directive.
- (15) It is essential to ensure that seafarers holding certificates issued by third countries and serving on board Community ships have a level of competence equivalent to that required by the STCW Convention. This Directive should lay down procedures and common criteria for the recognition by the Member States of certificates issued by third countries, based on the training and certification requirements as agreed in the framework of the STCW Convention.
- (16) In the interests of safety at sea, Member States should recognise qualifications proving the required level of training only where these are issued by or on behalf of Parties to the STCW Convention which have been identified by the IMO Maritime Safety Committee (MSC) as having been shown to have given, and still to be giving, full effect to the standards set out in that Convention. To bridge the time gap until the MSC has been able to carry out such identification, a procedure for the preliminary recognition of certificates is needed.
- (17) Where appropriate, maritime institutes, training programmes and courses should be inspected. Criteria for such inspection should therefore be established.

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<sup>(7)</sup> OJL 167, 2.7.1999, p. 33.

- (18) The Commission should be assisted by a committee in carrying out the tasks related to the recognition of certificates issued by training institutes or administrations of third countries.
- (19) The European Maritime Safety Agency established by Regulation (EC) No 1406/2002 of the European Parliament and of the Council <sup>(8)</sup> should assist the Commission in verifying that Member States comply with the requirements laid down in this Directive.
- (20) Member States, as port authorities, are required to enhance safety and prevention of pollution in Community waters through priority inspection of vessels flying the flag of a third country which has not ratified the STCW Convention, thereby ensuring no more favourable treatment to vessels flying the flag of a third country.
- (21) It is appropriate to include in this Directive provisions on port State control, pending the amendment of Council Directive 95/21/EC <sup>(9)</sup> on port State control of shipping in order to transfer to that Directive the provisions on port State control which are included in this Directive.
- (22) It is necessary to provide for procedures for adapting this Directive to changes in international conventions and codes.
- (23) 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>(10)</sup>.
- (24) In particular the Commission should be empowered to amend this Directive in order to apply, for the purposes of this Directive, subsequent amendments to certain international codes and any relevant amendment to Community legislation. Since those measures are of general scope and are designed to amend non-essential elements of this Directive, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.
- (25) The new elements introduced into this Directive only concern the committee procedures. They therefore do not need to be transposed by the Member States.
- (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 III, Part B,

HAVE ADOPTED THIS DIRECTIVE:

#### *Article 1*

#### **Definitions**

For the purposes of this Directive:

1. 'master' means the person having command of a ship;
2. 'officer' means a member of the crew, other than the master, designated as such by national law or regulations or, in the absence of such designation, by collective agreement or custom;
3. 'deck officer' means an officer qualified in accordance with the provisions of Chapter II of Annex I;
4. 'chief mate' means the officer next in rank to the master upon whom the command of the ship will fall in the event of the incapacity of the master;

<sup>(8)</sup> OJ L 208, 5.8.2002, p. 1.

<sup>(9)</sup> OJ L 157, 7.7.1995, p. 1.

<sup>(10)</sup> OJ L 184, 17.7.1999, p. 23.

5. 'engineer officer' means an officer qualified in accordance with the provisions of Chapter III of Annex I;
6. 'chief engineer officer' means the senior engineer officer responsible for the mechanical propulsion and the operation and maintenance of the mechanical and electrical installations of the ship;
7. 'second engineer officer' means the engineer officer next in rank to the chief engineer officer upon whom the responsibility for the mechanical propulsion and the operation and maintenance of the mechanical and electrical installations of the ship will fall in the event of the incapacity of the chief engineer officer;
8. 'assistant engineer officer' means a person under training to become an engineer officer and designated as such by national law or regulations;
9. 'radio operator' means a person holding an appropriate certificate issued or recognised by the competent authorities under the provisions of the Radio Regulations;
10. 'rating' means a member of the ship's crew other than the master or an officer;
11. 'seagoing ship' means a ship other than those which navigate exclusively in inland waters or in waters within, or closely adjacent to, sheltered waters or areas where port regulations apply;
12. '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; a ship not corresponding to this definition shall be regarded as a ship flying the flag of a third country;
13. 'near-coastal voyages' means voyages in the vicinity of a Member State as defined by that Member State;
14. 'propulsion power' means the total maximum continuous rated output power in kilowatts of all of a ship's main propulsion machinery which appears on the ship's certificate of registry or other official document;
15. 'oil-tanker' means a ship constructed and used for the carriage of petroleum and petroleum products in bulk;
16. 'chemical tanker' means a ship constructed or adapted and used for the carriage in bulk of any liquid product listed in Chapter 17 of the International Bulk Chemical Code, in its up-to-date version;
17. 'liquefied-gas tanker' means a ship constructed or adapted and used for the carriage in bulk of any liquefied gas or other product listed in Chapter 19 of the International Gas Carrier Code, in its up-to-date version;
18. 'Radio Regulations' means the radio regulations annexed to, or regarded as being annexed to, the International Telecommunication Convention, as amended;
19. 'passenger ship' means a ship as defined in the International Convention for the Safety of Life at Sea, 1974 (SOLAS 74), as amended;
20. 'fishing vessel' shall mean a vessel used for catching fish or other living resources of the sea;
21. 'STCW Convention' means the International Maritime Organisation (IMO) Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as it applies to the matters concerned taking into account the transitional provisions of Article VII and Regulation I/15 of the Convention and including, where appropriate, the applicable provisions of the STCW Code, all being applied in their up-to-date versions;
22. 'radio duties' includes, as appropriate, watchkeeping and technical maintenance and repairs conducted in accordance with the Radio Regulations, the International Convention for the Safety of Life at Sea, 1974 (SOLAS 74) and, at the discretion of each Member State, the relevant recommendations of the IMO, in their up-to-date versions;

23. 'ro-ro passenger ship' means a passenger ship with ro-ro cargo spaces or special-category spaces as defined in the SOLAS 74, in its up-to-date version;
24. 'STCW Code' means the Seafarers' Training, Certification and Watchkeeping (STCW) Code as adopted by the 1995 Conference resolution 2, in its up-to-date version;
25. 'function' means a group of tasks, duties and responsibilities, as specified in the STCW Code, necessary for ship operation, safety of life at sea or protection of the marine environment;
26. '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 shipowner and who, on assuming such responsibility, has agreed to take over all the duties and responsibilities imposed on the company by this Directive;
- 
28. 'seagoing service' means service on board a ship relevant to the issue or revalidation of a certificate of competency, certificate of proficiency or other qualification;
29. 'approved' means approved by a Member State in accordance with this Directive;
30. 'third country' means any country which is not a Member State;
31. 'month' means a calendar month or 30 days made up of periods of less than one month;
32. 'GMDSS radio operator' means a person qualified in accordance with Chapter IV of Annex I;
33. 'ISPS Code' means the International Ship and Port Facility Security Code adopted on 12 December 2002, by resolution 2 of the Conference of Contracting Governments to the SOLAS 74, in its up-to-date version;
34. 'ship security officer' means the person on board a ship, accountable to the master, designated by the company as responsible for the security of the ship including implementation and maintenance of the ship security plan and liaison with the company security officer and port facility security officers;
35. 'security duties' include all security tasks and duties on board ships as defined by Chapter XI/2 of the SOLAS 74, as amended, and by the ISPS Code;
36. 'certificate of competency' means a certificate issued and endorsed for masters, officers and GMDSS radio operators in accordance with Chapters II, III, IV or VII of Annex I, and entitling the lawful holder thereof to serve in the capacity and perform the functions involved at the level of responsibility specified therein;
37. 'certificate of proficiency' means a certificate, other than a certificate of competency, issued to a seafarer stating that the relevant requirements of training, competencies or sea-going service in this Directive have been met;
38. 'documentary evidence' means documentation, other than a certificate of competency or certificate of proficiency, used to establish that the relevant requirements in this Directive have been met;
39. 'electro-technical officer' means an officer qualified in accordance with Chapter III of Annex I;
40. 'able seafarer deck' means a rating qualified in accordance with Chapter II of Annex I;
41. 'able seafarer engine' means a rating qualified in accordance with Chapter III of Annex I;
42. 'electro-technical rating' means a rating qualified in accordance with Chapter III of Annex I.

## *Article 2*

### **Scope**

This Directive shall apply to the seafarers mentioned in this Directive serving on board seagoing ships flying the flag of a Member State with the exception of:

- (a) warships, naval auxiliaries or other ships owned or operated by a Member State and engaged only on government non-commercial service;
- (b) fishing vessels;
- (c) pleasure yachts not engaged in trade;
- (d) wooden ships of primitive build.

## *Article 3*

### **Training and certification**

1. Member States shall take the measures necessary to ensure that seafarers serving on ships as referred to in Article 2 are trained as a minimum in accordance with the requirements of the STCW Convention, as laid down in Annex I to this Directive, and hold certificates as defined in points (36) and (37) of Article 1, and/or documentary evidence as defined in point (38) of Article 1.
2. Member States shall take the measures necessary to ensure that those crew members that must be certified in accordance with Regulation III/10.4 of the SOLAS 74 are trained and certificated in accordance with this Directive.

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## *Article 5*

### **Certificates of competency, certificates of proficiency and endorsements**

1. Member States shall ensure that certificates of competency and certificates of proficiency are issued only to candidates who comply with the requirements of this Article.
2. Certificates for masters, officers and radio operators shall be endorsed by the Member State as prescribed in this Article.
3. Certificates of competency and certificates of proficiency shall be issued in accordance with Regulation I/2, paragraph 3 of the Annex to the STCW Convention.
- 3a. Certificates of competency shall be issued only by the Member States, following verification of the authenticity and validity of any necessary documentary evidence and in accordance with the provisions laid down in this Article.
4. In respect of radio operators, Member States may:
  - (a) include the additional knowledge required by the relevant regulations in the examination for the issue of a certificate complying with the Radio Regulations; or
  - (b) issue a separate certificate indicating that the holder has the additional knowledge required by the relevant regulations.
5. At the discretion of a Member State endorsements may be incorporated in the format of the certificates being issued as provided for in section A-I/2 of the STCW Code. If so incorporated the form used shall be that set out in section A-I/2, paragraph 1. If issued otherwise, the form of endorsements used shall be that set out in paragraph 2 of that section. Endorsements shall be issued in accordance with Article VI, paragraph 2, of the STCW Convention.

Endorsements attesting the issue of a certificate of competency and endorsements attesting a certificate of proficiency issued to masters and officers in accordance with the Regulations V/1-1 and V/1-2 of Annex I shall be issued only if all the requirements of the STCW Convention and this Directive have been complied with.

6. A Member State which recognises a certificate of competency, or a certificate of proficiency, issued to masters and officers in accordance with Regulations V/1-1 and V/1-2 of the Annex to the STCW Convention under the procedure laid down in Article 19(2) of this Directive shall endorse that certificate to attest its recognition only after ensuring the authenticity and validity of the certificate. The form of the endorsement used shall be that set out in paragraph 3 of Section A-I/2 of the STCW Code.

7. The endorsements referred to in paragraphs 5 and 6:

- (a) may be issued as separate documents;
- (b) shall be issued by Member States only;
- (c) shall each be assigned a unique number, except for endorsements attesting the issue of a certificate of competency, which may be assigned the same number as the certificate of competency concerned, provided that that number is unique; and
- (d) shall each expire as soon as the endorsed certificate of competency or certificate of proficiency issued to masters and officers in accordance with Regulations V/1-1 and V/1-2 of the Annex to the STCW Convention expires or is withdrawn, suspended or cancelled by the Member State or third country which issued it and, in any case, within five years of their date of issue.

8. The capacity in which the holder of a certificate is authorised to serve shall be identified in the form of endorsement in terms identical to those used in the applicable safe-manning requirements of the Member State concerned.

9. A Member State may use a format different from the format laid down in section A-I/2 of the STCW Code, provided that, as a minimum, the required information is provided in Roman characters and Arabic figures, taking account of the variations permitted under section A-I/2.

10. Subject to Article 19(7) any certificate required by this Directive shall be kept available in its original form on board the ship on which the holder is serving.

11. Candidates for certification shall provide satisfactory proof:

- (a) of their identity;
- (b) that their age is not less than that prescribed in the Regulations listed in Annex I relevant to the certificate of competency or certificate of proficiency applied for;
- (c) that they meet the standards of medical fitness, specified in Section A-I/9 of the STCW Code;
- (d) that they have completed the seagoing service and any related compulsory training prescribed in the Regulations listed in Annex I for the certificate of competency or certificate of proficiency applied for; and
- (e) that they meet the standards of competence prescribed in the Regulations listed in Annex I for the capacities, functions and levels that are to be identified in the endorsement of the certificate of competency.

This paragraph shall not apply to recognition of endorsements under Regulation I/10 of the STCW Convention.

12. Each Member State shall undertake:

- (a) to maintain a register or registers of all certificates of competency and certificates of proficiency and endorsements for masters and officers and, where applicable, ratings which are issued, have expired or have been revalidated, suspended, cancelled or reported as lost or destroyed, as well as of dispensations issued;
- (b) to make available information on the status of certificates of competency, endorsements and dispensations to other Member States or other Parties to the STCW Convention and companies which request verification of the authenticity and validity of certificates of competency and/or certificates issued to masters and officers in accordance with Regulations V/1-1 and V/1-2 of Annex I produced to them by seafarers seeking recognition, under Regulation 1/10 of the STCW Convention, or employment on board ship.

13. As of 1 January 2017, the information required to be available in accordance with point (b) of paragraph 12 shall be made available by electronic means.

#### *Article 5a*

### **Information to the Commission**

Each Member State shall make available to the Commission on a yearly basis the information indicated in Annex V to this Directive on certificates of competency, endorsements attesting the recognition of certificates of competency as well as, on a voluntary basis, certificates of proficiency issued to ratings in accordance with Chapters II, III, and VII of the Annex to the STCW Convention, for the purposes of statistical analysis only and exclusively for use by Member States and the Commission in policy-making.

#### *Article 6*

### **Training requirements**

The training required pursuant to Article 3 shall be in a form appropriate to the theoretical knowledge and practical skills required by Annex I, in particular the use of life saving and fire-fighting equipment, and approved by the competent authority or body designated by each Member State.

#### *Article 7*

### **Principles governing near-coastal voyages**

1. When defining near-coastal voyages Member States shall not impose training, experience or certification requirements on seafarers serving on board ships entitled to fly the flag of another Member State or another Party to the STCW Convention and engaged in such voyages in a manner resulting in more stringent requirements for such seafarers than for seafarers serving on board ships entitled to fly their own flag. In no case shall a Member State impose requirements in respect of seafarers serving on board ships flying the flag of another Member State or of another Party to the STCW Convention in excess of those of this Directive in respect of ships not engaged in near-coastal voyages.

1a. A Member State, for ships afforded the benefits of the near-coastal voyage provisions of the STCW Convention, which includes voyages off the coast of other Member States or of Parties to the STCW Convention within the limits of their near-coastal definition, shall enter into an undertaking with the Member States or Parties concerned specifying both the details of the trading areas involved and other relevant provisions.

2. With respect to ships entitled to fly the flag of a Member State regularly engaged in near-coastal voyages off the coast of another Member State or of another Party to the STCW Convention, the Member State the flag of which a ship is entitled to fly shall prescribe training, experience and certification requirements for seafarers serving on such ships at least equal to those of the Member State or the Party to the STCW Convention off the coast of which the ship is engaged, provided that they do not exceed the requirements of this Directive in respect of ships not engaged in near-coastal voyages. Seafarers serving on a ship which extends its voyage beyond what is defined as a near-coastal voyage by a Member State and enters waters not covered by that definition shall fulfil the appropriate requirements of this Directive.

3. A Member State may afford a ship which is entitled to fly its flag the benefits of the near-coastal voyage provisions of this Directive when it is regularly engaged off the coast of a non-Party to the STCW Convention on near-coastal voyages as defined by that Member State.

3a. The certificates of competency of seafarers issued by a Member State or a Party to the STCW Convention for its defined near-coastal voyage limits may be accepted by other Member States for service in their defined near-coastal voyage limits, provided the Member States or Parties concerned enter into an undertaking specifying the details of the trading areas involved and other relevant conditions thereof.

3b. Member States defining near-coastal voyages, in accordance with the requirements of this Article, shall:

- (a) meet the principles governing near-coastal voyages specified in Section A-I/3 of the STCW Code;
- (b) incorporate the near-coastal voyage limits in the endorsements issued pursuant to Article 5.

4. Upon deciding on the definition of near-coastal voyages and the conditions of education and training required thereof in accordance with the requirements of paragraphs 1, 2 and 3, Member States shall communicate to the Commission the details of the provisions they have adopted.

#### *Article 8*

### **Prevention of fraud and other unlawful practices**

1. Member States shall take and enforce appropriate measures to prevent fraud and other unlawful practices involving certificates and endorsements issued, and shall provide for penalties that are effective, proportionate and dissuasive.

2. Member States shall designate the national authorities competent to detect and combat fraud and other unlawful practices and exchange information with the competent authorities of other Member States and of third countries concerning the certification of seafarers.

Member States shall forthwith inform the other Member States and the Commission of the details of such competent national authorities.

Member States shall also forthwith inform any third countries with which they have entered into an undertaking in accordance with Regulation I/10, paragraph 1.2 of the STCW Convention of the details of such competent national authorities.

3. At the request of a host Member State, the competent authorities of another Member State shall provide written confirmation or denial of the authenticity of seafarers' certificates, corresponding endorsements or any other documentary evidence of training issued in that other Member State.

#### *Article 9*

### **Penalties or disciplinary measures**

1. Member States shall establish processes and procedures for the impartial investigation of any reported incompetence, act, omission or compromise to security that may pose a direct threat to safety of life or property at sea or to the marine environment, on the part of the holders of certificates of competency and certificates of proficiency or endorsements issued by that Member State in connection with their performance of duties relating to their certificates of competency and certificates of proficiency and for the withdrawal, suspension and cancellation of such certificates of competency and certificates of proficiency for such cause and for the prevention of fraud.

2. Member States shall take and enforce appropriate measures to prevent fraud and other unlawful practices involving certificates of competency and certificates of proficiency and endorsements issued.

3. Penalties or disciplinary measures shall be prescribed and enforced in cases in which:
  - (a) a company or a master has engaged a person not holding a certificate as required by this Directive;
  - (b) a master has allowed any function or service in any capacity which under this Directive must be performed by a person holding an appropriate certificate to be performed by a person not holding the required certificate, a valid dispensation or having the documentary proof required by Article 19(7); or
  - (c) a person has obtained by fraud or forged documents an engagement to perform any function or serve in any capacity which under this Directive must be performed or fulfilled by a person holding a certificate or dispensation.
4. Member States within the jurisdiction of which any company which or any person who is believed on clear grounds to have been responsible for or to have knowledge of any apparent non-compliance with this Directive specified in paragraph 3, is located shall extend cooperation to any Member State or other Party to the STCW Convention which advises them of its intention to initiate proceedings under its jurisdiction.

#### *Article 10*

#### **Quality standards**

1. Each Member State shall ensure that:
  - (a) all training, assessment of competence, certification, including medical certification, endorsement and revalidation activities carried out by non-governmental agencies or entities under their authority are continuously monitored through a quality standards system to ensure the achievement of defined objectives, including those concerning the qualifications and experience of instructors and assessors, in accordance with Section A-I/8 of the STCW Code;
  - (b) where governmental agencies or entities perform such activities, there is a quality standards system in accordance with Section A-I/8 of the STCW Code;
  - (c) education and training objectives and related quality standards of competence to be achieved are clearly defined and that the levels of knowledge, understanding and skills appropriate to the examinations and assessments required under the STCW Convention are identified;
  - (d) the fields of application of the quality standards cover the administration of the certification systems, all training courses and programmes, examinations and assessments carried out by or under the authority of each Member State and the qualifications and experience required of instructors and assessors, having regard to the policies, systems, controls and internal quality-assurance reviews established to ensure achievement of the defined objectives.

The objectives and related quality standards referred to in point (c) of the first subparagraph may be specified separately for different courses and training programmes and shall cover the administration of the certification system.

2. Member States shall also ensure that independent evaluations of the knowledge, understanding, skills and competence acquisition and assessment activities, and of the administration of the certification system, are conducted at intervals of not more than five years by qualified persons who are not themselves involved in the activities concerned in order to verify that:
  - (a) all internal management control and monitoring measures and follow-up actions comply with planned arrangements and documental procedures and are effective in ensuring that the defined objectives are achieved;

- (b) the results of each independent evaluation are documented and brought to the attention of those responsible for the area evaluated;
- (c) timely action is taken to correct deficiencies;
- (d) all applicable provisions of the STCW Convention and Code, including amendments are covered by the quality standards system. Member States may also include within this system the other applicable provisions of this Directive.

3. A report relating to each evaluation carried out pursuant to paragraph 2 shall be communicated by the Member State concerned to the Commission, in accordance with the format specified in Section A-I/7 of the STCW Code, within six months of the date of the evaluation.

#### *Article 11*

#### **Medical standards**

1. Each Member State shall establish standards of medical fitness for seafarers and procedures for the issue of a medical certificate in accordance with this Article and Section A-I/9 of the STCW Code, taking into account, as appropriate, Section B-I/9 of the STCW Code.
2. Each Member State shall ensure that those responsible for assessing the medical fitness of seafarers are medical practitioners recognised by that Member State for the purpose of seafarer medical examinations, in accordance with the Section A-I/9 of the STCW Code.
3. Every seafarer holding a certificate of competency or a certificate of proficiency, issued under the provisions of the STCW Convention, who is serving at sea shall also hold a valid medical certificate issued in accordance with this Article and Section A-I/9 of the STCW Code.
4. Candidates for medical certification shall:
  - (a) be not less than 16 years of age;
  - (b) provide satisfactory proof of their identity; and
  - (c) meet the applicable medical fitness standards established by the Member State concerned.
5. Medical certificates shall remain valid for a maximum period of two years unless the seafarer is under the age of 18, in which case the maximum period of validity shall be one year.
6. If the period of validity of a medical certificate expires in the course of a voyage, Regulation I/9 of the Annex to the STCW Convention shall apply.
7. In urgent cases, a Member State may permit a seafarer to work without a valid medical certificate. In such cases, Regulation I/9 of the Annex to the STCW Convention shall apply.

#### *Article 12*

#### **Revalidation of certificates of competency and certificates of proficiency**

1. Every master, officer and radio operator holding a certificate issued or recognised under any chapter of Annex I other than Chapter VI who is serving at sea or intends to return to sea after a period ashore shall, in order to continue to qualify for seagoing service, be required at intervals not exceeding five years:
  - (a) to meet the standards of medical fitness prescribed by Article 11; and
  - (b) to establish continued professional competence in accordance with section A-I/11 of the STCW Code.

2. Every master, officer and radio operator shall, for continuing seagoing service on board ships for which special training requirements have been internationally agreed upon, successfully complete approved relevant training.
- 2a. Every master and officer shall, for continuing seagoing service on board tankers, meet the requirements of paragraph 1 of this Article and be required, at intervals not exceeding five years, to establish continued professional competence for tankers in accordance with paragraph 3 of Section A-I/11 of the STCW Code.
3. Each Member State shall compare the standards of competence which are required of candidates for certificates of competency issued until 1 January 2017 with those specified for the relevant certificate of competency in Part A of the STCW Code, and shall determine the need to require the holders of such certificates of competency to undergo appropriate refresher and updating training or assessment.
4. Each Member State shall, in consultation with those concerned, formulate or promote the formulation of a structure of refresher and updating courses as provided for in section A-I/11 of the STCW Code.
5. For the purpose of updating the knowledge of masters, officers and radio operators, each Member State shall ensure that the texts of recent changes in national and international regulations concerning the safety of life at sea, security and the protection of the marine environment are made available to ships entitled to fly its flag, while respecting point (b) of Article 14(3) and Article 18.

#### *Article 13*

#### **Use of simulators**

1. The performance standards and other provisions set out in section A-I/12 of the STCW Code and such other requirements as are prescribed in Part A of the STCW Code for any certificate concerned shall be complied with in respect of:
  - (a) all mandatory simulator-based training;
  - (b) any assessment of competence required by Part A of the STCW Code which is carried out by means of a simulator;
  - (c) any demonstration, by means of a simulator, of continued proficiency required by Part A of the STCW Code.

#### *Article 14*

#### **Responsibilities of companies**

1. In accordance with paragraphs 2 and 3 Member States shall hold companies responsible for the assignment of seafarers for service in their ships in accordance with this Directive, and shall require every company to ensure that:
  - (a) each seafarer assigned to any of its ships holds an appropriate certificate in accordance with the provisions of this Directive and as established by the Member State;
  - (b) its ships are manned in accordance with the applicable safe-manning requirements of the Member State;
  - (c) documentation and data relevant to all seafarers employed on its ships are maintained and readily accessible, and include, without being limited to, documentation and data on their experience, training, medical fitness and competence in assigned duties;
  - (d) on being assigned to any of its ships seafarers are familiarised with their specific duties and with all ship arrangements, installations, equipment, procedures, and ship characteristics that are relevant to their routine or emergency duties;
  - (e) the ship's complement can effectively coordinate their activities in an emergency situation and in performing functions vital to safety or to the prevention or mitigation of pollution;

- (f) seafarers assigned to any of its ships have received refresher and updating training as required by the STCW Convention;
  - (g) at all times on board its ships there shall be effective oral communication in accordance with paragraphs 3 and 4 of Chapter V of Regulation 14, of the SOLAS 74, as amended.
2. Companies, masters and crew members shall each have responsibility for ensuring that the obligations set out in this Article are given full and complete effect and that such other measures as may be necessary are taken to ensure that each crew member can make a knowledgeable and informed contribution to the safe operation of the ship.
3. The company shall provide written instructions to the master of each ship to which this Directive applies, setting out the policies and the procedures to be followed to ensure that all seafarers who are newly employed on board the ship are given a reasonable opportunity to become familiar with the shipboard equipment, operating procedures and other arrangements needed for the proper performance of their duties, before being assigned to those duties. Such policies and procedures shall include:
- (a) the allocation of a reasonable period of time during which each newly employed seafarer will have an opportunity to become acquainted with:
    - (i) the specific equipment the seafarer will be using or operating;
    - and
    - (ii) ship-specific watchkeeping, safety, environmental protection and emergency procedures and arrangements the seafarer needs to know to perform the assigned duties properly;
  - (b) the designation of a knowledgeable crew member who will be responsible for ensuring that each newly employed seafarer is given an opportunity to receive essential information in a language the seafarer understands.
4. Companies shall ensure that masters, officers and other personnel assigned specific duties and responsibilities on board their ro-ro passenger ships shall have completed familiarisation training to attain the abilities that are appropriate to the capacity to be filled and duties and responsibilities to be taken up, taking into account the guidance given in Section B-I/14 of the STCW Code.

#### *Article 15*

#### **Fitness for duty**

1. For the purpose of preventing fatigue, Member States shall:
- (a) establish and enforce rest periods for watchkeeping personnel and those whose duties involve designated safety, security and prevention of pollution duties in accordance with paragraphs 3 to 13;
  - (b) require that watch systems are arranged in such a way that the efficiency of watchkeeping personnel is not impaired by fatigue, and that duties are organised in such a way that the first watch at the start of a voyage and subsequent relieving watches are sufficiently rested and otherwise fit for duty.
2. Member States shall, for the purpose of preventing drug and alcohol abuse, ensure that adequate measures are established in accordance with the provisions laid down in this Article.
3. Member States shall take account of the danger posed by fatigue of seafarers, especially those whose duties involve the safe and secure operation of a ship.

4. All persons who are assigned duty as officer in charge of a watch or as a rating forming part of a watch, and those whose duties involve designated safety, prevention of pollution and security duties shall be provided with a rest period of not less than:
- (a) a minimum of 10 hours of rest in any 24-hour period; and
  - (b) 77 hours in any seven-day period.
5. The hours of rest may be divided into no more than two periods, one of which shall be at least six hours in length, and the intervals between consecutive periods of rest shall not exceed 14 hours.
6. The requirements for rest periods laid down in paragraphs 4 and 5 need not be maintained in the case of an emergency or in other overriding operational conditions. Musters, firefighting and lifeboat drills, and drills prescribed by national laws and regulations and by international instruments, shall be conducted in a manner that minimises the disturbance of rest periods and does not induce fatigue.
7. Member States shall require that watch schedules be posted where they are easily accessible. The schedules shall be established in a standardised format in the working language or languages of the ship and in English.
8. When a seafarer is on call, such as when a machinery space is unattended, the seafarer shall have an adequate compensatory rest period if the normal period of rest is disturbed by call-outs to work.
9. Member States shall require that records of daily hours of rest of seafarers be maintained in a standardised format, in the working language or languages of the ship and in English, to allow monitoring and verification of compliance with this Article. Seafarers shall receive a copy of the records pertaining to them, which shall be endorsed by the master, or by a person authorised by the master, and by the seafarers.
10. Notwithstanding the rules laid down in paragraphs 3 to 9, the master of a ship shall be entitled to require a seafarer to perform any hours of work necessary for the immediate safety of the ship, persons on board or cargo, or for the purpose of giving assistance to other ships or persons in distress at sea. Accordingly, the master may suspend the schedule of hours of rest and require a seafarer to perform any hours of work necessary until the normal situation has been restored. As soon as practicable after the normal situation has been restored, the master shall ensure that any seafarers who have performed work in a scheduled rest period are provided with an adequate period of rest.
11. With due regard for the general principles of the protection of the health and safety of workers and in line with Directive 1999/63/EC Member States may, by means of national laws, regulations or a procedure for the competent authority, authorise or register collective agreements permitting exceptions to the required hours of rest set out in point (b) of paragraph 4 and in paragraph 5 of this Article provided that the rest period is no less than 70 hours in any seven-day period and respects the limits set out in paragraphs 12 and 13 of this Article. Such exceptions shall, as far as possible, follow the standards set out but may take account of more frequent or longer leave periods, or the granting of compensatory leave for watchkeeping seafarers or seafarers working on board ships on short voyages. Exceptions shall, as far as possible, take into account the guidance regarding prevention of fatigue laid down in Section B-VIII/1 of the STCW Code. Exceptions to the minimum hours of rest provided for in point (a) of paragraph 4 of this Article shall not be allowed.
12. Exceptions referred to in paragraph 11 to the weekly rest period provided for in point (b) of paragraph 4 shall not be allowed for more than two consecutive weeks. The intervals between two periods of exceptions on board shall not be less than twice the duration of the exception.
13. In the framework of possible exceptions to paragraph 5 referred to in paragraph 11, the minimum hours of rest in any 24-hour period provided for in point (a) of paragraph 4 may be divided into no more than three periods of rest, one of which shall be at least six hours in length and neither of the two other periods shall be less than one hour in length. The intervals between consecutive periods of rest shall not exceed 14 hours. Exceptions shall not extend beyond two 24-hour periods in any seven-day period.

14. Member States shall establish, for the purpose of preventing alcohol abuse, a limit of not greater than 0,05 % blood alcohol level (BAC) or 0,25 mg/l alcohol in the breath or a quantity of alcohol leading to such alcohol concentration for masters, officers and other seafarers while performing designated safety, security and marine environmental duties.

#### *Article 16*

### **Dispensation**

1. In circumstances of exceptional necessity, competent authorities may, if in their opinion this does not cause danger to persons, property or the environment, issue a dispensation permitting a specified seafarer to serve in a specified ship for a specified period not exceeding six months in a capacity, other than that of the radio operator, except as provided by the relevant Radio Regulations, for which he or she does not hold the appropriate certificate, provided that the person to whom the dispensation is issued shall be adequately qualified to fill the vacant post in a safe manner to the satisfaction of the competent authorities. However, dispensations shall not be granted to a master or chief engineer officer, except in circumstances of force majeure and then only for the shortest possible period.

2. Any dispensation granted for a post shall be granted only to a person properly certificated to fill the post immediately below. Where certification of the post below is not required, a dispensation may be issued to a person whose qualification and experience are, in the opinion of the competent authorities, of a clear equivalence to the requirements for the post to be filled, provided that, if such a person holds no appropriate certificate, he or she shall be required to pass a test accepted by the competent authorities as demonstrating that such a dispensation may safely be issued. In addition, the competent authorities shall ensure that the post in question is filled by the holder of an appropriate certificate as soon as possible.

#### *Article 17*

### **Responsibilities of Member States with regard to training and assessment**

1. Member States shall designate the authorities or bodies which shall:
  - (a) give the training referred to in Article 3;
  - (b) organise and/or supervise the examinations where required;
  - (c) issue the certificates referred to in Article 5;
  - (d) grant the dispensations provided for in Article 16.
2. Member States shall ensure that:
  - (a) all training and assessment of seafarers is:
    - (i) structured in accordance with the written programmes, including such methods and media of delivery, procedures and course material as are necessary to achieve the prescribed standard of competence; and
    - (ii) conducted, monitored, evaluated and supported by persons qualified in accordance with points (d), (e) and (f);
  - (b) persons conducting in-service training or assessment on board ship do so only when such training or assessment will not adversely affect the normal operation of the ship and they can dedicate their time and attention to training or assessment;
  - (c) instructors, supervisors and assessors are appropriately qualified for the particular types and levels of training or assessment of competence of seafarers either on board or ashore;
  - (d) any person conducting in-service training of a seafarer, either on board or ashore, which is intended to be used in qualifying for certification under this Directive:

- (i) has an appreciation of the training programme and an understanding of the specific training objectives for the particular type of training being conducted;
- (ii) is qualified in the task for which training is being conducted; and
- (iii) if conducting training using a simulator:
  - has received appropriate guidance in instructional techniques involving the use of simulators, and
  - has gained practical operational experience on the particular type of simulator being used;
- (e) any person responsible for the supervision of the in-service training of a seafarer intended to be used in qualifying for certification has a full understanding of the training programme and the specific objectives for each type of training being conducted;
- (f) any person conducting in-service assessment of the competence of a seafarer, either on board or ashore, which is intended to be used in qualifying for certification under this Directive:
  - (i) has an appropriate level of knowledge and understanding of the competence to be assessed;
  - (ii) is qualified in the task for which the assessment is being made;
  - (iii) has received appropriate guidance in assessment methods and practice;
  - (iv) has gained practical assessment experience; and
  - (v) if conducting assessment involving the use of simulators, has gained practical assessment experience on the particular type of simulator under the supervision and to the satisfaction of an experienced assessor;
- (g) when a Member State recognises a course of training, a training institution, or a qualification granted by a training institution, as part of its requirements for the issue of a certificate, the qualifications and experience of instructors and assessors are covered in the application of the quality standard provisions of Article 10; such qualification, experience and application of quality standards shall incorporate appropriate training in instructional techniques and training and assessment methods and practice and comply with all applicable requirements of points (d), (e) and (f).

#### *Article 18*

#### **On-board communication**

Member States shall ensure that:

- (a) without prejudice to points (b) and (d), there are at all times, on board all ships flying the flag of a Member State, means in place for effective oral communication relating to safety between all members of the ship's crew, particularly with regard to the correct and timely reception and understanding of messages and instructions;
- (b) on board all passenger ships flying the flag of a Member State and on board all passenger ships starting and/or finishing a voyage in a Member State port, in order to ensure effective crew performance in safety matters, a working language is established and recorded in the ship's log-book;

the company or the master, as appropriate, shall determine the appropriate working language; each seafarer shall be required to understand and, where appropriate, give orders and instructions and report back in that language;

if the working language is not an official language of the Member State, all plans and lists that must be posted shall include translations into the working language;

- (c) on board passenger ships, personnel nominated on muster lists to assist passengers in emergency situations are readily identifiable and have communication skills that are sufficient for that purpose, taking into account an appropriate and adequate combination of any of the following factors:
  - (i) the language or languages appropriate to the principal nationalities of passengers carried on a particular route;
  - (ii) the likelihood that an ability to use elementary English vocabulary for basic instructions can provide a means of communicating with a passenger in need of assistance whether or not the passenger and crew member share a common language;
  - (iii) the possible need to communicate during an emergency by some other means (e.g. by demonstration, hand signals, or calling attention to the location of instructions, muster stations, life-saving devices or evacuation routes) when verbal communication is impractical;
  - (iv) the extent to which complete safety instructions have been provided to passengers in their native language or languages;
  - (v) the languages in which emergency announcements may be broadcast during an emergency or drill to convey critical guidance to passengers and to facilitate crew members in assisting passengers;
- (d) on board oil tankers, chemical tankers and liquefied gas tankers flying the flag of a Member State, the master, officers and rating are able to communicate with each other in (a) common working language(s);
- (e) there are adequate means for communication between the ship and the shore-based authorities; these communications shall be conducted in accordance with Chapter V, Regulation 14, paragraph 4, of the SOLAS 74;
- (f) when carrying out port State control under Directive 95/21/EC, Member States also check that ships flying the flag of a State other than a Member State comply with this Article.

#### *Article 19*

### **Recognition of certificates of competency and certificates of proficiency**

1. Seafarers who do not possess the certificates of competency issued by Member States and/or the certificates of proficiency issued by Member States to masters and officers in accordance with Regulations V/1-1 and V/1-2 of the STCW Convention, may be allowed to serve on ships flying the flag of a Member State provided that a decision on the recognition of their certificates of competency and certificates of proficiency has been adopted through the procedures set out in paragraphs 2 to 6 of this Article.

2. A Member State which intends to recognise, by endorsement, the certificates of competency and/or the certificates of proficiency referred to in paragraph 1 issued by a third country to a master, officer or radio operator, for service on ships flying its flag, shall submit a request for recognition of that third country to the Commission, stating its reasons.

The Commission, assisted by the European Maritime Safety Agency and with the possible involvement of any Member State concerned, shall collect the information referred to in Annex II and shall carry out an assessment of the training and certification systems in the third country for which the request for recognition was submitted, in order to verify whether the country concerned meets all the requirements of the STCW Convention and whether the appropriate measures have been taken to prevent fraud involving certificates.

3. The decision on the recognition of a third country shall be taken by the Commission. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 28(2), within 18 months of the date of the request for the recognition. The Member State submitting the request may decide to recognise the third country unilaterally until a decision is taken under this paragraph.

4. A Member State may decide, with respect to ships flying its flag, to endorse certificates issued by the third countries recognised by the Commission, account being taken of the provisions contained in Annex II, points (4) and (5).
5. Recognitions of certificates issued by recognised third countries and published in the *Official Journal of the European Union*, C series, before 14 June 2005 shall remain valid.

These recognitions may be used by all Member States unless the Commission has subsequently withdrawn them pursuant to Article 20.

6. The Commission shall draw up and update a list of the third countries that have been recognised. The list shall be published in the *Official Journal of the European Union*, C series.
7. Notwithstanding Article 5(6), a Member State may, if circumstances require, allow a seafarer to serve in a capacity other than radio officer or radio operator, except as provided by the Radio Regulations, for a period not exceeding three months on board a ship flying its flag, while holding an appropriate and valid certificate issued and endorsed as required by a third country, but not yet endorsed for recognition by the Member State concerned so as to render it appropriate for service on board a ship flying its flag.

Documentary proof shall be kept readily available that application for an endorsement has been submitted to the competent authorities.

#### *Article 20*

#### **Non-compliance with the requirements of the STCW Convention**

1. Notwithstanding the criteria specified in Annex II, when a Member State considers that a recognised third country no longer complies with the requirements of the STCW Convention, it shall notify the Commission immediately, giving substantiated reasons therefor.

The Commission shall without delay refer the matter to the Committee referred to in Article 28(1).

2. Notwithstanding the criteria set out in Annex II, when the Commission considers that a recognised third country no longer complies with the requirements of the STCW Convention, it shall notify the Member States immediately, giving substantiated reasons therefor.

The Commission shall without delay refer the matter to the Committee referred to in Article 28(1).

3. When a Member State intends to withdraw the endorsements of all certificates issued by a third country it shall without delay inform the Commission and the other Member States of its intention, giving substantiated reasons therefor.
4. The Commission, assisted by the European Maritime Safety Agency, shall reassess the recognition of the third country concerned in order to verify whether that country failed to comply with the requirements of the STCW Convention.
5. Where there are indications that a particular maritime training establishment no longer complies with the requirements of the STCW Convention, the Commission shall notify the country concerned that recognition of that country's certificates will be withdrawn in two months' time unless measures are taken to ensure compliance with all the requirements of the STCW Convention.
6. The decision on the withdrawal of the recognition shall be taken by the Commission. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 28(2). The Member States concerned shall take appropriate measures to implement the decision.
7. Endorsements attesting recognition of certificates, issued in accordance with Article 5(6) before the date on which the decision to withdraw recognition of the third country is taken, shall remain valid. Seafarers holding such

endorsements may not claim an endorsement recognising a higher qualification, however, unless that upgrading is based solely on additional seagoing service experience.

#### *Article 21*

##### **Reassessment**

1. The third countries that have been recognised under the procedure referred to in the first subparagraph of Article 19(3), including those referred to in Article 19(6), shall be reassessed by the Commission, with the assistance of the European Maritime Safety Agency, on a regular basis and at least every five years to verify that they fulfil the relevant criteria set out in Annex II and whether the appropriate measures have been taken to prevent fraud involving certificates.
2. The Commission shall define the priority criteria for assessment of third countries on the basis of performance data provided by the port State control pursuant to Article 23, as well as the information relating to the reports of the independent evaluations communicated by third countries pursuant to section A-1/7 of the STCW Code.
3. The Commission shall provide the Member States with a report on the results of the assessment.

#### *Article 22*

##### **Port State control**

1. Irrespective of the flag it flies, each ship, with the exception of those types of ships excluded by Article 2, shall, while in the ports of a Member State, be subject to port State control by officers duly authorised by that Member State to verify that all seafarers serving on board who are required to hold a certificate of competency and/or a certificate of proficiency and/or documentary evidence under the STCW Convention, hold such a certificate of competency or valid dispensation and/or certificate of proficiency and/or documentary evidence.
2. When exercising port State control under this Directive, Member States shall ensure that all relevant provisions and procedures laid down in Directive 95/21/EC are applied.

#### *Article 23*

##### **Port State control procedures**

1. Without prejudice to Directive 95/21/EC, port State control pursuant to Article 22 shall be limited to the following:
  - (a) verification that every seafarer serving on board who is required to hold a certificate of competency and/or a certificate of proficiency in accordance with the STCW Convention holds such a certificate of competency or valid dispensation and/or certificate of proficiency, or provides documentary proof that an application for an endorsement attesting recognition of a certificate of competency has been submitted to the authorities of the flag State;
  - (b) verification that the numbers and certificates of the seafarers serving on board are in accordance with the safe-manning requirements of the authorities of the flag State.
2. The ability of the ship's seafarers to maintain watchkeeping and security standards, as appropriate, as required by the STCW Convention shall be assessed in accordance with Part A of the STCW Code if there are clear grounds for believing that such standards are not being maintained because any of the following has occurred:
  - (a) the ship has been involved in a collision, grounding or stranding;
  - (b) there has been a discharge of substances from the ship when under way, at anchor or at berth which is illegal under an international convention;

- (c) the ship has been manoeuvred in an erratic or unsafe manner whereby routing measures adopted by the IMO, or safe navigation practices and procedures have not been followed;
- (d) the ship is otherwise being operated in such a manner as to pose a danger to persons, property or the environment, or to compromise security;
- (e) a certificate has been fraudulently obtained or the holder of a certificate is not the person to whom that certificate was originally issued;
- (f) the ship is flying the flag of a country which has not ratified the STCW Convention, or has a master, officer or rating holding a certificate issued by a third country which has not ratified the STCW Convention.

3. Notwithstanding verification of the certificate, assessment under paragraph 2 may require the seafarer to demonstrate the relevant competence at the place of duty. Such a demonstration may include verification that operational requirements in respect of watchkeeping standards have been met and that there is a proper response to emergency situations within the seafarer's level of competence.

#### *Article 24*

#### **Detention**

Without prejudice to Directive 95/21/EC, the following deficiencies, in so far as they have been determined by the officer carrying out the port State control that they pose a danger to persons, property or the environment, shall be the only grounds under this Directive on which a Member State may detain a ship:

- (a) failure of seafarers to hold certificates, to have appropriate certificates, to have valid dispensations or provide documentary proof that an application for an endorsement attesting recognition has been submitted to the authorities of the flag State;
- (b) failure to comply with the applicable safe-manning requirements of the flag State;
- (c) failure of navigational or engineering-watch arrangements to conform to the requirements specified for the ship by the flag State;
- (d) absence in a watch of a person qualified to operate equipment essential to safe navigation, safety radio communications or the prevention of marine pollution;
- (e) failure to provide proof of professional proficiency for the duties assigned to seafarers for the safety of the ship and the prevention of pollution;
- (f) 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.

#### *Article 25*

#### **Regular monitoring of compliance**

Without prejudice to the powers of the Commission under Article 226 of the Treaty, the Commission, assisted by the European Maritime Safety Agency, shall verify on a regular basis and at least every five years that Member States comply with the minimum requirements laid down by this Directive.

*Article 25a***Information for statistical purposes**

1. The Member States shall communicate the information listed in Annex V to the Commission for the purposes of statistical analysis only. Such information may not be used for administrative, legal or verification purposes, and is exclusively for use by Member States and the Commission in policy-making.
2. That information shall be made available by Member States to the Commission on a yearly basis and in electronic format and shall include information registered until 31 December of the previous year. Member States shall retain all property rights to the information in its raw data format. Processed statistics drawn up on the basis of such information shall be made publicly available in accordance with the provisions on transparency and protection of information set out in Article 4 of Regulation (EC) No 1406/2002.
3. In order to ensure the protection of personal data, Member States shall anonymise all personal information as indicated in Annex V by using software provided or accepted by the Commission before transmitting it to the Commission. The Commission shall use this anonymised information only.
4. Member States and the Commission shall ensure that measures for collecting, submitting, storing, analysing and disseminating such information are designed in such a way that statistical analysis is made possible.

For the purposes of the first subparagraph, the Commission shall adopt detailed measures regarding the technical requirements necessary to ensure the appropriate management of the statistical data. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 28(2).

*Article 26***Reports**

1. Not later than 14 December 2008 the Commission shall submit an evaluation report to the European Parliament and the Council, based on a detailed analysis and evaluation of the provisions of the STCW Convention, the implementation thereof and new insights gained with regard to the correlation between safety and the level of training of ships' crews.
2. Not later than 20 October 2010 the Commission shall submit to the European Parliament and the Council an evaluation report drawn up on the basis of the information obtained pursuant to Article 25.

In the report the Commission shall analyse the Member States' compliance with this Directive and, where necessary, make proposals for additional measures.

*Article 27***Amendment**

The Commission shall be empowered to adopt delegated acts, in accordance with Article 27a, amending Annex V to this Directive with respect to specific and relevant content and details of the information that needs to be reported by Member States provided that such acts are limited to taking into account the amendments to the STCW Convention and Code and respect the safeguards on data protection. Such delegated acts shall not change the provisions of anonymisation of data as required by Article 25a(3).

*Article 27a***Exercise of the delegation**

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The delegation of power referred to in Article 27 shall be conferred on the Commission for a period of five years from 3 January 2013. The Commission shall draw up a report in respect of the delegation of power not later than

4 April 2017. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.

3. The delegation of power referred to in Article 27 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

5. A delegated act adopted pursuant to Article 27 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or the Council.

#### 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 <sup>(1)</sup>. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers <sup>(12)</sup>.

2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply. Where the Committee delivers no opinion, the Commission shall not adopt the draft implementing act and the third subparagraph of Article 5(4) of Regulation (EU) No 182/2011 shall apply.

#### Article 29

### Penalties

Member States shall lay down systems of penalties for breaching the national provisions adopted pursuant to Articles 3, 5, 7, 9 to 15, 17, 18, 19, 22, 23, 24 and Annex I, and shall take all the measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive.

#### Article 30

### Transitional provisions

In respect of those seafarers who commenced approved seagoing service, an approved education and training programme or an approved training course before 1 July 2013, Member States may continue to issue, recognise and endorse, until 1 January 2017, certificates of competency in accordance with the requirements of this Directive as they were before 3 January 2013.

Until 1 January 2017, Member States may continue to renew and revalidate certificates of competency and endorsements in accordance with the requirements of this Directive as they were before 3 January 2013.

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

<sup>(12)</sup> OJ L 55, 28.2.2011, p. 13.

*Article 31***Communication**

Member States shall immediately communicate to the Commission the texts of all the provisions which they adopt in the field governed by this Directive.

The Commission shall inform the other Member States thereof.

*Article 32***Repeal**

Directive 2001/25/EC, as amended by the Directives listed in Annex III, Part A, is repealed, 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 III, 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 in Annex IV.

*Article 34***Addressees**

This Directive is addressed to the Member States.

**List of third countries recognised as regards the systems for training and certification  
of seafarers for the purposes of Directive 2008/10/EC**

- Algeria <sup>(13)</sup>
- Argentina <sup>(14)</sup>
- Australia <sup>(15)</sup>
- Azerbaijan <sup>(16)</sup>
- Bangladesh <sup>(17)</sup>
- Brazil <sup>(18)</sup>
- Canada <sup>(19)</sup>
- Cape Verde <sup>(20)</sup>
- Chile <sup>(21)</sup>
- China <sup>(22)</sup>
- Cuba <sup>(23)</sup>
- Ecuador <sup>(24)</sup>
- Egypt <sup>(25)</sup>
- Georgia <sup>(26)</sup>
- Ghana <sup>(27)</sup>
- Hong Kong <sup>(28)</sup>

<sup>(13)</sup> Commission Decision 2010/363/EU of 28 June 2010 on the recognition of Algeria as regards education, training and certification of seafarers for the recognition of certificates of competency (OJ L 163, 30.6.2010, p. 42).

<sup>(14)</sup> OJ C 268, 7.11.2003, p. 7; OJ C 85, 7.4.2005, p. 8; OJ C 311, 19.12.2006, p. 59.

<sup>(15)</sup> OJ C 155, 29.6.2002, p. 11; OJ C 268, 7.11.2003, p. 7; OJ C 85, 7.4.2005, p. 8; OJ C 311, 19.12.2006, p. 59.

<sup>(16)</sup> Commission Implementing Decision 2011/517/EU of 25 August 2011 on the recognition of Azerbaijan pursuant to Directive 2008/106/EC of the European Parliament and of the Council as regards the systems for the training and certification of seafarers (OJ L 220, 26.8.2011, p. 22).

<sup>(17)</sup> Commission Implementing Decision 2011/822/EU of 7 December 2011 on the recognition of Bangladesh pursuant to Directive 2008/106/EC of the European Parliament and of the Council as regards the systems for the training and certification of seafarers (OJ L 327, 9.12.2011, p. 68).

<sup>(18)</sup> OJ C 268, 7.11.2003, p. 7; OJ C 311, 19.12.2006, p. 59.

<sup>(19)</sup> OJ C 155, 29.6.2002, p. 11; OJ C 268, 7.11.2003, p. 7; OJ C 85, 7.4.2005, p. 8; OJ C 311, 19.12.2006, p. 59.

<sup>(20)</sup> Commission Implementing Decision 2011/821/EU of 7 December 2011 on the recognition of Cape Verde pursuant to Directive 2008/106/EC of the European Parliament and of the Council as regards the system for the training and certification of seafarers (OJ L 327, 9.12.2011, p. 67).

<sup>(21)</sup> OJ C 268, 7.11.2003, p. 7.

<sup>(22)</sup> OJ C 268, 7.11.2003, p. 7; OJ C 85, 7.4.2005, p. 8.

<sup>(23)</sup> OJ C 268, 7.11.2003, p. 7; OJ C 311, 19.12.2006, p. 59.

<sup>(24)</sup> Commission Decision 2011/385/EU of 28 June 2011 on the recognition of Ecuador pursuant to Directive 2008/106/EC of the European Parliament and of the Council as regards the systems for the training and certification of seafarers (OJ L 170, 30.6.2011, p. 38).

<sup>(25)</sup> Commission Implementing Decision 2012/505/EU of 17 September 2012 on the recognition of Egypt pursuant to Directive 2008/106/EC of the European Parliament and of the Council as regards the systems for the training and certification of seafarers (OJ L 252, 19.9.2012, p. 57).

<sup>(26)</sup> Commission Implementing Decision 2013/794/EU of 19 December 2013 on the recognition of Georgia pursuant to Directive 2008/106/EC of the European Parliament and of the Council as regards the systems for training and certification of seafarers (OJ L 349, 21.12.2013, p. 105).

<sup>(27)</sup> Commission Implementing Decision 2012/75/EU of 9 February 2012 on the recognition of Ghana pursuant to Directive 2008/106/EC of the European Parliament and of the Council as regards the systems for the training and certification of seafarers (OJ L 38, 11.2.2012, p. 45).

<sup>(28)</sup> OJ C 155, 29.6.2002, p. 11; OJ C 268, 7.11.2003, p. 7; OJ C 311, 19.12.2006, p. 59.

- India <sup>(29)</sup>
- Indonesia <sup>(30)</sup>
- Iran <sup>(31)</sup>
- Israel <sup>(32)</sup>
- Jamaica <sup>(33)</sup>
- Japan <sup>(34)</sup>
- Jordan <sup>(35)</sup>
- South Korea <sup>(36)</sup>
- Madagascar <sup>(37)</sup>
- Malaysia <sup>(38)</sup>
- Mexico <sup>(39)</sup>
- Morocco <sup>(40)</sup>
- Myanmar/Burma <sup>(41)</sup>
- New Zealand <sup>(42)</sup>
- Pakistan <sup>(43)</sup>
- Peru <sup>(44)</sup>
- Philippines <sup>(45)</sup>
- Russia <sup>(46)</sup>
- Senegal <sup>(47)</sup>
- Serbia <sup>(48)</sup>
- Singapore <sup>(49)</sup>
- South Africa <sup>(50)</sup>
- Sri Lanka <sup>(51)</sup>

<sup>(29)</sup> OJ C 155, 29.6.2002, p. 11; OJ C 268, 7.11.2003, p. 7; OJ C 85, 7.4.2005, p. 8; OJ C 311, 19.12.2006, p. 59.

<sup>(30)</sup> OJ C 155, 29.6.2002, p. 11; OJ C 268, 7.11.2003, p. 7; OJ C 85, 7.4.2005, p. 8.

<sup>(31)</sup> OJ C 85, 7.4.2005, p. 8.

<sup>(32)</sup> Commission Decision 2010/361/EU of 28 June 2010 on the recognition of Israel as regards education, training and certification of seafarers for the recognition of certificates of competency (OJ L 161, 29.6.2010, p. 9).

<sup>(33)</sup> OJ C 155, 29.6.2002, p. 11; OJ C 268, 7.11.2003, p. 7.

<sup>(34)</sup> Commission Implementing Decision 2014/935/EU of 17 December 2014 on the recognition of Japan pursuant to Directive 2008/106/EC as regards the systems for training and certification of seafarers (OJ L 365, 19.12.2014, p. 158).

<sup>(35)</sup> Commission Implementing Decision 2012/783/EU of 13 December 2012 on the recognition of the Hashemite Kingdom of Jordan pursuant to Directive 2008/106/EC of the European Parliament and of the Council as regards the systems for the training and certification of seafarers (OJ L 347, 15.12.2012, p. 28).

<sup>(36)</sup> OJ C 85, 7.4.2005, p. 8.

<sup>(37)</sup> OJ C 268, 7.11.2003, p. 7; OJ C 85, 7.4.2005, p. 8.

<sup>(38)</sup> OJ C 85, 7.4.2005, p. 8; OJ C 311, 19.12.2006, p. 59.

<sup>(39)</sup> OJ C 268, 7.11.2003, p. 7.

<sup>(40)</sup> Commission Implementing Decision 2011/520/EU of 31 August 2011 on the recognition of Morocco pursuant to Directive 2008/106/EC of the European Parliament and of the Council as regards the systems for the training and certification of seafarers (OJ L 226, 1.9.2011, p. 10).

<sup>(41)</sup> OJ C 155, 29.6.2002, p. 11; OJ C 268, 7.11.2003, p. 7.

<sup>(42)</sup> OJ C 155, 29.6.2002, p. 11; OJ C 268, 7.11.2003, p. 7; OJ C 311, 19.12.2006, p. 59.

<sup>(43)</sup> OJ C 155, 29.6.2002, p. 11; OJ C 268, 7.11.2003, p. 7; OJ C 85, 7.4.2005, p. 8.

<sup>(44)</sup> OJ C 268, 7.11.2003, p. 7.

<sup>(45)</sup> OJ C 155, 29.6.2002, p. 11; OJ C 268, 7.11.2003, p. 7; OJ C 85, 7.4.2005, p. 8.

<sup>(46)</sup> OJ C 155, 29.6.2002, p. 11; OJ C 268, 7.11.2003, p. 7; OJ C 85, 7.4.2005, p. 8; OJ C 311, 19.12.2006, p. 59.

<sup>(47)</sup> OJ C 268, 7.11.2003, p. 7; OJ C 85, 7.4.2005, p. 8; OJ C 311, 19.12.2006, p. 59.

<sup>(48)</sup> OJ C 85, 7.4.2005, p. 8; OJ C 311, 19.12.2006, p. 59.

<sup>(49)</sup> OJ C 155, 29.6.2002, p. 11; OJ C 268, 7.11.2003, p. 7; OJ C 311, 19.12.2006, p. 59.

<sup>(50)</sup> OJ C 155, 29.6.2002, p. 11; OJ C 268, 7.11.2003, p. 7; OJ C 311, 19.12.2006, p. 59.

<sup>(51)</sup> Commission Decision 2010/704/EU of 22 November 2010 on the recognition of Sri Lanka as regards education, training and certification of seafarers for the recognition of certificates of competency (OJ L 306, 23.11.2010, p. 77).

- Tunisia <sup>(52)</sup>
  - Turkey <sup>(53)</sup>
  - Ukraine <sup>(54)</sup>
  - United States <sup>(55)</sup>
  - Uruguay <sup>(56)</sup>
  - Vietnam <sup>(57)</sup>
- 

<sup>(52)</sup> Commission Decision 2011/259/EU of 27 April 2011 on the recognition of Tunisia as regards education, training and certification of seafarers for the recognition of certificates of competency (OJ L 110, 29.4.2011, p. 34).

<sup>(53)</sup> OJ C 268, 7.11.2003, p. 7; OJ C 85, 7.4.2005, p. 8.

<sup>(54)</sup> OJ C 155, 29.6.2002, p. 11; OJ C 268, 7.11.2003, p. 7; OJ C 85, 7.4.2005, p. 8; OJ C 311, 19.12.2006, p. 59.

<sup>(55)</sup> OJ C 155, 29.6.2002, p. 11; OJ C 268, 7.11.2003, p. 7; OJ C 311, 19.12.2006, p. 59.

<sup>(56)</sup> Commission Implementing Decision 2012/76/EU of 9 February 2012 on the recognition of Uruguay pursuant to Directive 2008/106/EC of the European Parliament and of the Council as regards the systems for the training and certification of seafarers (OJ L 38, 11.2.2012, p. 46).

<sup>(57)</sup> OJ C 268, 7.11.2003, p. 7.

**Council Directive 79/115/EEC of 21 December 1978 concerning pilotage of vessels  
by deep-sea pilots in the North Sea and English Channel**

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Whereas, for the sake of safety at sea and of preventing marine pollution, it is necessary to ensure that vessels wishing to use the services of pilots in the North Sea and English Channel can call on adequately qualified deep-sea pilots, and to promote the employment of such pilots in vessels flying the flags of Member States,

HAS ADOPTED THIS DIRECTIVE :

*Article 1*

1. The Member States which have coasts bordering on the North Sea or English Channel shall take all necessary and appropriate measures to ensure that vessels availing themselves of the services of a deep-sea pilot for pilotage in the North Sea or the English Channel be provided with adequately qualified deep-sea pilots in possession of a certificate delivered by a competent authority of one of these Member States certifying that such pilots are qualified to pilot vessels in the North Sea and the English Channel.

2. Each Member State shall take all necessary and appropriate measures to encourage vessels flying its national flag to avail themselves, in the North Sea and the English Channel, of the services of only those deep-sea pilots who are in possession of a certificate as referred to in paragraph 1 or of an equivalent certificate delivered by another North Sea coastal State, when seeking the assistance of deep-sea pilots.

*Article 2*

After consulting the Commission, Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than 1 January 1980. They shall forthwith inform the Commission thereof.

*Article 3*

This Directive is addressed to the Member States.

Done at Brussels, 21 December 1978.

*For the Council*

*The President*

Otto Graf LAMBSDORFF



PART V —  
POLLUTION PREVENTION

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### PART V – POLLUTION PREVENTION

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**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 residue**

amended by Directive 2002/84/EC,

Commission Directive 2007/71/EC and Regulation (EC) No 1137/2008

(consolidated version without annexes <sup>(1)</sup>)

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 <sup>(2)</sup>,

Having regard to the Opinion of the Economic and Social Committee <sup>(3)</sup>,

Having regard to the Opinion of the Committee of the Regions <sup>(4)</sup>,

Acting in accordance with the procedure referred to in Article 251 of the Treaty <sup>(5)</sup>, and in the light of the joint text approved by the Conciliation Committee on 18 July 2000,

Whereas:

- (1) Community policy on the environment aims at a high level of protection. It is based on the precautionary principle and the principles that the polluter should pay and that preventive action should be taken.
- (2) One important field of Community action in maritime transport concerns the reduction of the pollution of the seas. This can be achieved through compliance with international conventions, codes and resolutions while maintaining the freedom of navigation as provided for by the United Nations Convention on the Law of the Sea and the freedom of providing services as provided for in Community law.
- (3) The Community is seriously concerned about the pollution of the seas and coastlines of the Member States caused by discharges of waste and cargo residues from ships, and in particular about the implementation of the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto (Marpol 73/78) which regulates what wastes can be discharged from ships into the marine environment and requires States Parties to ensure the provision of adequate reception facilities in ports. All Member States have ratified Marpol 73/78.
- (4) The protection of the marine environment can be enhanced by reducing discharges into the sea of ship-generated waste and cargo residues. This can be achieved by improving the availability and use of reception facilities and by improving the enforcement regime. In its Resolution of 8 June 1993 on a common policy on safe seas <sup>(6)</sup>, the Council included among its priority actions the development of availability and use of reception facilities within the Community.

<sup>(1)</sup> Complete version is available on the website of DG MOVE, Safety and Environment, Union Legislation on Maritime Safety.

<sup>(2)</sup> OJ C 271, 31.8.1998, p. 79 and OJ C 148, 28.5.1999, p. 7.

<sup>(3)</sup> OJ C 138, 18.5.1999, p. 12.

<sup>(4)</sup> OJ C 198, 14.7.1999, p. 27.

<sup>(5)</sup> Opinion of the European Parliament of 11 February 1999 (OJ C 150, 28.5.1999, p. 432), confirmed on 16 September 1999, Council Common Position of 8 November 1999 (OJ C 10, 13.1.2000, p. 14) and Decision of the European Parliament of 14 March 2000 (not yet published in the Official Journal). Decision of the European Parliament of 6 September 2000 and Decision of the Council of 14 September 2000.

<sup>(6)</sup> OJ C 271, 7.10.1993, p. 1.

- (5) Council Directive 95/21/EC of 19 June 1995 concerning the enforcement, in respect of shipping using Community ports and sailing in the waters under the jurisdiction of the Member States, of international standards for ship safety, pollution prevention and shipboard living and working conditions (port State control) <sup>(7)</sup> provides that ships posing an unreasonable threat of harm to the marine environment may not proceed to sea.
- (6) Pollution of the seas by its very nature has transboundary implications. In view of the subsidiarity principle, action at Community level is the most effective way of ensuring common environmental standards for ships and ports throughout the Community.
- (7) In view of the proportionality principle, a Directive is the appropriate legal instrument, as it provides a framework for the Member States' uniform and compulsory application of environmental standards, while leaving each Member State the right to decide which implementation tools best fit its internal system.
- (8) Consistency with existing regional agreements, such as the 1974/1992 Convention on the Protection of the Marine Environment in the Baltic Sea Area, should be ensured.
- (9) In the interest of improving pollution prevention and avoiding distortion of competition, the environmental requirements should apply to all ships, irrespective of the flag they fly, and adequate reception facilities should be made available in all ports of the Community.
- (10) Adequate port reception facilities should meet the needs of users, from the largest merchant ship to the smallest recreational craft, and of the environment, without causing undue delay to the ships using them. The obligation to ensure the availability of adequate port reception facilities leaves the Member States with a high degree of freedom to arrange the reception of waste in the most suitable manner and permits them, *inter alia*, to provide fixed reception installations or to appoint service providers bringing to the ports mobile units for the reception of waste when needed. This obligation also implies the obligation to provide all services and/or other accompanying arrangements necessary for the proper and adequate use of these facilities.
- (11) Adequacy of facilities can be improved by up-to-date waste reception and handling plans established in consultation with the relevant parties.
- (12) The effectiveness of port reception facilities can be improved by requiring ships to notify their need to use reception facilities. Such notification would also provide information for effectively planned waste management. Waste from fishing vessels and from recreational craft authorised to carry no more than 12 passengers may be handled by the port reception facilities without prior notification.
- (13) Discharges of ship-generated waste at sea can be reduced by requiring all ships to deliver their waste to port reception facilities before leaving the port. In order to reconcile the interest of the smooth operation of maritime transport with the protection of the environment, exceptions to this requirement should be possible taking into account the sufficiency of the dedicated storage capacity on board, the possibility to deliver at another port without risk of discharge at sea and specific delivery requirements adopted in accordance with international law.
- (14) In view of the 'polluter pays' principle, the costs of port reception facilities, including the treatment and disposal of ship-generated waste, should be covered by ships. In the interest of protecting the environment, the fee system should encourage the delivery of ship-generated waste to ports instead of discharge into the sea. This can be facilitated by providing that all ships contribute to the costs for the reception and handling of ship-generated waste so as to reduce the economic incentives to discharge into the sea. In view of the subsidiarity principle, Member States should, in accordance with their national laws and current practices, retain the powers to establish whether and in what proportion the fees related to quantities actually delivered

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<sup>(7)</sup> OJ L 157, 7.7.1995, p. 1. Directive as last amended by Directive 98/42/EC (OJ L 184, 27.6.1998, p. 40).

by the ships will be included in the cost recovery systems for using port reception facilities. Charges for using these facilities should be fair, non-discriminatory and transparent.

- (15) Ships producing reduced quantities of ship-generated waste should be treated more favourably in the cost recovery systems. Common criteria would facilitate the identification of such ships.
- (16) In order to avoid undue burden for the parties concerned, ships engaged in scheduled traffic with frequent and regular port calls may be exempted from certain obligations deriving from this Directive where there is sufficient evidence that there are arrangements to ensure the delivery of the waste and the payment of fees.
- (17) Cargo residues should be delivered to port reception facilities in accordance with Marpol 73/78. Marpol 73/78 requires cargo residues to be delivered to port reception facilities to the extent necessary to comply with the tank cleaning requirements. Any fee for such delivery should be paid by the user of the reception facility, the user being normally specified in the contractual arrangements between the parties involved or in other local arrangements.
- (18) It is necessary to undertake targeted inspections in order to verify compliance with this Directive. The number of such inspections, as well as the penalties imposed, should be sufficient to deter non-compliance with this Directive. For reasons of efficiency and cost-effectiveness, such inspections may be undertaken within the framework of Directive 95/21/EC, when applicable.
- (19) Member States should ensure a proper administrative framework for the adequate functioning of the port reception facilities. Under Marpol 73/78, allegations of inadequate port reception facilities should be transmitted to the International Maritime Organisation (IMO). The same information could be simultaneously transmitted to the Commission for information purposes.
- (20) An information system for the identification of polluting or potentially polluting ships would facilitate the enforcement of this Directive and would be helpful in evaluating the implementation thereof. The SIRENAC information system established under the Paris Memorandum of Understanding on Port State Control provides a large amount of the additional information needed for that purpose.
- (21) It is necessary that a Committee consisting of representatives of the Member States assist the Commission in the effective application of this Directive. Since the measures necessary for implementing this Directive are measures of a general scope within the meaning of Article 2 of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission <sup>(8)</sup>, such measures should be adopted in accordance with the regulatory procedure provided for in Article 5 of that Decision.
- (22) Certain provisions of this Directive may, without broadening its scope, be amended in accordance with that procedure in order to take into account Community or IMO measures which enter into force in the future so as to ensure their harmonised implementation,

HAVE ADOPTED THIS DIRECTIVE:

#### *Article 1*

#### **Purpose**

The purpose of this Directive is to reduce the discharges of ship-generated waste and cargo residues into the sea, especially illegal discharges, from ships using ports in the Community, by improving the availability and use of port reception facilities for ship-generated waste and cargo residues, thereby enhancing the protection of the marine environment.

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<sup>(8)</sup> OJ L 184, 17.7.1999, p. 23.

## *Article 2*

### **Definitions**

For the purpose of this Directive:

- (a) 'ship' shall mean a seagoing vessel of any type whatsoever operating in the marine environment and shall include hydrofoil boats, air-cushion vehicles, submersibles and floating craft;
- (b) 'Marpol 73/78' shall mean the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto, in its up-to-date version;
- (c) 'ship-generated waste' shall mean all waste, including sewage, and residues other than cargo residues, which are generated during the service of a ship and fall under the scope of Annexes I, IV and V to Marpol 73/78 and cargo-associated waste as defined in the Guidelines for the implementation of Annex V to Marpol 73/78;
- (d) 'cargo residues' shall mean the remnants of any cargo material on board in cargo holds or tanks which remain after unloading procedures and cleaning operations are completed and shall include loading/unloading excesses and spillage;
- (e) 'port reception facilities' shall mean any facility, which is fixed, floating or mobile and capable of receiving ship-generated waste or cargo residues;
- (f) 'fishing vessel' shall mean any ship equipped or used commercially for catching fish or other living resources of the sea;
- (g) 'recreational craft' shall mean a ship of any type, regardless of the means of propulsion, intended for sports or leisure purposes;
- (h) 'port' shall mean a place or a geographical area made up of such improvement works and equipment as to permit, principally, the reception of ships, including fishing vessels and recreational craft.

Without prejudice to the definitions in points (c) and (d), 'ship-generated waste' and 'cargo residues' shall be considered to be waste within the meaning of Article 1(a) of Council Directive 75/442/EEC of 15 July 1975 on waste <sup>(9)</sup>.

## *Article 3*

### **Scope**

This Directive shall apply to:

- (a) all ships, including fishing vessels and recreational craft, irrespective of their flag, calling at, or operating within, a port of a Member State, with the exception of any warship, naval auxiliary or other ship owned or operated by a State and used, for the time being, only on government non-commercial service; and
- (b) all ports of the Member States normally visited by ships falling under the scope of point (a).

Member States shall take measures to ensure that ships which are excluded from the scope of this Directive under point (a) of the preceding paragraph deliver their ship-generated waste and cargo residues in a manner consistent, in so far as is reasonable and practicable, with this Directive.

<sup>(9)</sup> OJ L 194, 25.7.1975, p. 39. Directive as last amended by Commission Decision 96/350/EC (OJ L 135, 6.6.1996, p. 32).

*Article 4***Port reception facilities**

1. Member States shall ensure the availability of port reception facilities adequate to meet the needs of the ships normally using the port without causing undue delay to ships.
2. To achieve adequacy, the reception facilities shall be capable of receiving the types and quantities of ship-generated waste and cargo residues from ships normally using that port, taking into account the operational needs of the users of the port, the size and the geographical location of the port, the type of ships calling at that port and the exemptions provided for under Article 9.
3. Member States shall establish procedures, in accordance with those agreed by the International Maritime Organization (IMO), for reporting to the port State alleged inadequacies of port reception facilities.

*Article 5***Waste reception and handling plans**

1. An appropriate waste reception and handling plan shall be developed and implemented for each port following consultations with the relevant parties, in particular with port users or their representatives, having regard to the requirements of Articles 4, 6, 7, 10 and 12. Detailed requirements for the development of such plans are set out in Annex I.
2. The waste reception and handling plans referred to in paragraph 1 may, where required for reasons of efficiency, be developed in a regional context with the appropriate involvement of each port, provided that the need for, and availability of, reception facilities are specified for each individual port.
3. Member States shall evaluate and approve the waste reception and handling plan, monitor its implementation and ensure its re-approval at least every three years and after significant changes in the operation of the port.

*Article 6***Notification**

1. The master of a ship, other than a fishing vessel or recreational craft authorised to carry no more than 12 passengers, bound for a port located in the Community shall complete truly and accurately the form in Annex II and notify that information to the authority or body designated for this purpose by the Member State in which that port is located:
  - (a) at least 24 hours prior to arrival, if the port of call is known; or
  - (b) as soon as the port of call is known, if this information is available less than 24 hours prior to arrival; or
  - (c) at the latest upon departure from the previous port, if the duration of the voyage is less than 24 hours.

Member States may decide that the information will be notified to the operator of the port reception facility, who will forward it to the relevant authority.

2. The information referred to in paragraph 1 shall be kept on board at least until the next port of call and shall upon request be made available to the Member States' authorities.

*Article 7***Delivery of ship-generated waste**

1. The master of a ship calling at a Community port shall, before leaving the port, deliver all ship-generated waste to a port reception facility.

2. Notwithstanding paragraph 1, a ship may proceed to the next port of call without delivering the ship-generated waste, if it follows from the information given in accordance with Article 6 and Annex II, that there is sufficient dedicated storage capacity for all ship-generated waste that has been accumulated and will be accumulated during the intended voyage of the ship until the port of delivery.

If there are good reasons to believe that adequate facilities are not available at the intended port of delivery, or if this port is unknown, and that there is therefore a risk that the waste will be discharged at sea, the Member State shall take all necessary measures to prevent marine pollution, if necessary by requiring the ship to deliver its waste before departure from the port.

3. Paragraph 2 shall apply without prejudice to more stringent delivery requirements for ships adopted in accordance with international law.

#### *Article 8*

#### **Fees for ship-generated waste**

1. Member States shall ensure that the costs of port reception facilities for ship-generated waste, including the treatment and disposal of the waste, shall be covered through the collection of a fee from ships.

2. The cost recovery systems for using port reception facilities shall provide no incentive for ships to discharge their waste into the sea. To this end the following principles shall apply to ships other than fishing vessels and recreational craft authorised to carry no more than 12 passengers:

- (a) all ships calling at a port of a Member State shall contribute significantly to the costs referred to in paragraph 1, irrespective of actual use of the facilities. Arrangements to this effect may include incorporation of the fee in the port dues or a separate standard waste fee. The fees may be differentiated with respect to, inter alia, the category, type and size of the ship;
- (b) the part of the costs which is not covered by the fee referred to in subparagraph (a), if any, shall be covered on the basis of the types and quantities of ship-generated waste actually delivered by the ship;
- (c) fees may be reduced if the ship's environmental management, design, equipment and operation are such that the master of the ship can demonstrate that it produces reduced quantities of ship-generated waste.

3. In order to ensure that the fees are fair, transparent, non-discriminatory and reflect the costs of the facilities and services made available and, where appropriate, used, the amount of the fees and the basis on which they have been calculated should be made clear for the port users.

4. The Commission shall, within three years of the date referred to in Article 16(1), submit a report to the European Parliament and to the Council, evaluating the impact of the variety of cost recovery systems adopted in accordance with paragraph 2 on the marine environment and waste flow patterns. This report shall be drawn up in liaison with the competent authorities of the Member States and representatives of ports.

The Commission shall, if necessary in the light of this evaluation, submit a proposal to amend this Directive by the introduction of a system involving the payment of an appropriate percentage, of no less than one third, of the costs referred to in paragraph 1 by all ships calling at a port of a Member State irrespective of actual use of the facilities, or an alternative system with equivalent effects.

#### *Article 9*

#### **Exemptions**

1. When ships are engaged in scheduled traffic with frequent and regular port calls and there is sufficient evidence of an arrangement to ensure the delivery of ship-generated waste and payment of fees in a port along the ship's route, Member States of the ports involved may exempt these ships from the obligations in Article 6, Article 7(1) and Article 8.

2. Member States shall inform the Commission of exemptions granted in accordance with paragraph 1 on a regular basis, at least once a year.

#### *Article 10*

### **Delivery of cargo residues**

The master of a ship calling at a Community port shall ensure that cargo residues are delivered to a port reception facility in accordance with the provisions of Marpol 73/78. Any fee for delivery of cargo residues shall be paid by the user of the reception facility.

#### *Article 11*

### **Enforcement**

1. Member States shall ensure that any ship may be subject to an inspection in order to verify that it complies with Articles 7 and 10 and that a sufficient number of such inspections is carried out.

2. For inspections concerning ships other than fishing vessels and recreational craft authorised to carry no more than 12 passengers:

- (a) in selecting ships for inspection, Member States shall pay particular attention to:
  - ships which have not complied with the notification requirements in Article 6;
  - ships for which the examination of the information provided by the master in accordance with Article 6 has revealed other grounds to believe that the ship does not comply with this Directive;
- (b) such inspection may be undertaken within the framework of Directive 95/21/EC, when applicable; whatever the framework of the inspections, the 25 % inspection requirement set out in that Directive shall apply;
- (c) if the relevant authority is not satisfied with the results of this inspection, it shall ensure that the ship does not leave the port until it has delivered its ship-generated waste and cargo residues to a port reception facility in accordance with Articles 7 and 10;
- (d) when there is clear evidence that a ship has proceeded to sea without having complied with Articles 7 or 10, the competent authority of the next port of call shall be informed thereof and such a ship shall, without prejudice to the application of the penalties referred to in Article 13, not be permitted to leave that port until a more detailed assessment of factors relating to the ship's compliance with this Directive, such as the accuracy of any information provided in accordance with Article 6, has taken place.

3. Member States shall establish control procedures, to the extent required, for fishing vessels and recreational craft authorised to carry no more than 12 passengers to ensure compliance with the applicable requirements of this Directive.

#### *Article 12*

### **Accompanying measures**

1. Member States shall:

- (a) take all necessary measures to ensure that masters, providers of port reception facilities and other persons concerned are adequately informed of the requirements addressed to them under this Directive and that they comply with them;
- (b) designate appropriate authorities or bodies for performing functions under this Directive;

- (c) make provision for cooperation between their relevant authorities and commercial organisations to ensure the effective implementation of this Directive;
  - (d) ensure that the information notified by masters in accordance with Article 6 be appropriately examined;
  - (e) ensure that the formalities relating to the use of port reception facilities are simple and expeditious in order to create an incentive for the master to use port reception facilities and to avoid undue delays to ships;
  - (f) ensure that the Commission is provided with a copy of the allegations of inadequate port reception facilities referred to in Article 4(3);
  - (g) ensure that the treatment, recovery or disposal of ship-generated waste and cargo residues shall be carried out in accordance with Directive 75/442/EEC and other relevant Community waste legislation, in particular Council Directive 75/439/EEC of 16 June 1975 on the disposal of waste oils <sup>(10)</sup> and Council Directive 91/689/EEC of 12 December 1991 on hazardous waste <sup>(11)</sup>;
  - (h) ensure in accordance with their national legislation that any party involved in the delivery or reception of ship-generated waste or cargo residues can claim compensation for damage caused by undue delay.
2. Delivery of ship-generated waste and cargo residues shall be considered as release for free circulation within the meaning of Article 79 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code <sup>(12)</sup>. The customs authorities shall not require the lodging of a summary declaration in accordance with Article 45 of the Community Customs Code.
3. Member States and the Commission shall co-operate in establishing an appropriate information and monitoring system, covering at least the whole of the Community, to:
- improve the identification of ships which have not delivered their ship-generated waste and cargo residues in accordance with this Directive,
  - ascertain whether the goals set in Article 1 of the Directive have been met.
4. Member States and the Commission shall cooperate in establishing common criteria for identifying ships referred to in Article 8(2)(c).

### *Article 3*

#### **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 thus provided shall be effective, proportionate and dissuasive.

### *Article 14*

#### **Committee procedure**

1. The Commission shall be assisted by the Committee on Safe Seas and the Prevention of Pollution from Ships (COSS) set up by Article 3 of Regulation (EC) No 2099/2002 of the European Parliament and of the Council <sup>(13)</sup>.

<sup>(10)</sup> OJ L 194, 25.7.1975, p. 23. Directive as last amended by Directive 91/692/EEC (OJ L 377, 31.12.1991, p. 48).

<sup>(11)</sup> OJ L 377, 31.12.1991, p. 20. Directive as last amended by Directive 94/31/EEC (OJ L 168, 2.7.1994, p. 28).

<sup>(12)</sup> OJ L 302, 19.10.1992, p. 1. Regulation as last amended by Regulation (EC) No 955/1999 (OJ L 119, 7.5.1999, p. 1).

<sup>(13)</sup> OJ L 324, 29.11.2002, p. 1.

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 15*

### **Amendment procedure**

The Annexes to this Directive, the definition in Article 2(b) and references to Community and IMO instruments may be adapted by the Commission in order to bring them into line with Community or IMO measures which have entered into force, in so far as such amendments do not broaden the scope of this Directive.

Furthermore, the Annexes to this Directive may be amended by the Commission when necessary in order to improve the regime established by this Directive, 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 14(2).

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 16*

### **Implementation**

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 28 December 2002 and forthwith inform the Commission thereof.

However, as far as sewage as referred to in Article 2(c) is concerned, the implementation of this Directive shall be suspended until 12 months after the entry into force of Annex IV to Marpol 73/78, while respecting the distinction made in this convention between new and existing ships.

2. 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 a reference shall be laid down by Member States.

#### *Article 17*

### **Evaluation**

1. Member States shall submit to the Commission a status report concerning the implementation of this Directive every three years.

2. The Commission shall submit an evaluation report on the operation of the system as provided for in this Directive to the European Parliament and the Council, on the basis of the reports of the Member States as provided for in paragraph 1 together with proposals as necessary, concerning the implementation of this Directive.

#### *Article 18*

### **Entry into force**

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

#### *Article 19*

### **Addressees**

This Directive is addressed to the Member States.

**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,**  
**including criminal penalties, for pollution offences**  
amended by Directive 2009/123/EC  
(without annexes <sup>(14)</sup>)

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>(15)</sup>,

After consulting the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the Treaty <sup>(16)</sup>,

Whereas:

- (1) The Community's maritime safety policy is aimed at a high level of safety and environmental protection and is based on the understanding that all parties involved in the transport of goods by sea have a responsibility for ensuring that ships used in Community waters comply with applicable rules and standards.
- (2) The material standards in all Member States for discharges of polluting substances from ships are based upon the Marpol 73/78 Convention; however these rules are being ignored on a daily basis by a very large number of ships sailing in Community waters, without corrective action being taken.
- (3) The implementation of Marpol 73/78 shows discrepancies among Member States and there is thus a need to harmonise its implementation at Community level; in particular the practices of Member States relating to the imposition of penalties for discharges of polluting substances from ships differ significantly.
- (4) Measures of a dissuasive nature form an integral part of the Community's maritime safety policy, as they ensure a link between the responsibility of each of the parties involved in the transport of polluting goods by sea and their exposure to penalties; in order to achieve effective protection of the environment there is therefore a need for effective, dissuasive and proportionate penalties.
- (5) To that end it is essential to approximate, by way of the proper legal instruments, existing legal provisions, in particular on the precise definition of the infringement in question, the cases of exemption and minimum rules for penalties, and on liability and jurisdiction.
- (6) This Directive is supplemented by detailed rules on criminal offences and penalties as well as other provisions set out in Council Framework Decision 2005/667/JHA of 12 July 2005 to strengthen the criminal law framework for the enforcement of the law against ship-source pollution <sup>(17)</sup>.

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<sup>(14)</sup> Complete version is available on the website of DG MOVE, Safety and Environment, Union Legislation on Maritime Safety.

<sup>(15)</sup> OJ C 220, 16.9.2003, p. 72.

<sup>(16)</sup> Opinion of the European Parliament of 13 January 2004 (OJ C 92 E, 16.4.2004, p. 77), Council Common Position of 7 October 2004 (OJ C 25 E, 1.2.2005, p. 29), Position of the European Parliament of 23 February 2005 (not yet published in the Official Journal) and Council Decision of 12 July 2005.

<sup>(17)</sup> See page 164 of this Official Journal.

- (7) Neither the international regime for the civil liability and compensation of oil pollution nor that relating to pollution by other hazardous or noxious substances provides sufficient dissuasive effects to discourage the parties involved in the transport of hazardous cargoes by sea from engaging in substandard practices; the required dissuasive effects can only be achieved through the introduction of penalties applying to any person who causes or contributes to marine pollution; penalties should be applicable not only to the shipowner or the master of the ship, but also the owner of the cargo, the classification society or any other person involved.
- (8) Ship-source discharges of polluting substances should be regarded as infringements if committed with intent, recklessly or by serious negligence. These infringements are regarded as criminal offences by, and in the circumstances provided for in, Framework Decision 2005/667/JHA supplementing this Directive.
- (9) Penalties for discharges of polluting substances from ships are not related to the civil liability of the parties concerned and are thus not subject to any rules relating to the limitation or channelling of civil liabilities, nor do they limit the efficient compensation of victims of pollution incidents.
- (10) There is a need for further effective cooperation among Member States to ensure that discharges of polluting substances from ships are detected in time and that the offenders are identified. For this reason, the European Maritime Safety Agency set up by Regulation (EC) No 1406/2002 of the European Parliament and of the Council of 27 June 2002 <sup>(18)</sup> has a key role to play in working with the Member States in developing technical solutions and providing technical assistance relating to the implementation of this Directive and in assisting the Commission in the performance of any task assigned to it for the effective implementation of this Directive.
- (11) In order better to prevent and combat marine pollution, synergies should be created between enforcement authorities such as national coastguard services. In this context, the Commission should undertake a feasibility study on a European coastguard dedicated to pollution prevention and response, making clear the costs and benefits. This study should, if appropriate, be followed by a proposal on a European coastguard.
- (12) Where there is clear, objective evidence of a discharge causing major damage or a threat of major damage, Member States should submit the matter to their competent authorities with a view to instituting proceedings in accordance with Article 220 of the 1982 United Nations Convention on the Law of the Sea.
- (13) The enforcement of 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>(19)</sup> is, together with this Directive, a key instrument in the set of measures to prevent ship-source pollution.
- (14) 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>(20)</sup>.
- (15) Since the objectives of this Directive, namely the incorporation of the international ship-source pollution standards into Community law and the establishment of penalties — criminal or administrative — for violation of them in order to ensure a high level of safety and environmental protection in maritime transport, 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 Directive does not go beyond what is necessary in order to achieve those objectives.

<sup>(18)</sup> OJ L 208, 5.8.2002, p. 1. Regulation as last amended by Regulation (EC) No 724/2004 (OJ L 129, 29.4.2004, p. 1).

<sup>(19)</sup> OJ L 332, 28.12.2000, p. 81. Directive as amended by Directive 2002/84/EC (OJ L 324, 29.11.2002, p. 53).

<sup>(20)</sup> OJ L 184, 17.7.1999, p. 23.

- (16) This Directive fully respects the Charter of fundamental rights of the European Union; any person suspected of having committed an infringement must be guaranteed a fair and impartial hearing and the penalties must be proportional,

HAVE ADOPTED THIS DIRECTIVE:

*Article 1*

**Purpose**

1. The purpose of this Directive is to incorporate international standards for ship-source pollution into Community law and to ensure that persons responsible for discharges of polluting substances are subject to adequate penalties, including criminal penalties, in order to improve maritime safety and to enhance protection of the marine environment from pollution by ships.
2. This Directive does not prevent Member States from taking more stringent measures against ship-source pollution in conformity with international law.

*Article 2*

**Definitions**

For the purpose of this Directive:

1. 'Marpol 73/78' shall mean the International Convention for the Prevention of Pollution from Ships, 1973 and its 1978 Protocol, in its up-to-date version;
2. 'polluting substances' shall mean substances covered by Annexes I (oil) and II (noxious liquid substances in bulk) to Marpol 73/78;
3. 'discharge' shall mean any release howsoever caused from a ship, as referred to in Article 2 of Marpol 73/78;
4. 'ship' shall mean a seagoing vessel, irrespective of its flag, of any type whatsoever operating in the marine environment and shall include hydrofoil boats, air-cushion vehicles, submersibles and floating craft;
5. 'Legal person' shall mean any legal entity in possession of such status under applicable national law, other than States themselves or public bodies in the exercise of State authority or public international organisations.

*Article 3*

**Scope**

1. This Directive shall apply, in accordance with international law, to discharges of polluting substances in:
  - (a) the internal waters, including ports, of a Member State, in so far as the Marpol regime is applicable;
  - (b) the territorial sea of a Member State;
  - (c) straits used for international navigation subject to the regime of transit passage, as laid down in Part III, section 2, of the 1982 United Nations Convention on the Law of the Sea, to the extent that a Member State exercises jurisdiction over such straits;
  - (d) the exclusive economic zone or equivalent zone of a Member State, established in accordance with international law; and
  - (e) the high seas.

2. This Directive shall apply to discharges of polluting substances from any ship, irrespective of its flag, with the exception of any warship, naval auxiliary or other ship owned or operated by a State and used, for the time being, only on government non-commercial service.

#### *Article 4*

### **Infringements**

1. Member States shall ensure that ship-source discharges of polluting substances, including minor cases of such discharges, into any of the areas referred to in Article 3(1) are regarded as infringements if committed with intent, recklessly or with serious negligence.

2. Each Member State shall take the necessary measures to ensure that any natural or legal person having committed an infringement within the meaning of paragraph 1 can be held liable therefor.

#### *Article 5*

### **Exceptions**

1. A discharge of polluting substances into any of the areas referred to in Article 3(1) shall not be regarded as an infringement, if it satisfies the conditions set out in Annex I, Regulations 15, 34, 4,1 or 4,3 or in Annex II, Regulations 13, 3.1.1 or 3.1.3 of Marpol 73/78.

2. A discharge of polluting substances into the areas referred to in Article 3(1)(c), (d) and (e) shall not be regarded as an infringement for the owner, the master or the crew, if it satisfies the conditions set out in Annex I, Regulation 4,2 or in Annex II, Regulation 3.1.2 of Marpol 73/78.

#### *Article 5a*

### **Criminal offences**

1. Member States shall ensure that infringements within the meaning of Articles 4 and 5 are regarded as criminal offences.

2. Paragraph 1 shall not apply to minor cases, where the act committed does not cause deterioration in the quality of water.

3. Repeated minor cases that do not individually but in conjunction result in deterioration in the quality of water shall be regarded as a criminal offence, if committed with intent, recklessly or with serious negligence.

#### *Article 5b*

### **Inciting, aiding and abetting**

Member States shall ensure that any act of inciting, or aiding and abetting an offence committed with intent and referred to in Article 5a(1) and (3), is punishable as a criminal offence.

#### *Article 6*

### **Enforcement measures with respect to ships within a port of a Member State**

1. If irregularities or information give rise to a suspicion that a ship which is voluntarily within a port or at an off-shore terminal of a Member State has been engaged in or is engaging in a discharge of polluting substances into any of the areas referred to in Article 3(1), that Member State shall ensure that an appropriate inspection, taking into account the relevant guidelines adopted by the International Maritime Organisation (IMO), is undertaken in accordance with its national law.

2. In so far as the inspection referred to in paragraph 1 reveals facts that could indicate an infringement within the meaning of Article 4, the competent authorities of that Member State and of the flag State shall be informed.

*Article 7*

**Enforcement measures by coastal States with respect to ships in transit**

1. If the suspected discharge of polluting substances takes place in the areas referred to in Article 3(1)(b), (c), (d) or (e) and the ship which is suspected of the discharge does not call at a port of the Member State holding the information relating to the suspected discharge, the following shall apply:
  - (a) If the next port of call of the ship is in another Member State, the Member States concerned shall cooperate closely in the inspection referred to in Article 6(1) and in deciding on the appropriate measures in respect of any such discharge;
  - (b) If the next port of call of the ship is a port of a State outside the Community, the Member State shall take the necessary measures to ensure that the next port of call of the ship is informed about the suspected discharge and shall request the State of the next port of call to take the appropriate measures in respect of any such discharge.
2. Where there is clear, objective evidence that a ship navigating in the areas referred to in Article 3(1)(b) or (d) has, in the area referred to in Article 3(1)(d), committed an infringement resulting in a discharge causing major damage or a threat of major damage to the coastline or related interests of the Member State concerned, or to any resources of the areas referred to in Article 3(1)(b) or (d), that State shall, subject to Part XII, Section 7 of the 1982 United Nations Convention on the Law of the Sea and provided that the evidence so warrants, submit the matter to its competent authorities with a view to instituting proceedings, including detention of the ship, in accordance with its national law.
3. In any event, the authorities of the flag State shall be informed.

*Article 8*

**Penalties**

Each Member State shall take the necessary measures to ensure that infringements within the meaning of Articles 4 and 5 are punishable by effective, proportionate and dissuasive penalties.

*Article 8a*

**Penalties against natural persons**

Each Member State shall take the necessary measures to ensure that the offences referred to in Article 5a(1), and (3) and Article 5b are punishable by effective, proportionate and dissuasive criminal penalties.

*Article 8b*

**Liability of legal persons**

1. Each Member State shall take the necessary measures to ensure that legal persons can be held liable for the criminal offences referred to in Article 5a(1) and (3) and Article 5b, committed for their benefit by any natural person acting either individually or as part of an organ of the legal person, and who has a leading position within the structure of the legal person, based on:
  - (a) a power of representation of the legal person;
  - (b) authority to take decisions on behalf of the legal person; or
  - (c) authority to exercise control within the legal person.
2. Each Member State shall also ensure that a legal person can be held liable where lack of supervision or control by a natural person referred to in paragraph 1 has made the commission of a criminal offence referred to in Article 5a(1) and (3) and Article 5b possible for the benefit of that legal person by a natural person under its authority.

3. The liability of a legal person under paragraphs 1 and 2 shall not exclude criminal proceedings against natural persons involved as perpetrators, inciters or accessories in the criminal offences referred to in Article 5a(1) and (3) and Article 5b.

*Article 8c*

**Penalties against legal persons**

Each Member State shall take the necessary measures to ensure that a legal person held liable pursuant to Article 8b is punishable by effective, proportionate and dissuasive penalties.

*Article 9*

**Compliance with international law**

Member States shall apply the provisions of this Directive without any discrimination in form or in fact against foreign ships and in accordance with applicable international law, including Section 7 of Part XII of the 1982 United Nations Convention on the Law of the Sea, and they shall promptly notify the flag State of the vessel and any other State concerned of measures taken in accordance with this Directive.

*Article 10*

**Accompanying measures**

1. For the purposes of this Directive, Member States and the Commission shall cooperate, where appropriate, in close collaboration with the European Maritime Safety Agency and taking account of the action programme to respond to accidental or deliberate marine pollution set up by Decision No 2850/2000/EC <sup>(21)</sup> and if appropriate, of the implementation of Directive 2000/59/EC in order to:

- (a) develop the necessary information systems required for the effective implementation of this Directive;
- (b) establish common practices and guidelines on the basis of those existing at international level, in particular for:
  - the monitoring and early identification of ships discharging polluting substances in violation of this Directive, including, where appropriate, on-board monitoring equipment,
  - reliable methods of tracing polluting substances in the sea to a particular ship, and
  - the effective enforcement of this Directive.

2. In accordance with its tasks as defined in Regulation (EC) No 1406/2002, the European Maritime Safety Agency shall:

- (a) work with the Member States in developing technical solutions and providing technical assistance in relation to the implementation of this Directive, in actions such as tracing discharges by satellite monitoring and surveillance;
- (b) assist the Commission in the implementation of this Directive, including, if appropriate, by means of visits to the Member States, in accordance with Article 3 of Regulation (EC) No 1406/2002.

*Article 11*

**Feasibility Study**

The Commission shall, before the end of 2006, submit to the European Parliament and the Council a feasibility study on a European coastguard dedicated to pollution prevention and response, making clear the costs and benefits.

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<sup>(21)</sup> Decision No 2850/2000/EC of the European Parliament and of the Council of 20 December 2000 setting up a Community framework for cooperation in the field of accidental or deliberate marine pollution (OJ L 332, 28.12.2000, p. 1). Decision as amended by Decision No 787/2004/EC (OJ L 138, 30.4.2004, p. 12).

*Article 12***Reporting**

Every three years, Member States shall transmit a report to the Commission on the application of this Directive by the competent authorities. On the basis of these reports, the Commission shall submit a Community report to the European Parliament and the Council. In this report, the Commission shall assess, inter alia, the desirability of revising or extending the scope of this Directive. It shall also describe the evolution of relevant case-law in the Member States and shall consider the possibility of creating a public database containing such relevant case-law.

*Article 13***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 of the European Parliament and of the Council, of 5 November 2002 <sup>(2)</sup>.

2. Where reference is made to this Article, 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 one month.

*Article 14***Provision of information**

The Commission shall regularly inform the Committee set up by Article 4 of Decision No 2850/2000/EC of any proposed measures or other relevant activities concerning the response to marine pollution.

*Article 15***Amendment procedure**

In accordance with Article 5 of Regulation (EC) No 2099/2002 and following the procedure referred to in Article 13 of this Directive, the COSS may exclude amendments to Marpol 73/78 from the scope of this Directive.

*Article 16***Implementation**

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 1 April 2007 and forthwith inform the Commission thereof.

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

*Article 17***Entry into force**

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

*Article 18***Addressees**

This Directive is addressed to the Member States.

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<sup>(2)</sup> OJ L 324, 29.11.2002, p. 1. Regulation as amended by Commission Regulation (EC) No 415/2004 (OJ L 68, 6.3.2004, p. 10).

**REGULATION (EU) NO 911/2014 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL  
of 23 July 2014**

**on multiannual funding for the action of the European Maritime Safety Agency in the field of response  
to marine pollution caused by ships and oil and gas installations**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 100(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee <sup>(23)</sup>,

After consulting the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure <sup>(24)</sup>,

Whereas:

- (1) Regulation (EC) No 1406/2002 of the European Parliament and of the Council <sup>(25)</sup> established a European Maritime Safety Agency ('the Agency') for the purpose of ensuring a high, uniform and effective level of maritime safety and prevention of pollution by ships.
- (2) Regulation (EC) No 724/2004 of the European Parliament and of the Council <sup>(26)</sup>, which amended Regulation (EC) No 1406/2002, assigned to the Agency tasks in the fields of prevention and response to pollution caused by ships, following accidents in Union waters, particularly those of the oil tankers 'Erika' and 'Prestige'.
- (3) Regulation (EU) No 100/2013 of the European Parliament and of the Council <sup>(27)</sup>, amending Regulation (EC) No 1406/2002, assigned to the Agency tasks with regard to response to marine pollution caused by oil and gas installations and extended the Agency's services to the States applying for accession to the Union and to the European Neighbourhood partner countries.
- (4) Regulation (EC) No 2038/2006 of the European Parliament and of the Council <sup>(28)</sup> established a multiannual funding for the action of the Agency in the field of response to pollution caused by ships which expired on 31 December 2013.
- (5) Given the potentially devastating ecological impact and extremely high economic costs of pollution incidents, as well as the possible socioeconomic impact of such incidents on other sectors, such as tourism and fisheries,

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<sup>(23)</sup> OJ C 327, 12.11.2013, p. 108.

<sup>(24)</sup> Position of the European Parliament of 15 April 2014 (not yet published in the Official Journal) and decision of the Council of 23 July 2014.

<sup>(25)</sup> Regulation (EC) No 1406/2002 of the European Parliament and of the Council of 27 June 2002 establishing a European Maritime Safety Agency (OJ L 208, 5.8.2002, p. 1).

<sup>(26)</sup> Regulation (EC) No 724/2004 of the European Parliament and of the Council of 31 March 2004 amending Regulation (EC) No 1406/2002 establishing a European Maritime Safety Agency (OJ L 129, 29.4.2004, p. 1).

<sup>(27)</sup> Regulation (EU) No 100/2013 of the European Parliament and of the Council of 15 January 2013 amending Regulation (EC) No 1406/2002 establishing a European Maritime Safety Agency (OJ L 39, 9.2.2013, p. 30).

<sup>(28)</sup> Regulation (EC) No 2038/2006 of the European Parliament and of the Council of 18 December 2006 on multiannual funding for the action of the European Maritime Safety Agency in the field of response to pollution caused by ships (OJ L 394, 30.12.2006, p. 1).

the Agency should have sufficient means to allow it to carry out its assigned tasks in relation to response to marine pollution by ships and oil and gas installations. Those tasks are important in preventing further damage of both a monetary and non-monetary nature.

- (6) For the purposes of implementing the tasks of preventing and responding to pollution by ships, the Administrative Board of the Agency adopted on 22 October 2004 an Action Plan for Oil Pollution Preparedness and Response, which determines the Agency's oil pollution response activities and which is aimed at the optimum use of the financial resources available to the Agency. On 12 June 2007, the Administrative Board adopted an Action Plan for Hazardous and Noxious Substances Pollution Preparedness and Response. In accordance with Article 15 of Regulation (EC) No 1406/2002, both Action Plans are updated yearly through the Agency's annual work programme.
- (7) Regard should be had to the existing agreements on accidental pollution, which facilitate mutual assistance and cooperation between Member States in this field, as well as to the relevant international conventions and agreements for the protection of European maritime areas from pollution incidents requiring parties to take all appropriate measures to prepare for and respond to an oil pollution incident.
- (8) The pollution response action of the Agency, as specified in its action plans, relates to activities in the fields of information, cooperation and coordination, including with regard to marine pollution caused by hazardous and noxious substances. Above all, that response action relates to the provision of operational assistance to the affected Member States or third countries sharing a regional sea basin with the Union ('affected States') by supplying, on request, additional anti-pollution vessels to combat oil pollution caused by ships as well as marine pollution caused by oil and gas installations. The Agency should pay particular attention to those areas identified as most vulnerable without prejudice to any other area in need.
- (9) The activities of the Agency in the field of pollution response should comply with existing cooperation arrangements providing for mutual assistance in the event of a maritime pollution incident. The Union has acceded to various regional organisations and is preparing to accede to other regional organisations.
- (10) The Agency's action should be coordinated with the activities under the bilateral and regional agreements to which the Union is a party. In the event of a maritime pollution incident, the Agency should assist affected States, under whose authority clean-up operations are conducted.
- (11) The Agency should play an active role in maintaining and further developing the European Satellite Oil Monitoring Service (CleanSeaNet) for surveillance, the early detection of pollution and the identification of the ships or oil and gas installations responsible, for example in the case of discharges of oil from ships and of operational releases and accidental spills from offshore platforms. That service should improve the availability of data and the effectiveness and timeliness of the pollution response.
- (12) The additional means to be provided by the Agency to affected States should be made available through the Union Civil Protection Mechanism established by Decision No 1313/2013/EU of the European Parliament and of the Council <sup>(29)</sup>.
- (13) The information related to public and private pollution response mechanisms and associated response capabilities in the various regions of the Union should be made available by Member States through the Common Emergency Communication and Information System (CECIS) established by Council Decision 2007/779/EC, Euratom <sup>(30)</sup>, when available for that purpose.

<sup>(29)</sup> Decision No 1313/2013/EU of the European Parliament and of the Council of 17 December 2013 on a Union Civil Protection Mechanism (OJ L 347, 20.12.2013, p. 924).

<sup>(30)</sup> Council Decision 2007/779/EC, Euratom of 8 November 2007 establishing a Community Civil Protection Mechanism (OJ L 314, 1.12.2007, p. 9).

- (14) In order to make the Agency's operational assistance more efficient in view of the extension of the Agency's pollution response mandate to third countries sharing a regional sea basin with the Union, the Agency should make every effort to encourage those third countries to pool information and cooperate in the maintenance by the Agency of a list of response mechanisms and associated response capabilities.
- (15) In order to improve the effectiveness of the Agency's pollution response activities, Member States should share with the Agency scientific studies they may have carried out on the effects of chemicals used as dispersants which could be relevant for those activities.
- (16) In order to ensure thorough implementation of the Agency's action plans, the Agency should be provided with a viable and cost-effective system for financing, in particular, the provision of operational assistance to affected States.
- (17) Financial security should therefore be provided for the funding of the tasks entrusted to the Agency in the field of pollution response and associated actions on the basis of a multiannual commitment. The size of that multiannual commitment should reflect the expansion of the Agency's remit with regard to pollution response, and also the need for the Agency to increase the efficiency in using the funds allocated to it, in a context of budgetary constraints. The annual amounts of the Union contribution should be determined by the European Parliament and the Council in accordance with the annual budgetary procedure. It is of particular importance that the Commission carry out a mid-term evaluation of the Agency's ability to fulfil its responsibilities in the field of response to marine pollution caused by ships and oil and gas installations in an effective and cost-efficient manner.
- (18) The amounts to be committed for the funding of pollution response should cover the period from 1 January 2014 to 31 December 2020, in line with the multiannual financial framework laid down in Council Regulation (EU, Euratom) No 1311/2013 <sup>(31)</sup> ('the multiannual financial framework'). A financial envelope covering the same period should therefore be provided.
- (19) The Agency's support to States applying for accession to the Union and to the European Neighbourhood partner countries should be financed through existing Union programmes for those States and countries and should therefore not be part of the multiannual funding of the Agency.
- (20) In order to optimise the allocation of commitments and take into account any changes with regard to activities in response to pollution caused by ships, it is necessary to ensure continuous monitoring of the particular needs for action so as to allow for adaptation of the annual financial commitments.
- (21) In accordance with Regulation (EC) No 1406/2002, the Agency should report on the financial execution of the multiannual funding of the Agency in its annual report.
- (22) It is appropriate to ensure continuity in the funding support provided under the action of the Agency in the field of response to marine pollution caused by ships and oil and gas installations, and to align the period of application of this Regulation with that of Regulation (EU, Euratom) No 1311/2013. Therefore, this Regulation should apply from 1 January 2014,

HAVE ADOPTED THIS REGULATION:

#### *Article 1*

#### **Subject matter**

1. This Regulation lays down the detailed arrangements for the financial contribution of the Union to the budget of the European Maritime Safety Agency ('the Agency') for the implementation of the tasks assigned to it in the field of

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<sup>(31)</sup> Council Regulation (EU, Euratom) No 1311/2013 of 2 December 2013 laying down the multiannual financial framework for the years 2014-2020 (OJ L 347, 20.12.2013, p. 884).

response to marine pollution caused by ships and oil and gas installations, pursuant to Articles 1 and 2 of Regulation (EC) No 1406/2002.

2. The activities of the Agency in the field of pollution response shall not relieve coastal States of their responsibility to have appropriate pollution response mechanisms in place.

#### *Article 2*

### **Definitions**

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

- (a) 'oil' means petroleum in any form, including crude oil, fuel oil, sludge, oil refuse and refined products as established by the International Convention on Oil Pollution Preparedness, Response and Cooperation, 1990, of the International Maritime Organisation (IMO);
- (b) 'hazardous and noxious substances' means any substance other than oil which, if introduced into the marine environment, is likely to create hazards to human health, to harm living resources and marine life, to damage amenities or to interfere with other legitimate uses of the sea, as established by the Protocol on Preparedness, Response and Cooperation to Pollution Incidents by Hazardous and Noxious Substances, 2000, of the IMO;
- (c) 'oil and gas installation' means a stationary fixed or mobile facility, or a combination of facilities permanently interconnected by bridges or other structures, used for offshore oil or gas operations or in connection with those operations; 'oil and gas installation' includes mobile offshore drilling units only if they are stationed in offshore waters for drilling, production or other activities associated with offshore oil or gas operations, as well as infrastructure and facilities used to transport the oil and gas onshore and to onshore terminals.

#### *Article 3*

### **Scope**

The financial contribution of the Union referred to in Article 1 shall be allocated to the Agency with the aim of financing actions in the field of response to marine pollution caused by ships and oil and gas installations as referred to in the detailed plan established in accordance with point (k) of Article 10(2) of Regulation (EC) No 1406/2002, in particular those relating to:

- (a) operational assistance and supporting with additional means, such as stand-by anti-pollution ships, satellite images and equipment, of pollution response actions, upon request by the affected States, in accordance with point (d) of Article 2(3) and Article 2(5) of Regulation (EC) No 1406/2002 in the event of accidental or deliberate marine pollution caused by ships or oil and gas installations;
- (b) cooperation and coordination and the provision to the Member States and the Commission of technical and scientific assistance in the framework of the relevant activities of the Union Civil Protection Mechanism, the IMO and the relevant regional organisations;
- (c) information, in particular the gathering, analysis and dissemination of best practices, expertise, techniques and innovations in the field of response to marine pollution caused by ships and oil and gas installations.

#### *Article 4*

### **Union funding**

1. Within the limits of the multiannual financial framework, the Agency shall be given the appropriations necessary to fulfil its responsibilities in the field of response to marine pollution caused by ships and oil and gas installations in an effective and cost-efficient manner.

2. The financial envelope for the implementation of the tasks referred to in Article 3 for the period from 1 January 2014 to 31 December 2020 shall be EUR 160 500 000 expressed in current prices.
3. Annual appropriations shall be determined by the European Parliament and the Council within the limits of the multiannual financial framework. In this connection the necessary funding of operational assistance to the Member States pursuant to point (a) of Article 3 shall be guaranteed.

#### *Article 5*

### **Monitoring existing capabilities**

1. In order to define the requirements for, and to improve the efficiency of, the Agency's provision of operational assistance, for example in the form of anti-pollution vessels additional to Member States' capacities, the Agency shall maintain a list of the public and, where available, private pollution response mechanisms and associated response capabilities in the various regions of the Union.
2. The Agency shall maintain that list on the basis of information that Member States shall provide. In maintaining that list, the Agency shall aim at obtaining information on pollution response mechanisms and associated response capabilities from third countries sharing a regional sea basin with the Union.
3. The Administrative Board of the Agency shall take into account that list and other appropriate information relevant to the pollution response objectives set out in Article 1 of Regulation (EC) No 1406/2002, such as that contained in risk assessments and scientific studies on the effects of chemicals used as dispersants, before deciding on the Agency's pollution response activities in the framework of the Agency's annual work programmes. In this context, the Agency shall pay particular attention to those areas identified as most vulnerable, without prejudice to any other area in need.

#### *Article 6*

### **Protection of the Union's financial interests**

1. The Commission and the Agency shall ensure that, when actions funded under this Regulation are implemented, the financial interests of the Union are protected by the application of preventive measures against fraud, corruption and any other illegal activities, by means of effective checks and inspections and, where irregularities are detected, the recovery of any amounts unduly paid and by imposing effective, proportional and dissuasive penalties, in accordance with Council Regulations (EC, Euratom) No 2988/95 <sup>(32)</sup> and (Euratom, EC) No 2185/96 <sup>(33)</sup> and Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council <sup>(34)</sup>.
2. For the Union actions funded under this Regulation, the notion of irregularity referred to in Article 1(2) of Regulation (EC, Euratom) No 2988/95 shall mean any infringement of a provision of Union law or any breach of a contractual obligation resulting from an act or omission by an economic operator which has, or would have, the effect of prejudicing the general budget of the Union or budgets managed by it, by an unjustified item of expenditure.
3. The Commission and the Agency shall, each within its respective sphere of competence, ensure that best value for money is achieved in the funding of Union actions under this Regulation.

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<sup>(32)</sup> Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests (OJ L 312, 23.12.1995, p. 1).

<sup>(33)</sup> Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities (OJ L 292, 15.11.1996, p. 2).

<sup>(34)</sup> Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999 (OJ L 248, 18.9.2013, p. 1).

*Article 7***Mid-term evaluation**

1. No later than 31 December 2017, the Commission shall submit to the European Parliament and to the Council, on the basis of information provided by the Agency, a report on the implementation of this Regulation. That report, which shall be established without prejudice to the role of the Administrative Board of the Agency, shall set out the results of the use of the Union contribution referred to in Article 4 as regards commitments and expenditure covering the period between 1 January 2014 and 31 December 2016.
2. In that report, the Commission shall present an evaluation of the Agency's ability to fulfil its responsibilities in an effective and cost-efficient manner. For the period 2018–2020, based on the evaluation and considering the need for the Agency to carry out the tasks assigned to it, the Commission shall, if necessary, propose an appropriate adjustment, by a maximum of 8 %, of the multiannual financial envelope allocated to the Agency for the implementation of the tasks referred to in Article 3. The possible adjustment shall remain within the limits of the multiannual financial framework and is without prejudice to the annual budgetary procedures or the upcoming review of the multiannual financial framework.
3. That report shall contain information on the socioeconomic, ecological and financial implications, if available, of the Agency's response preparedness relating to marine pollution caused by ships and oil and gas installations.
4. Furthermore, on the basis of that report, the Commission may, if appropriate, propose amendments to this Regulation, in particular in order to take account of scientific progress in the field of combating marine pollution caused by ships and oil and gas installations, including with regard to pollution caused by hazardous and noxious substances, as well as of relevant changes to the instruments establishing regional organisations whose activities are covered by the Agency's activities with regard to pollution response and to which the Union has acceded.

*Article 8***Entry into force and date of application**

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 1 January 2014 to 31 December 2020.

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

Done at Brussels, 23 July 2014.

*For the European Parliament*

*The President*

M. SCHULZ

*For the Council*

*The President*

S. GOZI

**COUNCIL DIRECTIVE 1999/32/EC OF 26 APRIL 1999 RELATING TO A REDUCTION  
IN THE SULPHUR CONTENT OF CERTAIN LIQUID FUELS**

and amending Directive 93/12/EEC (OJ L 121, 11.5.1999, p. 13)  
amended by Regulation (EC) No 1882/2003, Directive 2005/33/EC,  
Regulation (EC) No 219/2009, Directive 2009/30/EC and Directive 2012/33/EU  
(consolidated version)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 130s(1) thereof,

Having regard to the proposal from the Commission <sup>(35)</sup>,

Having regard to the opinion of the Economic and Social Committee <sup>(36)</sup>,

Acting in accordance with the procedure laid down in Article 189c of the Treaty <sup>(37)</sup>,

- (1) Whereas the objectives and principles of the Community's environmental policy as set out in the action programmes on the environment and in particular the Fifth Environmental Action Programme <sup>(38)</sup> on the basis of principles enshrined in Article 130r of the Treaty, aim in particular to ensure the effective protection of all people from the recognised risks from sulphur dioxide emissions and to protect the environment by preventing sulphur deposition exceeding critical loads and levels;
- (2) Whereas Article 129 of the Treaty provides that health protection requirements are to form a constituent part of the Community's other policies; whereas Article 3(o) of the Treaty also provides that the activities of the Community should include a contribution to the attainment of a high level of health protection;
- (3) Whereas emissions of sulphur dioxide contribute significantly to the problem of acidification in the Community; whereas sulphur dioxide also has a direct effect on human health and on the environment;
- (4) Whereas acidification and atmospheric sulphur dioxide damage sensitive ecosystems, reduce biodiversity and reduce amenity value as well as detrimentally affecting crop production and the growth of forests; whereas acid rain falling in cities may cause significant damage to buildings and the architectural heritage; whereas sulphur dioxide pollution may also have a significant effect upon human health, particularly among those sectors of the population suffering from respiratory diseases;
- (5) Whereas acidification is a transboundary phenomenon requiring Community as well as national or local solutions;
- (6) Whereas emissions of sulphur dioxide contribute to the formation of particulate matter in the atmosphere;
- (7) Whereas the Community and the individual Member States are Contracting Parties to the UN-ECE Convention on Long-Range Transboundary Air Pollution; whereas the second UN-ECE Protocol on transboundary pollution by sulphur dioxide foresees that the Contracting Parties should reduce sulphur dioxide emissions

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<sup>(35)</sup> OJ C 190, 21.6.1997, p. 9, and OJ C 259, 18.8.1998, p. 5.

<sup>(36)</sup> OJ C 355, 21.11.1997, p. 1

<sup>(37)</sup> Opinion of the European Parliament of 13 May 1998 (OJ C 167, 1.6.1998, p. 111), Council Common Position of 6 October 1998 (OJ C 364, 25.11.1998, p. 20) and Decision of the European Parliament of 9 February 1999 (not yet published in the Official Journal).

<sup>(38)</sup> OJ C 138, 17.5.1993, p. 5.

in line with or beyond the 30 % reduction specified in the first Protocol and whereas the second UN-ECE Protocol is based on the premise that critical loads and levels will continue to be exceeded in some sensitive areas; whereas further measures to reduce sulphur dioxide emissions will still be required if the objectives in the Fifth Environmental Action Programme are to be respected; whereas the Contracting Parties should therefore make further significant reductions in emissions of sulphur dioxide;

- (8) Whereas sulphur which is naturally present in small quantities in oil and coal has for decades been recognised as the dominant source of sulphur dioxide emissions which are one of the main causes of 'acid rain' and one of the major causes of the air pollution experienced in many urban and industrial areas;
- (9) Whereas the Commission has recently published a communication on a cost-effective strategy to combat acidification in the Community; whereas the control of sulphur dioxide emissions originating from the combustion of certain liquid fuels was identified as being an integral component of this cost-effective strategy; whereas the Community recognises the need for measures regarding all other fuels;
- (10) Whereas studies have shown that benefits from reducing sulphur emissions by reductions in the sulphur content of fuels will often be considerably greater than the estimated costs to industry in this Directive and whereas the technology exists and is well established for reducing the sulphur level of liquid fuels;
- (11) Whereas, in conformity with the principle of subsidiarity and the principle of proportionality referred to in Article 3b of the Treaty, the objective of reducing the emissions of sulphur dioxide arising from the combustion of certain types of liquid fuels cannot be achieved effectively by Member States acting individually; whereas uncoordinated action offers no guarantee of achieving the desired objective, is potentially counterproductive and will result in considerable uncertainty in the market for the fuel products affected; whereas, in view of the need to reduce sulphur dioxide emissions across the Community, it is therefore more effective to take action at the level of the Community; whereas this Directive limits itself to the minimum requirements necessary to achieve the desired objective;
- (12) Whereas in Council Directive 93/12/EEC of 23 March 1993 relating to the sulphur content of certain liquid fuels <sup>(39)</sup> the Commission was asked to submit to the Council a proposal prescribing lower limits for the sulphur content in gas oil and new limits for aviation kerosene; whereas it would be appropriate to lay down limits for the sulphur content of other liquid fuels, in particular heavy fuel oils, bunker fuel oils, marine gas oils and gas oils, on the basis of cost effectiveness studies;
- (13) Whereas, in accordance with Article 130t of the Treaty, this Directive should not prevent any Member State from maintaining or introducing more stringent protective measures; whereas such measures must be compatible with the Treaty and should be notified to the Commission;
- (14) Whereas a Member State, before introducing new, more stringent protective measures, should notify the draft measures to the Commission in accordance with Council Directive 83/189/EEC of 28 March 1983 laying down a procedure for the provision of information in the field of technical standards and regulations <sup>(40)</sup>;
- (15) Whereas, with regard to the limit on the sulphur content of heavy fuel oil, it is appropriate to provide for derogations in Member States and regions where the environmental conditions allow;
- (16) Whereas, with regard to the limit on the sulphur content of heavy fuel oil, it is also appropriate to provide for derogations for their use in combustion plants which comply with the emission limit values laid down in Council Directive 88/609/EEC of 24 November 1988 <sup>(41)</sup> on the limitation of emissions of certain pollutants into the air from large combustion plants; whereas in the light of the forthcoming revision of Directive 88/609/EEC, it may be necessary to review and, if appropriate, to revise certain provisions of this Directive;

<sup>(39)</sup> OJ L 74, 27.3.1993, p. 81.

<sup>(40)</sup> OJ L 109, 26.4.1983, p. 8. Directive as last amended by Commission Decision 96/139/EC (OJ L 32, 10.2.1996, p. 31).

<sup>(41)</sup> OJ L 336, 7.12.1988, p. 1. Directive as last amended by Directive 94/66/EC (OJ L 337, 24.12.1994, p. 83).

- (17) Whereas for refinery combustion plants excluded from the scope of Article 3(3)(i)(c) of this Directive the emissions of sulphur dioxide averaged over such plants should not exceed the limits set out in Directive 88/609/EEC or any future revision of that Directive; whereas, in the application of this Directive, Member States should bear in mind that substitution by fuels other than those pursuant to Article 2 should not produce an increase in emissions of acidifying pollutants;
- (18) Whereas a limit value of 0,2 % for the sulphur content of gas oils has already been established pursuant to Directive 93/12/EEC; whereas that limit value should be changed to 0,1 % until 1 January 2008;
- (19) Whereas, in accordance with the 1994 Act of Accession, Austria and Finland have a derogation for a period of four years from the date of accession regarding the provisions in Directive 93/12/EEC concerning the sulphur content of gas oil;
- (20) Whereas the limit values of 0,2 % (from the year 2000) and of 0,1 % (from the year 2008) for the sulphur content of gas oils intended for marine use in sea-going ships may present technical and economic problems for Greece throughout its territory, for Spain with regard to the Canary Islands, for France with regard to the French Overseas Departments, and for Portugal with regard to the archipelagoes of Madeira and Azores; whereas a derogation for Greece, the Canary Islands, the French Overseas Departments and the Archipelagoes of Madeira and Azores should not have a negative effect upon the market in gas oil intended for marine use and given that exports of gas oil for marine use from Greece, the Canary Islands, the French Overseas Departments and the Archipelagoes of Madeira and Azores to other Member States should satisfy the requirements in force in the importing Member State; whereas Greece, the Canary Islands, the French Overseas Departments and the Archipelagoes of Madeira and Azores should therefore be afforded a derogation from the limit values of sulphur by weight for gas oil used for marine purposes;
- (21) Whereas sulphur emissions from shipping due to the combustion of bunker fuels with a high sulphur content contribute to sulphur dioxide pollution and problems of acidification; whereas the Community will be advocating more effective protection of areas sensitive to SO<sub>x</sub> emissions and a reduction in the normal limit value for bunker fuel oil (from the present 4,5 %) at the continuing and future negotiations on the MARPOL Convention within the International Maritime Organisation (IMO); whereas the Community initiatives to have the North Sea/Channel declared a special low SO<sub>x</sub> emission control area should be continued;
- (22) Whereas more profound research into the effects of acidification on ecosystems and the human body is needed; whereas the Community is assisting such research under the Fifth Framework Research Programme <sup>(42)</sup>;
- (23) Whereas in the case of a disruption in the supply of crude oil, petroleum products or other hydrocarbons, the Commission may authorise application of a higher limit within a Member State's territory;
- (24) Whereas Member States should establish the appropriate mechanisms for monitoring compliance with the provisions of this Directive; whereas reports on the sulphur content of liquid fuels should be submitted to the Commission;
- (25) Whereas, for reasons of clarity, it will be necessary to amend Directive 93/12/EEC,

HAS ADOPTED THIS DIRECTIVE:

#### *Article 1*

#### **Purpose and scope**

1. The purpose of this Directive is to reduce the emissions of sulphur dioxide resulting from the combustion of certain types of liquid fuels and thereby to reduce the harmful effects of such emissions on man and the environment.

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<sup>(42)</sup> OJL 26, 1.2.1999, p. 1.

2. Reductions in emissions of sulphur dioxide resulting from the combustion of certain petroleum-derived liquid fuels shall be achieved by imposing limits on the sulphur content of such fuels as a condition for their use within Member States' territory, territorial seas and exclusive economic zones or pollution control zones.

The limitations on the sulphur content of certain petroleum-derived liquid fuels as laid down in this Directive shall not, however, apply to:

- (a) fuels intended for the purposes of research and testing;
- (b) fuels intended for processing prior to final combustion;
- (c) fuels to be processed in the refining industry;
- (d) fuels used and placed on the market in the outermost regions of the Community provided that the relevant Member States ensure that, in those regions:
  - air quality standards are respected,
  - heavy fuel oils are not used if their sulphur content exceeds 3 % by mass;
- (e) fuels used by warships and other vessels on military service. However, each Member State shall endeavour to ensure, by the adoption of appropriate measures not impairing the operations or operational capability of such ships, that these ships act in a manner consistent, so far as is reasonable and practical, with this Directive;
- (f) any use of fuels in a vessel necessary for the specific purpose of securing the safety of a ship or saving life at sea;
- (g) any use of fuels in a ship necessitated by damage sustained to it or its equipment, provided that all reasonable measures are taken after the occurrence of the damage to prevent or minimise excess emissions and that measures are taken as soon as possible to repair the damage. This shall not apply if the owner or master acted either with intent to cause damage, or recklessly;
- (h) without prejudice to Article 3a, fuels used on board vessels employing emission abatement methods in accordance with Articles 4c and 4e.

#### *Article 2*

#### **Definitions**

For the purpose of this Directive:

1. *heavy fuel oil* means:
  - any petroleum-derived liquid fuel, excluding marine fuel, falling within CN code 2710 19 51 to 2710 19 68, 2710 20 31, 2710 20 35, 2710 20 39, or
  - any petroleum-derived liquid fuel, other than gas oil as defined in points 2 and 3, which, by reason of its distillation limits, falls within the category of heavy oils intended for use as fuel and of which less than 65 % by volume (including losses) distils at 250 °C by the ASTM D86 method. If the distillation cannot be determined by the ASTM D86 method, the petroleum product is likewise categorised as a heavy fuel oil;
2. *gas oil* means:

- any petroleum-derived liquid fuel, excluding marine fuel, falling within CN code 2710 19 25, 2710 19 29, 2710 19 47, 2710 19 48, 2710 20 17 or 2710 20 19, or
- any petroleum-derived liquid fuel, excluding marine fuel, of which less than 65 % by volume (including losses) distils at 250 °C and of which at least 85 % by volume (including losses) distils at 350 °C by the ASTM D86 method.

Diesel fuels as defined in point 2 of Article 2 of Directive 98/70/EC of the European Parliament and of the Council of 13 October 1998 relating to the quality of petrol and diesel fuels <sup>(43)</sup> are excluded from this definition. Fuels used in nonroad mobile machinery and agricultural tractors are also excluded from this definition;

3. *marine fuel* means any petroleum-derived liquid fuel intended for use or in use on board a vessel, including those fuels defined in ISO 8217. It includes any petroleum-derived liquid fuel in use on board inland waterway vessels or recreational craft, as defined in Directive 97/68/EC of the European Parliament and of the Council of 16 December 1997 on the approximation of the laws of the Member States relating to measures against the emission of gaseous and particulate pollutants from internal combustion engines to be installed in non-road mobile machinery <sup>(44)</sup> and Directive 94/25/EC of the European Parliament and of the Council of 16 June 1994 on the approximation of the laws, regulations and administrative provisions of the Member States relating to recreational craft <sup>(45)</sup>, when such vessels are at sea;

3a. *marine diesel oil* means any marine fuel as defined for DMB grade in Table I of ISO 8217 with the exception of the reference to the sulphur content;

3b. *marine gas oil* means any marine fuel as defined for DMX, DMA and DMZ grades in Table I of ISO 8217 with the exception of the reference to the sulphur content;

3c. MARPOL means the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto;

3d. *Annex VI to MARPOL* means the annex, entitled 'Regulations for the Prevention of Air Pollution from Ships', that the Protocol of 1997 adds to MARPOL;

3e. *Ox Emission Control Areas* means sea areas defined as such by the IMO under Annex VI to MARPOL;

3f. *passenger ships* means ships that carry more than 12 passengers, where a passenger is every person other than:

- (i) the master and the members of the crew or other person employed or engaged in any capacity on board a ship on the business of that ship, and
- (ii) a child under one year of age;

3g. *regular services* means a series of passenger ship crossings operated so as to serve traffic between the same two or more ports, or a series of voyages from and to the same port without intermediate calls, either:

- (i) according to a published timetable, or
- (ii) with crossings so regular or frequent that they constitute a recognisable schedule;

3h. *warship* means a ship belonging to the armed forces of a State bearing the external marks distinguishing such ships of its nationality, under the command of an officer duly commissioned by the government of the State and whose name appears in the appropriate service list or its equivalent, and manned by a crew which is under regular armed forces discipline;

<sup>(43)</sup> OJ L 350, 28.12.1998, p. 58.

<sup>(44)</sup> OJ L 59, 27.2.1998, p. 1.

<sup>(45)</sup> OJ L 164, 30.6.1994, p. 15.

3i. *ships at berth* means ships which are securely moored or anchored in a Community port while they are loading, unloading or hotelling, including the time spent when not engaged in cargo operations;

3k. *placing on the market* means supplying or making available to third persons, against payment or free of charge, anywhere within Member States' jurisdictions, marine fuels for on-board combustion. It excludes supplying or making available marine fuels for export in ships' cargo tanks;

3l. *outermost regions* means the French overseas departments, the Azores, Madeira and the Canary Islands, as set out in Article 299 of the Treaty;

3m. *emission abatement method* means any fitting, material, appliance or apparatus to be fitted in a ship or other procedure, alternative fuel, or compliance method, used as an alternative to low sulphur marine fuel meeting the requirements set out in this Directive, that is verifiable, quantifiable and enforceable;

4. *ASTM method* means the methods laid down by the American Society for Testing and Materials in the 1976 edition of standard definitions and specifications for petroleum and lubricating products;

5. *combustion plant* means any technical apparatus in which fuels are oxidised in order to use the heat generated.

#### Article 3

### Maximum sulphur content of heavy fuel oil

1. Member States shall ensure that heavy fuel oils are not used within their territory if their sulphur content exceeds 1 % by mass.

2. Until 31 December 2015, subject to appropriate monitoring of emissions by competent authorities, paragraph 1 shall not apply to heavy fuel oils used:

- (a) in combustion plants which fall within the scope of Directive 2001/80/EC of the European Parliament and of the Council of 23 October 2001 on the limitation of emissions of certain pollutants into the air from large combustion plants <sup>(46)</sup>, which are subject to Article 4(1) or (2) or Article 4(3)(a) of that Directive and which comply with the emission limits for sulphur dioxide for such plants as set out in that Directive;
- (b) in combustion plants which fall within the scope of Directive 2001/80/EC, which are subject to Article 4(3)(b) and Article 4(6) of that Directive and the monthly average sulphur dioxide emissions of which do not exceed 1 700 mg/Nm<sup>3</sup> at an oxygen content in the flue gas of 3 % by volume on a dry basis;
- (c) in combustion plants which do not fall under points (a) or (b), and the monthly average sulphur dioxide emissions of which do not exceed 1 700 mg/Nm<sup>3</sup> at an oxygen content in the flue gas of 3 % by volume on a dry basis;
- (d) for combustion in refineries, where the monthly average of emissions of sulphur dioxide averaged over all combustion plants in the refinery, irrespective of the type of fuel or fuel combination used, but excluding plants which fall under points (a) and (b), gas turbines and gas engines, do not exceed 1 700 mg/Nm<sup>3</sup> at an oxygen content in the flue gas of 3 % by volume on a dry basis.

3. As from 1 January 2016, subject to appropriate monitoring of emissions by competent authorities, paragraph 1 shall not apply to heavy fuel oils used:

<sup>(46)</sup> OJL 309, 27.11.2001, p. 1.

- (a) in combustion plants which fall within the scope of Chapter III of Directive 2010/75/EU of the European Parliament and of the Council <sup>(47)</sup>, and which comply with the emission limits for sulphur dioxide for such plants as set out in Annex V to that Directive or, where those emission limit values are not applicable according to that Directive, for which the monthly average sulphur dioxide emissions do not exceed 1 700 mg/Nm<sup>3</sup> at an oxygen content in the flue gas of 3 % by volume on a dry basis;
- (b) in combustion plants which do not fall under point (a), and the monthly average sulphur dioxide emissions of which do not exceed 1 700 mg/Nm<sup>3</sup> at an oxygen content in the flue gas of 3 % by volume on a dry basis;
- (c) for combustion in refineries, where the monthly average of emissions of sulphur dioxide averaged over all combustion plants in the refinery, irrespective of the type of fuel or fuel combination used, but excluding plants falling under point (a), gas turbines and gas engines, do not exceed 1 700 mg/Nm<sup>3</sup> at an oxygen content in the flue gas of 3 % by volume on a dry basis.

Member States shall take the necessary measures to ensure that no combustion plant using heavy fuel oil with a sulphur concentration greater than that referred to in paragraph 1 is operated without a permit issued by a competent authority, which specifies the emission limits.

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*Article 3a*

**Maximum sulphur content in marine fuel**

Member States shall ensure that marine fuels are not used within their territory if their sulphur content exceeds 3,50 % by mass, except for fuels supplied to ships using emission abatement methods subject to Article 4c operating in closed mode.

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*Article 4*

**Maximum sulphur content in gas oil**

1. Member States shall ensure that gas oils are not used within their territory if their sulphur content exceeds 0,10 % by mass.

*Article 4a*

**Maximum sulphur content of marine fuels used in territorial seas, exclusive economic zones and pollution control zones of Member States, including SO<sub>x</sub> Emission Control Areas and by passenger ships operating on regular services to or from Union ports**

1. Member States shall take all necessary measures to ensure that marine fuels are not used in the areas of their territorial seas, exclusive economic zones and pollution control zones falling within SO<sub>x</sub> Emission Control Areas if the sulphur content of those fuels by mass exceeds:

- (a) 1,00 % until 31 December 2014;
- (b) 0,10 % as from 1 January 2015.

This paragraph shall apply to all vessels of all flags, including vessels whose journey began outside the Union. The Commission shall have due regard to any future changes to the requirements pursuant to Annex VI to MARPOL

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<sup>(47)</sup> OJL 334, 17.12.2010, p. 17.

applicable within SO<sub>x</sub> Emission Control Areas, and, where appropriate, without undue delay make any relevant proposals with a view to amending this Directive accordingly.

1a. Member States shall take all necessary measures to ensure that marine fuels are not used in the areas of their territorial seas, exclusive economic zones and pollution control zones if the sulphur content of those fuels by mass exceeds:

- (a) 3,50 % as from 18 June 2014;
- (b) 0,50 % as from 1 January 2020.

This paragraph shall apply to all vessels of all flags, including vessels whose journey began outside of the Union, without prejudice to paragraphs 1 and 4 of this Article and Article 4b.

2. The application dates for paragraph 1 shall be as follows:

- (a) for the Baltic Sea area referred to in regulation 14(3)(a) of Annex VI to MARPOL, 11 August 2006;
- (b) for the North Sea:
  - 12 months after entry into force of the IMO designation, according to established procedures, or
  - 11 August 2007,

whichever is the earlier;

- (c) for any other sea areas, including ports, that the IMO subsequently designates as SO<sub>x</sub> Emission Control Areas in accordance with regulation 14(3)(b) of Annex VI to MARPOL: 12 months after the date of entry into force of the designation.

3. Member States shall be responsible for the enforcement of paragraph 1 at least in respect of:

- vessels flying their flag, and
- in the case of Member States bordering SO<sub>x</sub> Emission Control Areas, vessels of all flags while in their ports.

Member States may also take additional enforcement action in respect of other vessels in accordance with international maritime law.

4. Member States shall take all necessary measures to ensure that marine fuels are not used in their territorial seas, exclusive economic zones and pollution control zones falling outside SO<sub>x</sub> Emission Control Areas by passenger ships operating on regular services to or from any Union port if the sulphur content of those fuels exceeds 1,50 % by mass until 1 January 2020.

Member States shall be responsible for the enforcement of this requirement at least in respect of vessels flying their flag and vessels of all flags while in their ports.

5. Member States shall require the correct completion of ships' logbooks, including fuel-changeover operations.

5a. Member States shall endeavour to ensure the availability of marine fuels which comply with this Directive and inform the Commission of the availability of such marine fuels in its ports and terminals.

5b. If a ship is found by a Member State not to be in compliance with the standards for marine fuels which comply with this Directive, the competent authority of the Member State is entitled to require the ship to:

- (a) present a record of the actions taken to attempt to achieve compliance; and

- (b) provide evidence that it attempted to purchase marine fuel which complies with this Directive in accordance with its voyage plan and, if it was not made available where planned, that attempts were made to locate alternative sources for such marine fuel and that, despite best efforts to obtain marine fuel which complies with this Directive, no such marine fuel was made available for purchase.

The ship shall not be required to deviate from its intended voyage or to delay unduly the voyage in order to achieve compliance.

If a ship provides the information referred to in the first subparagraph, the Member State concerned shall take into account all relevant circumstances and the evidence presented to determine the appropriate action to take, including not taking control measures.

A ship shall notify its flag State, and the competent authority of the relevant port of destination, when it cannot purchase marine fuel which complies with this Directive.

A port State shall notify the Commission when a ship has presented evidence of the non-availability of marine fuels which comply with this Directive.

6. Member States shall, in accordance with regulation 18 of Annex VI to MARPOL:
  - (a) maintain a publicly available register of local suppliers of marine fuel;
  - (b) ensure that the sulphur content of all marine fuels sold in their territory is documented by the supplier on a bunker delivery note, accompanied by a sealed sample signed by the representative of the receiving ship;
  - (c) take action against marine fuel suppliers that have been found to deliver fuel that does not comply with the specification stated on the bunker delivery note;
  - (d) ensure that remedial action is taken to bring any non-compliant marine fuel discovered into compliance.
7. Member States shall ensure that marine diesel oils are not placed on the market in their territory if the sulphur content of those marine diesel oils exceeds 1,50 % by mass.

#### *Article 4b*

#### **Maximum sulphur content of marine fuels used by ships at berth in Union ports**

1. Member States shall take all necessary measures to ensure that ships at berth in Union ports do not use marine fuels with a sulphur content exceeding 0,10 % by mass, allowing sufficient time for the crew to complete any necessary fuel-changeover operation as soon as possible after arrival at berth and as late as possible before departure.

Member States shall require the time of any fuel-changeover operation to be recorded in ships' logbooks.

2. Paragraph 1 shall not apply:
  - (a) whenever, according to published timetables, ships are due to be at berth for less than two hours;
  - (b) to ships which switch off all engines and use shore-side electricity while at berth in ports.
3. Member States shall ensure that marine gas oils are not placed on the market in their territory if the sulphur content of those marine gas oils exceeds 0,10 % by mass.

*Article 4c***Emission abatement methods**

1. Member States shall allow the use of emission abatement methods by ships of all flags in their ports, territorial seas, exclusive economic zones and pollution control zones, as an alternative to using marine fuels that meet the requirements of Articles 4a and 4b, subject to paragraphs 2 and 3 of this Article.
2. Ships using the emission abatement methods referred to in paragraph 1 shall continuously achieve reductions of sulphur dioxide emissions that are at least equivalent to the reductions that would be achieved by using marine fuels that meet the requirements of Articles 4a and 4b. Equivalent emission values shall be determined in accordance with Annex I.
  - 2a. Member States shall, as an alternative solution for reducing emissions, encourage the use of onshore power supply systems by docked vessels.
3. The emission abatement methods referred to in paragraph 1 shall comply with the criteria specified in the instruments referred to in Annex II.
4. Where justified in the light of scientific and technical progress regarding alternative emission abatement methods and in such a way as to ensure strict consistency with the relevant instruments and standards adopted by the IMO, the Commission shall:
  - (a) be empowered to adopt delegated acts in accordance with Article 9a amending Annexes I and II;
  - (b) adopt implementing acts laying down the detailed requirements for monitoring of emissions, where appropriate. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 9(2).;

*Article 4d***Approval of emission abatement methods for use on board ships flying the flag of a Member State**

1. Emission abatement methods falling within the scope of Council Directive 96/98/EC <sup>(48)</sup> shall be approved in accordance with that Directive.
2. Emission abatement methods not covered by paragraph 1 of this Article shall be approved in accordance with the procedure referred to in Article 3(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>(49)</sup>, taking into account:
  - (a) guidelines developed by the IMO;
  - (b) the results of any trials conducted under Article 4e;
  - (c) effects on the environment, including achievable emission reductions, and impacts on ecosystems in enclosed ports, harbours and estuaries; and
  - (d) the feasibility of monitoring and verification.

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<sup>(48)</sup> OJ L 46, 17.2.1997, p. 25.

<sup>(49)</sup> OJ L 324, 29.11.2002, p. 1.

*Article 4e***Trials of new emission abatement methods**

Member States may, in cooperation with other Member States, as appropriate, approve trials of ship emission abatement methods on vessels flying their flag, or in sea areas within their jurisdiction. During those trials, the use of marine fuels meeting the requirements of Articles 4a and 4b shall not be mandatory, provided that all of the following conditions are fulfilled:

- (a) the Commission and any port State concerned are notified in writing at least six months before trials begin;
- (b) permits for trials do not exceed 18 months in duration;
- (c) all ships involved install tamper-proof equipment for the continuous monitoring of funnel gas emissions and use it throughout the trial period;
- (d) all ships involved achieve emission reductions which are at least equivalent to those which would be achieved through the sulphur limits for fuels specified in this Directive;
- (e) there are proper waste management systems in place for any waste generated by the emission abatement methods throughout the trial period;
- (f) there is an assessment of impacts on the marine environment, particularly ecosystems in enclosed ports, harbours and estuaries throughout the trial period; and
- (g) full results are provided to the Commission, and made publicly available, within six months of the end of the trials.

*Article 4f***Financial measures**

Member States may adopt financial measures in favour of operators affected by this Directive where such financial measures are in accordance with State aid rules applicable and to be adopted in this area.

*Article 5***Change in the supply of fuels**

If, as a result of a sudden change in the supply of crude oil, petroleum products or other hydrocarbons, it becomes difficult for a Member State to apply the limits on the maximum sulphur content referred to in Articles 3 and 4, that Member State shall inform the Commission thereof. The Commission may authorise a higher limit to be applicable within the territory of that Member State for a period not exceeding six months; it shall notify its decision to the Council and the Member States. Any Member State may refer that decision to the Council within one month. The Council, acting by a qualified majority, may adopt a different decision within two months.

*Article 6***Sampling and analysis**

1. Member States shall take all necessary measures to check by sampling that the sulphur content of fuels used complies with Articles 3, 3a, 4, 4a and 4b. The sampling shall commence on the date on which the relevant limit for maximum sulphur content in the fuel comes into force. It shall be carried out periodically with sufficient frequency and quantities in such a way that the samples are representative of the fuel examined, and in the case of marine fuel, of the fuel being used by vessels while in relevant sea areas and ports. The samples shall be analysed without undue delay.

1a. The following means of sampling, analysis and inspection of marine fuel shall be used:

(a) inspection of ships' log books and bunker delivery notes;

and, as appropriate, the following means of sampling and analysis:

(b) sampling of the marine fuel for on-board combustion while being delivered to ships, in accordance with the Guidelines for the sampling of fuel oil for determination of compliance with the revised MARPOL Annex VI adopted on 17 July 2009 by Resolution 182(59) of the Marine Environment Protection Committee (MEPC) of the IMO, and analysis of its sulphur content; or

(c) sampling and analysis of the sulphur content of marine fuel for on-board combustion contained in tanks, where technically and economically feasible, and in sealed bunker samples on board ships.

1b. The Commission shall be empowered to adopt implementing acts concerning:

(a) the frequency of sampling;

(b) the sampling methods;

(c) the definition of a sample representative of the fuel examined.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 9(2).

2. The reference method adopted for determining the sulphur content shall be ISO method 8754 (2003) or PrEN ISO 14596 (2007).

In order to determine whether marine fuel delivered to and used on board ships is compliant with the sulphur limits required by Articles 3a, 4, 4a and 4b the fuel verification procedure set out in Appendix VI to Annex VI to MARPOL shall be used.

#### *Article 7*

### **Reporting and review**

1. Each year by 30 June, Member States shall, on the basis of the results of the sampling, analysis and inspections carried out in accordance with Article 6, submit a report to the Commission on the compliance with the sulphur standards set out in this Directive for the preceding year.

On the basis of the reports received in accordance with the first subparagraph of this paragraph and the notifications regarding the non-availability of marine fuel which complies with this Directive submitted by Member States in accordance with the fifth subparagraph of Article 4a(5b), the Commission shall, within 12 months from the date referred to in the first subparagraph of this paragraph, draw up and publish a report on the implementation of this Directive. The Commission shall evaluate the need for further strengthening the relevant provisions of this Directive and make any appropriate legislative proposals to that effect.

1a. The Commission may adopt implementing acts concerning the information to be included in the report and the format of the report. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 9(2).

2. By 31 December 2013 the Commission shall submit a report to the European Parliament and to the Council which shall be accompanied, if appropriate, by legislative proposals. The Commission shall consider in its report the potential for reducing air pollution taking into account, inter alia: annual reports submitted in accordance with paragraphs 1 and 1a; observed air quality and acidification; fuel costs; potential economic impact and observed modal shift; and progress in reducing emissions from ships.

3. The Commission shall, in cooperation with Member States and stakeholders, by 31 December 2012, develop appropriate measures, including those identified in the Commission's staff working paper of 16 September 2011 entitled "Pollutant emission reduction from maritime transport and the sustainable waterborne transport toolbox" promoting compliance with the environmental standards of this Directive, and minimising the possible negative impacts.
4. The Commission shall be empowered to adopt delegated acts in accordance with Article 9a concerning the adaptations of Article 2, points 1, 2, 3, 3a, 3b and 4, point (b) of Article 6(1a) and Article 6(2) to scientific and technical progress. Such adaptations shall not result in any direct changes to the scope of this Directive or to sulphur limits for fuels specified in this Directive.

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*Article 9*

**Committee procedure**

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers<sup>(50)</sup>.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

Where the committee delivers no opinion, the Commission shall not adopt the draft implementing act and the third subparagraph of Article 5(4) of Regulation (EU) No 182/2011 shall apply.

*Article 9a*

**Exercise of the delegation**

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Article 4c(4) and Article 7(4) shall be conferred on the Commission for a period of five years from 17 December 2012. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.
3. The delegation of power referred to in Article 4c(4) and Article 7(4) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the powers specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
5. A delegated act adopted pursuant to Article 4c(4) and Article 7(4) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of three months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by three months at the initiative of the European Parliament or of the Council.;

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<sup>(50)</sup> OJ L 55, 28.2.2011, p. 13.

*Article 10***Transposition**

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 1 July 2000. They shall immediately inform the Commission thereof.

When Member States adopt these provisions, these shall contain a reference to this Directive or shall be accompanied by such reference at the time of their official publication. The procedure for such reference shall be adopted by Member States.

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

*Article 11***Penalties**

1. Member States shall determine the penalties applicable to breaches of the national provisions adopted pursuant to this Directive.
2. The penalties determined must be effective, proportionate and dissuasive and may include fines calculated in such a way as to ensure that the fines at least deprive those responsible of the economic benefits derived from their infringement and that those fines gradually increase for repeated infringements.

*Article 12***Entry into force**

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

*Article 13***Addressees**

This Directive is addressed to the Member States.

ANNEX I  
**EQUIVALENT EMISSION VALUES FOR EMISSION ABATEMENT METHODS AS REFERRED TO IN  
 ARTICLE 4c(2)**

Marine fuel sulphur limits referred to in Articles 4a and 4b and regulations 14.1 and 14.4 of Annex VI to MARPOL and corresponding emission values referred to in Article 4c(2):

Marine fuel Sulphur Content (% m/m)	Ratio Emission SO <sub>2</sub> (ppm)/CO <sub>2</sub> (% v/v)
3,50	151,7
1,50	65,0
1,00	43,3
0,50	21,7
0,10	4,3

Note:

- The use of the Ratio Emissions limits is only applicable when using petroleum based Distillate or Residual Fuel Oils.
- In justified cases where the CO<sub>2</sub> concentration is reduced by the exhaust gas cleaning (EGC) unit, the CO<sub>2</sub> concentration may be measured at the EGC unit inlet, provided that the correctness of such a methodology can be clearly demonstrated.

## ANNEX II

**CRITERIA FOR THE USE OF EMISSION ABATEMENT METHODS REFERRED TO IN ARTICLE 4c(3)**

The emission abatement methods referred to in Article 4c shall comply at least with the criteria specified in the following instruments, as applicable:

Emission abatement method	Criteria for use
Mixture of marine fuel and boil-off gas	Commission Decision 2010/769/EU of 13 December 2010 on the establishment of criteria for the use by liquefied natural gas carriers of technological methods as an alternative to using low sulphur marine fuels meeting the requirements of Article 4b of Council Directive 1999/32/EC relating to a reduction in the sulphur content of certain liquid fuels as amended by Directive 2005/33/EC of the European Parliament and of the Council on the sulphur content of marine fuels <sup>(51)</sup> .
Exhaust gas cleaning systems	Resolution MEPC.184(59) adopted on 17 July 2009 "Wash water resulting from exhaust gas cleaning systems which make use of chemicals, additives, preparations and relevant chemical created in situ", referred to in point 10.1.6.1 of Resolution MEPC.184(59), shall not be discharged into the sea, including enclosed ports, harbours and estuaries, unless it is demonstrated by the ship operator that such wash water discharge has no significant negative impacts on and do not pose risks to human health and the environment. If the chemical used is caustic soda it is sufficient that the washwater meets the criteria set out in Resolution MEPC.184(59) and its pH does not exceed 8,0.
Biofuels	Use of biofuels as defined in Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources <sup>(52)</sup> that comply with the relevant CEN and ISO standards. The mixtures of biofuels and marine fuels shall comply with the sulphur standards set out in Article 3a, Article 4a(1), (1a) and (4) and Article 4b of this Directive.

<sup>(51)</sup> OJ L 328, 14.12.2010, p. 15.

<sup>(52)</sup> OJ L 140, 5.6.2009, p. 16.

**REGULATION (EU) 2015/757 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL  
of 29 April 2015**

**on the monitoring, reporting and verification of carbon dioxide emissions from maritime transport,  
and amending Directive 2009/16/EC**

(without annexes Complete version is available on the website of DG MOVE, Safety and Environment, Union  
Legislation on Maritime Safety)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 192(1) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee <sup>(53)</sup>,

After consulting the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure <sup>(54)</sup>,

Whereas:

- (1) Directive 2009/29/EC of the European Parliament and of the Council <sup>(55)</sup> and Decision No 406/2009/EC of the European Parliament and of the Council <sup>(56)</sup> which call for contributions from all sectors of the economy to achieve emission reductions, including the international maritime shipping sector, provide that in the event that no international agreement which includes international maritime emissions in its reduction targets through the International Maritime Organisation (IMO) has been approved by Member States or no such agreement through the United Nations Framework Convention on Climate Change has been approved by the Community by 31 December 2011, the Commission should make a proposal to include international maritime emissions in the Community reduction commitment, with the aim of the proposed act entering into force by 2013. Such a proposal should minimise any negative impact on the Community's competitiveness while taking into account the potential environmental benefits.
- (2) Maritime transport has an impact on the global climate and on air quality, as a result of the carbon dioxide (CO<sub>2</sub>) emissions and other emissions that it generates, such as nitrogen oxides (NOx), sulphur oxides (SOx), methane (CH<sub>4</sub>), particulate matter (PM) and black carbon (BC).
- (3) International maritime shipping remains the only means of transportation not included in the Union's commitment to reduce greenhouse gas emissions. According to the impact assessment accompanying the proposal for this Regulation, Union-related CO<sub>2</sub> emissions from international shipping increased by 48 % between 1990 and 2007.

<sup>(53)</sup> OJ C 67, 6.3.2014, p. 170.

<sup>(54)</sup> Position of the European Parliament of 16 April 2014 (not yet published in the Official Journal) and position of the Council at first reading of 5 March 2015 (not yet published in the Official Journal). Position of the European Parliament of 28 April 2015 (not yet published in the Official Journal).

<sup>(55)</sup> Directive 2009/29/EC of the European Parliament and of the Council of 23 April 2009 amending Directive 2003/87/EC so as to improve and extend the greenhouse gas emission allowance trading scheme of the Community (OJ L 140, 5.6.2009, p. 63).

<sup>(56)</sup> Decision No 406/2009/EC of the European Parliament and of the Council of 23 April 2009 on the effort of Member States to reduce their greenhouse gas emissions to meet the Community's greenhouse gas emission reduction commitments up to 2020 (OJ L 140, 5.6.2009, p. 136).

- (4) In the light of the rapidly developing scientific understanding of the impact of non-CO<sub>2</sub> related emissions from maritime transport on the global climate, an updated assessment of that impact should be carried out regularly in the context of this Regulation. Based on its assessments, the Commission should analyse the implications for policies and measures, in order to reduce those emissions.
- (5) The European Parliament's Resolution of 5 February 2014 on a 2030 framework for climate and energy policies called on the Commission and the Member States to set a binding EU 2030 target of reducing domestic greenhouse gas emissions by at least 40 % compared to 1990 levels. The European Parliament also pointed out that all sectors of the economy would need to contribute to reducing greenhouse gas emissions if the Union is to deliver its fair share of global efforts.
- (6) In its Conclusions of 23 and 24 October 2014, the European Council endorsed a binding EU target of an at least 40 % domestic reduction in greenhouse gas emissions by 2030 compared to 1990. The European Council also stated the importance of reducing greenhouse gas emissions and risks related to fossil fuel dependency in the transport sector and invited the Commission to further examine instruments and measures for a comprehensive and technology-neutral approach, inter alia, for the promotion of emissions reduction and energy efficiency in transport.
- (7) The 7th Environment Action Programme (EAP) <sup>(57)</sup> underlines that all sectors of the economy will need to contribute to reducing greenhouse gas emissions if the Union is to deliver its fair share of global efforts. In this context the 7th EAP highlights that the White paper on transport of 2011 needs to be underpinned by a strong policy framework.
- (8) In July 2011, the IMO adopted technical and operational measures, in particular the Energy Efficiency Design Index (EEDI) for new ships and the Ship Energy Efficiency Management Plan (SEEMP), which will bring improvement in terms of reducing the expected increase in greenhouse gas emissions, but alone cannot lead to the necessary absolute reductions of greenhouse gas emissions from international shipping to keep efforts in line with the global objective of limiting increases in global temperatures to 2 °C.
- (9) According to data provided by the IMO, the specific energy consumption and CO<sub>2</sub> emissions of ships could be reduced by up to 75 % by applying operational measures and implementing existing technologies; a significant part of those measures can be regarded as cost-effective and being such that they could offer net benefits to the sector, as the reduced fuel costs ensure the pay-back of any operational or investment costs.
- (10) In order to reduce CO<sub>2</sub> emissions from shipping at Union level, the best possible option remains setting up a system for monitoring, reporting and verification (MRV system) of CO<sub>2</sub> emissions based on the fuel consumption of ships as a first step of a staged approach for the inclusion of maritime transport emissions in the Union's greenhouse gas reduction commitment, alongside emissions from other sectors that are already contributing to that commitment. Public access to the emissions data will contribute to removing market barriers that prevent the uptake of many cost-negative measures which would reduce greenhouse gas emissions from maritime transport.
- (11) The adoption of measures to reduce greenhouse gas emissions and fuel consumption is hampered by the existence of market barriers such as a lack of reliable information on the fuel efficiency of ships or of technologies available for retrofitting ships, a lack of access to finance for investments in ship efficiency, and split incentives, as shipowners would not benefit from their investments in ship efficiency when fuel bills are paid by operators.
- (12) The results of the stakeholder consultation and discussions with international partners indicate that a staged approach for the inclusion of maritime transport emissions in the Union's greenhouse gas reduction commitment should be applied with the implementation of a robust MRV system for CO<sub>2</sub> emissions from

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<sup>(57)</sup> Decision No 1386/2013/EU of the European Parliament and of the Council of 20 November 2013 on a General Union Environment Action Programme to 2020 'Living well, within the limits of our planet' (OJ L 354, 28.12.2013, p. 171).

maritime transport as a first step and the pricing of those emissions at a later stage. This approach facilitates the making of significant progress at international level on the agreement of greenhouse gas emission reduction targets and further measures to achieve those reductions at minimum cost.

- (13) The introduction of a Union MRV system is expected to lead to emission reductions of up to 2 % compared to business-as-usual, and aggregated net costs reductions of up to EUR 1,2 billion by 2030 as it could contribute to the removal of market barriers, in particular those related to the lack of information about ship efficiency, by providing comparable and reliable information on fuel consumption and energy efficiency to the relevant markets. This reduction of transport costs should facilitate international trade. Furthermore, a robust MRV system is a prerequisite for any market-based measure, efficiency standard or other measure, whether applied at Union level or globally. It also provides reliable data to set precise emission reduction targets and to assess the progress of maritime transport's contribution towards achieving a low carbon economy. Given the international nature of shipping, the preferred and most effective method of reducing greenhouse gas emissions in international maritime transport would be by global agreement.
- (14) All intra-Union voyages, all incoming voyages from the last non-Union port to the first Union port of call and all outgoing voyages from a Union port to the next non-Union port of call, including ballast voyages, should be considered relevant for the purposes of monitoring. CO<sub>2</sub> emissions in Union ports, including emissions arising from ships at berth or moving within a port, should also be covered, particularly as specific measures for their reduction or avoidance are available. These rules should be applied in a non-discriminatory manner to all ships regardless of their flag. However, since this Regulation focuses on maritime transport, it should not establish monitoring, reporting and verification requirements for ship movements and activities not serving the purpose of transporting cargo or passengers for commercial purposes, such as dredging, ice-breaking, pipe laying or offshore installation activities.
- (15) To ensure a level-playing field for ships operating in less favourable climate conditions, it should be possible to include specific information relating to a ship's ice class, and to its navigation through ice, in the data monitored on the basis of this Regulation.
- (16) The proposed MRV system should take the form of a Regulation on account of the complex and highly technical nature of provisions to be introduced, the need for uniform rules applicable throughout the Union to reflect the international nature of maritime transport with numerous ships being expected to call at ports in different Member States, and to facilitate implementation throughout the Union.
- (17) A robust ship-specific Union MRV system should be based on the calculation of emissions from fuel consumed on voyages to and from Union ports, as fuel sales data could not provide appropriately accurate estimates for the fuel consumption within this specific scope, due to the large tank capacities of ships.
- (18) The Union MRV system should also cover other relevant information allowing for the determination of ships' efficiency or for the further analysis of the drivers for the development of emissions, while preserving the confidentiality of commercial or industrial information. This scope also aligns the Union MRV system with international initiatives to introduce efficiency standards for existing ships, also covering operational measures, and contributes to the removal of market barriers related to the lack of information.
- (19) In order to minimise the administrative burden for shipowners and operators, in particular for small and medium-sized enterprises, and to optimise the cost-benefit ratio of the MRV system without jeopardising the objective of covering a widely predominant share of greenhouse gas emissions from maritime transport, the rules for MRV should only apply to large emitters. A threshold of 5 000 gross tonnage (GT) has been selected after detailed objective analysis of sizes and emissions of ships going to and coming from Union ports. Ships above 5 000 GT account for around 55 % of the number of ships calling into Union ports and represent around 90 % of the related emissions. This non-discriminatory threshold would ensure that the most relevant emitters are covered. A lower threshold would result in a higher administrative burden while a higher threshold would limit the coverage of emissions and thus the environmental effectiveness of the MRV system.

- (20) To further reduce the administrative burden for shipowners and operators, the monitoring rules should focus on CO<sub>2</sub> as the most relevant greenhouse gas emitted by maritime transport.
- (21) The rules should take into account existing requirements and data already available on board ships; therefore, companies should be given the opportunity to select one of the following four monitoring methods: the use of Bunker Fuel Delivery Notes, bunker fuel tank monitoring on-board, flow meters for applicable combustion processes or direct emission measurements. A monitoring plan specific to each ship should document the choice made and provide further details on the application of the selected method.
- (22) Any company with responsibility for an entire reporting period over a ship performing shipping activities should be considered responsible for all monitoring and reporting obligations arising in relation to that reporting period, including the submission of a satisfactorily verified emissions report. In the event of a change of company, the new company should only be responsible for the monitoring and reporting obligations related to the reporting period during which the change of company has taken place. To facilitate the fulfilment of these obligations, the new company should receive a copy of the latest monitoring plan and document of compliance, if applicable.
- (23) Other greenhouse gases, climate forcers or air pollutants should not be covered by the Union MRV system at this stage to avoid requirements to install not sufficiently reliable or commercially available measuring equipment, which could impede the implementation of the Union MRV system.
- (24) The IMO International Convention for the Prevention of Pollution from Ships (MARPOL) provides for the mandatory application of the EEDI to new ships and the use of SEEMPs throughout the entire world fleet.
- (25) To minimise the administrative burden for shipowners and operators, reporting and publication of reported information should be organised on an annual basis. By restricting the publication of emissions, fuel consumption and efficiency-related information to annual averages and aggregated figures, confidentiality issues should be addressed. In order to ensure that the protection of legitimate economic interests overriding the public interest in disclosure is not undermined, a different level of aggregation of data should be applied in exceptional cases at the request of the company. The data reported to the Commission should be integrated with statistics to the extent that those data are relevant for the development, production and dissemination of European statistics in accordance with Commission Decision 2012/504/EU<sup>(58)</sup>.
- (26) Verification by accredited verifiers should ensure that monitoring plans and emissions reports are correct and in compliance with the requirements set out in this Regulation. As an important element to simplify verification, verifiers should check data credibility by comparing reported data with estimated data based on ship tracking data and characteristics. Such estimates could be provided by the Commission. In order to ensure impartiality, verifiers should be independent and competent legal entities and should be accredited by national accreditation bodies established pursuant to Regulation (EC) No 765/2008 of the European Parliament and of the Council<sup>(59)</sup>.
- (27) A document of compliance issued by a verifier should be kept on board ships to demonstrate compliance with the obligations for monitoring, reporting and verification. Verifiers should inform the Commission of the issuance of such documents.
- (28) Based on experience from similar tasks related to maritime safety, the European Maritime Safety Agency (EMSA) should, within the framework of its mandate, support the Commission by carrying out certain tasks.

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<sup>(58)</sup> Commission Decision 2012/504/EU of 17 September 2012 on Eurostat (OJ L 251, 18.9.2012, p. 49).

<sup>(59)</sup> Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93 (OJ L 218, 13.8.2008, p. 30).

- (29) Enforcement of the obligations relating to the MRV system should be based on existing instruments, namely those established under Directive 2009/16/EC of the European Parliament and of the Council <sup>(60)</sup> and Directive 2009/21/EC of the European Parliament and of the Council <sup>(61)</sup>, and on information on the issuance of documents of compliance. The document confirming compliance of the ship with the monitoring and reporting obligations should be added to the list of certificates and documents referred to in Annex IV to Directive
- (30) Member States should endeavour to inspect ships which enter ports under their jurisdiction and for which certain required information concerning the document of compliance is not available.
- (31) Non-compliance with the provisions of this Regulation should result in the application of penalties. Member States should lay down rules on those penalties. Those penalties should be effective, proportionate and dissuasive.
- (32) In the case of ships having failed to comply with monitoring and reporting requirements for two or more consecutive reporting periods and where other enforcement measures have failed to ensure compliance, it is appropriate to provide for the possibility of expulsion. Such a measure should be applied in such a way as to allow the situation of non-compliance to be rectified within a reasonable period of time.
- (33) Member States that have no maritime ports in their territory and which have no ships flying their flag and falling under the scope of this Regulation, or which have closed their national ship registers, should be able to derogate from the provisions of this Regulation relating to penalties, as long as no such ships are flying their flag.
- (34) The Union MRV system should serve as a model for the implementation of a global MRV system. A global MRV system is preferable as it could be regarded as more effective due to its broader scope. In this context, and with a view to facilitating the development of international rules within the IMO for the monitoring, reporting and verification of greenhouse gas emissions from maritime transport, the Commission should share relevant information on the implementation of this Regulation with the IMO and other relevant international bodies on a regular basis and relevant submissions should be made to the IMO. Where an agreement on a global MRV system is reached, the Commission should review the Union MRV system with a view to aligning it to the global MRV system.
- (35) In order to take account of relevant international rules and international and European standards as well as technological and scientific developments, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of reviewing certain technical aspects of monitoring and reporting of CO<sub>2</sub> emissions from ships and of further specifying the rules for the verification activities and the methods of accreditation of verifiers. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing-up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.
- (36) In order to ensure uniform conditions for the use of standard templates for the monitoring of CO<sub>2</sub> emissions and other relevant information, for the use of automated systems and standard electronic templates for the coherent reporting of CO<sub>2</sub> emissions and other relevant information to the Commission and the authorities of the flag States concerned, for the specification of technical rules specifying the parameters applicable to categories of ships other than passenger, ro-ro and container ships and for the revision of those parameters,

<sup>(60)</sup> Directive 2009/16/EC of the European Parliament and of the Council of 23 April 2009 on port State control (OJ L 131, 28.5.2009, p. 57).

<sup>(61)</sup> Directive 2009/21/EC of the European Parliament and of the Council of 23 April 2009 on compliance with flag State requirements (OJ L 131, 28.5.2009, p. 132).

implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council <sup>(62)</sup>.

- (37) Since the objective of this Regulation, namely to monitor, report and verify CO<sub>2</sub> emissions from ships as the first step of a staged approach to reduce greenhouse gas emissions, cannot be sufficiently achieved by the Member States, due to the international nature of maritime transport, but can rather, by reason of its scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. 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.
- (38) The rules establishing the MRV system should comply with Directive 95/46/EC of the European Parliament and of the Council <sup>(63)</sup> and Regulation (EC) No 45/2001 of the European Parliament and of the Council <sup>(64)</sup>.
- (39) This Regulation should enter into force on 1 July 2015 to ensure that the Member States and relevant stakeholders have sufficient time to take the necessary measures for the effective application of this Regulation before the first reporting period starting on 1 January 2018,

HAVE ADOPTED THIS REGULATION:

## CHAPTER I GENERAL PROVISIONS

### *Article 1*

#### **Subject matter**

This Regulation lays down rules for the accurate monitoring, reporting and verification of carbon dioxide (CO<sub>2</sub>) emissions and of other relevant information from ships arriving at, within or departing from ports under the jurisdiction of a Member State, in order to promote the reduction of CO<sub>2</sub> emissions from maritime transport in a cost effective manner.

### *Article 2*

#### **Scope**

1. This Regulation applies to ships above 5 000 gross tonnage in respect of CO<sub>2</sub> emissions released during their voyages from their last port of call to a port of call under the jurisdiction of a Member State and from a port of call under the jurisdiction of a Member State to their next port of call, as well as within ports of call under the jurisdiction of a Member State.
2. This Regulation does not apply to warships, naval auxiliaries, fish-catching or fish-processing ships, wooden ships of a primitive build, ships not propelled by mechanical means, or government ships used for non-commercial purposes.

<sup>(62)</sup> Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

<sup>(63)</sup> 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 (OJ L 281, 23.11.1995, p. 31).

<sup>(64)</sup> Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and of the free movement of such data (OJ L 8, 12.1.2001, p. 1).

*Article 3***Definitions**

For the purposes of this Regulation, the following definitions apply:

- (a) 'CO<sub>2</sub> emissions' means the release of CO<sub>2</sub> into the atmosphere by ships;
- (b) 'port of call' means the port where a ship stops to load or unload cargo or to embark or disembark passengers; consequently, stops for the sole purposes of refuelling, obtaining supplies, relieving the crew, going into dry-dock or making repairs to the ship and/or its equipment, stops in port because the ship is in need of assistance or in distress, ship-to-ship transfers carried out outside ports, and stops for the sole purpose of taking shelter from adverse weather or rendered necessary by search and rescue activities are excluded;
- (c) 'voyage' means any movement of a ship that originates from or terminates in a port of call and that serves the purpose of transporting passengers or cargo for commercial purposes;
- (d) 'company' means the shipowner or any other organisation or person, such as the manager or the bareboat charterer, which has assumed the responsibility for the operation of the ship from the shipowner;
- (e) 'gross tonnage' (GT) means the gross tonnage calculated in accordance with the tonnage measurement regulations contained in Annex I to the International Convention on Tonnage Measurement of Ships, adopted by the International Maritime Organization (IMO) in London on 23 June 1969, or any successor convention;
- (f) 'verifier' means a legal entity carrying out verification activities which is accredited by a national accreditation body pursuant to Regulation (EC) No 765/2008 and this Regulation;
- (g) 'verification' means the activities carried out by a verifier to assess the conformity of the documents transmitted by the company with the requirements of this Regulation;
- (h) 'document of compliance' means a document specific to a ship, issued to a company by a verifier, which confirms that that ship has complied with the requirements of this Regulation for a specific reporting period;
- (i) 'other relevant information' means information related to CO<sub>2</sub> emissions from the consumption of fuels, to transport work and to the energy efficiency of ships, which enables the analysis of emission trends and the assessment of ships' performances;
- (j) 'emission factor' means the average emission rate of a greenhouse gas relative to the activity data of a source stream, assuming complete oxidation for combustion and complete conversion for all other chemical reactions;
- (k) 'uncertainty' means a parameter, associated with the result of the determination of a quantity, that characterises the dispersion of the values that could reasonably be attributed to the particular quantity, including the effects of systematic as well as of random factors, expressed as a percentage, and describes a confidence interval around the mean value comprising 95 % of inferred values taking into account any asymmetry of the distribution of values;
- (l) 'conservative' means that a set of assumptions is defined in order to ensure that no under-estimation of annual emissions or over-estimation of distances or amounts of cargo carried occurs;
- (m) 'reporting period' means one calendar year during which CO<sub>2</sub> emissions have to be monitored and reported. For voyages starting and ending in two different calendar years, the monitoring and reporting data shall be accounted under the first calendar year concerned;
- (n) 'ship at berth' means a ship which is securely moored or anchored in a port falling under the jurisdiction of a Member State while it is loading, unloading or hotelling, including the time spent when not engaged in cargo operations;

- (o) 'ice class' means the notation assigned to the ship by the competent national authorities of the flag State or an organisation recognised by that State, showing that the ship has been designed for navigation in sea-ice conditions.

## CHAPTER II

### MONITORING AND REPORTING

#### SECTION 1

#### **Principles and methods for monitoring and reporting**

##### *Article 4*

#### **Common principles for monitoring and reporting**

1. In accordance with Articles 8 to 12, companies shall, for each of their ships, monitor and report on the relevant parameters during a reporting period. They shall carry out that monitoring and reporting within all ports under the jurisdiction of a Member State and for any voyages to or from a port under the jurisdiction of a Member State.
2. Monitoring and reporting shall be complete and cover CO<sub>2</sub> emissions from the combustion of fuels, while the ships are at sea as well as at berth. Companies shall apply appropriate measures to prevent any data gaps within the reporting period.
3. Monitoring and reporting shall be consistent and comparable over time. To that end, companies shall use the same monitoring methodologies and data sets subject to modifications assessed by the verifier.
4. Companies shall obtain, record, compile, analyse and document monitoring data, including assumptions, references, emission factors and activity data, in a transparent manner that enables the reproduction of the determination of CO<sub>2</sub> emissions by the verifier.
5. Companies shall ensure that the determination of CO<sub>2</sub> emissions is neither systematically nor knowingly inaccurate. They shall identify and reduce any source of inaccuracies.
6. Companies shall enable reasonable assurance of the integrity of the CO<sub>2</sub> emission data to be monitored and reported.
7. Companies shall endeavour to take account of the recommendations included in the verification reports issued pursuant to Article 13(3) or (4) in their subsequent monitoring and reporting.

##### *Article 5*

#### **Methods for monitoring CO<sub>2</sub> emissions and other relevant information**

1. For the purposes of Article 4(1), (2) and (3), companies shall, for each of their ships, determine the CO<sub>2</sub> emissions in accordance with any of the methods set out in Annex I, and monitor other relevant information in accordance with the rules set out in Annex II or adopted pursuant to it.
2. The Commission shall be empowered to adopt delegated acts in accordance with Article 23 to amend the methods set out in Annex I and the rules set out in Annex II, in order to take into account relevant international rules as well as international and European standards. The Commission shall be also empowered to adopt delegated acts in accordance with Article 23 to amend Annexes I and II in order to refine the elements of the monitoring methods set out therein, in the light of technological and scientific developments.

## SECTION 2

**Monitoring plan***Article 6***Content and submission of the monitoring plan**

1. By 31 August 2017, companies shall submit to the verifiers a monitoring plan for each of their ships indicating the method chosen to monitor and report CO<sub>2</sub> emissions and other relevant information.
2. Notwithstanding paragraph 1, for ships falling under the scope of this Regulation for the first time after 31 August 2017, the company shall submit a monitoring plan to the verifier without undue delay and no later than two months after each ship's first call in a port under the jurisdiction of a Member State.
3. The monitoring plan shall consist of a complete and transparent documentation of the monitoring method for the ship concerned and shall contain at least the following elements:
  - (a) the identification and type of the ship, including its name, its IMO identification number, its port of registry or home port, and the name of the shipowner;
  - (b) the name of the company and the address, telephone and e-mail details of a contact person;
  - (c) a description of the following CO<sub>2</sub> emission sources on board the ship: main engines, auxiliary engines, gas turbines, boilers and inert gas generators, and the fuel types used;
  - (d) a description of the procedures, systems and responsibilities used to update the list of CO<sub>2</sub> emission sources over the reporting period;
  - (e) a description of the procedures used to monitor the completeness of the list of voyages;
  - (f) a description of the procedures for monitoring the fuel consumption of the ship, including:
    - (i) the method chosen from among those set out in Annex I for calculating the fuel consumption of each CO<sub>2</sub> emission source, including, where applicable, a description of the measuring equipment used,
    - (ii) the procedures for the measurement of fuel uplifts and fuel in tanks, a description of the measuring equipment used and the procedures for recording, retrieving, transmitting and storing information regarding measurements, as applicable,
    - (iii) the method chosen for the determination of density, where applicable,
    - (iv) a procedure to ensure that the total uncertainty of fuel measurements is consistent with the requirements of this Regulation, where possible referring to national laws, clauses in customer contracts or fuel supplier accuracy standards;
  - (g) single emission factors used for each fuel type, or in the case of alternative fuels, the methodologies for determining the emission factors, including the methodology for sampling, methods of analysis and a description of the laboratories used, with the ISO 17025 accreditation of those laboratories, if any;
  - (h) a description of the procedures used for determining activity data per voyage, including:
    - (i) the procedures, responsibilities and data sources for determining and recording the distance,
    - (ii) the procedures, responsibilities, formulae and data sources for determining and recording the cargo carried and the number of passengers, as applicable,

- (iii) the procedures, responsibilities, formulae and data sources for determining and recording the time spent at sea between the port of departure and the port of arrival;
  - (i) a description of the method to be used to determine surrogate data for closing data gaps;
  - (j) a revision record sheet to record all the details of the revision history.
4. The monitoring plan may also contain information on the ice class of the ship and/or the procedures, responsibilities, formulae and data sources for determining and recording the distance travelled and the time spent at sea when navigating through ice.
5. Companies shall use standardised monitoring plans based on templates. Those templates, including the technical rules for their uniform application, shall be determined by the Commission by means of implementing acts. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 24(2).

#### *Article 7*

### **Modifications of the monitoring plan**

1. Companies shall check regularly, and at least annually, whether a ship's monitoring plan reflects the nature and functioning of the ship and whether the monitoring methodology can be improved.
2. Companies shall modify the monitoring plan in any of the following situations:
  - (a) where a change of company occurs;
  - (b) where new CO<sub>2</sub> emissions occur due to new emission sources or due to the use of new fuels not yet contained in the monitoring plan;
  - (c) where a change in availability of data, due to the use of new types of measuring equipment, new sampling methods or analysis methods, or for other reasons, may affect the accuracy of the determination of CO<sub>2</sub> emissions;
  - (d) where data resulting from the monitoring method applied has been found to be incorrect;
  - (e) where any part of the monitoring plan is identified as not being in conformity with the requirements of this Regulation and the company is required to revise it pursuant to Article 13(1).
3. Companies shall notify to the verifiers without undue delay any proposals for modification of the monitoring plan.
4. Modifications of the monitoring plan under points (b), (c) and (d) of paragraph 2 of this Article shall be subject to assessment by the verifier in accordance with Article 13(1). Following the assessment, the verifier shall notify the company whether those modifications are in conformity.

#### SECTION 3

### **Monitoring of CO<sub>2</sub> emissions and other relevant information**

#### *Article 8*

### **Monitoring of activities within a reporting period**

From 1 January 2018, companies shall, based on the monitoring plan assessed in accordance with Article 13(1), monitor CO<sub>2</sub> emissions for each ship on a per-voyage and an annual basis by applying the appropriate method for determining CO<sub>2</sub> emissions among those set out in Part B of Annex I and by calculating CO<sub>2</sub> emissions in accordance with Part A of Annex I.

*Article 9***Monitoring on a per-voyage basis**

1. Based on the monitoring plan assessed in accordance with Article 13(1), for each ship arriving in or departing from, and for each voyage to or from, a port under a Member State's jurisdiction, companies shall monitor in accordance with Part A of Annex I and Part A of Annex II the following parameters:

- (a) port of departure and port of arrival including the date and hour of departure and arrival;
- (b) amount and emission factor for each type of fuel consumed in total;
- (c) CO<sub>2</sub> emitted;
- (d) distance travelled;
- (e) time spent at sea;
- (f) cargo carried;
- (g) transport work.

Companies may also monitor information relating to the ship's ice class and to navigation through ice, where applicable.

2. By way of derogation from paragraph 1 of this Article and without prejudice to Article 10, a company shall be exempt from the obligation to monitor the information referred to in paragraph 1 of this Article on a per-voyage basis in respect of a specified ship, if:

- (a) all of the ship's voyages during the reporting period either start from or end at a port under the jurisdiction of a Member State; and
- (b) the ship, according to its schedule, performs more than 300 voyages during the reporting period.

*Article 10***Monitoring on an annual basis**

Based on the monitoring plan assessed in accordance with Article 13(1), for each ship and for each calendar year, companies shall monitor in accordance with Part A of Annex I and with Part B of Annex II the following parameters:

- (a) amount and emission factor for each type of fuel consumed in total;
- (b) total aggregated CO<sub>2</sub> emitted within the scope of this Regulation;
- (c) aggregated CO<sub>2</sub> emissions from all voyages between ports under a Member State's jurisdiction;
- (d) aggregated CO<sub>2</sub> emissions from all voyages which departed from ports under a Member State's jurisdiction;
- (e) aggregated CO<sub>2</sub> emissions from all voyages to ports under a Member State's jurisdiction;
- (f) CO<sub>2</sub> emissions which occurred within ports under a Member State's jurisdiction at berth;
- (g) total distance travelled;
- (h) total time spent at sea;
- (i) total transport work;
- (j) average energy efficiency.

Companies may monitor information relating to the ship's ice class and to navigation through ice, where applicable.

Companies may also monitor fuel consumed and CO<sub>2</sub> emitted, differentiating on the basis of other criteria defined in the monitoring plan.

#### SECTION 4

### Reporting

#### Article 11

### Content of the emissions report

1. From 2019, by 30 April of each year, companies shall submit to the Commission and to the authorities of the flag States concerned, an emissions report concerning the CO<sub>2</sub> emissions and other relevant information for the entire reporting period for each ship under their responsibility, which has been verified as satisfactory by a verifier in accordance with Article 13.
2. Where there is a change of company, the new company shall ensure that each ship under its responsibility complies with the requirements of this Regulation in relation to the entire reporting period during which it takes responsibility for the ship concerned.
3. Companies shall include in the emissions report the following information:
  - (a) data identifying the ship and the company, including:
    - (i) name of the ship,
    - (ii) IMO identification number,
    - (iii) port of registry or home port,
    - (iv) ice class of the ship, if included in the monitoring plan,
    - (v) technical efficiency of the ship (the Energy Efficiency Design Index (EEDI) or the Estimated Index Value (EIV) in accordance with IMO Resolution MEPC.215 (63), where applicable),
    - (vi) name of the shipowner,
    - (vii) address of the shipowner and its principal place of business,
    - (viii) name of the company (if not the shipowner),
    - (ix) address of the company (if not the shipowner) and its principal place of business,
    - (x) address, telephone and e-mail details of a contact person;
  - (b) the identity of the verifier that assessed the emissions report;
  - (c) information on the monitoring method used and the related level of uncertainty;
  - (d) the results from annual monitoring of the parameters in accordance with Article 10.

*Article 12***Format of the emissions report**

1. The emissions report shall be submitted using automated systems and data exchange formats, including electronic templates.
2. The Commission shall determine, by means of implementing acts, technical rules establishing the data exchange formats, including the electronic templates. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 24(2).

## CHAPTER III

**VERIFICATION AND ACCREDITATION***Article 13***Scope of verification activities and verification report**

1. The verifier shall assess the conformity of the monitoring plan with the requirements laid down in Articles 6 and 7. Where the verifier's assessment identifies non-conformities with those requirements, the company concerned shall revise its monitoring plan accordingly and submit the revised plan for a final assessment by the verifier before the reporting period starts. The company shall agree with the verifier on the timeframe necessary to introduce those revisions. That timeframe shall in any event not extend beyond the beginning of the reporting period.
2. The verifier shall assess the conformity of the emissions report with the requirements laid down in Articles 8 to 12 and Annexes I and II.

In particular the verifier shall assess whether the CO<sub>2</sub> emissions and other relevant information included in the emissions report have been determined in accordance with Articles 8, 9 and 10 and the monitoring plan.

3. Where the verification assessment concludes, with reasonable assurance from the verifier, that the emissions report is free from material misstatements, the verifier shall issue a verification report stating that the emissions report has been verified as satisfactory. The verification report shall specify all issues relevant to the work carried out by the verifier.
4. Where the verification assessment concludes that the emissions report includes misstatements or non-conformities with the requirements of this Regulation, the verifier shall inform the company thereof in a timely manner. The company shall then correct the misstatements or non-conformities so as to enable the verification process to be completed in time and shall submit to the verifier the revised emissions report and any other information that was necessary to correct the non-conformities identified. In its verification report, the verifier shall state whether the misstatements or non-conformities identified during the verification assessment have been corrected by the company. Where the communicated misstatements or non-conformities have not been corrected and, individually or combined, lead to material misstatements, the verifier shall issue a verification report stating that the emissions report does not comply with this Regulation.

*Article 14***General obligations and principles for the verifiers**

1. The verifier shall be independent from the company or from the operator of a ship and shall carry out the activities required under this Regulation in the public interest. For that purpose, neither the verifier nor any part of the same legal entity shall be a company or ship operator, the owner of a company, or be owned by them, nor shall the verifier have relations with the company that could affect its independence and impartiality.

2. When considering the verification of the emissions report and of the monitoring procedures applied by the company, the verifier shall assess the reliability, credibility and accuracy of the monitoring systems and of the reported data and information relating to CO<sub>2</sub> emissions, in particular:

- (a) the attribution of fuel consumption to voyages;
- (b) the reported fuel consumption data and related measurements and calculations;
- (c) the choice and the employment of emission factors;
- (d) the calculations leading to the determination of the overall CO<sub>2</sub> emissions;
- (e) the calculations leading to the determination of the energy efficiency.

3. The verifier shall only consider emissions reports submitted in accordance with Article 12 if reliable and credible data and information enable the CO<sub>2</sub> emissions to be determined with a reasonable degree of certainty and provided that the following are ensured:

- (a) the reported data are coherent in relation to estimated data that are based on ship tracking data and characteristics such as the installed engine power;
- (b) the reported data are free of inconsistencies, in particular when comparing the total volume of fuel purchased annually by each ship and the aggregate fuel consumption during voyages;
- (c) the collection of the data has been carried out in accordance with the applicable rules; and
- (d) the relevant records of the ship are complete and consistent.

#### *Article 15*

#### **Verification procedures**

1. The verifier shall identify potential risks related to the monitoring and reporting process by comparing reported CO<sub>2</sub> emissions with estimated data based on ship tracking data and characteristics such as the installed engine power. Where significant deviations are found, the verifier shall carry out further analyses.

2. The verifier shall identify potential risks related to the different calculation steps by reviewing all data sources and methodologies used.

3. The verifier shall take into consideration any effective risk control methods applied by the company to reduce levels of uncertainty associated with the accuracy specific to the monitoring methods used.

4. The company shall provide the verifier with any additional information that enables it to carry out the verification procedures. The verifier may conduct spot-checks during the verification process to determine the reliability of reported data and information.

5. The Commission shall be empowered to adopt delegated acts in accordance with Article 23, in order to further specify the rules for the verification activities referred to in this Regulation. When adopting these acts, the Commission shall take into account the elements set out in Part A of Annex III. The rules specified in those delegated acts shall be based on the principles for verification provided for in Article 14 and on relevant internationally accepted standards.

*Article 16***Accreditation of verifiers**

1. Verifiers that assess the monitoring plans and the emissions reports, and issue verification reports and documents of compliance referred to in this Regulation shall be accredited for activities under the scope of this Regulation by a national accreditation body pursuant to Regulation (EC) No 765/2008.
2. Where no specific provisions concerning the accreditation of verifiers are laid down in this Regulation, the relevant provisions of Regulation (EC) No 765/2008 shall apply.
3. The Commission shall be empowered to adopt delegated acts in accordance with Article 23, in order to further specify the methods of accreditation of verifiers. When adopting these acts, the Commission shall take into account the elements set out in Part B of Annex III. The methods specified in those delegated acts shall be based on the principles for verification provided for in Article 14 and on relevant internationally accepted standards.

## CHAPTER IV

**COMPLIANCE AND PUBLICATION OF INFORMATION***Article 17***Document of compliance**

1. Where the emissions report fulfils the requirements set out in Articles 11 to 15 and those in Annexes I and II, the verifier shall issue, on the basis of the verification report, a document of compliance for the ship concerned.
2. The document of compliance shall include the following information:
  - (a) identity of the ship (name, IMO identification number and port of registry or home port);
  - (b) name, address and principal place of business of the shipowner;
  - (c) identity of the verifier;
  - (d) date of issue of the document of compliance, its period of validity and the reporting period it refers to.
3. Documents of compliance shall be valid for the period of 18 months after the end of the reporting period.
4. The verifier shall inform the Commission and the authority of the flag State, without delay, of the issuance of any document of compliance. The verifier shall transmit the information referred to in paragraph 2 using automated systems and data exchange formats, including electronic templates.
5. The Commission shall determine, by means of implementing acts, technical rules for the data exchange formats, including the electronic templates. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 24(2).

*Article 18***Obligation to carry a valid document of compliance on board**

By 30 June of the year following the end of a reporting period, ships arriving at, within or departing from a port under the jurisdiction of a Member State, and which have carried out voyages during that reporting period, shall carry on board a valid document of compliance.

### Article 19

#### **Compliance with monitoring and reporting requirements and inspections**

1. Based on the information published in accordance with Article 21(1), each Member State shall take all the measures necessary to ensure compliance with the monitoring and reporting requirements set out in Articles 8 to 12 by ships flying its flag. Member States shall regard the fact that a document of compliance has been issued for the ship concerned, in accordance with Article 17(4), as evidence of such compliance.
2. Each Member State shall ensure that any inspection of a ship in a port under its jurisdiction carried out in accordance with Directive 2009/16/EC includes checking that a valid document of compliance is carried on board.
3. For each ship in respect of which the information referred to in points (i) and (j) of Article 21(2), is not available at the time when it enters a port under the jurisdiction of a Member State, the Member State concerned may check that a valid document of compliance is carried on board.

### Article 20

#### **Penalties, information exchange and expulsion order**

1. Member States shall set up a system of penalties for failure to comply with the monitoring and reporting obligations set out in Articles 8 to 12 and shall take all the measures necessary to ensure that those penalties are imposed. The penalties provided for shall be effective, proportionate and dissuasive. Member States shall notify those provisions to the Commission by 1 July 2017, and shall notify to the Commission without delay any subsequent amendments.
2. Member States shall establish an effective exchange of information and effective cooperation between their national authorities responsible for ensuring compliance with monitoring and reporting obligations or, where applicable, their authorities entrusted with penalty procedures. National penalty procedures against a specified ship by any Member State shall be notified to the Commission, the European Maritime Safety Agency (EMSA), to the other Member States and to the flag State concerned.
3. In the case of ships that have failed to comply with the monitoring and reporting requirements for two or more consecutive reporting periods and where other enforcement measures have failed to ensure compliance, the competent authority of the Member State of the port of entry may issue an expulsion order which shall be notified to the Commission, EMSA, 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 the ship concerned into any of its ports until the company fulfils its monitoring and reporting obligations in accordance with Articles 11 and 18. The fulfilment of those obligations shall be confirmed by the notification of a valid document of compliance to the competent national authority which issued the expulsion order. This paragraph shall be without prejudice to international maritime rules applicable in the case of ships in distress.
4. The shipowner or operator of a ship or its representative in the Member States shall have the right to an effective remedy before a court or tribunal against an expulsion order and shall be properly informed thereof by the competent authority of the Member State of the port of entry. Member States shall establish and maintain appropriate procedures for this purpose.
5. Any Member State without maritime ports in its territory and which has closed its national ship register or has no ships flying its flag that fall within the scope of this Regulation, and as long as no such ships are flying its flag, may derogate from the provisions of this Article. Any Member State that intends to avail itself of that derogation shall notify the Commission at the latest on 1 July 2015. Any subsequent change shall also be communicated to the Commission.

*Article 21***Publication of information and Commission report**

1. By 30 June each year, the Commission shall make publicly available the information on CO<sub>2</sub> emissions reported in accordance with Article 11 as well as the information set out in paragraph 2 of this Article.
2. The Commission shall include the following in the information to be made publicly available:
  - (a) the identity of the ship (name, IMO identification number and port of registry or home port);
  - (b) the technical efficiency of the ship (EEDI or EIV, where applicable);
  - (c) the annual CO<sub>2</sub> emissions;
  - (d) the annual total fuel consumption for voyages;
  - (e) the annual average fuel consumption and CO<sub>2</sub> emissions per distance travelled of voyages;
  - (f) the annual average fuel consumption and CO<sub>2</sub> emissions per distance travelled and cargo carried on voyages;
  - (g) the annual total time spent at sea in voyages;
  - (h) the method applied for monitoring;
  - (i) the date of issue and the expiry date of the document of compliance;
  - (j) the identity of the verifier that assessed the emissions report;
  - (k) any other information monitored and reported on a voluntary basis in accordance with Article 10.
3. Where, due to specific circumstances, disclosure of a category of aggregated data under paragraph 2, which does not relate to CO<sub>2</sub> emissions, would exceptionally undermine the protection of commercial interests deserving protection as a legitimate economic interest overriding the public interest in disclosure pursuant to Regulation (EC) No 1367/2006 of the European Parliament and of the Council <sup>(65)</sup>, a different level of aggregation of that specific data shall be applied, at the request of the company, so as to protect such interests. Where application of a different level of aggregation is not possible, the Commission shall not make those data publicly available.
4. The Commission shall publish an annual report on CO<sub>2</sub> emissions and other relevant information from maritime transport, including aggregated and explained results, with the aim of informing the public and allowing for an assessment of the CO<sub>2</sub> emissions and the energy efficiency of maritime transport per size, type of ships, activity, or any other category deemed relevant.
5. The Commission shall assess every two years the maritime transport sector's overall impact on the global climate including through non-CO<sub>2</sub>-related emissions or effects.
6. Within the framework of its mandate, EMSA shall assist the Commission in its work to comply with this Article and Articles 12 and 17 of this Regulation, in accordance with Regulation (EC) No 1406/2002 of the European Parliament and of the Council <sup>(66)</sup>.

<sup>(65)</sup> Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies (OJ L 264, 25.9.2006, p. 13).

<sup>(66)</sup> Regulation (EC) No 1406/2002 of the European Parliament and of the Council of 27 June 2002 establishing a European Maritime Safety Agency (OJ L 208, 5.8.2002, p. 1).

CHAPTER V  
**INTERNATIONAL COOPERATION**

*Article 22*

**International cooperation**

1. The Commission shall inform the IMO and other relevant international bodies on a regular basis of the implementation of this Regulation, without prejudice to the distribution of competences or to decision-making procedures as provided for in the Treaties.
2. The Commission and, where relevant, the Member States shall maintain technical exchange with third countries, in particular the further development of monitoring methods, the organisation of reporting and the verification of emissions reports.
3. In the event that an international agreement on a global monitoring, reporting and verification system for greenhouse gas emissions or on global measures to reduce greenhouse gas emissions from maritime transport is reached, the Commission shall review this Regulation and shall, if appropriate, propose amendments to this Regulation in order to ensure alignment with that international agreement.

CHAPTER VI  
**DELEGATED AND IMPLEMENTING POWERS AND FINAL PROVISIONS**

*Article 23*

**Exercise of delegation**

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article. It is of particular importance that the Commission follow its usual practice and carry out consultations with experts, including Member States' experts, before adopting those delegated acts.
2. The power to adopt delegated acts referred to in Articles 5(2), 15(5) and 16(3) shall be conferred on the Commission for a period of five years from 1 July 2015. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.
3. The delegation of power referred to in Articles 5(2), 15(5) and 16(3) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
5. A delegated act adopted pursuant to Articles 5(2), 15(5) and 16(3) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

*Article 24***Committee procedure**

1. The Commission shall be assisted by the Committee established by Article 26 of Regulation (EU) No 525/2013 of the European Parliament and of the Council <sup>(67)</sup>. That Committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply. Where the committee delivers no opinion, the Commission shall not adopt the draft implementing act and the third subparagraph of Article 5(4) of Regulation (EU) No 182/2011 shall apply.

*Article 25***Amendments to Directive 2009/16/EC**

The following point shall be added to the list set out in Annex IV to Directive 2009/16/EC:

'50. Document of Compliance issued under Regulation (EU) 2015/757 of the European Parliament and of the Council of 29 April 2015 on the monitoring, reporting and verification of carbon dioxide emissions from maritime transport, and amending Directive 2009/16/EC (\*).

(\* ) OJ L 123, 19.5.2015, p. 55.'

*Article 26***Entry into force**

This Regulation shall enter into force on 1 July 2015.

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

Done at Strasbourg, 29 April 2015.

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<sup>(67)</sup> Regulation (EU) No 525/2013 of the European Parliament and of the Council of 21 May 2013 on a mechanism for monitoring and reporting greenhouse gas emissions and for reporting other information at national and Union level relevant to climate change and repealing Decision No 280/2004/EC (OJ L 165, 18.6.2013, p. 13).

*For the European Parliament*

*The President*

M. SCHULZ

*For the Council*

*The President*

Z. KALNIŅA-LUKAŠEVICA

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**Regulation (EU) No 1257/2013 of the European Parliament and of the Council of 20 November 2013 on  
ship recycling**

and amending Regulation (EC) No 1013/2006 and Directive 2009/16/EC

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 192(1) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee <sup>(68)</sup>,

After consulting the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure <sup>(69)</sup>,

Whereas:

- (1) Ships which constitute waste and which are subject to a transboundary movement for recycling are regulated by the Basel Convention of 22 March 1989 on the Control of the Transboundary Movements of Hazardous Wastes and their Disposal ('the Basel Convention') and Regulation (EC) No 1013/2006 of the European Parliament and of the Council <sup>(70)</sup>. Regulation (EC) No 1013/2006 implements the Basel Convention as well as an amendment <sup>(71)</sup> to that Convention adopted in 1995, which has not yet entered into force at international level, and which establishes a ban on exports of hazardous waste to countries that are not members of the Organisation for Economic Cooperation and Development (OECD). Such ships are generally classified as hazardous waste and prohibited from being exported from the Union for recycling in facilities in countries that are not members of the OECD.
- (2) The mechanisms for monitoring the application of, and enforcing the current Union and international law are not adapted to the specificities of ships and international shipping. Efforts involving inter-agency cooperation between the International Labour Organisation (ILO), the International Maritime Organisation (IMO) and the Secretariat of the Basel Convention have been successful in reaching agreement on the introduction of mandatory requirements, at global level, aimed at ensuring an efficient and effective solution to unsafe and unsound ship recycling practices in the form of the Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships ('the Hong Kong Convention').
- (3) Current ship recycling capacity in OECD countries which is legally accessible to ships flying the flag of a Member State is insufficient. Current safe and environmentally sound ship recycling capacity in countries which are not members of the OECD is sufficient to treat all ships flying the flag of a Member State and is expected to expand further by 2015 as the results of actions taken by recycling countries to meet the requirements of the Hong Kong Convention.

<sup>(68)</sup> OJ C 299, 4.10.2012, p. 158.

<sup>(69)</sup> Position of the European Parliament of 22 October 2013 (not yet published in the Official Journal) and decision of the Council of 15 November 2013.

<sup>(70)</sup> Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste (OJ L 190, 12.7.2006, p. 1).

<sup>(71)</sup> Amendment to the Basel Convention ('Ban amendment') adopted by Decision III/1 of the Parties to the Basel Convention.

- (4) The Hong Kong Convention was adopted on 15 May 2009 under the auspices of the International Maritime Organization. The Hong Kong Convention will enter into force only 24 months after the date of ratification by at least 15 states representing a combined merchant fleet of at least 40 per cent of the gross tonnage of the world's merchant shipping and whose combined maximum annual ship recycling volume during the preceding 10 years constitutes not less than three per cent of the gross tonnage of the combined merchant shipping of the same states. That Convention covers the design, the construction, the operation and the preparation of ships with a view to facilitating safe and environmentally sound recycling without compromising ship safety and operational efficiency. It also covers the operation of ship recycling facilities in a safe and environmentally sound manner, and the establishment of an appropriate enforcement mechanism for ship recycling.
- (5) This Regulation is aimed at facilitating early ratification of the Hong Kong Convention both within the Union and in third countries by applying proportionate controls to ships and ship recycling facilities on the basis of that Convention.
- (6) The Hong Kong Convention provides explicitly for its Parties to take more stringent measures consistent with international law, with respect to the safe and environmentally sound recycling of ships, in order to prevent, reduce or minimise any adverse effects on human health and the environment. Taking that into account, this Regulation should provide protection from the possible adverse effects of hazardous materials on board all ships calling at a port or anchorage of a Member State while ensuring compliance with the provisions applicable to those materials under international law. In order to ensure the monitoring of compliance with the requirements relating to hazardous materials under this Regulation, Member States should apply national provisions to implement Directive 2009/16/EC of the European Parliament and of the Council <sup>(72)</sup>. Currently, port State control inspectors are tasked with the inspection of certification and with active testing for hazardous materials, including asbestos, under the International Convention for the Safety of Life at Sea ('SOLAS'). The Paris Memorandum of Understanding on Port State Control provides a harmonised approach for those activities.
- (7) The purpose of this Regulation is also to reduce disparities between operators in the Union, in OECD countries and in relevant third countries in terms of health and safety at the workplace and environmental standards and to direct ships flying the flag of a Member State to ship recycling facilities that practice safe and environmentally sound methods of dismantling ships instead of directing them to substandard sites as is currently the practice. The competitiveness of safe and environmentally sound recycling and treatment of ships in ship recycling facilities located in a Member State would thereby also be increased. The establishment of a European List of ship recycling facilities ('the European List') fulfilling the requirements set out in this Regulation would contribute to those objectives as well as to better enforcement by facilitating the control of ships going for recycling by the Member State whose flag the ship is flying. Those requirements for ship recycling facilities should be based on the requirements of the Hong Kong Convention. In this regard, ship recycling facilities approved in accordance with this Regulation should meet the necessary requirements to ensure protection of the environment, the health and safety of workers and the environmentally sound management of the waste recovered from recycled ships. For ship recycling facilities located in a third country, the requirements should achieve a high level of protection of human health and the environment that is broadly equivalent to that in the Union. Ship recycling facilities which do not meet those minimum requirements should therefore not be included in the European List.
- (8) The principle of equality in Union law should be applied and its application monitored, in particular when establishing and updating the European List in respect of ship recycling facilities located in a Member State and ship recycling facilities located in a third country fulfilling the requirements set out in this Regulation.
- (9) Member States are encouraged to adopt appropriate measures to ensure that ships excluded from the scope of this Regulation act in a manner that is consistent with this Regulation, in so far as is reasonable and practicable.

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<sup>(72)</sup> Directive 2009/16/EC of the European Parliament and of the Council of 23 April 2009 on port State control (OJ L 131, 28.5.2009, p. 57).

- (10) In order to avoid duplication, it is necessary to exclude ships flying the flag of a Member State falling under the scope of this Regulation from the scope of application of Regulation (EC) No 1013/2006 and of Directive 2008/98/EC of the European Parliament and of the Council <sup>(73)</sup> respectively. Regulation (EC) No 1013/2006 applies to shipments of waste from the Union, subject to exclusions for certain categories of waste where an alternative regime applies. This Regulation subjects ships within its scope to controls throughout their life-cycle and aims to secure recycling of those ships in an environmentally sound manner. It is therefore appropriate to specify that a ship subject to the alternative control regime throughout its life-cycle under this Regulation should not be subject to Regulation (EC) No 1013/2006. Ships neither covered by the scope of the Hong Kong Convention nor by this Regulation, and any waste on board of a ship other than operationally generated waste, should continue to be subject to Regulation (EC) No 1013/2006 and to Directives 2008/98/EC and 2008/99/EC of the European Parliament and of the Council <sup>(74)</sup>, respectively.
- (11) It is also acknowledged that ships continue to be subject to other international conventions to ensure their safe operation at sea during the operational part of their life-cycle and, although they can exercise certain navigational rights and freedoms, ships are required to provide prior notice of entry into ports. Member States should be able to choose to apply further controls in accordance with other international treaties. Additional transit controls are therefore not considered necessary under this Regulation.
- (12) When interpreting the requirements of this Regulation, consideration should be given to the guidelines developed by the IMO ('IMO guidelines') to support the Hong Kong Convention.
- (13) For the purposes of this Regulation, the term 'recycling' should not have the same meaning as defined in Directive 2008/98/EC. This Regulation should therefore introduce a specific definition for the term 'ship recycling'.
- (14) Regulation (EC) No 1272/2008 of the European Parliament and of the Council <sup>(75)</sup> implements at Union level the Globally Harmonised System for the classification and labelling of chemicals. That Regulation, together with Council Directive 67/548/EEC <sup>(76)</sup> and Directive 1999/45/EC of the European Parliament and of the Council <sup>(77)</sup>, provides useful guidance in determining what constitutes a hazardous material.
- (15) Keeping an inventory of hazardous materials on board a ship throughout its life-cycle is a key requirement laid down in the Hong Kong Convention and in this Regulation. In accordance with Regulation 8(2) of the Hong Kong Convention, a ship destined to be recycled should minimise the amounts of operationally generated waste in the period prior to entering the ship recycling facility. If the operationally generated waste is intended for delivery with the ship to a ship recycling facility, the approximate quantities and locations of that waste should be listed in Part II of the inventory.
- (16) Member States should take measures to prevent circumvention of ship recycling rules and to enhance transparency of ship recycling. As provided for in the Hong Kong Convention, Member States should report information concerning ships to which an inventory certificate has been issued, ships for which a statement of completion has been received and information regarding illegal ship recycling and follow-up actions that they have undertaken.

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<sup>(73)</sup> Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives (OJ L 312, 22.11.2008, p. 3).

<sup>(74)</sup> Directive 2008/99/EC of the European Parliament and of the Council of 19 November 2008 on the protection of the environment through criminal law (OJ L 328, 6.12.2008, p. 28).

<sup>(75)</sup> Regulation (EC) No 1272/2008 of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures, amending and repealing Directives 67/548/EEC and 1999/45/EC, and amending Regulation (EC) No 1907/2006 (OJ L 353, 31.12.2008, p. 1).

<sup>(76)</sup> Council Directive 67/548/EEC of 27 June 1967 on the approximation of laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances (OJ 196, 16.8.1967, p. 1).

<sup>(77)</sup> Directive 1999/45/EC of the European Parliament and of the Council of 31 May 1999 concerning the approximation of the laws, regulations and administrative provisions of the Member States relating to the classification, packaging and labelling of dangerous preparations (OJ L 200, 30.7.1999, p. 1).

- (17) Member States should lay down rules on penalties applicable to infringements of this Regulation and ensure that those penalties are applied so as to prevent circumvention of ship recycling rules. The penalties, which may be of a civil or administrative nature, should be effective, proportionate and dissuasive.
- (18) In accordance with the case-law of the Court of Justice, the courts of the Member States are required to interpret, to the fullest extent possible, the procedural rules relating to the conditions to be met in order to bring administrative or judicial proceedings in accordance with the objectives of Article 9(3) of the Aarhus Convention.
- (19) In the interest of protecting human health and the environment and having regard to the ‘polluter pays’ principle, the Commission should assess the feasibility of establishing a financial mechanism applicable to all ships calling at a port or anchorage of a Member State, irrespective of the flag they are flying, to generate resources that would facilitate the environmentally sound recycling and treatment of ships without creating an incentive to out-flag.
- (20) In order to take into account developments regarding the Hong Kong Convention, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of the updating of Annexes I and II to this Regulation. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.
- (21) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council <sup>(78)</sup>.
- (22) Since the objective of this Regulation, namely to prevent, reduce or eliminate adverse effects on human health and the environment caused by the recycling, operation and maintenance of ships flying the flag of a Member State, cannot be sufficiently achieved by the Member States due to the international character of shipping and ship recycling, but can rather by reason of its scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. 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:

## TITLE I

### SUBJECT-MATTER, SCOPE AND DEFINITIONS

#### *Article 1*

#### **Subject matter and purpose**

The purpose of this Regulation is to prevent, reduce, minimise and, to the extent practicable, eliminate accidents, injuries and other adverse effects on human health and the environment caused by ship recycling. The purpose of this Regulation is to enhance safety, the protection of human health and of the Union marine environment throughout a ships life-cycle, in particular to ensure that hazardous waste from such ship recycling is subject to environmentally sound management.

This Regulation also lays down rules to ensure the proper management of hazardous materials on ships.

<sup>(78)</sup> Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission’s exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

This Regulation also aims to facilitate the ratification of the Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships, 2009 ('the Hong Kong Convention').

#### *Article 2*

#### **Scope**

1. This Regulation, with the exception of Article 12, shall apply to ships flying the flag of a Member State.

Article 12 shall apply to ships flying the flag of a third country calling at a port or anchorage of a Member State.

2. This Regulation shall not apply to:

- (a) any warships, naval auxiliary, or other ships owned or operated by a state and used, for the time being, only on government non-commercial service;
- (b) ships of less than 500 gross tonnage (GT);
- (c) ships operating throughout their life only in waters subject to the sovereignty or jurisdiction of the Member State whose flag the ship is flying.

#### *Article 3*

#### **Definitions**

1. For the purposes of this Regulation, the following definitions apply:

- (1) 'ship' means a vessel of any type whatsoever operating or having operated in the marine environment, and includes submersibles, floating craft, floating platforms, self-elevating platforms, Floating Storage Units (FSUs), and Floating Production Storage and Offloading Units (FPSOs), as well as a vessel stripped of equipment or being towed;
- (2) 'new ship' means a ship for which either:
  - (a) the building contract is placed on or after the date of application of this Regulation;
  - (b) in the absence of a building contract, the keel is laid or the ship is at a similar stage of construction six months after the date of application of this Regulation or thereafter; or
  - (c) the delivery takes place thirty months after the date of application of this Regulation or thereafter;
- (3) 'tanker' means an oil tanker as defined in Annex I to the Convention for the Prevention of Pollution from Ships ('MARPOL Convention') or a Noxious Liquid Substances (NLS) tanker as defined in Annex II to that Convention;
- (4) 'hazardous material' means any material or substance which is liable to create hazards to human health and/or the environment;
- (5) 'operationally generated waste' means waste water and residues generated by the normal operation of ships subject to the requirements of the MARPOL Convention;
- (6) 'ship recycling' means the activity of complete or partial dismantling of a ship at a ship recycling facility in order to recover components and materials for reprocessing, for preparation for re-use or for re-use, whilst ensuring the management of hazardous and other materials, and includes associated operations such as storage and treatment of components and materials on site, but not their further processing or disposal in separate facilities;

- (7) 'ship recycling facility' means a defined area that is a yard or facility located in a Member State or in a third country and used for the recycling of ships;
- (8) 'ship recycling company' means, the owner of the ship recycling facility or any other organisation or person who has assumed the responsibility for the operation of the ship recycling activity from the owner of the ship recycling facility;
- (9) 'administration' means a governmental authority designated by a Member State as being responsible for duties related to ships flying its flag or to ships operating under its authority;
- (10) 'recognised organisation' means an organisation recognised in accordance with Regulation (EC) No 391/2009 of the European Parliament and of the Council <sup>(79)</sup>;
- (11) 'competent authority' means a governmental authority or authorities designated by a Member State or a third country as responsible for ship recycling facilities, within a specified geographical area or an area of expertise, relating to all operations within the jurisdiction of that state;
- (12) 'gross tonnage' means the gross tonnage (GT) calculated in accordance with the tonnage measurement regulations contained in Annex I to the International Convention on Tonnage Measurement of Ships, 1969, or any successor convention;
- (13) 'competent person' means a person with suitable qualifications, training, and sufficient knowledge, experience and skill, for the performance of the specific work;
- (14) 'ship owner' means the natural or legal person registered as the owner of the ship, including the natural or legal person owning the ship for a limited period pending its sale or handover to a ship recycling facility, or, in the absence of registration, the natural or legal person owning 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 the legal person operating a state-owned ship;
- (15) 'new installation' means the installation of systems, equipment, insulation or other material on a ship after the date of application of this Regulation;
- (16) 'ship recycling plan' means a plan developed by the operator of the ship recycling facility for each specific ship to be recycled under its responsibility taking into account the relevant IMO guidelines and resolutions;
- (17) 'ship recycling facility plan' means a plan prepared by the operator of the ship recycling facility and adopted by the board or the appropriate governing body of the ship recycling company that describes the operational processes and procedures involved in ship recycling at the ship recycling facility and that covers in particular workers' safety and training, protection of human health and the environment, roles and responsibilities of personnel, emergency preparedness and response, and systems for monitoring, reporting and record-keeping, taking into account the relevant IMO guidelines and resolutions;
- (18) 'safe-for-entry' means a space that meets all of the following criteria:
  - (a) the oxygen content of the atmosphere and the concentration of flammable vapours are within safe limits;
  - (b) any toxic materials in the atmosphere are within permissible concentrations;
  - (c) any residues or materials associated with the work authorised by the competent person will not produce uncontrolled release of toxic materials or an unsafe concentration of flammable vapours under existing atmospheric conditions while maintained as directed;

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<sup>(79)</sup> 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 (OJ L 131, 28.5.2009, p. 11).

- (19) 'safe-for-hot work' means a space in which all of the following criteria are met:
- (a) safe, non-explosive conditions, including gas-free status, exist for the use of electric arc or gas welding equipment, cutting or burning equipment or other forms of naked flame, as well as heating, grinding, or spark-generating operations;
  - (b) the safe-for-entry criteria set out in point 18 are met;
  - (c) existing atmospheric conditions do not change as a result of the hot work;
  - (d) all adjacent spaces have been cleaned, rendered inert or treated sufficiently to prevent the start or spread of fire;
- (20) 'statement of completion' means a confirmatory statement issued by the operator of the ship recycling facility that the ship recycling has been completed in accordance with this Regulation;
- (21) 'inventory certificate' means a ship-specific certificate that is issued to ships flying the flag of a Member State in accordance with Article 9 and that is supplemented by an inventory of hazardous materials in accordance with Article 5;
- (22) 'ready for recycling certificate' means a ship-specific certificate that is issued to ships flying the flag of a Member State in accordance with Article 9(9) and that is supplemented by an inventory of hazardous materials in accordance with Article 5(7) and the approved ship recycling plan in accordance with Article 7;
- (23) 'statement of compliance' means a ship-specific certificate that is issued to ships flying the flag of a third country and that is supplemented by an inventory of hazardous materials in accordance with Article 12;
- (24) 'light displacement tonnes (LDT)' means the weight of a ship in tonnes without cargo, fuel, lubricating oil in storage tanks, ballast water, fresh water, feedwater, consumable stores, passengers and crew and their effects and it is the sum of the weight of the hull, structure, machinery, equipment and fittings of the ship.
2. For the purposes of Article 7(2)(d) and Articles 13, 15 and 16,
- (a) 'waste', 'hazardous waste', 'treatment' and 'waste management' have the same meaning as in Article 3 of Directive 2008/98/EC;
  - (b) 'site inspection' means an inspection of the ship recycling facility assessing whether the conditions on site are consistent with those described in any relevant documentation provided;
  - (c) 'worker' means any person who performs work, either regularly or temporarily, in the context of an employment relationship, including the personnel working for contractors and subcontractors;
  - (d) 'environmentally sound management' means taking all practicable steps to ensure that waste and hazardous materials are managed in a manner which protects human health and the environment against the adverse effects which may result from such materials and waste.

3. For the purposes of point 13 of paragraph 1, a competent person may be a trained worker or a managerial employee capable of recognising and evaluating occupational hazards, risks, and employee exposure to potentially hazardous materials or unsafe conditions in a ship recycling facility, and who is capable of specifying the necessary protection and precautions to be taken to eliminate or reduce those hazards, risks or that exposure.

Without prejudice to Directive 2005/36/EC of the European Parliament and of the Council <sup>(80)</sup>, the competent authority may define appropriate criteria for the designation of such persons and may determine the duties to be assigned to them.

<sup>(80)</sup> Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications (OJ L 255, 30.9.2005, p. 22).

## TITLE II SHIPS

### *Article 4*

#### **Control of hazardous materials**

The installation or use of hazardous materials referred to in Annex I on ships shall be prohibited or restricted as specified in Annex I, without prejudice to other requirements of relevant Union law which may require further measures.

### *Article 5*

#### **Inventory of hazardous materials**

1. Each new ship shall have on board an inventory of hazardous materials, which shall identify at least the hazardous materials referred to in Annex II and contained in the structure or equipment of the ship, their location and approximate quantities.
2. Subject to point (b) of Article 32(2), existing ships shall comply, as far as practicable, with paragraph 1.

In the case of ships going for recycling, they shall comply, as far as practicable, with paragraph 1 of this Article from the date of the publication of the European List of ship recycling facilities ('the European List') as set out in Article 16(2).

Subject to point (b) of Article 32(2), when the inventory of hazardous materials is developed it shall identify, at least, the hazardous materials listed in Annex I.

3. The inventory of hazardous materials shall:
  - (a) be specific to each ship;
  - (b) provide evidence that the ship complies with the prohibition or restrictions on installing or using hazardous materials in accordance with Article 4;
  - (c) be compiled taking into account the relevant IMO guidelines;
  - (d) be verified either by the administration or a recognised organisation authorised by it.
4. In addition to paragraph 3, for existing ships a plan shall be prepared describing the visual or sampling check by which the inventory of hazardous materials is developed and taking into account the relevant IMO guidelines.
5. The inventory of hazardous materials shall consist of three parts:
  - (a) a list of hazardous materials referred to in Annexes I and II, in accordance with the provisions of paragraphs 1 and 2 of this Article, and contained in the structure or equipment of the ship, with an indication of their location and approximate quantities (Part I);
  - (b) a list of the operationally generated waste present on board the ship (Part II);
  - (c) a list of the stores present on board the ship (Part III).
6. Part I of the inventory of hazardous materials shall be properly maintained and updated throughout the operational life of the ship, reflecting new installations containing any hazardous materials referred to in Annex II and relevant changes in the structure and equipment of the ship.

7. Prior to recycling, and taking into account the relevant IMO guidelines, the inventory of hazardous materials shall, in addition to the properly maintained and updated Part I, incorporate Part II for operationally generated waste and Part III for stores, and be verified by the administration or a recognised organisation authorised by it.

8. The Commission shall be empowered to adopt delegated acts in accordance with Article 24 concerning the updating of the list of items for the inventory of hazardous materials in Annexes I and II to ensure that the lists include at least the substances listed in Appendices I and II of the Hong Kong Convention.

The Commission shall adopt a separate delegated act in respect of each substance to be added or deleted from Annexes I or II.

#### *Article 6*

### **General requirements for ship owners**

1. When preparing to send a ship for recycling, ship owners shall:
  - (a) provide the operator of the ship recycling facility with all ship-relevant information, necessary for the development of the ship recycling plan set out in Article 7;
  - (b) notify in writing the relevant administration, within a timeframe to be determined by that administration, of the intention to recycle the ship in a specified ship recycling facility or facilities. The notification shall include at least:
    - (i) the inventory of hazardous materials; and
    - (ii) all ship-relevant information provided under point (a).
2. Ship owners shall ensure that ships destined to be recycled:
  - (a) are only recycled at ship recycling facilities that are included in the European List;
  - (b) conduct operations in the period prior to entering the ship recycling facility in such a way as to minimise the amount of cargo residues, remaining fuel oil, and ship generated waste remaining on board;
  - (c) hold a ready for recycling certificate issued by the administration or a recognised organisation authorised by it prior to any recycling of the ship and after the receipt of the ship recycling plan approved in accordance with Article 7(3).
3. Ship owners shall ensure that tankers arrive at the ship recycling facility with cargo tanks and pump rooms in a condition ready for certification as safe-for-hot work.
4. Ship owners shall provide the operator of the ship recycling facility with a copy of the ready for recycling certificate issued in accordance with Article 9.
5. Ship owners shall be responsible for the ship and shall make arrangements to maintain that ship in compliance with the requirements of the administration of the Member State whose flag the ship is flying up until such time as the operator of the ship recycling facility accepts responsibility for that ship. The operator of the ship recycling facility may decline to accept the ship for recycling if the condition of the ship does not correspond substantially with the particulars of the inventory certificate, including where Part I of the inventory of hazardous materials has not been properly maintained and updated, reflecting changes in the ship's structure and equipment. In such circumstances, the ship owner shall retain responsibility for that ship and shall inform the administration thereof without delay.

*Article 7***Ship recycling plan**

1. A ship-specific ship recycling plan shall be developed prior to any recycling of a ship. The ship recycling plan shall address any ship-specific considerations that are not covered in the ship recycling facility plan or that require special procedures.
2. The ship recycling plan shall:
  - (a) be developed by the operator of the ship recycling facility in accordance with the relevant provisions of the Hong Kong Convention and taking into account the relevant IMO guidelines and the ship-relevant information provided by the ship owner in accordance with Article 6(1)(a) so that its contents are consistent with the information contained in the inventory of hazardous materials;
  - (b) clarify whether and to what extent any preparatory work, such as pre-treatment, identification of potential hazards and removal of stores, is to take place at a location other than the ship recycling facility identified in the ship recycling plan. The ship recycling plan should include the location where the ship will be placed during recycling operations and a concise plan for the arrival and safe placement of the specific ship to be recycled;
  - (c) include information concerning the establishment, maintenance and monitoring of the safe-for-entry and safe-for-hot work conditions for the specific ship, taking into account features such as its structure, configuration and previous cargo, and other necessary information on how the ship recycling plan is to be implemented;
  - (d) include information on the type and amount of hazardous materials and of waste to be generated by the recycling of the specific ship, including the materials and the waste identified in the inventory of hazardous materials, and on how they will be managed and stored in the ship recycling facility as well as in subsequent facilities; and
  - (e) be prepared separately, in principle, for each ship recycling facility involved where more than one ship recycling facility is to be used, and identify the order of use and the authorised activities that will occur at those facilities.
3. The ship recycling plan shall be tacitly or explicitly approved by the competent authority in accordance with the requirements of the state where the ship recycling facility is located, where applicable.

Explicit approval shall be given when the competent authority sends a written notification of its decision on the ship recycling plan to the operator of the ship recycling facility, the ship owner and the administration.

Tacit approval shall be deemed given, if no written objection to the ship recycling plan is communicated by the competent authority to the operator of the ship recycling facility, the ship owner and the administration within a review period laid down in accordance with the requirements of the state where the ship recycling facility is located, where applicable, and notified in accordance with Article 15(2)(b).

4. Member States may require their administration to send to the competent authority of the state where the ship recycling facility is located the information provided by the ship owner pursuant to Article 6(1)(b) and the following details:
  - (i) the date on which the ship was registered within the State whose flag it flies;
  - (ii) the ship's identification number (IMO number);
  - (iii) the hull number on new-building delivery;

- (iv) the name and type of the ship;
- (v) the port at which the ship is registered;
- (vi) the name and address of the ship owner as well as the IMO registered owner identification number;
- (vii) the name and address of the company;
- (viii) the name of any classification societies with which the ship is classed;
- (ix) the ship's main particulars (Length overall (LOA), Breadth (Moulded), Depth (Moulded), LDT, Gross and Net tonnage, and engine type and rating).

#### *Article 8*

#### **Surveys**

1. Surveys of ships shall be carried out by officers of the administration, or of a recognised organisation authorised by it, taking into account the relevant IMO guidelines.
2. Where the administration uses recognised organisations to conduct surveys, as described in paragraph 1, it shall, as a minimum, empower such recognised organisations to:
  - require a ship that they survey to comply with this Regulation; and
  - carry out surveys if requested by the appropriate authorities of a Member State.
3. Ships shall be subject to the following surveys:
  - (a) an initial survey;
  - (b) a renewal survey;
  - (c) an additional survey;
  - (d) a final survey.
4. The initial survey of a new ship shall be conducted before the ship is put in service, or before the inventory certificate is issued. For existing ships, an initial survey shall be conducted by 31 December 2020. The survey shall verify that Part I of the inventory of hazardous materials complies with the requirements of this Regulation.
5. The renewal survey shall be conducted at intervals specified by the administration, which shall not exceed five years. The renewal survey shall verify that Part I of the inventory of hazardous materials complies with the requirements of this Regulation.
6. The additional survey, either general or partial depending on the circumstances, shall be conducted if requested by the ship owner after a change, replacement or significant repair of the structure, equipment, systems, fittings, arrangements and material, which has an impact on the inventory of hazardous materials. The survey shall be such as to ensure that any change, replacement, or significant repair has been made in a manner that ensures that the ship continues to comply with the requirements of this Regulation, and that Part I of the inventory of hazardous materials is amended as necessary.
7. The final survey shall be conducted prior to the ship being taken out of service and before the recycling of the ship has started.

That survey shall verify that:

- (a) the inventory of hazardous materials complies with the requirements of Article 5;
  - (b) the ship recycling plan properly reflects the information contained in the inventory of hazardous materials and complies with the requirements of Article 7;
  - (c) the ship recycling facility where the ship is to be recycled is included in the European List.
8. For existing ships intended for ship recycling, the initial survey and the final survey may be conducted at the same time.

#### *Article 9*

#### **Issuance and endorsement of certificates**

1. After successful completion of an initial or renewal survey, the administration or a recognised organisation authorised by it shall issue an inventory certificate. That certificate shall be supplemented by Part I of the inventory of hazardous materials, referred to in Article 5(5)(a).

Where the initial survey and the final survey are conducted at the same time as provided for in Article 8(8), only the ready for recycling certificate referred to in paragraph 9 of this Article shall be issued.

The Commission shall adopt implementing acts to establish the format of the inventory certificate to ensure it is consistent with Appendix 3 to the Hong Kong Convention. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 25 of this Regulation.

2. An inventory certificate shall be endorsed at the request of the ship owner either by the administration or by a recognised organisation authorised by it after successful completion of an additional survey conducted in accordance with Article 8(6).

3. Subject to paragraph 4, the administration or recognised organisation authorised by it shall issue or endorse, as appropriate, an inventory certificate, where the renewal survey is successfully completed:

- (a) in the three month period before the expiry date of the existing inventory certificate, and the new certificate shall be valid from the date of completion of the renewal survey to a date not exceeding five years from the date of expiry of the existing one;
- (b) after the expiry date of the existing inventory certificate, and the new certificate shall be valid from the date of completion of the renewal survey to a date not exceeding five years from the date of expiry of the existing one;
- (c) more than three months before the expiry date of the existing inventory certificate, and the new certificate shall be valid from the date of completion of the renewal survey to a date not exceeding five years from the date of completion of the renewal survey.

4. Where a renewal survey has been successfully completed and a new inventory certificate cannot be issued or placed on board before the expiry date of the existing certificate, the administration or recognised organisation authorised by it shall endorse the existing certificate and such a certificate shall be accepted as valid for a further period which shall not exceed five months from the date of expiry.

5. In case of an inventory certificate issued for a period of less than five years, the administration or the recognised organisation authorised by it may extend the validity of the existing certificate for a further period which shall not exceed five years.

6. In special circumstances as determined by the administration, a new inventory certificate need not be dated from the date of expiry of the existing certificate as required by points (a) and (b) of paragraph 3 and paragraphs 7 and 8. In those circumstances, the new certificate shall be valid for a period not exceeding five years from the date of completion of the renewal survey.

7. Where a ship is not at the port or anchorage where it is to be surveyed when the inventory certificate expires, the administration may, if it is proper to do so, extend the period of validity of the inventory certificate for a period not exceeding three months to enable the ship to complete its voyage to the port in which it is to be surveyed. Any such extension granted shall be conditional on the survey being completed at that port before the ship leaves. A ship to which an extension is granted shall not, on its arrival in the port in which it is to be surveyed, be entitled, by virtue of such extension, to leave the port without having a new certificate. When the renewal survey is completed, the new inventory certificate shall be valid for a period not exceeding five years from the date of expiry of the existing certificate before the extension was granted.

8. An inventory certificate for a ship engaged on short voyages and which has not been extended under the conditions referred to in paragraph 7 may be extended by the administration for a period of grace of up to one month from its expiry. When the renewal survey is completed, the new inventory certificate shall be valid for a period not exceeding five years from the date of expiry of the existing certificate before the extension was granted.

9. After successful completion of a final survey in accordance with Article 8(7), the administration or a recognised organisation authorised by it shall issue a ready for recycling certificate. That certificate shall be supplemented by the inventory of hazardous materials and the ship recycling plan.

The Commission shall adopt implementing acts to establish the format of the ready for recycling certificate to ensure it is consistent with Appendix 4 to the Hong Kong Convention. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 25 of this Regulation. A ready for recycling certificate issued after a final survey in accordance with the first subparagraph of this paragraph shall be accepted by the other Member States and regarded for the purposes of this Regulation as having the same validity as a ready for recycling certificate issued by them.

#### *Article 10*

### **Duration and validity of certificates**

1. Subject to Article 9, an inventory certificate shall be issued for a period specified by the administration, which shall not exceed five years.
2. An inventory certificate issued or endorsed under Article 9 shall cease to be valid in any of the following cases:
  - (a) if the condition of the ship does not correspond substantially with the particulars of that inventory certificate, including where Part I of the inventory of hazardous materials has not been properly maintained and updated, reflecting changes in ship structure and equipment, taking into account the relevant IMO guidelines;
  - (b) where the renewal survey is not completed within the intervals specified in Article 8(5).
3. A ready for recycling certificate shall be issued by the administration or by a recognised organisation authorised by it for a period not exceeding three months.
4. A ready for recycling certificate issued under Article 9(9) shall cease to be valid where the condition of the ship does not correspond substantially with the particulars of the inventory certificate.
5. By way of derogation from paragraph 3, the ready for recycling certificate may be extended by the administration or by a recognised organisation authorised by it for a single point to point voyage to the ship recycling facility.

#### *Article 11*

### **Port State control**

1. Member States shall apply control provisions for ships in accordance with their national law having regard to Directive 2009/16/EC. Subject to paragraph 2, any such inspection shall be limited to checking that either an inventory

certificate or a ready for recycling certificate is kept on board, which, if valid, shall be considered sufficient for the inspection to be approved.

2. A detailed inspection may be carried out by the relevant authority involved in port State control activities, taking into account the relevant IMO guidelines, where a ship does not carry a valid certificate or there are clear grounds for believing either that:

- (a) the condition of the ship or its equipment does not correspond substantially with the particulars of that certificate, Part I of the inventory of hazardous materials, or both; or
- (b) there is no procedure implemented on board the ship for the maintenance of Part I of the inventory of hazardous materials.

3. A ship may be warned, detained, dismissed or excluded from the ports or offshore terminals under the jurisdiction of a Member State in the event that it fails to submit to the relevant authorities of that Member State a copy of the inventory certificate or the ready for recycling certificate, as appropriate and on request of those authorities, without prejudice to Article 9. A Member State taking such action shall immediately inform the administration concerned. Failure to update the inventory of hazardous materials shall not constitute a detainable deficiency, but any inconsistencies in the inventory of hazardous materials shall be reported to the administration concerned and shall be rectified at the time of the next survey.

4. Access to a specific port or anchorage may be permitted by the relevant authority of a Member 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 relevant authority of that Member State have been implemented by the owner, the operator or the master of the ship to ensure safe entry.

#### *Article 12*

### **Requirements for ships flying the flag of a third country**

1. Subject to point (b) of Article 32(2), when calling at a port or anchorage of a Member State, a ship flying the flag of a third country shall have on board an inventory of hazardous materials that complies with Article 5(2).

Notwithstanding the first subparagraph, access to a specific port or anchorage may be permitted by the relevant authority of a Member 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 relevant authority of that Member State have been implemented by the owner, the operator or the master of the ship to ensure safe entry.

2. The installation of hazardous materials referred to in Annex I on ships flying the flag of a third country, whilst in a port or anchorage of a Member State, shall be prohibited or restricted as specified in Annex I.

The use of hazardous materials referred to in Annex I on ships flying the flag of a third country, whilst in a port or anchorage of a Member State, shall be prohibited or restricted as specified in Annex I, without prejudice to the exemptions and transitional arrangements applicable to those materials under international law.

3. The inventory of hazardous materials shall be specific to each ship, be compiled taking into account the relevant IMO guidelines and serve to clarify that the ship complies with paragraph 2 of this Article. When the inventory of hazardous materials is developed it shall identify, at least, the hazardous materials listed in Annex I. A plan shall be established by the ship flying the flag of a third country describing the visual/ sampling check by which the inventory of hazardous materials is developed taking into account the relevant IMO guidelines.

4. The inventory of hazardous materials shall be properly maintained and updated throughout the operational life of the ship, reflecting new installations containing any hazardous materials referred to in Annex II and relevant changes in

the structure and equipment of the ship, taking into account the exemptions and transitional arrangements applicable to those materials under international law.

5. A ship flying the flag of a third country may be warned, detained, dismissed or excluded from the ports or offshore terminals under the jurisdiction of a Member State in the event that it fails to submit to the relevant authorities of that Member State a copy of the statement of compliance in accordance with paragraphs 6 and 7, together with the inventory of hazardous materials, as appropriate and on request from those authorities. A Member State taking such action shall immediately inform the relevant authorities of the third country whose flag the ship concerned is flying. Failure to update the inventory of hazardous materials shall not constitute a detainable deficiency, but any inconsistencies in the inventory of hazardous materials shall be reported to the relevant authorities of the third country whose flag that ship is flying.

6. The statement of compliance shall be issued after verification of the inventory of hazardous materials by the relevant authorities of the third country whose flag the ship is flying or an organisation authorised by them, in accordance with the national requirements. The statement of compliance may be modelled on the basis of Appendix 3 to the Hong Kong Convention.

7. The statement of compliance and the inventory of hazardous materials shall be drawn up in an official language of the issuing relevant authorities of the third country whose flag the ship is flying and where the language used is not English, French or Spanish, the text shall include a translation into one of those languages.

8. Subject to point (b) of Article 32(2), ships flying the flag of a third country applying to be registered under the flag of a Member State shall ensure that an inventory of hazardous materials, as provided for in Article 5(2), is kept on board or is established within six months of the registration under the flag of that Member State or during any of the next surveys under Article 8(3), whichever comes first.

### TITLE III

## SHIP RECYCLING FACILITIES

### Article 13

#### **Requirements necessary for ship recycling facilities to be included in the European List**

1. In order to be included in the European List, a ship recycling facility shall comply with the following requirements, in accordance with the relevant Hong Kong Convention provisions and taking into account the relevant guidelines of the IMO, the ILO, the Basel Convention and of the Stockholm Convention on Persistent Organic Pollutants and of other international guidelines:

- (a) it is authorised by its competent authorities to conduct ship recycling operations;
- (b) it is designed, constructed and operated in a safe and environmentally sound manner;
- (c) it operates from built structures;
- (d) it establishes management and monitoring systems, procedures and techniques which have the purpose of preventing, reducing, minimising and to the extent practicable eliminating:
  - (i) health risks to the workers concerned and to the population in the vicinity of the ship recycling facility, and
  - (ii) adverse effects on the environment caused by ship recycling;
- (e) it prepares a ship recycling facility plan;

- (f) it prevents adverse effects on human health and the environment, including the demonstration of the control of any leakage, in particular in intertidal zones;
  - (g) it ensures safe and environmentally sound management and storage of hazardous materials and waste, including:
    - (i) the containment of all hazardous materials present on board during the entire ship recycling process so as to prevent any release of those materials into the environment; and in addition, the handling of hazardous materials, and of waste generated during the ship recycling process, only on impermeable floors with effective drainage systems;
    - (ii) that all waste generated from the ship recycling activity and their quantities are documented and are only transferred to waste management facilities, including waste recycling facilities, authorised to deal with their treatment without endangering human health and in an environmentally sound manner;
  - (h) it establishes and maintain an emergency preparedness and response plan; ensures rapid access for emergency response equipment, such as fire-fighting equipment and vehicles, ambulances and cranes, to the ship and all areas of the ship recycling facility;
  - (i) it provides for worker safety and training, including ensuring the use of personal protective equipment for operations requiring such use;
  - (j) it establishes records on incidents, accidents, occupational diseases and chronic effects and, if requested by its competent authorities, reports any incidents, accidents, occupational diseases or chronic effects causing, or with the potential for causing, risks to workers' safety, human health and the environment;
  - (k) it agrees to comply with the requirements of paragraph 2.
2. The operator of a ship recycling facility shall:
- (a) send the ship recycling plan, once approved in accordance with Article 7(3), to the ship owner and the administration or a recognised organisation authorised by it;
  - (b) report to the administration that the ship recycling facility is ready in every respect to start the recycling of the ship;
  - (c) when the total or partial recycling of a ship is completed in accordance with this Regulation, within 14 days of the date of the total or partial recycling in accordance with the ship recycling plan, send a statement of completion to the administration which issued the ready for recycling certificate for the ship. The statement of completion shall include a report on incidents and accidents damaging human health and/or the environment, if any.
3. The Commission shall adopt implementing acts to establish the format of:
- (a) the report required by point (b) of paragraph 2 of this Article to ensure it is consistent with Appendix 6 to the Hong Kong Convention; and
  - (b) the statement required by point (c) of paragraph 2 of this Article to ensure it is consistent with Appendix 7 to the Hong Kong Convention.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 25 of this Regulation.

#### Article 14

##### **Authorisation of ship recycling facilities located in a Member State**

1. Without prejudice to other relevant provisions of Union law, competent authorities shall authorise ship recycling facilities located on their territory that comply with the requirements set out in Article 13 to conduct ship recycling. That authorisation may be granted to the respective ship recycling facilities for a maximum period of five years and renewed accordingly.

Provided that the requirements of this Regulation are complied with, any permit produced pursuant to other relevant national or Union law provisions may be combined with the authorisation under this Article to form a single permit, where such a format obviates the unnecessary duplication of information and the duplication of work by the operator of the ship recycling facility or the ship recycling company or the competent authority. In those cases the authorisation may be extended in accordance with the permit regime referred to in the first subparagraph, but not exceeding a maximum period of five years.

2. Member States shall establish and update a list of the ship recycling facilities that they have authorised in accordance with paragraph 1.

3. The list referred to in paragraph 2 shall be communicated to the Commission without delay and not later than 31 March 2015.

4. Where a ship recycling facility ceases to comply with the requirements set out in Article 13, the Member State where that ship recycling facility is located shall suspend or withdraw the authorisation given to it or require corrective actions by the ship recycling company concerned and shall inform the Commission thereof without delay.

5. Where a ship recycling facility has been authorised in accordance with paragraph 1, the Member State concerned shall inform the Commission thereof without delay.

#### Article 15

##### **Ship recycling facilities located in a third country**

1. A ship recycling company owning a ship recycling facility located in a third country and intending to recycle ships flying the flag of a Member State shall submit an application to the Commission for inclusion of that ship recycling facility in the European List.

2. The application referred to in paragraph 1 shall be accompanied by evidence that the ship recycling facility concerned complies with the requirements set out in Article 13 in order to conduct ship recycling and to be included in the European List in accordance with Article 16.

In particular, the ship recycling company shall:

- (a) identify the permit, license or authorisation granted by its competent authorities to conduct the ship recycling and, where relevant, the permit, license or authorisation granted by the competent authorities to all its contractors and sub-contractors directly involved in the process of ship recycling and specify all information referred to in Article 16(2);
- (b) indicate whether the ship recycling plan will be approved by the competent authority through a tacit or explicit procedure, specifying the review period relating to tacit approval, in accordance with national requirements, where applicable;
- (c) confirm that it will only accept a ship flying the flag of a Member State for recycling in accordance with this Regulation;

- (d) provide evidence that the ship recycling facility is capable of establishing, maintaining and monitoring of the safe-for-hot work and safe-for-entry criteria throughout the ship recycling process;
- (e) attach a map of the boundary of the ship recycling facility and the location of ship recycling operations within it;
- (f) for each hazardous material referred to in Annex I and additional hazardous material which might be part of the structure of a ship, specify:
  - (i) whether the ship recycling facility is authorised to carry out the removal of the hazardous material. Where it is so authorised, the relevant personnel authorised to carry out the removal shall be identified and evidence of their competence shall be provided;
  - (ii) which waste management process will be applied within or outside the ship recycling facility such as incineration, landfilling or another waste treatment method, the name and address of the waste treatment facility if different from that of the ship recycling facility, and provide evidence that the applied process will be carried out without endangering human health and in an environmentally sound manner;
- (g) confirm that the company adopted a ship recycling facility plan, taking into account the relevant IMO guidelines;
- (h) provide the information necessary to identify the ship recycling facility.

3. The Commission shall be empowered to adopt implementing acts to specify the format of the information required to identify the ship recycling facility. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 25.

4. In order to be included in the European List, compliance by ship recycling facilities located in third countries with the requirements set out in Article 13 shall be certified following a site inspection by an independent verifier with appropriate qualifications. The certification shall be submitted to the Commission by the ship recycling company when applying for inclusion in the European List and, every five years thereafter, upon renewal of the inclusion in the European List. The initial inclusion on the list and the renewal thereof shall be supplemented by a mid-term review to confirm compliance with the requirements set out in Article 13.

By applying for inclusion in the European List, ship recycling companies accept the possibility of the ship recycling facility concerned being subject to site inspections by the Commission or agents acting on its behalf prior to or after their inclusion in the European List in order to verify compliance with the requirements set out in Article 13. The independent verifier, the Commission or agents acting on its behalf shall cooperate with the competent authorities of the third country where the ship recycling facility is located in order to carry out those site inspections.

The Commission may issue technical guidance notes in order to facilitate such certification.

5. For the purposes of Article 13, with regard to the waste recovery or disposal operation concerned, environmentally sound management may only be assumed to be in place provided the ship recycling company can demonstrate that the waste management facility which receives the waste will be operated in accordance with human health and environmental protection standards that are broadly equivalent to relevant international and Union standards.

6. The ship recycling company shall provide updated evidence without delay in the event of any changes to the information provided to the Commission and shall, in any event, three months prior to expiry of each five year period of inclusion on the European List, declare that:

- (a) the evidence that it has provided is complete and up-to-date;
- (b) the ship recycling facility continues and will continue to comply with the requirements of Article 13.

Article 16

**Establishment and updating of the European List**

1. The Commission shall adopt implementing acts to establish a European List of ship recycling facilities which:
  - (a) are located in the Union and have been notified by the Member States in accordance with Article 14(3);
  - (b) are located in a third country and whose inclusion is based on an assessment of the information and supporting evidence provided or gathered in accordance with Article 15.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 25.

2. The European List shall be published in the *Official Journal of the European Union* and on the website of the Commission not later than 31 December 2016. It shall be divided into two sub-lists indicating the ship recycling facilities located in a Member State and the ship recycling facilities located in a third country.

The European List shall include all of the following information about the ship recycling facility:

- (a) the method of recycling;
  - (b) the type and size of ships that can be recycled;
  - (c) any limitation and conditions under which the ship recycling facility operates, including as regards hazardous waste management;
  - (d) details on the explicit or tacit procedure, as referred to in Article 7(3), for the approval of the ship recycling plan by the competent authority;
  - (e) the maximum annual ship recycling output.
3. The European List shall indicate the date of expiry of the inclusion of the ship recycling facility. An inclusion shall be valid for a maximum period of five years and shall be renewable.
4. The Commission shall adopt implementing acts to regularly update the European List, in order to:
  - (a) include a ship recycling facility in the European List where:
    - (i) it has been authorised in accordance with Article 14; or
    - (ii) its inclusion in the European List is decided in accordance with paragraph 1(b) of this Article;
  - (b) remove a ship recycling facility from the European List where:
    - (i) the ship recycling facility ceases to comply with the requirements set out in Article 13; or
    - (ii) the updated evidence is not provided at least three months prior to expiry of the five-year period as set out in paragraph 3 of this Article.

Those implementing acts shall be adopted, in accordance with the examination procedure referred to in Article 25.

5. In establishing and updating the European List, the Commission shall act in accordance with the principles enshrined in the Treaties and with the international obligations of the Union.

6. Member States shall communicate to the Commission all information that may be relevant in the context of updating the European List. The Commission shall forward all relevant information to the other Member States.

TITLE IV  
**GENERAL ADMINISTRATIVE PROVISIONS**

*Article 17*

**Language**

1. The ship recycling plan referred to in Article 7 shall be developed in a language accepted by the state authorising the ship recycling facility. Where the language used is not English, French or Spanish, the ship recycling plan shall be translated into one of those languages, except where the administration is satisfied that that is unnecessary.
2. The inventory certificate and the ready for recycling certificate issued pursuant to Article 9 shall be drawn up in an official language of the issuing administration. Where the language used is not English, French or Spanish, the text shall include a translation into one of those languages.

*Article 18*

**Designation of competent authorities and administrations**

1. Member States shall designate the competent authorities and administrations responsible for the application of this Regulation and shall notify the Commission of those designations. Member States shall immediately notify the Commission of any changes in such information.
2. The Commission shall publish on its website lists of the designated competent authorities and administrations and shall update those lists as appropriate.

*Article 19*

**Designation of contact persons**

1. Member States and the Commission shall each designate one or more contact persons responsible for informing or advising natural or legal persons making enquiries. The contact person of the Commission shall forward to the contact persons of the Member States any questions received which concern the latter, and vice versa.
2. Member States shall notify the Commission of the designation of contact persons. Member States shall immediately notify the Commission of any changes to that information.
3. The Commission shall publish on its website lists of the designated contact persons and shall update those lists as appropriate.

*Article 20*

**Meeting of contact persons**

The Commission shall, if requested by Member States or where it considers it appropriate, periodically organise a meeting of the contact persons to discuss the questions raised by the implementation of this Regulation. Relevant stakeholders shall be invited to such meetings, or parts of meetings, where all Member States and the Commission are in agreement that it is appropriate to do so.

TITLE V  
**REPORTING AND ENFORCEMENT**

*Article 21*

**Reports by the Member States**

1. Each Member State shall send to the Commission a report containing the following:
  - (a) a list of the ships flying its flag to which a ready for recycling certificate has been issued, and the name of the ship recycling company and the location of the ship recycling facility as shown in the ready for recycling certificate;
  - (b) a list of the ships flying its flag for which a statement of completion has been received;
  - (c) information regarding illegal ship recycling, penalties and follow-up actions undertaken by the Member State.
2. Every three years, Member States shall electronically transmit the report to the Commission no later than nine months after the end of the three-year period covered by it.

The first electronic report shall cover the period from the date of application of this Regulation to the end of the first regular three-year reporting period, specified in Article 5 of Council Directive 91/692/EEC <sup>(81)</sup>, falling after the starting date of the first reporting period.

The Commission shall publish a report on the application of this Regulation no later than nine months after receiving the reports from the Member States.

3. The Commission shall enter this information in an electronic database that is permanently accessible to the public.

*Article 22*

**Enforcement in Member States**

1. Member States shall lay down provisions on penalties applicable to infringements of this Regulation and shall take all the measures necessary to ensure that they are applied. The penalties provided for shall be effective, proportionate and dissuasive.
2. Member States shall cooperate, bilaterally or multilaterally, with one another in order to facilitate the prevention and detection of potential circumvention and breach of this Regulation.
3. Member States shall designate those members of their permanent staff responsible for the cooperation referred to in paragraph 2. That information shall be sent to the Commission, which shall distribute to those members a compiled list.
4. Member States shall communicate to the Commission the provisions of their national law relating to the enforcement of this Regulation and the applicable penalties.

*Article 23*

**Request for action**

1. Natural or legal persons affected or likely to be affected by a breach of Article 13 in conjunction with Article 15 and Article 16(1)(b) of this Regulation, or having a sufficient interest in environmental decision-making relating to the breach of Article 13 in conjunction with Article 15 and Article 16(1)(b) of this Regulation shall be entitled to request the Commission to take action under this Regulation with respect to such a breach or an imminent threat of such a breach.

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<sup>(81)</sup> Council Directive 91/692/EEC of 23 December 1991 standardizing and rationalizing reports on the implementation of certain Directives relating to the environment (OJ L 377, 31.12.1991, p. 48).

The interest of any non-governmental organisation promoting environmental protection and meeting the requirements laid down in Article 11 of Regulation (EC) No 1367/2006 of the European Parliament and of the Council <sup>(82)</sup> shall be deemed sufficient for the purposes of the first subparagraph.

2. The request for action shall be accompanied by the relevant information and data supporting that request.
3. Where the request for action and the accompanying information and data show in a plausible manner that a breach of Article 13 in conjunction with Article 15 and Article 16(1)(b) has occurred, or that there is an imminent threat of such a breach, the Commission shall consider any such requests for action and information and data. In such circumstances, the Commission shall give the ship recycling company concerned an opportunity to make its views known with respect to the request for action and the accompanying information and data.
4. The Commission shall, without delay and in accordance with the relevant provisions of Union law, inform the persons who submitted a request pursuant to paragraph 1, of its decision to accede to or refuse the request for action and shall provide the reasons for it.

## TITLE VI FINAL PROVISIONS

### *Article 24*

#### **Exercise of the delegation**

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Article 5(8) shall be conferred on the Commission for a period of five years from 30 December 2013. The Commission shall draw up a report in respect of the delegation of power no later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension no later than three months before the end of each period.
3. The delegation of power referred to in Article 5(8) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a late date specified therein. It shall not affect the validity of any delegated acts already in force.
4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
5. A delegated act adopted pursuant to Article 5(8) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

### *Article 25*

#### **Committee procedure**

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

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<sup>(82)</sup> Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies (OJ L 264, 25.9.2006, p. 13).

2. When reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

Where the committee delivers no opinion, the Commission shall not adopt the draft implementing act and the third subparagraph of Article 5(4) of Regulation (EU) No 182/2011 shall apply.

*Article 26*

**Transitional provision**

As of the date of publication of the European List, Member States may, prior to the date of application of this Regulation, authorise the recycling of ships in ship recycling facilities included in the European List. In such circumstances, Regulation (EC) No 1013/2006 shall not apply.

*Article 27*

**Amendment to Regulation (EC) No 1013/2006**

In Article 1(3) of Regulation (EC) No 1013/2006, the following point is added:

- (i) ships flying the flag of a Member State falling under the scope of Regulation (EU) No 1257/2013 of the European Parliament and of the Council (\*).  
 (\*) Regulation (EU) No 1257/2013 of the European Parliament and of the Council of 20 November 2013 on ship recycling and amending Regulation (EC) No

*Article 28*

**Amendment to Directive 2009/16/EC**

In Annex IV, the following point is added:

'49. A certificate on the inventory of hazardous materials or a statement of compliance as applicable pursuant to Regulation (EU) No 1257/2013 of the European Parliament and of the Council (\*).

(\*) Regulation (EU) No 1257/2013 of the European Parliament and of the Council of 20 November 2013 on ship recycling and amending Regulation (EC) No 1013/2006 and Directive 2009/16/EC (OJ L 330, 10.12.2013, p. 1).'

*Article 29*

**Financial incentive**

The Commission shall, by 31 December 2016, submit to the European Parliament and to the Council a report on the feasibility of a financial instrument that would facilitate safe and sound ship recycling and shall, if appropriate, accompany it by a legislative proposal.

*Article 30*

**Review**

1. The Commission shall assess which infringements of this Regulation should be brought under the scope of Directive 2008/99/EC to achieve equivalence of the provisions related to infringements between this Regulation and Regulation (EC) No 1013/2006. The Commission shall report on its findings by 31 December 2014 to the European Parliament and to the Council and, if appropriate, accompany it by a legislative proposal.
2. The Commission shall review this Regulation not later than 18 months prior to the date of entry into force of the Hong Kong Convention and at the same time, submit, if appropriate, any appropriate legislative proposals to that effect. This review shall consider the inclusion of ship recycling facilities authorised under the Hong Kong Convention in the European List in order to avoid duplication of work and administrative burden.
3. The Commission shall keep this Regulation under review and, if appropriate, make timely proposals to address developments relating to international Conventions, including the Basel Convention, should it prove necessary.

4. Notwithstanding paragraph 2, the Commission shall, by five years after the date of application of this Regulation, submit a report to the European Parliament and to the Council on the application of this Regulation, accompanied, if appropriate, by legislative proposals to ensure that its objectives are being met and its impact is ensured and justified.

#### Article 31

### Entry into force

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

#### Article 32

### Application

1. This Regulation shall apply from the earlier of the following two dates, but not earlier than 31 December 2015:
  - (a) 6 months after the date that the combined maximum annual ship recycling output of the ship recycling facilities included in the European List constitutes not less than 2,5 million light displacement tonnes (LDT). The annual ship recycling output of a ship recycling facility is calculated as the sum of the weight of ships expressed in LDT that have been recycled in a given year in that facility. The maximum annual ship recycling output is determined by selecting the highest value occurring in the preceding 10-year period for each ship recycling facility, or, in the case of a newly authorised ship recycling facility, the highest annual value achieved at that facility; or
  - (b) on 31 December 2018.
2. However in relation to the following provisions the following dates of application shall apply:
  - (a) Article 2, the second subparagraph of Article 5(2), Articles 13, 14, 15, 16, 25 and 26 from 31 December 2014;
  - (b) the first and third subparagraphs of Article 5(2) and Article 12(1) and (8) from 31 December 2020.
3. The Commission shall publish in the *Official Journal of the European Union* a notice concerning the date of application of this Regulation when the conditions referred to in point (a) of paragraph 1 have been fulfilled.
4. If a Member State has closed its national ship register or, during a three year period, has had no ships registered under its flag, and as long as no ship is registered under its flag, that Member State may derogate from the provisions of this Regulation, except for Articles 4, 5, 11, 12, 13, 14, 16(6), 18, 19, 20, 21 and 22. Where a Member State intends to avail itself of this derogation, it shall notify the Commission at the latest on the date of application of this Regulation. Any subsequent change shall also be communicated to the Commission.

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

Done at Strasbourg, 20 November 2013.

*For the European Parliament*

*The President*

M. SCHULZ

*For the Council*

*The President*

V. LEŠKEVIČIUS

ANNEX I  
CONTROL OF HAZARDOUS MATERIALS

Hazardous Material	Definitions	Control measures
Asbestos	Materials containing asbestos	For all ships, new installation of materials which contain asbestos shall be prohibited.
Ozone-depleting substances	<p>Controlled substances defined in Article 1(4) of the Montreal Protocol on Substances that Deplete the Ozone Layer, 1987, listed in Annexes A,B,C or E to that Protocol in force at the time of application or interpretation of this Annex.</p> <p>Ozone-depleting substances that may be found on board ships include, but are not limited to:</p> <p>Halon 1211 Bromochlorodifluoromethane</p> <p>Halon 1301 Bromotrifluoromethane</p> <p>Halon 2402 1,2-Dibromo-1,1,2,2-tetrafluoroethane (also known as Halon114B2)</p> <p>CFC-11 Trichlorofluoromethane</p> <p>CFC-12 Dichlorodifluoromethane</p> <p>CFC-113 1,1,2-Trichloro-1,2,2-trifluoroethane</p> <p>CFC-114 1,2-Dichloro-1,1,2,2-tetrafluoroethane</p> <p>CFC-115 Chloropentafluoroethane</p> <p>HCFC-22</p> <p>Chlorodifluoromethane</p>	New installations which contain ozone-depleting substances shall be prohibited on all ships.
Polychlorinated biphenyls (PCB)	'Polychlorinated biphenyls' means aromatic compounds formed in such a manner that the hydrogen atoms on the biphenyl molecule (two benzene rings bonded together by a single carbon-carbon bond) may be replaced by up to ten chlorine atoms	For all ships, new installation of materials which contain Polychlorinated biphenyls shall be prohibited.

Perfluorooctane sulfonic acid (PFOS) <sup>(83)</sup>	'perfluorooctane sulfonic acid' (PFOS) means perfluorooctane sulfonic acid and its derivatives	New installations which contain perfluorooctane sulfonic acid (PFOS) and its derivatives shall be prohibited in accordance with Regulation (EC) No 850/2004 of the European Parliament and of the Council <sup>(84)</sup> .
Anti-fouling compounds and systems	Anti-fouling compounds and systems regulated under Annex I to the International Convention on the Control of Harmful Anti-fouling Systems on Ships, 2001 (AFS Convention) in force at the time of application or interpretation of this Annex.	1. No ship may apply anti-fouling systems containing organotin compounds as a biocide or any other anti-fouling system whose application or use is prohibited by the AFS Convention.
		2. No new ship or new installations on ships shall apply or employ anti-fouling compounds or systems in a manner inconsistent with the AFS Convention.

<sup>(83)</sup> Not applicable for ships flying the flag of a third country.

<sup>(84)</sup> Regulation (EC) No 850/2004 of the European Parliament and of the Council of 29 April 2004 on persistent organic pollutants and amending Directive 79/117/EEC (OJ L 158, 30.4.2004, p. 7).

*ANNEX II***LIST OF ITEMS FOR THE INVENTORY OF HAZARDOUS MATERIALS**

1. Any hazardous materials listed in Annex I
2. Cadmium and Cadmium Compounds
3. Hexavalent Chromium and Hexavalent Chromium Compounds
4. Lead and Lead Compounds
5. Mercury and Mercury Compounds
6. Polybrominated Biphenyl (PBBs)
7. Polybrominated Diphenyl Ethers (PBDEs)
8. Polychlorinated Naphthalenes (more than 3 chlorine atoms)
9. Radioactive Substances
10. Certain Shortchain Chlorinated Paraffins (Alkanes, C10-C13, chloro)
11. Brominated Flame Retardant (HBCDD)

PART VI—  
ACCIDENT INVESTIGATION

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### PART VI – ACCIDENT INVESTIGATION

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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**

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) 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 prevent the recurrence of such casualties resulting in loss of life, loss of ships and pollution of the marine environment.
- (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.
- (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.
- (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.
- (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.

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<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.

- (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.
- (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>(5)</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>(6)</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.

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<sup>(5)</sup> OJ L 138, 1.6.1999, p. 1.

<sup>(6)</sup> OJ L 208, 5.8.2002, p. 10.

- (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>(7)</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.
- (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>(8)</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.

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<sup>(7)</sup> OJ L 281, 23.11.1995, p. 31.

<sup>(8)</sup> OJ L 208, 5.8.2002, p. 1.

- (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>(9)</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>(10)</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:
  - (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;

<sup>(9)</sup> OJ L 184, 17.7.1999, p. 23.

<sup>(10)</sup> OJ C 321, 31.12.2003, p. 1.

- (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.

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.

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

*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.

PART VII —  
LIABILITY AND INSURANCE

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### PART VII – LIABILITY AND INSURANCE

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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**

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>(3)</sup> 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. Shipowners 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.

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<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).

- (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>(4)</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>(5)</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>(6)</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>(7)</sup>, should assist the Commission in preparing and drafting a progress report on the functioning of the rules laid down by this Regulation.

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<sup>(4)</sup> OJ L 144, 15.5.1998, p. 1.

<sup>(5)</sup> OJ L 12, 16.1.2001, p. 1.

<sup>(6)</sup> OJ L 184, 17.7.1999, p. 23.

<sup>(7)</sup> OJ L 208, 5.8.2002, p. 1.

- (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.
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>(6)</sup>, the carrier and/or performing carrier shall ensure that passengers are provided with appropriate and comprehensible information regarding their rights under this Regulation.

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).

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<sup>(6)</sup> OJ L 158, 23.6.1990, p. 59.

*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>(9)</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.

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

Done at Strasbourg, 23 April 2009.

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<sup>(9)</sup> OJ L 324, 29.11.2002, p. 1.

*For the European Parliament*

*The President*

H.-G. PÖTTERING

*For the Council*

*The President*

P. NEČAS

## 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. [...] (\*)

(\*) Not reproduced.

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;
  - (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 (\*)**

(\*) Not reproduced.

*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.

*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 (\*)**

(\*) Not reproduced.

*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.
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.
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## 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 4*bis* 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 4*bis*, 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.

\_\_\_\_\_

**COUNCIL DECISION 2012/23/EU**  
**of 12 December 2011**  
**concerning the accession of the European Union to the Protocol of 2002 to the Athens Convention**  
**relating to the Carriage of Passengers and their Luggage by Sea, 1974,**  
**as regards Article 10 and 11 thereof**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 81(1) and points (a) and (c) of Article 81(2), in conjunction with point (a) of Article 218(6) and the first subparagraph of Article 218(8) thereof,

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament,

Whereas:

- (1) The Protocol of 2002 to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974 (“Athens Protocol”) represents a major improvement to the regime relating to the liability of carriers and the compensation of passengers carried by sea.
- (2) The Athens Protocol modifies the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974 and establishes in Article 15 that the two instruments shall, as between the Parties to the Athens Protocol, be read and interpreted together as one single instrument.
- (3) Articles 10 and 11 of the Athens Protocol affect 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>(10)</sup>. The Union thus has exclusive competence as regards Articles 10 and 11 of the Athens Protocol.
- (4) Upon accession of the Union to the Athens Protocol, the rules on jurisdiction set out in Article 10 thereof should take precedence over the relevant Union rules.
- (5) However, the rules on recognition and enforcement of judgments laid down in Article 11 of the Athens Protocol should not take precedence either over the relevant rules of the Union, as extended to Denmark by the Agreement between the European Community and the Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters <sup>(11)</sup>, or the rules of the Lugano Convention on jurisdiction and the enforcement of judgments in civil and commercial matters of 16 September 1988 <sup>(12)</sup> or the Lugano Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters of 30 October 2007 <sup>(13)</sup>, since the effect of the application of these rules is to ensure that judgments are recognised and enforced at least to the same extent as under the rules of the Athens Protocol.
- (6) The Athens Protocol is open for ratification, acceptance, approval or accession by States and by Regional Economic Integration Organisations which are constituted by sovereign States that have transferred competence over certain matters governed by the Athens Protocol to those Organisations.

<sup>(10)</sup> OJ L 12, 16.1.2001, p. 1.

<sup>(11)</sup> OJ L 299, 16.11.2005, p. 62.

<sup>(12)</sup> OJ L 319, 25.11.1988, p. 9.

<sup>(13)</sup> OJ L 339, 21.12.2007, p. 3.

- (7) According to Article 17(2)(b) and Article 19 of the Athens Protocol, Regional Economic Integration Organisations may conclude the Athens Protocol.
- (8) The United Kingdom and Ireland, to which the Protocol (No 21) on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, applies, will be bound as part of the European Union by Articles 10 and 11 of the Athens Protocol.
- (9) In accordance with Articles 1 and 2 of the Protocol (No 22) on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Decision and is not bound by it or subject to its application in respect of Articles 10 and 11 of the Athens Protocol. It will be bound by these Articles only as a separate Contracting Party.
- (10) The majority of the rules of the Athens Protocol have been incorporated into Union law by 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>(14)</sup>. Thus, the Union exerted competence as regards the matters governed by that Regulation. A separate Decision relating to those provisions is to be adopted in parallel to this Decision.
- (11) Member States which are to ratify or accede to the Athens Protocol should, if possible, do so simultaneously. Member States should therefore exchange information on the state of their ratification or accession procedures in order to prepare as far as possible the simultaneous deposit of their instruments of ratification or accession. When ratifying or acceding to the Athens Protocol, Member States should make the reservation contained in the IMO Guidelines,

HAS ADOPTED THIS DECISION:

*Article 1*

The accession of the European Union to the Protocol of 2002 to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974 ("Athens Protocol") is hereby approved on behalf of the European Union as regards Articles 10 and 11 thereof.

The text of these Articles is reproduced in the Annex.

*Article 2*

1. The President of the Council is hereby authorised to designate the person or persons empowered to deposit the instrument of accession of the Union to the Athens Protocol as regards Articles 10 and 11 thereof in accordance with Articles 17(2)(c), 17(3) and 19 of that Protocol.

2. At the time of the deposit of the instrument of accession, the Union shall make the following declaration of competence:

"As regards matters covered by Articles 10 and 11 of the Athens Protocol of 2002 to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974, which come under Article 81 of the Treaty on the Functioning of the European Union, the Member States of the European Union, with the exception of the Kingdom of Denmark, in accordance with Articles 1 and 2 of Protocol (No 22) on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, have conferred competences to the Union. The Union exercised this competence by adopting Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters."

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<sup>(14)</sup> OJ L 131, 28.5.2009, p. 24.

3. At the time of the deposit of the instrument of accession, the Union shall make the following declaration on Article 17bis(3) of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974, as amended by Article 11 of the Athens Protocol:

“1. Judgments on matters covered by the Athens Protocol of 2002 to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974, when given by a court of the Kingdom of Belgium, the Republic of Bulgaria, the Czech Republic, the Federal Republic of Germany, the Republic of Estonia, Ireland, the Hellenic Republic, the Kingdom of Spain, the French Republic, the Italian Republic, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Grand Duchy of Luxembourg, the Republic of Hungary, Malta, the Kingdom of the Netherlands, the Republic of Austria, the Republic of Poland, the Portuguese Republic, Romania, the Republic of Slovenia, the Slovak Republic, the Republic of Finland, the Kingdom of Sweden or the United Kingdom of Great Britain and Northern Ireland, shall be recognised and enforced in a Member State of the European Union in accordance with the relevant rules of the European Union on the subject.

2. Judgments on matters covered by the Athens Protocol, when given by a court of the Kingdom of Denmark, shall be recognised and enforced in a Member State of the European Union in accordance with the Agreement between the European Community and the Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

3. Judgments on matters covered by the Athens Protocol, when given by a court of a third State

- (a) bound by the Lugano Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters of 30 October 2007 shall be recognised and enforced in the Member States of the European Union in accordance with that Convention;
- (b) bound by the Lugano Convention on jurisdiction and the enforcement of judgments in civil and commercial matters of 16 September 1988 shall be recognised and enforced in the Member States of the European Union in accordance with that Convention.”.

4. The person or persons designated under paragraph 1 of this Article shall make the reservation contained in the IMO Guidelines when depositing the instrument of accession of the Union to the Athens Protocol as regards Articles 10 and 11 thereof.

#### *Article 3*

The Union shall deposit its instrument of accession to the Athens Protocol as regards Articles 10 and 11 thereof by 31 December 2011.

#### *Article 4*

Member States shall take the necessary steps to deposit the instruments of ratification of, or accession to, the Athens Protocol within a reasonable time and, if possible, by 31 December 2011.

Done at Brussels, 12 December 2011.

*For the Council*

*The President*

S. NOWAK

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## ANNEX

**ARTICLES 10 AND 11 OF THE PROTOCOL OF 2002 TO THE ATHENS CONVENTION RELATING TO THE CARRIAGE OF PASSENGERS AND THEIR LUGGAGE BY SEA, 1974***Article 10*

Article 17 of the Convention is replaced by the following text:

*'Article 17*

**Competent jurisdiction**

1. An action arising under Articles 3 and 4 of this Convention shall, at the option of the claimant, be brought before one of the courts listed below, provided that the court is located in a State Party to this Convention, and subject to the domestic law of each State Party governing proper venue within those States with multiple possible forums:

- (a) the court of the State of permanent residence or principal place of business of the defendant, or
- (b) the court of the State of departure or that of the destination according to the contract of carriage, or
- (c) the court of the State of the domicile or permanent residence of the claimant, if the defendant has a place of business and is subject to jurisdiction in that State, or
- (d) the court of the State where the contract of carriage was made, if the defendant has a place of business and is subject to jurisdiction in that State.

2. Actions under Article 4bis of this Convention shall, at the option of the claimant, be brought before one of the courts where action could be brought against the carrier or performing carrier according to paragraph 1.

3. After the occurrence of the incident which has caused the damage, the parties may agree that the claim for damages shall be submitted to any jurisdiction or to arbitration.'

*Article 11*

The following text is added as Article 17bis of the Convention:

*'Article 17bis*

**Recognition and enforcement**

1. Any judgment given by a court with jurisdiction in accordance with Article 17 which is enforceable in the State of origin where it is no longer subject to ordinary forms of review, shall be recognised in any State Party, except

- (a) where the judgment was obtained by fraud; or
- (b) where the defendant was not given reasonable notice and a fair opportunity to present the case.

2. A judgment recognised under paragraph 1 shall be enforceable in each State Party as soon as the formalities required in that State have been complied with. The formalities shall not permit the merits of the case to be reopened.

3. A State Party to this Protocol may apply other rules for the recognition and enforcement of judgments, provided that their effect is to ensure that judgments are recognised and enforced at least to the same extent as under paragraphs 1 and 2.'

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**COUNCIL DECISION**  
**of 12 December 2011**  
**concerning the accession of the European Union to the Protocol**  
**of 2002 to the Athens Convention relating to the Carriage**  
**of Passengers and their Luggage by Sea, 1974,**  
**with the exception of Articles 10 and 11 thereof**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 81(1) and points (a) and (c) of Article 81(2), in conjunction with point (a) of Article 218(6) and the first subparagraph of Article 218(8) thereof,

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament,

Whereas:

- (1) The Protocol of 2002 to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974 ("Athens Protocol") represents a major improvement to the regime relating to the liability of carriers and the compensation of passengers carried by sea.
- (2) The Athens Protocol modifies the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974 and establishes in Article 15 that the two instruments shall, as between the Parties to the Athens Protocol, be read and interpreted together as one single instrument.
- (3) Articles 10 and 11 of the Athens Protocol affect 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>(15)</sup>. The Union thus has exclusive competence as regards Articles 10 and 11 of the Athens Protocol.
- (4) Upon accession of the Union to the Athens Protocol, the rules on jurisdiction set out in Article 10 thereof should take precedence over the relevant Union rules.
- (5) However, the rules on recognition and enforcement of judgments laid down in Article 11 of the Athens Protocol should not take precedence either over the relevant rules of the Union, as extended to Denmark by the Agreement between the European Community and the Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters <sup>(16)</sup>, or the rules of the Lugano Convention on jurisdiction and the enforcement of judgments in civil and commercial matters of 16 September 1988 <sup>(17)</sup> or the Lugano Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters of 30 October 2007 <sup>(18)</sup>, since the effect of the application of these rules is to ensure that judgments are recognised and enforced at least to the same extent as under the rules of the Athens Protocol.
- (6) The Athens Protocol is open for ratification, acceptance, approval or accession by States and by Regional Economic Integration Organisations which are constituted by sovereign States that have transferred competence over certain matters governed by the Athens Protocol to those Organisations.

<sup>(15)</sup> OJ L 12, 16.1.2001, p. 1.

<sup>(16)</sup> OJ L 299, 16.11.2005, p. 62.

<sup>(17)</sup> OJ L 319, 25.11.1988, p. 9.

<sup>(18)</sup> OJ L 339, 21.12.2007, p. 3.

- (7) According to Article 17(2)(b) and Article 19 of the Athens Protocol, Regional Economic Integration Organisations may conclude the Athens Protocol.
- (8) The United Kingdom and Ireland, to which the Protocol (No 21) on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, applies, will be bound as part of the European Union by Articles 10 and 11 of the Athens Protocol.
- (9) In accordance with Articles 1 and 2 of the Protocol (No 22) on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Decision and is not bound by it or subject to its application in respect of Articles 10 and 11 of the Athens Protocol. It will be bound by these Articles only as a separate Contracting Party.
- (10) The majority of the rules of the Athens Protocol have been incorporated into Union law by 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>(19)</sup>. Thus, the Union exerted competence as regards the matters governed by that Regulation. A separate Decision relating to those provisions is to be adopted in parallel to this Decision.
- (11) Member States which are to ratify or accede to the Athens Protocol should, if possible, do so simultaneously. Member States should therefore exchange information on the state of their ratification or accession procedures in order to prepare as far as possible the simultaneous deposit of their instruments of ratification or accession. When ratifying or acceding to the Athens Protocol, Member States should make the reservation contained in the IMO Guidelines,

HAS ADOPTED THIS DECISION:

*Article 1*

The accession of the European Union to the Protocol of 2002 to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974 ("Athens Protocol") is hereby approved on behalf of the European Union as regards Articles 10 and 11 thereof.

The text of these Articles is reproduced in the Annex.

*Article 2*

1. The President of the Council is hereby authorised to designate the person or persons empowered to deposit the instrument of accession of the Union to the Athens Protocol as regards Articles 10 and 11 thereof in accordance with Articles 17(2)(c), 17(3) and 19 of that Protocol.
2. At the time of the deposit of the instrument of accession, the Union shall make the following declaration of competence:

"As regards matters covered by Articles 10 and 11 of the Athens Protocol of 2002 to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974, which come under Article 81 of the Treaty on the Functioning of the European Union, the Member States of the European Union, with the exception of the Kingdom of Denmark, in accordance with Articles 1 and 2 of Protocol (No 22) on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, have conferred competences to the Union. The Union exercised this competence by adopting Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters."

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<sup>(19)</sup> OJ L 131, 28.5.2009, p. 24.

3. At the time of the deposit of the instrument of accession, the Union shall make the following declaration on Article 17bis(3) of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974, as amended by Article 11 of the Athens Protocol:

“1. Judgments on matters covered by the Athens Protocol of 2002 to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974, when given by a court of the Kingdom of Belgium, the Republic of Bulgaria, the Czech Republic, the Federal Republic of Germany, the Republic of Estonia, Ireland, the Hellenic Republic, the Kingdom of Spain, the French Republic, the Italian Republic, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Grand Duchy of Luxembourg, the Republic of Hungary, Malta, the Kingdom of the Netherlands, the Republic of Austria, the Republic of Poland, the Portuguese Republic, Romania, the Republic of Slovenia, the Slovak Republic, the Republic of Finland, the Kingdom of Sweden or the United Kingdom of Great Britain and Northern Ireland, shall be recognised and enforced in a Member State of the European Union in accordance with the relevant rules of the European Union on the subject.

2. Judgments on matters covered by the Athens Protocol, when given by a court of the Kingdom of Denmark, shall be recognised and enforced in a Member State of the European Union in accordance with the Agreement between the European Community and the Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

3. Judgments on matters covered by the Athens Protocol, when given by a court of a third State

- (a) bound by the Lugano Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters of 30 October 2007 shall be recognised and enforced in the Member States of the European Union in accordance with that Convention;
- (b) bound by the Lugano Convention on jurisdiction and the enforcement of judgments in civil and commercial matters of 16 September 1988 shall be recognised and enforced in the Member States of the European Union in accordance with that Convention.”.

4. The person or persons designated under paragraph 1 of this Article shall make the reservation contained in the IMO Guidelines when depositing the instrument of accession of the Union to the Athens Protocol as regards Articles 10 and 11 thereof.

#### *Article 3*

The Union shall deposit its instrument of accession to the Athens Protocol as regards Articles 10 and 11 thereof by 31 December 2011.

#### *Article 4*

Member States shall take the necessary steps to deposit the instruments of ratification of, or accession to, the Athens Protocol within a reasonable time and, if possible, by 31 December 2011.

Done at Brussels, 12 December 2011.

*For the Council*

*The President*

S. NOWAK

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## ANNEX

**ARTICLES 10 AND 11 OF THE PROTOCOL OF 2002 TO THE ATHENS CONVENTION RELATING TO THE CARRIAGE OF PASSENGERS AND THEIR LUGGAGE BY SEA, 1974***Article 10*

Article 17 of the Convention is replaced by the following text:

*'Article 17*

**Competent jurisdiction**

1. An action arising under Articles 3 and 4 of this Convention shall, at the option of the claimant, be brought before one of the courts listed below, provided that the court is located in a State Party to this Convention, and subject to the domestic law of each State Party governing proper venue within those States with multiple possible forums:

- (a) the court of the State of permanent residence or principal place of business of the defendant, or
- (b) the court of the State of departure or that of the destination according to the contract of carriage, or
- (c) the court of the State of the domicile or permanent residence of the claimant, if the defendant has a place of business and is subject to jurisdiction in that State, or
- (d) the court of the State where the contract of carriage was made, if the defendant has a place of business and is subject to jurisdiction in that State.

2. Actions under Article 4bis of this Convention shall, at the option of the claimant, be brought before one of the courts where action could be brought against the carrier or performing carrier according to paragraph 1.

3. After the occurrence of the incident which has caused the damage, the parties may agree that the claim for damages shall be submitted to any jurisdiction or to arbitration.'

*Article 11*

The following text is added as Article 17bis of the Convention:

*'Article 17bis*

**Recognition and enforcement**

1. Any judgment given by a court with jurisdiction in accordance with Article 17 which is enforceable in the State of origin where it is no longer subject to ordinary forms of review, shall be recognised in any State Party, except

- (a) where the judgment was obtained by fraud; or
- (b) where the defendant was not given reasonable notice and a fair opportunity to present the case.

2. A judgment recognised under paragraph 1 shall be enforceable in each State Party as soon as the formalities required in that State have been complied with. The formalities shall not permit the merits of the case to be reopened.

3. A State Party to this Protocol may apply other rules for the recognition and enforcement of judgments, provided that their effect is to ensure that judgments are recognised and enforced at least to the same extent as under paragraphs 1 and 2.'

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**DIRECTIVE 2009/20/EC OF THE EUROPEAN PARLIAMENT AND of the Council  
of 23 April 2009  
on the insurance of shipowners for maritime claims**

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>(20)</sup>,

Having regard to the opinion of the Committee of the Regions <sup>(21)</sup>,

Acting in accordance with the procedure laid down in Article 251 of the Treaty <sup>(22)</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>(23)</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>(24)</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

<sup>(20)</sup> OJ C 318, 23.12.2006, p. 195.

<sup>(21)</sup> OJ C 229, 22.9.2006, p. 38.

<sup>(22)</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>(23)</sup> OJ L 255, 30.9.2005, p. 11.

<sup>(24)</sup> See page 57 of this Official Journal.

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.

*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

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## 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.

PART VIII —  
FLAG STATE REQUIREMENTS  
& RECOGNISED  
ORGANISATIONS

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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**

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

<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).

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.
- (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>(4)</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>(5)</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>(6)</sup>.

#### *Article 2*

#### **Scope**

This Directive shall apply to the administration of the State whose flag the ship is flying.

#### *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;

<sup>(4)</sup> OJ L 184, 17.7.1999, p. 23.

<sup>(5)</sup> OJ L 324, 29.11.2002, p. 1.

<sup>(6)</sup> OJ L 167, 2.7.1999, p. 33.

- (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>(7)</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.

#### *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.

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<sup>(7)</sup> See page 11 of this Official Journal.

*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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**DIRECTIVE 2013/54/EU**  
**of 20 November 2013**  
**concerning certain flag State responsibilities for compliance with and enforcement**  
**of the Maritime Labour Convention, 2006**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 100(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee <sup>(8)</sup>,

After consulting the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure <sup>(9)</sup>,

Whereas:

- (1) Union action in the field of maritime transport aims, inter alia, to improve the shipboard living and working conditions of seafarers, security and safety at sea and to prevent pollution caused by maritime accidents.
- (2) The Union is aware of the fact that most accidents at sea are directly caused by human factors, especially fatigue.
- (3) One of the main objectives of the maritime safety policy of the Union is to eradicate substandard shipping.
- (4) On 23 February 2006, the International Labour Organisation (ILO), desiring to create a single, coherent and up-to-date instrument that also embodies the fundamental principles to be found in other international labour conventions, adopted the Maritime Labour Convention, 2006 (MLC 2006).
- (5) According to Article VIII thereof, the MLC 2006 is to come into force 12 months after the date on which there have been registered ratifications by at least 30 Members of the ILO with a total share in the world gross tonnage of ships of 33 %. This condition was fulfilled on 20 August 2012, and MLC 2006 therefore entered into force on 20 August 2013.
- (6) Council Decision 2007/431/EC <sup>(10)</sup> authorised the Member States to ratify MLC 2006, and Member States are urged to do so as soon as possible.
- (7) MLC 2006 sets out minimum global standards to ensure the right of all seafarers to decent living and working conditions, irrespective of their nationality and irrespective of the flag of the ships on which they serve, and to establish a level playing field.
- (8) Various parts of MLC 2006 have been introduced into different Union instruments both as regards flag State and port State obligations. The aim of this Directive is to introduce certain compliance and enforcement provisions, envisaged in Title 5 of MLC 2006, which relate to those parts of MLC 2006 in respect of which the

<sup>(8)</sup> OJ C 299, 4.10.2012, p. 153.

<sup>(9)</sup> Position of the European Parliament of 8 October 2013 (not yet published in the Official Journal) and decision of the Council of 15 November 2013.

<sup>(10)</sup> Council Decision 2007/431/EC of 7 of June 2007 authorising Member States to ratify, in the interests of the European Community, the Maritime Labour Convention, 2006, of the International Labour Organisation (OJ L 161, 22.6.2007, p. 63).

required compliance and enforcement provisions have not yet been adopted. Those parts correspond to the elements set out in the Annex to Council Directive 2009/13/EC <sup>(11)</sup>.

- (9) Directive 2009/13/EC implements the Agreement concluded by the European Community Shipowners' Associations (ECSA) and the European Transport Workers' Federation (ETF) on the Maritime Labour Convention, 2006 ('the Agreement'), annexed thereto. This Directive is without prejudice to Directive 2009/13/EC and should therefore ensure compliance with more favourable provisions of Union law in conformity with that Directive.
- (10) Although Directive 2009/21/EC of the European Parliament and of the Council <sup>(12)</sup> governs flag State responsibilities, incorporating the voluntary IMO Member States audit scheme into Union law, and introducing the certification of quality of national maritime authorities, a separate Directive covering the maritime labour standards would be more appropriate and would more clearly reflect the different purposes and procedures, without affecting Directive 2009/21/EC.
- (11) Directive 2009/21/EC applies to IMO Conventions. In any event, Member States could develop, implement and maintain a quality management system for the operational parts of the flag State-related activities of their maritime administration falling within the scope of this Directive.
- (12) Member States should ensure the effective discharge of their obligations as flag States with respect to the implementation, by ships flying their flag, of the relevant parts of MLC 2006. In establishing an effective system for monitoring mechanisms, including inspections, a Member State could, where appropriate, grant authorisation to public institutions, or to other organisations within the meaning of Regulation 5.1.2 of MLC 2006, under the conditions set out therein.
- (13) According to Article 2(3)(c) of Regulation (EC) No 1406/2002 of the European Parliament and of the Council <sup>(13)</sup> the mandate of the European Maritime Safety Agency includes, as a core task, that the Agency should work with the Member States to provide, at the request of a Member State, appropriate information in order to support the monitoring of recognised organisations acting on behalf of that Member State, without prejudice to the rights and obligations of the flag State.
- (14) Since the objectives of this Directive cannot be sufficiently achieved by the Member States but can rather, by reason of the scale and effects of the action, be better achieved at the level of the Union, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. 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.
- (15) Under no circumstances should the application of this Directive lead to a reduction in the level of protection currently enjoyed by seafarers under Union law,

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<sup>(11)</sup> Council Directive 2009/13/EC of 16 February 2009 implementing the Agreement concluded by the European Community Shipowners' Associations (ECSA) and the European Transport Workers' Federation (ETF) on the Maritime Labour Convention, 2006 and amending Directive 1999/63/EC (OJ L 124, 20.5.2009, p. 30).

<sup>(12)</sup> Directive 2009/21/EC of the European Parliament and of the Council of 23 April 2009 on compliance with flag State requirements (OJ L 131, 28.5.2009, p. 132).

<sup>(13)</sup> Regulation (EC) No 1406/2002 of the European Parliament and of the Council of 27 June 2002 establishing a European Maritime Safety Agency (OJ L 208, 5.8.2002, p. 1).

HAVE ADOPTED THIS DIRECTIVE:

*Article 1*

**Subject matter**

This Directive lays down rules to ensure that Member States effectively discharge their obligations as flag States with respect to the implementation of the relevant parts of MLC 2006. This Directive is without prejudice to Directives 2009/13/EC and 2009/21/EC, and to any higher standards for living and working conditions for seafarers set out therein.

*Article 2*

**Definitions**

For the purposes of this Directive, the following definition shall apply in addition to the relevant definitions set out in the Annex to Directive 2009/13/EC:

'relevant parts of MLC 2006' means the parts of MLC 2006 of which the content shall be considered as corresponding to the provisions in the Annex to Directive 2009/13/EC.

*Article 3*

**Monitoring of compliance**

1. Member States shall ensure that effective and appropriate enforcement and monitoring mechanisms, including inspections at the intervals provided for in MLC 2006, are established in order to ensure that the living and working conditions of seafarers on ships flying their flag meet, and continue to meet, the requirements of the relevant parts of MLC 2006.
2. With respect to ships of less than 200 gross tonnage not engaged in international voyages, Member States may, in consultation with the shipowners' and seafarers' organisations concerned, decide to adapt, pursuant to Article II, paragraph 6 of MLC 2006, monitoring mechanisms, including inspections, to take account of the specific conditions relating to such ships.
3. When fulfilling their obligations under this Article, Member States may, where appropriate, authorise public institutions or other organisations, including those of another Member State, if the latter agrees, which they recognise as having sufficient capacity, competence and independence, to carry out inspections. In all cases, a Member State shall remain fully responsible for the inspection of the living and working conditions of the seafarers concerned on ships that fly the flag of that Member State. This provision is without prejudice to Directive 2009/15/EC of the European Parliament and of the Council <sup>(14)</sup>.
4. Member States shall establish clear objectives and standards covering the administration of their inspection systems, as well as adequate overall procedures for their assessment of the extent to which those objectives and standards are being attained.
5. A Member State shall ensure that seafarers on board ships flying the flag of that Member State have access to a copy of the Agreement. The access may be provided electronically.

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<sup>(14)</sup> 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 (OJ L 131, 28.5.2009, p. 47).

*Article 4***Personnel in charge of compliance monitoring**

1. Member States shall ensure that personnel, including staff from institutions or other organisations ('recognised organisations' within the meaning of MLC 2006), authorised to carry out inspections in accordance with Article 3(3) and in charge of verifying the proper implementation of the relevant parts of MLC 2006, have the training, competence, terms of reference, full legal authority, status and independence necessary or desirable to enable them to carry out that verification and to ensure compliance with the relevant parts of MLC 2006. In accordance with MLC 2006, inspectors shall be empowered to take steps, as appropriate, to prohibit a ship from leaving port until necessary actions are taken.
2. All authorisations granted with respect to inspections shall, as a minimum, empower the recognised organisation to require the rectification of deficiencies that it identifies in seafarers' living and working conditions, and to carry out inspections in that regard at the request of a port State.
3. Each Member State shall establish:
  - (a) a system to ensure the adequacy of work performed by recognised organisations, which includes information on all applicable national laws and regulations and relevant international instruments; and
  - (b) procedures for communication with and oversight of such organisations.
4. Each Member State shall provide the International Labour Office with a current list of any recognised organisations authorised to act on its behalf, and shall keep this list up to date. The list shall specify the functions that the recognised organisations have been authorised to carry out.

*Article 5***On-board complaint procedures, handling of complaints and corrective measures**

1. Each Member State shall ensure that, in its laws or regulations, appropriate on-board complaint procedures are in place.
2. If a Member State receives a complaint which it does not consider manifestly unfounded or obtains evidence that a ship that flies its flag does not conform to the requirements of the relevant parts of MLC 2006 or that there are serious deficiencies in its implementing measures, that Member State shall take the steps necessary to investigate the matter and ensure that action is taken to remedy any deficiencies found.
3. Personnel dealing with or becoming aware of complaints shall treat as confidential the source of any grievance or complaint alleging a danger or deficiency in relation to seafarers' living and working conditions or a violation of laws and regulations and shall give no intimation to the shipowner, the shipowner's representative or the operator of the ship that an inspection was made as a consequence of such a grievance or complaint.

*Article 6***Reports**

1. The Commission shall, in the context of its reports to be established in accordance with Article 9 of Directive 2009/21/EC, include matters falling within the scope of this Directive.
2. No later than 31 December 2018, the Commission shall submit a report to the European Parliament and to the Council on the implementation and application of Regulation 5.3 of MLC 2006 regarding labour-supplying responsibilities. If appropriate, the report may include proposals for measures to enhance living and working conditions in the maritime sector.

*Article 7***Transposition**

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 31 March 2015. They shall forthwith communicate to the Commission the text of those provisions.

When Member States adopt those 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 for making such references shall be laid down by Member States.

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

*Article 8***Entry into force**

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

*Article 9***Addressees**

This Directive is addressed to the Member States.

Done at Strasbourg, 20 November 2013.

*For the European Parliament*

*The President*

M. SCHULZ

*For the Council*

*The President*

V. LEŠKEVIČIUS

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**Commission statement**

‘The Commission considers that the title does not properly reflect the scope of the Directive.’

**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**

amended by Commission Implementing Regulation (EU) No 1355/2014 of 17 December 2014 amending Regulation (EC) No 391/2009 with regard to the adoption by the International Maritime Organization (IMO) of certain Codes and related amendments to certain conventions and protocols  
(consolidated version)

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>(15)</sup>,

Having regard to the opinion of the Committee of the Regions <sup>(16)</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>(17)</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>(18)</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.

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<sup>(15)</sup> OJ C 318, 23.12.2006, p. 195.

<sup>(16)</sup> OJ C 229, 22.9.2006, p. 38.

<sup>(17)</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>(18)</sup> OJ L 319, 12.12.1994, p. 20.

- (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.
- (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>(19)</sup>.
- (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

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<sup>(19)</sup> OJ L 184, 17.7.1999, p. 23.

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>(20)</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

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<sup>(20)</sup> OJ L 208, 5.8.2002, p. 1.

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>(21)</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.

*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, with the exception of paragraphs 16.1, 18.1 and 19 of part 2 of the IMO Instruments Implementation Code, and of sections 1.1, 1.3, 3.9.3.1, 3.9.3.2 and 3.9.3.3 of part 2 of the IMO Code for Recognized Organizations, in their up-to-date version;
- (c) 'organisation' means a legal entity, its subsidiaries and any other entities under its control, which
- (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;

<sup>(21)</sup> See page 47 of this Official Journal.

- (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>(22)</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 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.

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>(23)</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.

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<sup>(22)</sup> OJ L 46, 17.2.1997, p. 25.

<sup>(23)</sup> See page 57 of this Official Journal.

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.

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>(24)</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.

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<sup>(24)</sup> OJL 324, 29.11.2002, p. 1.

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.

#### *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.

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.

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(f)	Article 2(d)
—	Article 2(g)	Article 2(e)
Article 2(f)	Article 2(h)	Article 2(f)
Article 2(g)	Article 2(i)	Article 2(g)
Article 2(h)	Article 2(k)	Article 2(i)
Article 2(i)	Article 2(j)	Article 2(h)
—	Article 2(l)	—
Article 2(j)	—	Article 2(j)
Article 2(k)	Article 3	—
Article 3	—	Article 3(1)
Article 4(1) first phrase	—	Article 3(2)
Article 4(1) second phrase	—	—
Article 4(1) third phrase	—	Article 4(1)
Article 4(1) fourth phrase	—	Article 3(3)
—	—	Article 4(2), (3), (4)
—	—	Article 5
—	—	Article 6
Article 5(1)	Article 4(1)	Article 7
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)	—

Directive 94/57/EC	Directive 2009/15/EC	This Regulation
Article 8(2) second subparagraph	—	Article 13(2)
Article 9(1)	—	—
Article 9(2)	Article 8	—
Article 10(1) introductory wording	—	—
Article 10(1)(a), (b), (c), (2), (3), (4)	Article 9(1), (2)	Article 8(1), (2)
Article 11(1), (2)	Article 10	—
Article 11(3), (4) Article 12	—	—
Article 13	Article 11(1), (2)	—
Article 14	Article 11(3)	—
—	Article 12	—
—	—	Article 9
—	Article 13	Article 10(1), (2)
Article 15(1)	Article 16	Article 10(3)
Article 15(2)	Article 14	Article 10(4)
Article 15(3)	Article 15	Article 10(5)
Article 15(4)	Annex I	Article 10(6) first, second, third, fifth subparagraphs
Article 15(5)	Annex II	Article 10(6) fourth subparagraph
—		—
Article 16		—
Article 17		—
—		Article 11
—		Article 14
Annex		Article 15
		Article 16
		Article 17
		Article 18
		Article 19
		Annex I
		Annex II

**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**  
(consolidated version)

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>(25)</sup>,

Having regard to the opinion of the Committee of the Regions <sup>(26)</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>(27)</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>(28)</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) 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.

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<sup>(25)</sup> OJ C 318, 23.12.2006, p. 195.

<sup>(26)</sup> OJ C 229, 22.9.2006, p. 38.

<sup>(27)</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>(28)</sup> OJ L 319, 12.12.1994, p. 20.

- (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>(29)</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.
- (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>(30)</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>(31)</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.

<sup>(29)</sup> OJ L 184, 17.7.1999, p. 23.

<sup>(30)</sup> OJ L 204, 21.7.1998, p. 37.

<sup>(31)</sup> OJ C 321, 31.12.2003, p. 1.

- (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>(32)</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, with the exception of paragraphs 16.1, 18.1 and 19 of part 2 of the IMO Instruments Implementation Code, and of sections 1.1, 1.3, 3.9.3.1, 3.9.3.2 and 3.9.3.3 of part 2 of the IMO Code for Recognized Organizations, in their up-to-date version;
- (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;

<sup>(32)</sup> See page 11 of this Official Journal.

- (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>(33)</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 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

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<sup>(33)</sup> OJ L 324, 29.11.2002, p. 1.

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.

## 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 3	Article 3	Article 2(j)
Article 4(1) first phrase	—	—
Article 4(1) second phrase	—	Article 3(1)
Article 4(1) third phrase	—	Article 3(2)
Article 4(1) fourth phrase	—	—
—	—	Article 4(1)
—	—	Article 3(3)
—	—	Article 4(2), (3), (4)
—	—	Article 5
—	Article 4(1)	Article 6
Article 5(1)	Article 4(2)	Article 7
Article 5(3)	Article 5 (1), (2), (3), (4)	—
Article 6(1), (2), (3), (4)	—	—
Article 6(5)	Article 6	—
Article 7	Article 7(1), point (a) of first subparagraph	—
Article 8(1) first indent	—	Article 12
Article 8(1) second indent	—	—
Article 8(1) third indent	Article 7(1), point (b) of first subparagraph	Article 13(1)
—	Article 7(1) second subparagraph	—
Article 8(2)	Article 7(2)	Article 13(1) (second subparagraph)
Article 8(2) second subparagraph	—	—
Article 9(1)	—	Article 13(2)
	—	—

Directive 94/57/EC	This Directive	Regulation (EC) No 391/2009
Article 9(2)	—	—
Article 10(1) introductory wording	Article 8 —	— —
Article 10(1)(a), (b), (c), (2), (3), (4)	Article 9(1), (2) — Article 10 —	— Article 8(1), (2) — —
Article 11(1),(2)	Article 11(1), (2)	—
Article 11(3), (4)	Article 11(3)	—
Article 12	Article 12	—
Article 13	—	Article 9
Article 14	—	—
—	—	Article 10(1), (2)
—	—	Article 10(3)
—	—	Article 10(4)
—	—	Article 10(5)
—	—	Article 10(6) first, second, third, fifth subparagraphs
Article 15(1)	Article 13 Article 16 Article 14 Article 15	Article 10(6) fourth subparagraph — — —
—	—	—
Article 15(2)	—	—
Article 15(3)	—	Article 11
Article 15(4)	—	Article 14
Article 15(5)	—	Article 15
—	—	Article 16
—	—	Article 17
Article 16	—Annex I	Article 18
Article 17	Annex II	Article 19
—	—	Annex I
—	—	—
—	—	Annex II
—	—	—
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Annex	—	—
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**COMMISSION REGULATION (EU) NO 788/2014  
of 18 July 2014**

**laying down detailed rules for the imposition of fines and periodic penalty payments and the withdrawal  
of recognition of ship inspection and survey organisations pursuant to Articles 6 and 7 of Regulation  
(EC) No 391/2009 of the European Parliament and of the Council**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to 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<sup>(34)</sup>, and in particular Article 14(2) thereof,

Whereas:

- (1) Articles 6 and 7 of Regulation (EC) No 391/2009 empower the Commission to impose fines and periodic penalty payments on recognised organisations, as defined in Article 2 of that Regulation, or to withdraw their recognition, in order to ensure the enforcement of the criteria and obligations established under that Regulation with a clear view to removing any potential threat to safety or the environment.
- (2) It is in the interest of transparency to lay down, in accordance with Article 14(2) of Regulation (EC) No 391/2009, detailed rules of procedure for decision-making, as well as the methodology for the calculation of fines and periodic penalty payments by the Commission so that it is known in advance by the organisations concerned, including specific criteria for the Commission to appraise the gravity of the case and the extent to which safety or the protection of the environment has been compromised.
- (3) Through the introduction of fines and periodic penalty payments the Commission should have a supplementary tool, allowing it to give a more nuanced, flexible and graduated response to a breach of the rules contained in Regulation (EC) No 391/2009 by a recognised organisation, compared to the withdrawal of its recognition.
- (4) Periodic penalty payments should be effective in ensuring that any breach of the obligations and requirements laid down in Regulation (EC) No 391/2009 is promptly and appropriately remedied. Therefore Regulation (EC) No 391/2009 empowers the Commission to apply periodic penalty payments where a recognised organisation has failed to undertake the preventive and remedial actions required by the Commission, after a reasonable period and until such time as the required actions have been taken by the recognised organisation concerned. If necessary, in light of the circumstances of the case, the daily amount of the periodic penalty payments may gradually be increased to reflect the urgency of the requested actions.
- (5) The calculation of fines and periodic penalty payments as a fraction of the turnover of the organisation, bearing in mind the maximum ceiling established in accordance with Regulation (EC) No 391/2009, is a simple method to make the fines and periodic penalty payments dissuasive while remaining proportionate to both the gravity of the case and the economic capacity of the organisation concerned, in light of the diverse sizes of recognised organisations.
- (6) The application of the maximum aggregate amount ceiling to the fines and periodic penalty payments should be clearly set out taking into account the different circumstances where this would apply, in the interests of transparency and legal certainty. For the same reasons, the way in which the total average turnover in the

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<sup>(34)</sup> OJ L 131, 28.5.2009, p. 11.

preceding three business years for the activities falling under the scope of Regulation (EC) No 391/2009 is calculated for each recognised organisation should also be laid down.

- (7) It is appropriate that a decision to withdraw the recognition of an organisation on the basis of the conditions laid down in Article 7(1) of Regulation (EC) No 391/2009 should consider all factors linked to the overarching objective of monitoring the recognised organisations' operations and overall performance, including the effectiveness of any fines and periodic penalty payments already imposed for repeated and serious breaches of that Regulation.
- (8) A specific procedure should be laid down in order to enable the Commission, be it at its own initiative or at the request of Member State(s), to withdraw the recognition of an organisation pursuant to Regulation (EC) No 391/2009, further to the Commission's powers to assess recognised organisations and to impose fines and periodic penalty payments with the associated procedures set out in this Regulation.
- (9) It is important that a decision to impose fines, periodic penalty payments or the withdrawal of recognition in accordance with this Regulation is based exclusively on grounds on which the recognised organisation concerned has been able to comment.
- (10) This Regulation respects the fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union, in particular the right of defence and the principles of confidentiality and *ne bis in idem*, in accordance with the general principles of law and the case law of the Court of Justice of the European Union.
- (11) Decisions imposing fines and periodic penalty payments in accordance with this Regulation should be enforceable in accordance with Article 299 of the Treaty on the Functioning of the European Union and can be subject to review by the Court of Justice of the European Union.
- (12) For the purpose of ensuring fairness and legal certainty in the conduct of the procedure, it is necessary to lay down detailed rules for the calculation of time limits set by the Commission in the course of the procedure and of the limitation periods that apply to the Commission for the imposition and enforcement of fines and periodic penalty payments, taking into account also the date of entry into force of Regulation (EC) No 391/2009.
- (13) The enforcement of this Regulation requires an effective cooperation between the Member States concerned, the Commission and the European Maritime Safety Agency. For that purpose, it is necessary to clarify the rights and obligations of each of these parties in the procedures laid down in this Regulation, in order to ensure the effective conduct of the inquiry, decision-making and follow-up process pursuant to Articles 6 and 7 of Regulation (EC) No 391/2009.
- (14) The measures provided for in this Regulation are in accordance with the opinion of 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>(35)</sup>,

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<sup>(35)</sup> OJ L 324, 29.11.2002, p. 1.

HAS ADOPTED THIS REGULATION:

CHAPTER I  
**GENERAL PROVISIONS**

*Article 1*

**Subject matter**

This Regulation lays down rules for the implementation of Articles 6 and 7 of Regulation (EC) No 391/2009 by the Commission.

It sets out the criteria for establishing the amount of fines and periodic penalty payments, the decision-making procedure to impose a fine and a periodic penalty payment or to withdraw the recognition of a recognised organisation on the Commission's own initiative or at the request of a Member State.

*Article 2*

**Definitions**

For the purposes of this Regulation, the definitions set out in Article 2 of Regulation (EC) No 391/2009 shall apply.

In addition the following definition shall apply:

'Member State concerned' means any Member State that has entrusted a recognised organisation with the inspection, survey and certification of ships flying its flag for compliance with the international conventions, in accordance with 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>(36)</sup>, including the Member State that has submitted the request for recognition of that organisation to the Commission, in accordance with Article 3 of Regulation (EC) No 391/2009.

CHAPTER II

**FINES AND PERIODIC PENALTY PAYMENTS**

*Article 3*

**Identification of infringements**

1. The Commission shall identify an infringement under Article 6(1) of Regulation (EC) No 391/2009 where:
  - (a) the serious or repeated failure by a recognised organisation to fulfil one of the minimum criteria set out in Annex I of Regulation (EC) No 391/2009 or its obligations under Articles 8(4), 9, 10 and 11 of Regulation (EC) No 391/2009 reveals serious shortcomings in a recognised organisation's structure, systems, procedures or internal controls;
  - (b) a recognised organisation's worsening performance, taking into account Commission Decision No 2009/491/EC<sup>(37)</sup>, reveals serious shortcomings in that organisation's structure, systems, procedures or internal controls;
  - (c) a recognised organisation has deliberately provided incorrect, incomplete or misleading information to the Commission in the course of its assessment or otherwise obstructed that assessment.

<sup>(36)</sup> OJ L 131, 28.5.2009, p. 47.

<sup>(37)</sup> OJ L 162, 25.6.2009, p. 6.

2. In any infringement procedure under this Regulation, the burden of proving an infringement shall rest on the Commission.

#### *Article 4*

### **Calculation of fines**

1. A basic fine of 0,6 % of the total average turnover of the recognised organisation, as determined in accordance with Article 9, shall be initially assigned to each infringement established on the basis of Article 6(1) of Regulation (EC) No 391/2009.

2. For the calculation of the individual fine for each infringement the basic fine referred to in paragraph 1 shall be increased or reduced, on the basis of the seriousness and of the effects of the infringement, in particular the extent to which safety or the protection of the environment have been compromised, in accordance with Articles 5 and 6 respectively.

3. The maximum amount of each individual fine shall not exceed 1,8 % of the total average turnover of the recognised organisation.

4. Where one action or omission of the recognised organisation forms the sole basis of two or more infringements under Article 6(1)(a) of Regulation (EC) No 391/2009 identified in accordance with Article 3(1)(a) of this Regulation, the concurrent individual fine shall be the highest of the individual fines calculated for the underlying infringements.

5. The total fine imposed on a recognised organisation in one decision shall be the sum of all individual fines resulting from the application of paragraphs 1 to 4 of this Article, without prejudice to the maximum ceiling established under Article 6(3) of Regulation (EC) No 391/2009, as detailed Article 8 of this Regulation.

#### *Article 5*

### **Assessment of the seriousness of an infringement**

When assessing the seriousness of each infringement the Commission shall take into account all relevant aggravating and mitigating circumstances, in particular the following:

- (a) whether the organisation has acted with negligence or intent;
- (b) the number of actions or omissions of the recognised organisation which give rise to the infringement;
- (c) whether the infringement affects isolated offices, geographical areas or the entire organisation;
- (d) the recurrence of the actions or omissions of the recognised organisation giving rise to the infringement;
- (e) the duration of the infringement;
- (f) a misrepresentation of the actual condition of ships in the certificates and documents of compliance delivered by the recognised organisation, or the inclusion of incorrect or misleading information therein;
- (g) prior sanctions, including fines, imposed on the same recognised organisation;
- (h) whether the infringement results from an agreement between recognised organisations or a concerted practice, which have as their object or effect the breach of the criteria and obligations provided in Regulation (EC) No 391/2009;
- (i) the degree of diligence and cooperation of the recognised organisation in the discovery of the relevant actions or omissions, as well as in the determination of the infringements by the Commission.

*Article 6***Assessment of the effects of an infringement**

When assessing the effects of each infringement, in particular the extent to which safety and the protection of the environment have been compromised, the Commission shall take into account all relevant aggravating and mitigating circumstances, in particular the following:

- (a) the nature and extent of the deficiencies actually or potentially affecting the fleet certified by the organisation, which the said organisation, as a result of the infringement, has failed to detect or may not be able to detect, or has failed to or may not be able to request the timely correction of, taking into account in particular the criteria for the detention of a ship laid down in Annex X of Directive 2009/16/EC of the European Parliament and of the Council <sup>(38)</sup> on port State control;
- (b) the proportion of the fleet certified by the organisation actually or potentially affected;
- (c) any other circumstances posing specific identifiable risks, such as the type of the ships actually or potentially affected.

*Article 7***Periodic penalty payments**

1. Periodic penalty payments as referred to in Article 6(2) of Regulation (EC) No 391/2009 may be imposed by the Commission on the organisation concerned, without prejudice to the fines imposed pursuant to Article 3, in order to ensure that preventive and remedial action is taken as required by the Commission in the course of its assessment of the recognised organisation.
2. In the decision imposing fines pursuant to Article 3 the Commission may also establish periodic penalty payments to be imposed on the recognised organisation if, and for as long as, it fails to undertake remedial action or incurs unjustified delays in bringing the infringement to an end.
3. The decision imposing the periodic penalty payments shall determine the time limit within which the recognised organisation has to comply with the required action.
4. Periodic penalty payments shall apply as from the day following the expiry of the time limit established in accordance with paragraph 3 until the day on which appropriate remedial action has been undertaken by the organisation, provided that the remedial action is considered satisfactory by the Commission.
5. The basic amount per day of the periodic penalty payments for each infringement shall be 0,0033 % of the total average turnover of the recognised organisation calculated in accordance with Article 9. For the calculation of the individual amount of periodic penalty payments for each infringement, the basic amount shall be adjusted based on the seriousness of the infringement and taking into account the extent to which safety or the protection of the environment has been compromised, in the light of Articles 5 and 6 of this Regulation.
6. The Commission may decide, in light of the circumstances of the case, and in particular in view of the urgency of the remedial action to be undertaken by the organisation concerned, to increase the daily amount for periodic penalty payments up to the following limits:
  - (a) when the recognised organisation exceeds the time limit established pursuant to paragraph 3 by more than 120 days, from the 121st to the 300th day from the expiry of the time limit, 0,005 % per day of the organisation's total average turnover, calculated in accordance with Article 9;

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<sup>(38)</sup> OJ L 131, 28.5.2009, p. 57.

- (b) when the recognised organisation exceeds the time limit established pursuant to paragraph 3 by more than 300 days, from the 301st day from the expiry of the time limit, 0,01 % per day of the organisation's total average turnover, calculated in accordance with Article 9.

7. The total amount of periodic penalty payments imposed under this Article, individually or in addition to fines, shall not exceed the maximum ceiling established under Article 6(3) of Regulation (EC) No 391/2009, as detailed in Article 8 of this Regulation.

#### *Article 8*

### **Determination of maximum aggregate amount of fines and periodic penalty payments**

The maximum aggregate amount of fines and periodic penalty payments imposed to the recognised organisation, as established in Article 6(3) of Regulation (EC) No 391/2009, shall be determined as follows:

- (a) the aggregate amount of the fines imposed on a recognised organisation in accordance with Article 4 within one business year for that organisation, taking into account the date of the decision to impose the fines and, in case of more than one decision imposing fines to that organisation, the date of the first decision imposing a fine on that organisation, shall not exceed 5 % of the total average turnover of that organisation calculated in accordance with Article 9;
- (b) the aggregate amount of the fines imposed on a recognised organisation in accordance with Article 4 within one business year for that organisation, determined in accordance with paragraph 1, and the periodic penalty payments imposed in the same decisions in accordance with Article 7(2) and accrued for as long as appropriate remedial action is not undertaken by the organisation shall not exceed 5 % of the total average turnover of that organisation calculated in accordance with Article 9. Without prejudice to Article 21, recovery by the Commission of the periodic penalty payments shall not exceed the 5 % ceiling;
- (c) the aggregate amount of the periodic penalty payments imposed on a recognised organisation in accordance with Article 7(1) and accrued for as long as appropriate preventive or remedial action is not undertaken by the organisation shall not exceed 5 % of the total average turnover of that organisation calculated in accordance with Article 9. Without prejudice to Article 21, recovery by the Commission of the periodic penalty payments shall not exceed the 5 % ceiling.

#### *Article 9*

### **Calculation of turnover**

1. For the purposes of this Regulation the total average turnover of the recognised organisation concerned shall be one third of the amount obtained by adding, over the three business years preceding the Commission's decision, the aggregate turnover of the parent entity holding the recognition and all legal entities which are encompassed in that recognition at the end of each year.

2. In the case of a group with certified consolidated accounts, the turnover referred to in paragraph 1 shall be, as regards the parent entity and all legal entities included in that group which are encompassed in the recognition at the end of each business year, the consolidated revenue of those entities.

3. In the application of paragraphs 1 and 2 only the activities falling under the scope of Regulation (EC) No 391/2009 shall be taken into account.

CHAPTER III  
**WITHDRAWAL OF RECOGNITION**

*Article 10*

**Withdrawal of recognition**

1. Upon its own initiative or at the request of a Member State, the Commission may adopt a decision to withdraw the recognition of an organisation, in the cases referred to in Article 7(1) points (a) to (e) of Regulation (EC) No 391/2009.
2. In order to determine whether a repeated and serious failure constitutes an unacceptable threat to safety or the environment in accordance with Article 7(1)(a) and (b) of Regulation (EC) No 391/2009, the following elements shall be taken into account:
  - (a) the information and circumstances referred to in Article 7(2) of Regulation (EC) No 391/2009, particularly in light of the circumstances referred to in Articles 5 and 6 of this Regulation;
  - (b) the criteria and, as the case may be, thresholds defined in Commission Decision 2009/491/EC.
3. When fines and periodic penalty payments imposed on a recognised organisation reach the maximum ceiling established in accordance with Article 6(3) of Regulation (EC) No 391/2009 and appropriate corrective action has not been taken by the recognised organisation, the Commission may consider that these measures have not attained their objective of removing any potential threat to safety or the environment.

*Article 11*

**Procedure to withdraw recognition at the request of a Member State**

1. Where a Member State requests the Commission to withdraw the recognition of an organisation in accordance with Article 7(3) of Regulation (EC) No 391/2009, it shall address that request in writing to the Commission.
2. The requesting Member State shall explain the reasons for its request in full detail and by reference, as appropriate, to the criteria listed in Article 7(1) and the circumstances listed in Article 7(2) of Regulation (EC) No 391/2009, as well as the circumstances listed in paragraphs 2 and 3 of Article 10 of this Regulation.
3. The requesting Member State shall provide the Commission with all necessary documentary evidence supporting its request, duly classified and numbered.
4. The Commission shall acknowledge receipt of the Member State's request in writing.
5. Where the Commission considers that additional information, clarification or evidence is necessary in order to take a decision, it shall inform the requesting Member State and invite it to supplement its submission as appropriate within a designated time limit, which shall not be less than four weeks. The Member State's request shall not be considered complete until all necessary information has been provided.
6. Within one year of receipt of a complete request, the Commission shall, if it concludes that the Member State's request is justified, address a statement of objections to the organisation concerned in accordance with Article 12, with a view to withdrawing its recognition in accordance with this Regulation. In this case, the requesting Member State shall be granted the consideration and rights of a Member State concerned under Chapter IV of this Regulation.

If, within the same time limit, the Commission concludes that the Member State's request is unjustified, it shall inform the requesting Member State, stating the reasons thereof and inviting that to submit its observations within a designated time limit, which shall not be less than three months. Within six months of receipt of these observations, the Commission shall either confirm that the request is unjustified or issue a statement of objections in accordance with the first subparagraph.

7. If the Commission concludes that the Member State's request is unjustified or that it remains incomplete after the expiry of the time limit referred to in paragraph 5, the Commission may choose to incorporate all or part of that request and its accompanying evidence into the assessment of the recognised organisation undertaken in accordance with Article 8 of Regulation (EC) No 391/2009.

8. The Commission shall report yearly to the COSS on the requests for withdrawal submitted by the Member States as well as the on-going withdrawal procedures initiated by the Commission.

## CHAPTER IV COMMON PROVISIONS

### *Article 12*

#### **Statement of objections**

1. Where the Commission considers that there are grounds to impose a fine and periodic penalty payments on a recognised organisation in accordance with Article 6 of Regulation (EC) No 391/2009, or to withdraw an organisation's recognition in accordance with Article 7 of that Regulation, it shall address a statement of objections to the organisation and notify the Member States concerned.

2. The statement of objections shall include:

- (a) a detailed account of the recognised organisation's actions and omissions, including the description of the relevant facts and the identification of the provisions of Regulation (EC) No 391/2009, which the Commission considers to have been breached by the recognised organisation;
- (b) an identification of the evidence on which the relevant findings are based, including by reference to inspection reports, assessment reports, or any other relevant documents which have been previously communicated to the organisation concerned by the Commission or by the European Maritime Safety Agency acting on the Commission's behalf;
- (c) a notice that fines and periodic penalty payments or the withdrawal of recognition may be imposed by the Commission in accordance with Articles 6 or 7 of Regulation (EC) No 391/2009.

3. When notifying the statement of objections, the Commission shall invite the recognised organisation and the Member States concerned to submit written observations within a designated time limit, which shall not, in any event, be less than six weeks of the date of receipt of the statement of objections. The Commission shall not be obliged to take into account submissions received after the expiry of that time limit, without prejudice to the provisions of Article 24 paragraph 4 of this Regulation.

4. The notification of a statement of objections shall not suspend the assessment of the organisation concerned. At any moment prior to the adoption of a decision to impose a fine and periodic penalty payments, or the withdrawal of recognition in accordance with this Regulation, the Commission may decide to carry out additional inspections of an organisation's offices and facilities, to visit ships certified by the organisation or to request the recognised organisation in writing to provide additional information relating to its compliance with the criteria and obligations under Regulation (EC) No 391/2009.

5. At any moment prior to the adoption of a decision to impose a fine and periodic penalty payments, or the withdrawal of recognition in accordance with this Regulation, the Commission may amend its assessment of the recognised organisation concerned. If the new assessment is different to the assessment which gave rise to the statement of objections, because new facts have been discovered, or because new infringements or new circumstances concerning the seriousness of an infringement or its effects on safety and the environment have been identified, the Commission shall issue a new statement of objections.

*Article 13***Requests for information**

In order to clarify the facts for the purposes of Article 12, the Commission may request in writing the recognised organisation to provide written or oral explanations, or particulars or documents, within a designated time limit, which shall not, in any event, be less than 4 weeks. In such a case the Commission shall inform the recognised organisation of the periodic penalty payments and fines that may be imposed for failing to comply with the request or when incurring unjustified delays in the provision of information or providing deliberately incorrect, incomplete or misleading information to the Commission.

*Article 14***Oral hearing**

1. At the request of the recognised organisation to which a statement of objections has been addressed, the Commission shall offer that organisation the opportunity to present its arguments at an oral hearing.
2. The Commission shall invite the competent authorities of Member States concerned, and may, on its own initiative or at the request of Member States concerned, invite any other persons with a legitimate interest in the infringements to take part in the oral hearing. The Commission may choose to be assisted by the European Maritime Safety Agency.
3. Natural or private legal persons invited to attend shall either appear in person or be represented by legal or authorised representatives. Member States shall be represented by officials of that Member State.
4. The oral hearing shall not be public. Each person invited to attend may be heard separately or in the presence of other persons invited to attend, having regard to the legitimate interest of the recognised organisation and other parties in the protection of their business secrets and other confidential information.
5. The statements made by each person heard shall be recorded. Upon request, the recording of the hearing shall be made available to the persons who attended the hearing and to Member States concerned.

*Article 15***Periodic penalty payments for non-cooperation**

1. Where the Commission intends to adopt a decision imposing periodic penalty payments as referred to in Article 7(1) to a recognised organisation that has failed to undertake or incurs unjustified delays in undertaking preventive and remedial action requested by the Commission, it shall first notify the recognised organisation in writing.
2. The notification by the Commission in accordance with paragraph 1 shall make reference to the specific preventive and remedial action that has not been undertaken by the recognised organisation and the supporting evidence, as well as inform the recognised organisation of the periodic penalty payments that are being considered by the Commission thereon.
3. The Commission shall set a time limit in which the recognised organisation may submit written observations to the Commission. The Commission shall not be obliged to take into account written observations received after the expiry of the time limit.

*Article 16***Access to the file**

1. At the request of the recognised organisation to which a statement of objections has been addressed, the Commission shall grant access to the file containing documents and other evidence compiled by the Commission on the alleged infringement.

2. The Commission shall set the date and make the relevant practical arrangements for the recognised organisation's access to the file, which may be granted in electronic form only.
3. The Commission shall make available to the recognised organisation concerned, upon request, a list of all the documents contained in the file.
4. The recognised organisation concerned shall have the right to access the documents and information contained in the file. When granting such access, the Commission shall have due regard to business secrets, confidential information or the internal character of documents issued by the Commission or the European Maritime Safety Agency.
5. For the purposes of paragraph 4, internal documents of the Commission and the European Maritime Safety Agency may include:
  - (a) documents or parts of documents pertaining to the internal deliberations of the Commission and its services and of the European Maritime Safety Agency, including the opinions and recommendations of the European Maritime Safety Agency addressed to the Commission;
  - (b) documents or parts of documents forming part of the correspondence between the Commission and the European Maritime Safety Agency or between the Commission and Member States.

#### *Article 17*

### **Legal representation**

The recognised organisation shall have the right to legal representation at all stages of the proceedings under this Regulation.

#### *Article 18*

### **Confidentiality, professional secrecy and the right to remain silent**

1. Proceedings under this Regulation shall be carried out subject to the principles of confidentiality and of professional secrecy.
2. The Commission, the European Maritime Safety Agency, and the authorities of the Member States concerned, as well as their officials, servants and other persons working under their supervision shall not disclose information acquired or exchanged by them pursuant to this Regulation and of the kind covered by the obligation of professional secrecy and confidentiality.
3. Any recognised organisation or other person who submits information or observations pursuant to this Regulation shall clearly identify any material considered to be confidential, giving the reasons for it, and provide a separate non-confidential version by the date set by the Commission.
4. The Commission may also require recognised organisations and other interested parties to identify any part of a report, of the statement of objections or of a decision by the Commission, which in their view contains business secrets.
5. In the absence of the identification referred to in paragraphs 3 and 4, the Commission may assume that the documents or observations concerned do not contain confidential information.
6. Without prejudice to Article 9 of Regulation (EC) No 391/2009, recognised organisations shall have the right to remain silent in situations where it would otherwise be compelled to provide answers which might involve an admission on their part of the existence of a breach.

### Article 19

#### Decision

1. A decision to impose fines, periodic penalty payments, or the withdrawal of recognition in accordance with this Regulation shall be based exclusively on the grounds on which the recognised organisation concerned has been able to submit its observations.
2. The decision to impose a fine or a periodic penalty payment and the determination of the appropriate amount shall take into account the principles of effectiveness, proportionality and dissuasiveness.
3. When taking measures in accordance with this Regulation and deciding on the seriousness and effect of the relevant actions or omissions on safety and the environment the Commission shall take into account national measures already taken on the basis of the same facts against the recognised organisation concerned, in particular where that organisation has already been subject to judicial or enforcement proceedings.
4. Actions or omissions of a recognised organisation on the basis of which measures have been taken in accordance with this Regulation shall not be subject to further measures. However, these actions or omissions may be taken into account in subsequent decisions adopted in accordance with this Regulation in order to assess recurrence.
5. A decision to impose periodic penalty payments or a decision imposing fines and periodic penalty payments shall be adopted by the Commission in accordance with the procedure applicable pursuant to Article 12(2) of Regulation (EC) No 391/2009.
6. A decision to withdraw the recognition of a recognised organisation shall be adopted by the Commission in accordance with the procedure applicable pursuant to Article 12(3) of Regulation (EC) No 391/2009.

### Article 20

#### Judicial remedies, notification and publication

1. The Commission shall inform the recognised organisation concerned of the judicial remedies available to it.
2. The Commission shall notify its decision to the European Maritime Safety Agency and to the Member States for information.
3. When justified, in particular on grounds of safety or protection of the environment, the Commission may make its decision public. When publishing details of its decision or informing the Member States, the Commission shall have regard to the legitimate interests of the recognised organisation concerned and other interested persons.

### Article 21

#### Recovery of fines and penalty payments

The Commission shall proceed with the recovery of the fines and the penalty payments by establishing a recovery order and issuing a debit note addressed to the recognised organisation concerned in accordance with Articles 78 to 80 and 83 of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council <sup>(39)</sup> and Articles 80 to 92 of Commission Delegated Regulation (EU) No 1268/2012 <sup>(40)</sup>.

### Article 22

#### Limitation periods for the imposition of fines and periodic penalty payments

1. The right of the Commission to impose fines and/or periodic penalty payments to a recognised organisation in accordance with this Regulation shall expire after five years from the date when the action or omission of the recognised

<sup>(39)</sup> OJ L 298, 26.10.2012, p. 1.

<sup>(40)</sup> OJ L 362, 31.12.2012, p. 1.

organisation giving rise to an infringement identified in accordance with Article 3 of this Regulation was committed. However, in case of continuing or repeated actions or omissions giving rise to an infringement, time shall begin to run on the day on which the action or omission ceases.

The right of the Commission to impose periodic penalty payments to a recognised organisation in accordance with Article 15 of this Regulation shall expire after three years from the date when the action or omission of the recognised organisation, for which the Commission requested appropriate preventive and remedial action, was committed.

2. Any action taken by the Commission or the European Maritime Safety Agency for the purpose of the assessment or the infringement procedure in relation to an action or omission of the recognised organisation shall interrupt the relevant limitation period established under paragraph 1. The limitation period shall be interrupted with effect from the date on which the action of the Commission or the Agency is notified to the recognised organisation.
3. Each interruption shall start time running afresh. The limitation period shall, however, not exceed a period equal to twice the initial limitation period, except where limitation is suspended pursuant to paragraph 4.
4. The limitation period for the imposition of periodic penalty payments shall be suspended for as long as the decision of the Commission is the subject of proceedings pending before the Court of Justice of the European Union.

#### *Article 23*

#### **Limitation periods for the collection of fines and periodic penalty payments**

1. The right to start a recovery procedure for fines and/or periodic penalty payments shall expire one year after the Decision pursuant to Article 19 has become final.
2. The limitation period referred to in paragraph 1 shall be interrupted by any action of the Commission or of a Member State acting at the request of the Commission, aimed at enforcing payment of the fines and/or periodic penalty payments.
3. Each interruption shall start time running afresh.
4. The limitation periods referred to in paragraphs 1 and 2 shall be suspended for as long as:
  - (a) time to pay is allowed;
  - (b) enforcement of payment is suspended pursuant to a decision of the Court of Justice of the European Union.

#### *Article 24*

#### **Application of time limits**

1. The time limits laid down in this Regulation shall run from the day following receipt of the Commission's communication or delivery thereof by hand.
2. In the case of a communication addressed to the Commission, the relevant time limits shall be deemed to have been met when that communication has been dispatched by registered post before the relevant time limit expires.
3. In setting the time limits, the Commission shall have regard both to due process rights and the specific circumstances of each decision-making procedure under this Regulation.
4. Where appropriate and upon reasoned request made before the expiry of the original time limit, time limits may be extended.

*Article 25*

**Cooperation with national competent authorities**

Information provided by the national competent authorities in response to a request from the Commission shall be used by the Commission only for the following purposes:

- (a) to carry out the tasks entrusted to it for the recognition and supervision of recognised organisations under Regulation (EC) No 391/2009;
- (b) as evidence for the purposes of decision-making under this Regulation, without prejudice to Articles 16 and 18 of this Regulation.

CHAPTER V

**FINAL PROVISIONS**

*Article 26*

**Application**

Events which occurred before the date of entry into force of Regulation (EC) No 391/2009 shall not give rise to any measures in accordance with this Regulation.

*Article 27*

**Entry into force**

This Regulation shall enter into force on the twentieth day following that of 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.

**COMMISSION DECISION 2009/491/EC**  
**of 16 June 2009**  
**on criteria to be followed in order to decide when the performance**  
**of organisation acting on behalf of a flag State can be considered**  
**an unacceptable threat to safety and the environment**  
(without annexes <sup>(41)</sup>)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to 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>(42)</sup>, and in particular Article 9(2) thereof,

Whereas:

- (1) Where a Member State decides, with respect to ships flying its flag, either to authorise organisations to undertake fully or in part inspections and surveys related to certificates in accordance with the relevant international conventions and, where appropriate, to issue or renew the related certificates, or to rely upon organisations to undertake fully or in part the said inspections and surveys, it shall entrust these duties only to organisations recognised in accordance with Article 4 of Directive 94/57/EC.
- (2) A good record of safety and pollution prevention performance of a recognised organisation — measured in respect of all ships classed by it, irrespective of the flag they fly — is an important indication of the performance of that organisation.
- (3) The safety and pollution prevention performance records of recognised organisations must be derived from the data produced by the Paris Memorandum of Understanding on Port State Control and/or by similar schemes. Other indications may be derived from an analysis of the casualties involving ships classed by the recognised organisations.
- (4) Since recognised organisations operate all over the world, it is appropriate that their performance records are based on a sufficiently wide geographical area.
- (5) Both the United States Coast Guard and the Tokyo Memorandum of Understanding on Port State Control periodically publish data based on port State control in a similar way to the Paris Memorandum of Understanding. They should be considered comparably reliable sources in terms of continuity and accuracy of data from which to derive an assessment of the safety and pollution prevention performance records of recognised organisations.
- (6) The data published by the Paris Memorandum of Understanding, the Tokyo Memorandum of Understanding and the United States Coast Guard are subject to prior appeal mechanisms, allowing the recognised organisations concerned to contest them. Those data should, therefore, be considered as sufficiently reliable sources and should be used for the establishment of the assessment criteria as to the safety and pollution prevention performance of recognised organisations.

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<sup>(41)</sup> Complete version is available on the website of DG MOVE, Safety and Environment, Union Legislation on Maritime Safety.

<sup>(42)</sup> OJ L 319, 12.12.1994, p. 20.

- (7) Analysis of records on the detention of ships should, where such information is available, take specific account of recognised organisation-related detentions. It should also be designed in such a way as to reduce the risk that small and/or flag-specific populations, as may be the case of fleets classed by certain organisations with limited recognition, give rise to statistical distortions.
- (8) Data sources must be transparent, impartial and capable of providing sufficiently reliable, exhaustive and continuous data. Therefore, in the absence of sufficiently complete public sources, data on marine casualties may be obtained from commercial data sources and taken into consideration provided that reasonable assurance can be gained that the aforementioned criteria are met.
- (9) Reports produced by Member States on the basis of Article 12 of Directive 94/57/EC should also be taken into consideration in assessing the safety and pollution prevention performance records of the organisations.
- (10) A recognised organisation's safety and pollution prevention records, including other indications such as marine casualties, should be assessed with a view to allowing the adoption of fair and proportionate decisions based on the organisation's structural capacity to meet the highest professional standards. It is therefore necessary to compare these records over a reasonable period of time.
- (11) In order to guarantee the usefulness and fairness of the assessment system, it is necessary to allow a reasonable period of time for recognised organisations to take it into account in their management decisions, while at the same time giving the Commission the opportunity to evaluate its functioning and, as appropriate, make the necessary adjustments.
- (12) The measures provided for in this Decision are in accordance with the opinion of the Committee on Safe Seas and the Prevention of Pollution from Ships,

HAS ADOPTED THE FOLLOWING DECISION:

*Article 1*

For the purpose of this Decision:

1. 'recognised organisation' means an organisation recognised in accordance with Article 4 of Directive 94/57/EC;
2. 'Paris Memorandum of Understanding' (hereinafter Paris MOU) means the Memorandum of Understanding on Port State Control, signed in Paris on 26 January 1982, as it stands at the date of adoption of this Decision;
3. 'Tokyo Memorandum of Understanding' (hereinafter Tokyo MOU) means the Memorandum of Understanding on Port State Control in the Asia Pacific Region, signed in Tokyo on 1 December 1993, as it stands at the date of adoption of this Decision;
4. a 'recognised organisation-related detention' means that the ship's recognised organisation that carried out the relevant survey or that issued a certificate had a responsibility in relation to the deficiencies which, alone or in combination, led to detention, as defined in the applicable instructions of the relevant port State control scheme;
5. a 'marine casualty' means a marine casualty as defined in IMO resolution A. 849(20).

*Article 2*

The criteria to be followed in order to decide when the performance of an organisation acting on behalf of a flag State can be considered an unacceptable threat to safety and the environment are set out in Annex I.

*Article 3*

1. The Commission, in determining whether an organisation acting on behalf of a flag State must be considered an unacceptable threat to safety and the environment may, in addition to the criteria set out in Annex I, take into account the cases that come to its knowledge where:
  - (a) it has been proven in a court of law or in an arbitration procedure that a marine casualty involving a ship in the class of a recognised organisation has been caused by a wilful act or omission or gross negligence of such recognised organisation, its bodies, employees, agents or others who act on its behalf; and
  - (b) it can be considered, based on the information available to the Commission, that such wilful act, omission or gross negligence has been due to shortcomings in the organisation's structure, procedures and/or internal control.
2. The Commission shall take into account the gravity of the case, and shall seek to determine whether recurrence or any other circumstances reveal the organisation's failure to remedy the shortcomings referred to in paragraph 1 and improve its performance.

*Article 4*

1. Three years after the entry into force of this Decision, the Commission shall evaluate the criteria set out in Annex I.
2. Where appropriate it shall, in accordance with the procedure referred to in Article 7(2) of Directive 94/57/EC, amend Annex I in order to:
  - (a) adjust the said criteria to ensure their usefulness and fairness;
  - (b) define thresholds triggering the application of the measures provided for in Articles 9(1) and 10(2) of the said Directive.

*Article 5*

In submitting reports to the Commission and to the other Member States in accordance with Article 12 of Directive 94/57/EC, the Member States shall make use of the harmonised form set out in Annex II.

*Article 6*

This Decision is addressed to the Member States.

Done at Brussels, 16 June 2009.

*For the Commission*

Antonio TAJANI

*Vice-President*

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**LIST OF RECOGNISED ORGANISATIONS RECOGNISED ON THE BASIS OF 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

- American Bureau of Shipping (ABS)
  - Bureau Veritas SA — Registre international de classification de navires et d'aeronefs (BV)
  - China Classification Society (CCS)
  - Croatian Register of Shipping (CRS)
  - DNV GL AS
  - KR (Korean Register)
  - Lloyd's Register Group LTD (LR)
  - Nippon Kaiji Kyokai General Incorporated Foundation (ClassNK)
  - Polish Register of Shipping (PRS)
  - RINA Services S.p.A.
  - Russian Maritime Register of Shipping (RS)
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**REGULATION (EC) NO 789/2004 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**  
**of 21 April 2004**

**on the transfer of cargo and passenger ships between registers within the Community**

and repealing Council Regulation (EEC) No 613/91

as amended by Regulation (EC) No 219/2009

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>(43)</sup>,

After consulting the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the Treaty <sup>(44)</sup>,

Whereas:

- (1) The establishment and functioning of the internal market involve the elimination of technical barriers to the transfer of cargo and passenger ships between the registers of Member States. Measures to facilitate the transfer of cargo and passenger ships within the Community are also required to reduce the costs and administrative procedures involved in a change of register within the Community, thereby improving the operating conditions and the competitive position of Community shipping.
- (2) It is necessary, at the same time, to safeguard a high level of ship safety and environmental protection, in compliance with International Conventions.
- (3) The requirements set out in the 1974 International Convention for the Safety of life at Sea (1974 SOLAS), the 1966 International Convention on Load Lines (LL 1966) and the 1973 International Convention for the Prevention of Pollution from Ships, as amended by the 1978 Protocol (MARPOL 73/78) provide for a high level of ship safety and environmental protection. The International Convention on Tonnage Measurement of Ships, 1969 provides for a uniform system for the measurement of the tonnage of merchant ships.
- (4) The international regime applicable to passenger ships has been strengthened and refined through the adoption of a considerable number of amendments to 1974 SOLAS by the International Maritime Organisation (IMO) and an increased convergence of the interpretations of the 1974 SOLAS rules and standards.
- (5) The transfer of cargo and passenger ships flying the flag of a Member State between the registers of Member States should not be impeded by technical barriers, provided that the ships have been certified as complying with the provisions of relevant international Conventions by Member States or, on their behalf, by the organisations recognised under 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>(45)</sup>.

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<sup>(43)</sup> OJ C 80, 30.3.2004, p. 88.

<sup>(44)</sup> Opinion of the European Parliament of 13 January 2004 (not yet published in the Official Journal) and Decision of the Council of 6 April 2004.

<sup>(45)</sup> OJ L 319, 12.12.1994, p. 20. Directive as last amended by Directive 2002/84/EC of the European Parliament and of the Council (OJ L 324, 29.11.2002, p. 53).

- (6) A Member State receiving a ship should however remain able to apply rules which differ in scope and nature from those referred to in the Conventions listed in Article 2(a).
- (7) In order to ensure a prompt and informed decision by the Member State of the receiving register, the Member State of the losing register should provide it with all relevant available information on the ship's condition and equipment. The Member State of the receiving register should, nevertheless, be able to subject the ship to an inspection to confirm its condition and equipment.
- (8) Ships which have been refused access to Member States' ports under Council Directive 95/21/EC of 19 June 1995, concerning the enforcement, in respect of shipping using Community ports and sailing in the waters under the jurisdiction of the Member States, of international standards for ship safety, pollution prevention and shipboard living and working conditions (port State control) <sup>(46)</sup> or which have been detained more than once following an inspection in the port during the three years preceding the application for registration should not be able to benefit from the possibility of being transferred under the simplified system to another register within the Community.
- (9) Relevant International Conventions leave important points of interpretation of the requirements to the discretion of the Parties. On the basis of their own interpretation, Member States issue to all ships flying their flags, that are subject to the provisions of relevant International Conventions, certificates certifying their compliance with these provisions. Member States enforce national technical regulations, some provisions of which contain requirements other than those in the Conventions and in associated technical standards. An appropriate procedure should therefore be established in order to reconcile divergences in the interpretation of existing requirements which may occur upon a request for transfer of register.
- (10) In order to enable the implementation of this Regulation to be monitored, Member States should provide the Commission with succinct yearly reports. In the first yearly report Member States should identify any measures taken to facilitate the implementation of this Regulation.
- (11) The provisions of Council Regulation (EEC) No 613/91 of 4 March 1991 on the transfer of ships from one register to another within the Community <sup>(47)</sup>, are significantly reinforced and extended by this Regulation. Regulation (EEC) No 613/91 should therefore be repealed.
- (12) 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>(48)</sup>,

HAVE ADOPTED THIS REGULATION:

#### *Article 1*

#### **Purpose**

The purpose of this Regulation is to eliminate technical barriers to the transfer of cargo and passenger ships flying the flag of a Member State between the registers of the Member States while, at the same time, ensuring a high level of ship safety and environmental protection, in accordance with International Conventions.

#### *Article 2*

#### **Definitions**

For the purposes of this Regulation:

<sup>(46)</sup> OJ L 157, 7.7.1995, p. 1. Directive as last amended by Directive 2002/84/EC.

<sup>(47)</sup> OJ L 68, 15.3.1991, p. 1. Regulation as amended by Regulation (EC) No 2099/2002 of the European Parliament and of the Council (OJ L 324, 29.11.2002, p. 1).

<sup>(48)</sup> OJ L 184, 17.7.1999, p. 23.

- (a) 'Conventions' means the 1974 International Convention for the Safety of Life at Sea (1974 SOLAS), the 1966 International Convention on Load Lines (LL 66), the 1969 International Convention on Tonnage Measurement of Ships, and the 1973 International Convention for the Prevention of Pollution from Ships, as amended by the 1978 Protocol relating thereto (MARPOL 73/78), in their up-to-date versions, and related codes of mandatory status adopted in the framework of the International Maritime Organisation (IMO), together with Protocols and amendments thereto in their up-to-date versions;
- (b) 'Requirements' means the safety, security and pollution-prevention requirements relating to the construction and equipment of ships laid down in the Conventions and, for passenger ships engaged on domestic voyages, those set out in Council Directive 98/18/EC of 17 March 1998 on safety rules and standards for passenger ships <sup>(49)</sup>;
- (c) 'Certificates' means certificates, documents and statements of compliance issued by a Member State or by a recognised organisation on its behalf in accordance with the Conventions, and for passenger ships engaged on domestic voyages, those issued in accordance with Article 11 of Directive 98/18/EC;
- (d) 'Passenger ship' means a ship carrying more than twelve passengers;
- (e) 'Passenger' means every person other than:
  - (i) the master and the members of the crew or other persons employed or engaged in any capacity on board a ship on the business of that ship; and
  - (ii) a child under one year of age;
- (f) 'Domestic voyage' means a voyage in sea areas from a port of a Member State to the same or another port within that Member State;
- (g) 'International voyage' means a voyage by sea from a port of a Member State to a port outside that Member State, or conversely;
- (h) 'Cargo ship' means a ship which is not a passenger ship;
- (i) 'Recognised organisation' means an organisation recognised in accordance with Article 4 of Directive 94/57/EC.

### Article 3

#### Scope

1. This Regulation shall apply to:
  - (a) cargo ships, carrying valid certificates, which:
    - (i) were built on or after 25 May 1980, or
    - (ii) were built before that date, but have been certified by a Member State or by a recognised organisation acting on its behalf as complying with the regulations for new ships defined in 1974 SOLAS, or, in the case of chemical tankers and gas carriers, with the relevant Standard codes for ships built on or after 25 May 1980;
  - (b) passenger ships engaged on domestic and/or international voyages, carrying valid certificates, which:
    - (i) were built on or after 1 July 1998, or

<sup>(49)</sup> OJ L 144, 15.5.1998, p. 1. Directive as last amended by Commission Directive 2003/75/EC (OJ L 190, 30.7.2003, p. 6).

- (ii) were built before that date, but have been certified by a Member State or by a recognised organisation acting on its behalf as complying with the requirements set out for ships built on or after 1 July 1998:
  - in Directive 98/18/EC, for ships engaged on domestic voyages,
  - in 1974 SOLAS, for ships engaged on international voyages.

2. This Regulation shall not apply to:

- (a) ships following delivery after completion of their construction that do not carry valid full-term certificates from the Member State of the losing register;
- (b) ships that have been refused access to Member States' ports in accordance with Directive 95/21/EC during the three years preceding application for registration and to ships that have been detained following inspection in the port of a State signatory of the Paris Memorandum of Understanding of 1982 on Port State Control and for reasons relating to the requirements defined in Article 2(b), more than once during the three years preceding application for registration. Member States shall nevertheless give due and timely consideration to applications in respect of such ships;
- (c) ships of war or troopships, or other ships owned or operated by a Member State and used only on government non-commercial service;
- (d) ships not propelled by mechanical means, wooden ships of primitive build, pleasure yachts not engaged in trade or a fishing vessel;
- (e) cargo ships of less than 500 gross tonnage.

#### *Article 4*

#### **Transfer of register**

1. A Member State shall not withhold from registration, for technical reasons arising from the Conventions, a ship registered in another Member State which complies with the requirements and carries valid certificates and equipment approved or type-approved in accordance with Council Directive 96/98/EC of 20 December 1996 on marine equipment<sup>(50)</sup>.

In order to fulfil their obligations under regional environmental instruments ratified before 1 January 1992, Member States may impose additional rules in accordance with the optional Annexes to the Conventions.

2. This Article shall apply without prejudice, where applicable, to any specific requirements laid down for the operation of a ship under Article 7 of Directive 98/18/EC and Article 6 of Directive 2003/25/EC of the European Parliament and of the Council of 14 April 2003 on specific stability requirements for ro-ro passenger ships<sup>(51)</sup>.

3. Upon receiving the request for transfer, the Member State of the losing register shall provide the Member State of the receiving register, or make available to the recognised organisation acting on its behalf, all relevant information on the ship, in particular, on her condition and equipment. This information shall contain the history file of the vessel and, if applicable, a list of the improvements required by the losing register for registering the ship or renewing her certificates and of overdue surveys. The information shall include all the certificates and particulars of the ship as required by the Conventions and relevant Community instruments as well as Flag State inspection and Port State control records. The Member States shall cooperate to ensure proper implementation of this paragraph.

<sup>(50)</sup> OJ L 46, 17.2.1997, p. 25. Directive as last amended by Directive 2002/84/EC.

<sup>(51)</sup> OJ L 123, 17.5.2003, p. 22.

4. Before registering a ship, the Member State of the receiving register, or the recognised organisation acting on its behalf, may subject the ship to an inspection to confirm that the actual condition of the ship and her equipment correspond to the certificates referred to in Article 3. The inspection shall be performed within a reasonable time frame.

5. If, following the inspection and having given the ship owner a reasonable opportunity to rectify any deficiencies, the Member State of the receiving register, or the recognised organisation acting on its behalf, is unable to confirm correspondence with the certificates, it shall notify the Commission in accordance with Article 6(1).

#### *Article 5*

### **Certificates**

1. Upon the transfer and without prejudice to Directive 94/57/EC, the Member State of the receiving register, or the recognised organisation acting on its behalf, shall issue certificates to the ship under the same conditions as those under the flag of the Member State of the losing register, provided the reasons or the grounds on the basis of which the Member State of the losing register imposed any condition or granted any exemption or waiver continue to apply.

2. At the time of renewal, extension or revision of the certificates, the Member State of the receiving register, or the recognised organisation acting on its behalf, shall not impose requirements other than those initially prescribed for the full-term certificates insofar as requirements for existing ships and conditions remain unchanged.

#### *Article 6*

### **Refusal of transfer and interpretation**

1. The Member State of the receiving register shall immediately notify the Commission of any refusal to issue, or to authorise the issuing of, new certificates to a ship for reasons based on divergences of interpretation of the requirements or of the provisions which the Conventions or relevant Community instruments leave to the discretion of the Parties.

Unless the Commission is informed of an agreement between the Member States concerned within one month, it shall initiate proceedings in order to take a decision in accordance with the procedure referred to in Article 7(2).

2. Where a Member State considers that a ship cannot be registered under Article 4 for reasons relating to serious danger to safety, security or to the environment, other than those referred to in paragraph 1, registration may be suspended.

The Member State shall immediately bring the matter to the attention of the Commission, stating the reasons for the suspension of the registration. The decision not to register the ship shall be confirmed or not in accordance with the procedure referred to in Article 7(2).

3. The Commission may consult the Committee referred to in Article 7 on any matter related to the interpretation and implementation of this Regulation, in particular in order to ensure that standards of safety, security and environmental protection are not reduced.

#### *Article 7*

### **Committee procedure**

1. The Commission shall be assisted by the Committee on Safe Seas and the Prevention of Pollution from Ships (COSS) set up by Article 3 of Regulation (EC) No 2099/2002 of the European Parliament and of the Council <sup>(52)</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.

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<sup>(52)</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 8*

**Reporting**

1. Member States shall transmit to the Commission a succinct yearly report on the implementation of this Regulation. The report shall provide statistical data on the transfer of ships carried out in accordance with this Regulation and list any difficulties encountered in its implementation.

2. By 20 May 2008 the Commission shall submit a report to the European Parliament and the Council on the implementation of this Regulation, based in part on the reports submitted by the Member States. In this report, the Commission shall assess, inter alia, whether it is appropriate to amend the Regulation.

*Article 9*

**Amendments**

1. In order to take account of developments at international level, in particular in the International Maritime Organisation (IMO), and to improve the effectiveness of this Regulation in the light of experience and technical progress, the Commission may amend the definitions in Article 2 insofar as such amendments do not broaden the scope of the Regulation. Those 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 7(3).

2. Any amendment to the Conventions may be excluded from the scope of this Regulation, pursuant to Article 5 of Regulation (EC) No 2099/2002.

*Article 10*

**Repeal**

Regulation (EEC) No 613/91 is hereby repealed.

*Article 11*

**Entry into force**

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

PART IX —  
PORT STATE CONTROL

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## PART IX – PORT STATE CONTROL

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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) amended by Directive 2013/38 and Regulation 2015/757  
(consolidated version without annexes <sup>(1)</sup>)

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>(2)</sup>,

Having regard to the opinion of the Committee of the Regions <sup>(3)</sup>,

Acting in accordance with the procedure laid down in Article 251 of the Treaty <sup>(4)</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>(5)</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>(6)</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

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<sup>(1)</sup> Complete version is available on the website of DG MOVE, Safety and Environment, Union Legislation on Maritime Safety.

<sup>(2)</sup> OJ C 318, 23.12.2006, p. 195.

<sup>(3)</sup> OJ C 229, 22.9.2006, p. 38.

<sup>(4)</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>(5)</sup> OJ L 157, 7.7.1995, p. 1.

<sup>(6)</sup> OJ L 161, 22.6.2007, p. 63.

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.
- (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>(7)</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

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<sup>(7)</sup> OJ L 208, 5.8.2002, p. 1.

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.
- (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>(8)</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

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<sup>(8)</sup> OJ L 138, 1.6.1999, p. 1.

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.
- (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>(9)</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.

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<sup>(9)</sup> OJ L 184, 17.7.1999, p. 23.

- (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>(10)</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.

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<sup>(10)</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);

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- (h) the International Convention on Civil Liability for Oil Pollution Damage, 1992 (CLC 92);
  - (i) the Maritime Labour Convention, 2006 (MLC 2006);
  - (j) the International Convention on the Control of Harmful Antifouling Systems on Ships, 2001 (AFS 2001);
  - (k) the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (Bunkers Convention, 2001).

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 indepth examination covering the ship's construction, equipment, manning, living and working conditions and compliance with onboard 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.
23. 'Maritime labour certificate' means the certificate referred to in Regulation 5.1.3 of MLC 2006.
24. 'Declaration of maritime labour compliance' means the declaration referred to in Regulation 5.1.3 of MLC 2006.

All the references in this Directive to the Conventions, international codes and resolutions, including for certificates and other documents, shall be deemed to be references to those Conventions, international codes and resolutions in their up-to-date versions.

### *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 that ship and its crew is not more favourable than that of a ship flying the flag of a State party to that Convention. Such ship shall be subject to a more detailed inspection in accordance with procedures established by the Paris MOU.

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.

5. Measures adopted to give effect to this Directive shall not lead to a reduction in the general level of protection of seafarers under Union social law in the areas to which this Directive applies, as compared to the situation which already prevails in each Member State. In implementing those measures, if the competent authority of the port State becomes aware of a clear violation of Union law on board ships flying the flag of a Member State, it shall, in accordance with national law and practice, forthwith inform any other relevant competent authority in order for further action to be taken as appropriate.

### *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.

#### *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.
3. Implementing powers shall be conferred on the Commission to implement a methodology for the consideration of generic risk parameters relating in particular to the flag State criteria and company performance criteria. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 31(3).

#### 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.

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

*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 may adopt detailed measures to ensure uniform conditions for the application of Annex VII. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 31(3).

#### 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>(12)</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. The Commission may adopt detailed measures to ensure uniform application of the procedures referred to in paragraph 1 and of the security checks referred to in paragraph 2 of this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 31(3).

#### 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

<sup>(12)</sup> OJ L 129, 29.4.2004, p. 6.

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).

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>(13)</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.

#### *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.

Where, following a more detailed inspection, the living and working conditions on the ship are found not to conform to the requirements of MLC 2006, the inspector shall forthwith bring the deficiencies to the attention of the master of the ship, with required deadlines for their rectification.

<sup>(13)</sup> See page 11 of this Official Journal.

In the event that the inspector considers such deficiencies to be significant, or if they relate to a possible complaint under point 19 of Part A of Annex V, the inspector shall also bring the deficiencies to the attention of the appropriate seafarers' and shipowners' organisations in the Member State in which the inspection is carried out, and may:

- (a) notify a representative of the flag State;
- (b) provide the competent authorities of the next port of call with the relevant information.

In respect of matters concerning MLC 2006, the Member State in which the inspection is carried out shall have the right to transmit a copy of the inspector's report, to be accompanied by any reply received from the competent authorities of the flag State within the prescribed deadline, to the Director-General of the International Labour Office with a view to such action as may be considered appropriate and expedient in order to ensure that a record is kept of such information and that it is brought to the attention of parties who might be interested in availing themselves of relevant recourse procedures.

#### *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 take appropriate steps to safeguard the confidentiality of complaints made by seafarers, including ensuring confidentiality during any interviews of seafarers.

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 18a*

### **Onshore MLC 2006 complaint-handling procedures**

1. A complaint by a seafarer alleging a breach of the requirements of MLC 2006 (including seafarers' rights) may be reported to an inspector in the port at which the seafarer's ship has called. In such cases, the inspector shall undertake an initial investigation.
2. Where appropriate, given the nature of the complaint, the initial investigation shall include consideration of whether the on-board complaint procedures provided for under Regulation 5.1.5 of MLC 2006 have been pursued. The inspector may also conduct a more detailed inspection in accordance with Article 13 of this Directive.
3. The inspector shall, where appropriate, seek to promote a resolution of the complaint at the ship-board level.
4. In the event that the investigation or the inspection reveals a nonconformity that falls within the scope of Article 19, that Article shall apply.
5. Where paragraph 4 does not apply and a complaint by a seafarer related to matters covered by MLC 2006 has not been resolved at the ship-board level, the inspector shall forthwith notify the flag State, seeking, within a prescribed deadline, advice and a corrective plan of action to be submitted by the flag State. A report of any inspection carried out shall be transmitted by electronic means to the inspection database referred to in Article 24.

6. Where the complaint has not been resolved following action taken in accordance with paragraph 5, the port State shall transmit a copy of the inspector's report to the Director-General of the International Labour Office. The report shall be accompanied by any reply received within the prescribed deadline from the competent authority of the flag State. The appropriate seafarers' and shipowners' organisations in the port State shall be similarly informed. In addition, statistics and information regarding complaints that have been resolved shall be regularly submitted by the port State to the Director-General of the International Labour Office.

Such submissions are provided in order that, on the basis of such action as may be considered appropriate and expedient, a record is kept of such information and brought to the attention of parties, including seafarers' and shipowners' organisations, which might be interested in availing themselves of relevant recourse procedures.

7. In order to ensure uniform conditions for the implementation of this Article, implementing powers shall be conferred on the Commission regarding the setting-up of a harmonised electronic format and procedure for the reporting of follow-up actions taken by Member States. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 31(3).

8. This Article shall be without prejudice to Article 18. The fourth paragraph of Article 18 shall also apply to complaints relating to matters covered by MLC 2006.

#### *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.

2a. In the case of living and working conditions on board which are clearly hazardous to the safety, health or security of seafarers or deficiencies which constitute a serious or repeated breach of MLC 2006 requirements (including seafarers' rights), 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 those deficiencies have been rectified or if the competent authority has accepted a plan of action to rectify those deficiencies and it is satisfied that the plan will be implemented in an expeditious manner. Prior to accepting a plan of action, the inspector may consult the flag State.

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. Moreover, if a ship is prevented from sailing due to serious or repeated breach of the requirements of MLC 2006 (including seafarers' rights) or due to the living and working conditions on board being clearly hazardous to the safety, health or security of seafarers, the competent authority shall forthwith notify the flag State accordingly and invite a representative of the flag State to be present, if possible, requesting the flag State to reply within a prescribed deadline. The competent authority shall also inform forthwith the appropriate seafarers' and shipowners' organisations in the port State in which the inspection was carried out.

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>(14)</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.

#### *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. Implementing powers shall be conferred on the Commission to adopt measures for the implementation of this Article, including harmonised procedures for the reporting of apparent anomalies by pilots and port authorities or bodies and of follow-up actions taken by Member States. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 31(3).

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<sup>(14)</sup> OJ L 196, 7.8.1996, p. 8.

### *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>(15)</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.

<sup>(15)</sup> OJ L 332, 28.12.2000, p. 81.

*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.

Implementing powers shall be conferred on the Commission to establish the detailed arrangements for publication of the information referred to in the first paragraph, the criteria for aggregating the relevant data and the frequency of updates. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 31(3).

*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 30a***Delegated acts**

The Commission shall be empowered to adopt delegated acts in accordance with Article 30b, concerning amendments to Annex VI, in order to add to the list set out in that Annex further instructions relating to port State control adopted by the Paris MOU Organisation.

*Article 30b***Exercise of the delegation**

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Article 30a shall be conferred on the Commission for a period of five years from 20 August 2013. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.
3. The delegation of power referred to in Article 30a may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
5. A delegated act adopted pursuant to Article 30a shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

*Article 31***Committee**

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 of the European Parliament and the Council <sup>(16)</sup>. That Committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

Where the committee delivers no opinion on a draft implementing act to be adopted pursuant to Articles 10(3), 23(5) and the second paragraph of Article 27 respectively, the Commission shall not adopt the draft implementing act and the third subparagraph of Article 5(4) of Regulation (EU) No 182/2011 shall apply.

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*Article 33***Implementing rules**

When establishing the implementing rules referred to in Articles 10(3), 14(4), 15(4), 18a(7), 23(5) and 27 in accordance with the procedures referred to in Article 31(3), the Commission shall take specific care that those rules take into account the expertise and experience gained with the inspection system in the Union and build upon the expertise of the Paris MOU.

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<sup>(16)</sup> OJ L 324, 29.11.2002, p. 1.

*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.

PART X —  
EMSA & COSS

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### PART X – EMSA & COSS

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**REGULATION OF THE EUROPEAN PARLIAMENT AND  
OF THE COUNCIL AMENDING REGULATION  
(EC) NO 1406/2002 ESTABLISHING A EUROPEAN MARITIME SAFETY AGENCY,**

amended by:

Regulation (EC) No 1644/2003 of the European Parliament and of the Council  
of 22 July 2003,

Regulation (EC) No 724/2004 of the European Parliament and of the Council  
of 31 March 2004,

Regulation (EC) No 2038/2006 of the European Parliament and of the Council  
of 18 December 2006,

Regulation (EU) No 100/2013 of the European Parliament and of the Council  
of 15 January 2013

(consolidated version)

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 <sup>(1)</sup>,

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

Having regard to the opinion of the Committee of the Regions <sup>(3)</sup>,

Acting in accordance with the procedure referred to in Article 251 of the Treaty <sup>(4)</sup>,

Whereas:

- (1) A large number of legislative measures have been adopted in the Community in order to enhance safety and prevent pollution in maritime transport. In order to be effective, such legislation must be applied in a proper and uniform manner throughout the Community. This will ensure a level playing field, reduce the distortion of competition resulting from the economic advantages enjoyed by non-complying ships and will reward the serious maritime players.
- (2) Certain tasks currently done at Community or national level could be executed by a specialised expert body. Indeed, there is a need for technical and scientific support and a high level of stable expertise to properly apply the Community legislation in the fields of maritime safety and ship pollution prevention, to monitor its implementation and to evaluate the effectiveness of the measures in place. There is a need therefore, within the Community's existing institutional structure and balance of powers, to establish a European Maritime Safety Agency ('the Agency').

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<sup>(1)</sup> OJ C 120 E, 24.4.2001, p. 83 and OJ C 103 E, 30.4.2002, p. 184.

<sup>(2)</sup> OJ C 221, 7.8.2001, p. 64.

<sup>(3)</sup> OJ C 357, 14.12.2001, p. 1.

<sup>(4)</sup> Opinion of the European Parliament of 14 June 2001 (OJ C 53 E, 28.2.2002, p. 312), Council Common Position of 7 March 2002 (OJ C 119 E, 22.5.2002, p. 27) and Decision of the European Parliament of 12 June 2002 (not yet published in the Official Journal) and Council Decision of 25 June 2002.

- (3) In general terms, the Agency should represent the technical body providing the Community with the necessary means to act effectively to enhance overall maritime safety and ship pollution prevention rules. The Agency should assist the Commission in the continuous process of updating and developing Community legislation in the field of maritime safety and prevention of pollution by ships and should provide the necessary support to ensure the convergent and effective implementation of such legislation throughout the Community by assisting the Commission in performing the tasks assigned to the latter by existing and future Community legislation on maritime safety and ship pollution prevention.
- (4) For the proper achievement of the purposes for which the Agency is established, it is appropriate that the Agency carries out a number of other important tasks aimed at enhancing maritime safety and ship pollution prevention in the waters of the Member States. In this respect, the Agency should work with Member States to organise appropriate training activities on port State control and flag State related issues and to provide technical assistance related to the implementation of Community legislation. It should facilitate cooperation between the Member States and the Commission as provided for in 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 and repealing Council Directive 93/75/EEC <sup>(<sup>5</sup>)</sup>, namely by developing and operating any information system necessary for the objectives of that Directive, and in the activities concerning the investigations related to serious maritime accidents. It should provide the Commission and the Member States with objective, reliable and comparable information and data on maritime safety and on ship pollution prevention to enable them to take any necessary initiatives to enhance the measures in place and to evaluate their effectiveness. It should place the Community maritime safety know-how at the disposal of the States applying for accession. It should be open to the participation of these States and to other third countries which have concluded agreements with the Community whereby they adopt and implement Community legislation in the field of maritime safety and prevention of pollution by ships.
- (5) The Agency should favour the establishment of better cooperation between the Member States and should develop and disseminate best practices in the Community. This in turn should contribute to enhancing the overall maritime safety system in the Community as well as reducing the risk of maritime accidents, marine pollution and the loss of human lives at sea.
- (6) In order properly to carry out the tasks entrusted to the Agency, it is appropriate that its officials carry out visits to the Member States in order to monitor the overall functioning of the Community maritime safety and ship pollution prevention system. The visits should be carried out in accordance with a policy to be established by the Agency's Administrative Board and should be facilitated by the authorities of the Member States.
- (7) The Agency should apply the relevant Community legislation concerning public access to documents and the protection of individuals with regard to the processing of personal data. It should give the public and any interested party objective, reliable and easily understandable information with regard to its work.
- (8) For the contractual liability of the Agency, which is governed by the law applicable to the contracts concluded by the Agency, the Court of Justice should have jurisdiction to give judgment pursuant to any arbitration clause contained in the contract. The Court of Justice should also have jurisdiction in disputes relating to compensation for any damage arising from the non-contractual liability of the Agency.
- (9) In order to effectively ensure the accomplishment of the functions of the Agency, the Member States and the Commission should be represented on an Administrative Board entrusted with the necessary powers to establish the budget, verify its execution, adopt the appropriate financial rules, establish transparent working procedures for decision making by the Agency, approve its work programme, examine requests for technical assistance from Member States, define a policy for visits to the Member States and appoint the Executive Director. In the light of the highly technical and scientific mission and tasks of the Agency, it is appropriate

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<sup>(5)</sup> See page 10 of this Official Journal.

for the Administrative Board to consist of one representative of each Member State and four representatives of the Commission, being members with a high level of expertise. In order further to ensure the highest level of expertise and experience in the Administrative Board and with a view to involving the sectors most closely concerned in the tasks of the Agency, the Commission should nominate independent professionals from these sectors as board members without the right to vote, on the basis of their personal merit and experience in the field of maritime safety and prevention of pollution by ships and not as representatives of particular professional organisations.

- (10) The good functioning of the Agency requires that its Executive Director be appointed on the grounds of merit and documented administrative and managerial skills, as well as competence and experience relevant for maritime safety and prevention of pollution by ships and that he/she performs his/her duties with complete independence and flexibility as to the organisation of the internal functioning of the Agency. To this end, the Executive Director should prepare and take all necessary steps to ensure the proper accomplishment of the working programme of the Agency, should prepare each year a draft general report to be submitted to the Administrative Board, should draw up estimates of the revenues and expenditure of the Agency and should implement the budget.
- (11) In order to guarantee the full autonomy and independence of the Agency, it is considered necessary to grant it an autonomous budget whose revenue comes essentially from a contribution from the Community.
- (12) Over the past years, as more decentralised agencies have been created, the budgetary authority has looked to improve transparency and control over the management of the Community funding allocated to them, in particular concerning the budgetisation of the fees, financial control, power of discharge, pension scheme contributions and the internal budgetary procedure (code of conduct). In a similar way, Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF) <sup>(6)</sup> should apply without restriction to the Agency, which should accede to the Interinstitutional Agreement of 25 May 1999 between the European Parliament, the Council of the European Union and the Commission of the European Communities concerning internal investigations by the European Anti-Fraud Office (OLAF) <sup>(7)</sup>.
- (13) Within five years from the date of the Agency having taken up its responsibilities, the Administrative Board should commission an independent external evaluation in order to assess the impact of this Regulation, the Agency and its working practices on establishing a high level of maritime safety and prevention of pollution by ships,

HAVE ADOPTED THIS REGULATION:

## CHAPTER I OBJECTIVES AND TASKS

### *Article 1*

#### **Objectives**

1. This Regulation establishes a European Maritime Safety Agency ('the Agency') for the purpose of ensuring a high, uniform and effective level of maritime safety, maritime security, prevention of, and response to, pollution caused by ships as well as response to marine pollution caused by oil and gas installations.
2. To that end, the Agency shall cooperate with the Member States and the Commission and provide them with technical, operational and scientific assistance in the fields mentioned in paragraph 1 of this Article within the limits of the core tasks set out in Article 2 and, as and when applicable, the ancillary tasks set out in Article 2a, in particular in order to

<sup>(6)</sup> OJ L 136, 31.5.1999, p. 1.

<sup>(7)</sup> OJ L 136, 31.5.1999, p. 15.

help the Member States and the Commission to apply the relevant legal acts of the Union properly. As regards the field of response to pollution, the Agency shall provide operational assistance only upon the request of the affected State(s).

3. By providing the assistance referred to in paragraph 2, the Agency shall, where appropriate, contribute to the overall efficiency of maritime traffic and maritime transport as set out in this Regulation, so as to facilitate the establishment of a European Maritime Transport Space without Barriers.

#### *Article 2*

### **Core tasks of the Agency**

1. In order to ensure that the objectives set out in Article 1 are met in the appropriate manner, the Agency shall perform the core tasks listed in this Article.
2. The Agency shall assist the Commission:
  - (a) in the preparatory work for updating and developing relevant legal acts of the Union, in particular in line with the development of international legislation;
  - (b) in the effective implementation of relevant binding legal acts of the Union, in particular by carrying-out visits and inspections as referred to in Article 3 of this Regulation and by providing technical assistance to the Commission in the performance of the inspection tasks assigned to it pursuant to Article 9(4) of Regulation (EC) No 725/2004 of the European Parliament and of the Council of 31 March 2004 on enhancing ship and port facility security<sup>(8)</sup>. In this regard, it may address suggestions to the Commission for any possible improvements of those binding legal acts;
  - (c) in the analysis of ongoing and completed research projects relevant to the objectives of the Agency; this may include the identification of possible follow-up measures resulting from specific research projects;
  - (d) in the performance of any other task assigned to the Commission in legislative acts of the Union regarding the objectives of the Agency.
3. The Agency shall work with the Member States to:
  - (a) organise, where appropriate, relevant training activities in fields which are the responsibility of the Member States;
  - (b) develop technical solutions, including the provision of relevant operational services, and provide technical assistance, to the building up of the necessary national capacity for the implementation of relevant legal acts of the Union;
  - (c) provide, at the request of a Member State, appropriate information resulting from the inspections referred to in Article 3 in order to support the monitoring of the recognised organisations that carry out certification tasks on behalf of the Member States in accordance with Article 9 of 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>(9)</sup> without prejudice to the rights and obligations of the flag State;
  - (d) support with additional means in a cost efficient way pollution response actions in case of pollution caused by ships as well as marine pollution caused by oil and gas installations, when a request has been presented by the affected Member State under the authority of which the cleaning operations are conducted, without prejudice to the responsibility of coastal States to have appropriate pollution response mechanisms in

<sup>(8)</sup> OJ L 129, 29.4.2004, p. 6.

<sup>(9)</sup> OJ L 131, 28.5.2009, p 47.

place while respecting existing cooperation between Member States in this field. As appropriate, requests for mobilisation of anti-pollution actions shall be relayed through the EU Civil Protection Mechanism established by Council Decision 2007/779/EC, Euratom <sup>(10)</sup>.

4. The Agency shall facilitate cooperation between the Member States and the Commission:
- (a) in the field of traffic monitoring covered by Directive 2002/59/EC, the Agency shall in particular promote cooperation between riparian States in the shipping areas concerned, as well as develop and operate the European Union Long-Range Identification and Tracking of Ships European Data Centre and the Union Maritime Information and Exchange System (SafeSeaNet) as referred to in Articles 6b and 22a of that Directive as well as the International Long-Range Identification and Tracking information data exchange system in accordance with the commitment made in the International Maritime Organisation (IMO);
  - (b) by providing, upon request and without prejudice to national and Union law, relevant vessel positioning and Earth observation data to the competent national authorities and relevant Union bodies within their mandate in order to facilitate measures against threats of piracy and of intentional unlawful acts as provided for in applicable Union law or under internationally agreed legal instruments in the area of maritime transport, subject to applicable data protection rules and in accordance with administrative procedures to be established by the Administrative Board or the High Level Steering Group established in accordance with Directive 2002/59/EC, as appropriate. The provision of long-range identification and tracking of ships data shall be subject to the consent of the flag State concerned;
  - (c) in the field of the investigation of marine casualties and incidents in accordance with 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 <sup>(11)</sup>; the Agency shall, if requested by the relevant Member States and assuming that no conflict of interest arises, provide operational support to these Member States concerning investigations related to serious or very serious casualties and it shall carry out analysis of safety investigation reports with a view to identify added value at Union level in terms of any relevant lessons to be drawn. On the basis of data provided by the Member States, in accordance with Article 17 of that Directive, the Agency shall compile a yearly overview of marine casualties and incidents;
  - (d) in providing objective, reliable and comparable statistics, information and data, to enable the Commission and the Member States to take the necessary steps to improve their actions and to evaluate the effectiveness and cost-efficiency of existing measures. Such tasks shall include the collection, recording and evaluation of technical data, the systematic exploitation of existing databases, including their cross-fertilisation, and, where appropriate, the development of additional databases. On the basis of the data collected, the Agency shall assist the Commission in the publication of information relating to ships pursuant to Directive 2009/16/EC of the European Parliament and of the Council of 23 April 2009 on port State control <sup>(12)</sup>;
  - (e) in gathering and analysing data on seafarers provided and used in accordance with 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>(13)</sup>;
  - (f) in improving the identification and pursuit of ships making unlawful discharges in accordance with 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>(14)</sup>;

<sup>(10)</sup> OJ L 314, 1.12.2007, p. 9.

<sup>(11)</sup> OJ L 131, 28.5.2009, p. 114.

<sup>(12)</sup> OJ L 131, 28.5.2009, p. 57.

<sup>(13)</sup> OJ L 323, 3.12.2008, p. 33.

<sup>(14)</sup> OJ L 255, 30.9.2005, p. 11.

- (g) regarding marine oil pollution caused by oil and gas installations, by using the European Satellite Oil Monitoring Service (CleanSeaNet) to monitor the extent and environmental impact of such pollution;
- (h) in providing technical assistance necessary for the Member States and the Commission to contribute to the relevant work of the technical bodies of the IMO, the International Labour Organisation as far as shipping is concerned, and the Paris Memorandum of Understanding on Port State Control ('Paris MoU') and relevant regional organisations to which the Union has acceded, with regard to matters of Union competence;
- (i) with regard to the implementation of Directive 2010/65/EU of the European Parliament and of the Council of 20 October 2010 on reporting formalities for ships arriving in and/or departing from ports of the Member States <sup>(15)</sup>, in particular by facilitating the electronic transmission of data through SafeSeaNet and by supporting the development of the single window.

5. The Agency may, upon the request of the Commission, provide technical assistance, including the organisation of relevant training activities, as regards relevant legal acts of the Union, to States applying for accession to the Union, and, where applicable, to European Neighbourhood partner countries and to countries taking part in the Paris MoU.

The Agency may also provide assistance in case of pollution caused by ships as well as marine pollution caused by oil and gas installations affecting those third countries sharing a regional sea basin with the Union, in line with the EU Civil Protection Mechanism established by Decision 2007/779/EC, Euratom, and by analogy with the conditions applicable to Member States as referred to in paragraph (3)(d) of this Article. These tasks shall be coordinated with the existing regional cooperation arrangements related to marine pollution.

#### *Article 2a*

#### **Ancillary tasks of the Agency**

1. Without prejudice to the core tasks referred to in Article 2, the Agency shall assist the Commission and the Member States, as appropriate, in the development and implementation of the Union activities set out in paragraphs 2 and 3 of this Article related to the Agency's objectives, in so far as the Agency has established and recognised expertise and tools. The ancillary tasks set out in this Article shall:

- (a) create substantiated added value;
- (b) avoid duplication of efforts;
- (c) be in the interest of the Union maritime transport policy;
- (d) not be detrimental to the Agency's core tasks; and
- (e) not infringe upon Member States' rights and obligations, in particular as flag States, port States and coastal States.

2. The Agency shall assist the Commission:

- (a) in the context of the implementation of Directive 2008/56/EC of the European Parliament and of the Council (Marine Strategy Framework Directive) <sup>(16)</sup>, by contributing to the objective of achieving good environmental status of marine waters with its shipping-related elements and in exploiting the results of existing tools such as SafeSeaNet and CleanSeaNet;
- (b) providing technical assistance in relation to greenhouse gas emissions from ships, in particular in following up ongoing international developments;

<sup>(15)</sup> OJL 283, 29.10.2010, p. 1.

<sup>(16)</sup> OJL 164, 25.6.2008, p. 19.

- (c) as concerns the Global Monitoring for Environment and Security programme (GMES), in promoting the use of GMES data and services for maritime purposes, within the GMES governance framework;
  - (d) in the development of a Common Information Sharing Environment for the EU maritime domain;
  - (e) with respect to mobile offshore oil and gas installations, in examining IMO requirements and in gathering basic information on potential threats to maritime transport and the marine environment;
  - (f) by providing relevant information with regard to classification societies for inland waterway vessels in accordance with Directive 2006/87/EC of the European Parliament and of the Council of 12 December 2006 laying down technical requirements for inland waterway vessels <sup>(17)</sup>. This information shall also be part of the reports referred to in Article 3(4) and (5) of this Regulation.
3. The Agency shall assist the Commission and the Member States:
- (a) in the examination of the feasibility and the implementation of policies and projects supporting the establishment of the European Maritime Transport Space without Barriers, such as the Blue Belt concept and e-Maritime, as well as Motorways of the Sea. This shall be done in particular by exploring additional functionalities to SafeSeaNet, without prejudice to the role of the High Level Steering Group established in accordance with Directive 2002/59/EC;
  - (b) by exploring with competent authorities for the River Information Services System the possibility of sharing information between this system and maritime transport information systems on the basis of the report provided for in Article 15 of Directive 2010/65/EU;
  - (c) by facilitating voluntary exchange of best practices in maritime training and education in the Union and by providing information on Union exchange programmes relevant to maritime training while fully respecting Article 166 of the Treaty on the Functioning of the European Union (TFEU).

### Article 3

#### Visits to Member States and inspections

1. In order to perform the tasks entrusted to it and to assist the Commission in fulfilling its duties under the TFEU, and in particular the assessment of the effective implementation of relevant Union law, the Agency shall carry out visits to Member States in accordance with the methodology established by the Administrative Board.
2. The Agency shall inform the Member State concerned in good time of the planned visit, the names of the authorised officials, and the date on which the visit starts and its expected duration. The Agency officials delegated to carry out such visits shall do so on presentation of a decision in writing from the Executive Director of the Agency specifying the purpose and the aims of their mission.
3. The Agency shall carry out inspections on behalf of the Commission as required by binding legal acts of the Union regarding organisations recognised by the Union 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 <sup>(18)</sup>, and regarding the training and certification of seafarers in third countries in accordance with Directive 2008/106/EC.
4. At the end of each visit or inspection, the Agency shall draw up a report and send it to the Commission and to the Member State concerned.

<sup>(17)</sup> OJL 389, 30.12.2006, p. 1.

<sup>(18)</sup> OJL 131, 28.5.2009, p. 11.

5. Where appropriate, and in any case when a cycle of visits or inspections is concluded, the Agency shall analyse reports from that cycle with a view to identifying horizontal findings and general conclusions on the effectiveness and cost-efficiency of the measures in place. The Agency shall present this analysis to the Commission for further discussion with Member States in order to draw any relevant lessons and facilitate the dissemination of good working practices.

#### *Article 4*

### **Transparency and protection of information**

1. Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents <sup>(19)</sup> shall apply to documents held by the Agency.
2. The Agency may communicate on its own initiative in the fields within its mission. It shall ensure in particular that the public and any interested party are rapidly given objective, reliable and easily understandable information with regard to its work.
3. The Administrative Board shall adopt the practical arrangements for the application of paragraphs 1 and 2, including, where appropriate, arrangements regarding consultation with Member States before the publication of information.
4. The information collected and processed in accordance with this Regulation by the Commission and the Agency shall be subject to Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data <sup>(20)</sup> and the Agency shall take the necessary measures to ensure the safe handling and processing of confidential information.
5. Decisions taken by the Agency pursuant to Article 8 of Regulation (EC) No 1049/2001 may form the subject of a complaint to the Ombudsman or of an action before the Court of Justice of the European Communities, under Articles 195 and 230 of the EC Treaty respectively.

## CHAPTER II

### **INTERNAL STRUCTURE AND FUNCTIONING**

#### *Article 5*

### **Legal status, regional centres**

1. The Agency shall be a body of the Community. It shall have legal personality.
2. In each of the Member States, the Agency shall enjoy the most extensive legal capacity accorded to legal persons under their laws. It may in particular, acquire or dispose of movable and immovable property and may be a party to legal proceedings.
3. At the request of the Commission, the Administrative Board may decide, with the agreement of and in cooperation with the Member States concerned and with due regard to budgetary implications, including any contribution the Member States concerned may provide, to establish the regional centres necessary in order to carry out, in the most efficient and effective way, some of the Agency's tasks. When taking such a decision, the Administrative Board shall define the precise scope of activities of the regional centre while avoiding unnecessary financial costs and enhancing cooperation with existing regional and national networks.
4. The Agency shall be represented by its Executive Director.

<sup>(19)</sup> OJ L 145, 31.5.2001, p. 43.

<sup>(20)</sup> OJ L 8, 12.1.2001, p. 1.

*Article 6***Staff**

1. The Staff Regulations of officials of the European Communities, the Conditions of employment of other servants of the European Communities and the rules adopted jointly by the institutions of the European Communities for the purposes of the application of those Staff Regulations and conditions of Employment shall apply to the staff of the Agency. The Administrative Board, in agreement with the Commission, shall adopt the necessary detailed rules of application.
2. Without prejudice to Article 16, the powers conferred on the appointing authority by the Staff Regulations and the Conditions of employment of other servants shall be exercised by the Agency in respect of its own staff.
3. The Agency's staff shall consist of officials assigned or seconded by the Commission or Member States on a temporary basis and of other servants recruited by the Agency as necessary to carry out its tasks.

*Article 7***Privileges and immunities**

The Protocol on the Privileges and Immunities of the European Communities shall apply to the Agency and to its staff.

*Article 8***Liability**

1. The contractual liability of the Agency shall be governed by the law applicable to the contract in question.
2. The Court of Justice shall have jurisdiction to give judgment pursuant to any arbitration clause contained in a contract concluded by the Agency.
3. In the case of non-contractual liability, the Agency shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by its departments or by its servants in the performance of their duties.
4. The Court of Justice shall have jurisdiction in disputes relating to the compensation for damage referred to in paragraph 3.
5. The personal liability of its servants towards the Agency shall be governed by the provisions laid down in the Staff Regulations or Conditions of employment applicable to them.

*Article 9***Languages**

1. The provisions laid down in Regulation No 1 of 15 April 1958 determining the languages to be used in the European Economic Community <sup>(21)</sup> shall apply to the Agency.
2. The translation services required for the functioning of the Agency shall be provided by the Translation Centre of the bodies of the European Union.

*Article 10***Creation and powers of the Administrative Board**

1. An Administrative Board is hereby set up.
2. The Administrative Board shall:

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<sup>(21)</sup> OJ 17, 6.10.1958, p. 385/58. Regulation as last amended by the 1994 Act of Accession.

- (a) appoint the Executive Director pursuant to Article 16;
- (b) adopt the annual report on the Agency's activities and forward it each year by 15 June to the European Parliament, the Council, the Commission, the Court of Auditors and the Member States.

The Agency shall forward annually to the budgetary authority all information regarding the outcome of the evaluation procedures;

- (c) examine and approve, in the framework of the preparation of the work programme, requests for assistance to the Commission, as referred to in Article 2(2)(d), requests from Member States for technical assistance, as referred to in Article 2(3), and requests for technical assistance, as referred to in Article 2(5) as well as requests for assistance as referred to in Article 2a;
- (ca) examine and adopt a multiannual strategy for the Agency for a period of five years taking the written opinion of the Commission into account;
- (cb) examine and adopt the multiannual staff policy plan of the Agency;
- (cc) consider draft administrative arrangements, as referred to in Article 15(2)(ba);
- (d) adopt, by 30 November each year, and taking the opinion of the Commission into account, the work programme of the Agency for the coming year and forward it to the Member States, the European Parliament, the Council and the Commission; this work programme shall be adopted without prejudice to the annual Community budgetary procedure. In the event that the Commission expresses, within 15 days from the date of adoption of the work programme, its disagreement with the said programme, the Administrative Board shall re-examine the programme and adopt it, possibly amended, within a period of two months, in second reading either with a two-thirds majority, including the Commission representatives, or by unanimity of the representatives of the Member States;
- (e) adopt the final budget of the Agency before the beginning of the financial year, adjusting it, where necessary, according to the Community contribution and any other revenue of the Agency;
- (f) establish procedures for decision-making by the Executive Director;
- (g) establish the methodology for the visits to be carried out pursuant to Article 3. In the event that the Commission expresses, within 15 days from the date of adoption of the methodology, its disagreement, the Administrative Board shall re-examine and adopt it, possibly amended, in second reading either with a two-thirds majority, including the Commission representatives, or by unanimity of the representatives of the Member States;
- (h) perform its duties in relation to the Agency's budget pursuant to Articles 18, 19 and 21 and monitor and ensure adequate follow-up to the findings and recommendations stemming from various audit reports and evaluations, whether internal or external;
- (i) exercise disciplinary authority over the Executive Director and the Heads of Department referred to in Article 16;
- (j) establish its rules of procedure;
- (k) adopt, following the procedures set out in (d), a detailed plan for the Agency's pollution preparedness and response activities, aiming at the optimum use of the financial means available to the Agency;
- (l) review the financial execution of the detailed plan referred to in point (k) of this paragraph and the budgetary commitments provided for in Regulation (EC) No 2038/2006 of the European Parliament and of the Council of 18 December 2006 on multiannual funding for the action of the European Maritime Safety Agency in the field of response to pollution caused by ships <sup>(22)</sup>;

<sup>(22)</sup> OJ L 394, 30.12.2006, p. 1.

- (m) appoint an observer from amongst its members to follow the selection procedure by the Commission for the appointment of the Executive Director.

#### *Article 11*

### **Composition of the Administrative Board**

1. The Administrative Board shall be composed of one representative of each Member State and four representatives of the Commission, as well as of four professionals from the sectors most concerned, nominated by the Commission, without the right to vote.

Administrative Board members shall be appointed on the basis of their degree of relevant experience and expertise in the fields referred to in Article 1. The Member States and the Commission shall each strive for a balanced representation between men and women on the Administrative Board.

- 2. Each Member State and the Commission shall appoint their members of the Administrative Board as well as an alternate who will represent the member in his/her absence.
- 3. The duration of the term of office shall be four years. The term of office may be renewed.
- 4. When appropriate, the participation of representatives of third countries and the conditions thereof shall be established in the arrangements referred to in Article 17(2).

#### *Article 12*

### **Chairmanship of the Administrative Board**

- 1. The Administrative Board shall elect a Chairperson and a Deputy-Chairperson from among its members. The Deputy Chairperson shall automatically take the place of the Chairperson if he/she is prevented from attending to his/her duties.
- 2. The terms of office of the Chairperson and Deputy Chairperson shall be three years and shall expire when they cease to be members of the Administrative Board. The terms of office shall be renewable once.

#### *Article 13*

### **Meetings**

- 1. The meetings of the Administrative Board shall be convened by its Chairperson.
- 2. The Executive Director of the Agency shall take part in the deliberations.
- 3. The Administrative Board shall hold an ordinary meeting twice a year. In addition, it shall meet on the initiative of the Chairperson or at the request of the Commission or of one-third of the Member States.
- 4. When there is a matter of confidentiality or conflict of interest, the Administrative Board may decide to examine specific items of its agenda without the presence of the members concerned. Detailed rules for the application of this provision shall be laid down in the rules of procedure.
- 5. The Administrative Board may invite any person whose opinion can be of interest to attend its meetings as an observer.
- 6. The members of the Administrative Board may, subject to the provisions of its rules of procedure, be assisted by advisers or experts.
- 7. The secretariat for the Administrative Board shall be provided by the Agency.

#### Article 14

##### **Voting**

1. The Administrative Board shall take its decisions by a two-thirds majority of all members with the right to vote.
2. Each member shall have one vote. The Executive Director of the Agency shall not vote.

In the absence of a member, his/her alternate shall be entitled to exercise his/her right to vote.

3. The rules of procedure shall establish the more detailed voting arrangements, in particular, the conditions for a member to act on behalf of another member.

#### Article 15

##### **Duties and powers of the Executive Director**

1. The Agency shall be managed by its Executive Director, who shall be completely independent in the performance of his/her duties, without prejudice to the respective competencies of the Commission and the Administrative Board.

2. The Executive Director shall have the following duties and powers:

(a) he/she shall prepare the multiannual strategy of the Agency and submit it to the Administrative Board after consultation of the Commission at least eight weeks before the relevant Administrative Board meeting, taking into account views and suggestions made by members of the Administrative Board;

(aa) he/she shall prepare the multiannual staff policy plan of the Agency and submit it to the Administrative Board after consultation of the Commission at least four weeks before the relevant Administrative Board meeting;

(ab) he/she shall prepare the annual work programme, with an indication of the expected human and financial resources allocated to each activity, and the detailed plan for the Agency's pollution preparedness and response activities, and submit them to the Administrative Board after consultation of the Commission at least eight weeks before the relevant Board meeting, taking into account views and suggestions made by members of the Administrative Board. He/she shall take the necessary steps for their implementation. He/she shall respond to any requests for assistance from a Member State in accordance with Article 10(2)(c);

(b) he/she shall decide to carry out the visits and inspections provided for in Article 3, after consultation of the Commission and following the methodology for visits established by the Administrative Board in accordance with Article 10(2)(g);

(ba) he/she may enter into administrative arrangements with other bodies working in the Agency's fields of activities provided that the draft arrangement has been submitted for consultation to the Administrative Board and provided that the Administrative Board does not object within four weeks;

(c) he/she shall take all necessary steps, including the adoption of internal administrative instructions and the publication of notices, to ensure the functioning of the Agency in accordance with the provisions of this Regulation;

(d) he/she shall organise an effective monitoring system in order to be able to compare the Agency's achievements with its objectives and tasks as laid down in this Regulation. To this end, he/she shall establish, in agreement with the Commission and the Administrative Board, tailored performance indicators allowing for an effective assessment of the results achieved. He/she shall ensure that the Agency's organisational structure will be regularly adapted to the evolving needs within the available financial and human resources. On this basis the Executive Director shall prepare a draft general report each year and submit it for consideration by the Administrative Board. The report shall include a dedicated section concerning the financial execution of the detailed plan for the Agency's pollution preparedness and response activities and give an update of

the status of all actions funded under that plan. He/she shall establish regular evaluation procedures that meet recognised professional standards;

- (e) he/she shall exercise, in respect of the staff, the powers laid down in Article 6(2);
- (f) he/she shall draw up estimates of the Agency's revenue and expenditure, in accordance with Article 18, and shall implement the budget in accordance with Article 19.

3. The Executive Director shall, as appropriate, report to the European Parliament and the Council on the carrying out of his/her tasks.

In particular, he/she shall present the state of play with regard to the preparation of the multiannual strategy and the annual work programme.

#### Article 16

### **Appointment and dismissal of the Executive Director and the Heads of Department**

1. The Executive Director shall be appointed and dismissed by the Administrative Board. The appointment shall be made for a period of five years on grounds of merit and documented administrative and managerial competence, as well as documented experience in the fields referred to in Article 1 after hearing the opinion of the observer as referred to in Article 10. The Executive Director shall be appointed from a list of at least three candidates proposed by the Commission after an open competition, following publication of the post in the *Official Journal of the European Union*, and elsewhere, of a call for expression of interest. The candidate selected by the Administrative Board may be invited to make a statement before the competent committee of the European Parliament and answer questions put by its members. The Administrative Board shall deliberate on dismissal at the request of the Commission or of one third of its members. The Administrative Board shall take its decisions on appointment or dismissal by a fourfifths majority of all members with the right to vote.

2. The Administrative Board, acting on a proposal from the Commission, taking into account the evaluation report may extend once the term of office of the Executive Director for not more than four years. The Administrative Board shall take its decision by a fourfifths majority of all members with the right to vote. The Administrative Board shall inform the European Parliament about its intention to extend the Executive Director's term of office. Within a month before the extension of his/her term of office, the Executive Director may be invited to make a statement before the competent committee of the European Parliament and answer questions put by its members. If the term of office is not extended, the Executive Director shall remain in office until the appointment of his/her successor.

3. The Executive Director may be assisted by one or more Heads of Department. If the Executive Director is absent or indisposed, one of the Heads of Department shall take his/her place.

4. The Heads of Department shall be appointed on grounds of merit and documented administrative and managerial skills, as well as professional competence and experience in the fields referred to in Article 1. The Heads of Department shall be appointed or dismissed by the Executive Director after having received a positive opinion of the Administrative Board.

#### Article 17

### **Participation of third countries**

1. The Agency shall be open to the participation of third countries, which have entered into agreements with the European Community, whereby they have adopted and are applying the Community law in the field of maritime safety, maritime security, prevention of pollution and response to pollution caused by ships.

2. Under the relevant provisions of these agreements, arrangements will be developed which shall, *inter alia*, specify the nature and the extent of the detailed rules for the participation by these countries in the work of the Agency, including provisions on financial contributions and staff.

CHAPTER III  
FINANCIAL REQUIREMENTS

*Article 18*

**Budget**

1. The Agency's revenues shall consist of:
  - (a) a contribution from the Community;
  - (b) possible contributions from any third country which participates in the work of the Agency in accordance with Article 17;
  - (c) fees and charges for publications, training and/or any other services provided by the Agency.
2. The Agency's expenditure shall cover staff and administrative, infrastructure and operational expenses.
3. The Executive Director shall draw up a draft statement of estimates of the Agency's revenue and expenditure for the following year, on the basis of activity-based budgeting, and shall forward it to the Administrative Board, together with a draft establishment plan.
4. Revenue and expenditure shall be in balance.
5. Each year the Administrative Board, on the basis of a draft statement of estimates of revenue and expenditure, shall produce a statement of estimates of revenue and expenditure for the Agency for the following financial year.
6. This statement of estimates, which shall include a draft establishment plan together with the provisional work programme, shall by 31 March at the latest be forwarded by the Administrative Board to the Commission and to the States with which the Community has concluded agreements in accordance with Article 17.
7. The statement of estimates shall be forwarded by the Commission to the European Parliament and the Council (the 'budgetary authority') together with the draft general budget of the European Union.
8. On the basis of the statement of estimates, the Commission shall enter in the draft general budget of the European Union the estimates it deems necessary for the establishment plan and the amount of the subsidy to be charged to the general budget, which it shall place before the budgetary authority in accordance with Article 314 TFEU, together with a description of and justification for any difference between the Agency's statement of estimates and the subsidy to be charged to the general budget.
9. The budgetary authority shall authorise the appropriations for the subsidy to the Agency.

The budgetary authority shall adopt the establishment plan for the Agency.

10. The budget shall be adopted by the Administrative Board. It shall become final following final adoption of the general budget of the European Union. Where appropriate, it shall be adjusted accordingly, together with the annual work programme.
11. The Administrative Board shall, as soon as possible, notify the budgetary authority of its intention to implement any project which may have significant financial implications for the funding of the budget, in particular any projects relating to property such as the rental or purchase of buildings. It shall inform the Commission thereof.

Where a branch of the budgetary authority has notified its intention to deliver an opinion, it shall forward its opinion to the Administrative Board within a period of six weeks after the date of notification of the project.

*Article 19***Implementation and control of the budget**

1. The Executive Director shall implement the Agency's budget.
2. By 1 March at the latest following each financial year, the Agency's accounting officer shall communicate the provisional accounts to the Commission's accounting officer together with a report on the budgetary and financial management for that financial year. The Commission's accounting officer shall consolidate the provisional accounts of the institutions and decentralised bodies in accordance with Article 128 of the general Financial Regulation.
3. By 31 March at the latest following each financial year, the Commission's accounting officer shall forward the Agency's provisional accounts to the Court of Auditors, together with a report on the budgetary and financial management for that financial year. The report on the budgetary and financial management for the financial year shall also be forwarded to the European Parliament and the Council.
4. On receipt of the Court of Auditors' observations on the Agency's provisional accounts, under Article 129 of the general Financial Regulation, the Executive Director shall draw up the Agency's final accounts under his own responsibility and submit them to the Administrative Board for an opinion.
5. The Administrative Board shall deliver an opinion on the Agency's final accounts.
6. The Executive Director shall, by 1 July at the latest following each financial year, forward the final accounts to the European Parliament, the Council, the Commission and the Court of Auditors, together with the Administrative Board's opinion.
7. The final accounts shall be published.
8. The Executive Director shall send the Court of Auditors a reply to its observations by 30 September at the latest. He shall also send this reply to the Administrative Board.
9. The Executive Director shall submit to the European Parliament, at the latter's request, all information necessary for the smooth application of the discharge procedure for the financial year in question, as laid down in Article 146(3) of the general Financial Regulation.

The European Parliament, on a recommendation from the Council acting by a qualified majority, shall, before 30 April of year N + 2, give a discharge to the Executive Director in respect of the implementation of the budget for year N.

*Article 20***Combating fraud**

1. In order to combat fraud, corruption and other unlawful activities, the provisions of Regulation (EC) No 1073/1999 shall apply without restriction to the Agency.
2. The Agency shall accede to the Interinstitutional Agreement of 25 May 1999 concerning internal investigations by OLAF and shall issue, without delay, the appropriate provisions applicable to all of its staff.
3. The decisions concerning funding and the implementing agreements and instruments resulting from them shall explicitly stipulate that the Court of Auditors and OLAF may carry out, if necessary, on-the-spot checks of the recipients of the Agency's funding and the agents responsible for allocating it.

*Article 21***Financial provisions**

The financial rules applicable to the Agency shall be adopted by the Administrative Board after the Commission has been consulted. They may not depart from Commission Regulation (EC, Euratom) No 2343/2002 of 19 November 2002 on the framework Financial Regulation for the bodies referred to in Article 185 of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities <sup>(23)</sup> unless such a departure is specifically required for the Agency's operation and the Commission has given its prior consent.

## CHAPTER IV

**FINAL PROVISIONS***Article 22***Evaluation**

1. At regular intervals and at least every five years, the Administrative Board shall commission an independent external evaluation on the implementation of this Regulation. The Commission shall make available to the Agency any information the latter considers relevant to that evaluation.
2. The evaluation shall assess the impact of this Regulation as well as the utility, relevance, achieved added value and effectiveness of the Agency and its working practices. The evaluation shall take into account the views of stakeholders, at both European and national level. It shall, in particular, address the possible need to modify the Agency's tasks. The Administrative Board shall issue specific terms of reference in agreement with the Commission, following consultations with the parties involved.
3. The Administrative Board shall receive the evaluation and issue recommendations regarding changes to this Regulation, the Agency and its working practices to the Commission. Both the evaluation findings and recommendations shall be forwarded by the Commission to the European Parliament and to the Council and shall be made public. An action plan with a timetable shall be included, if appropriate.

*Article 22a***Progress report**

By 2 March 2018, and taking into account the evaluation report referred to in Article 22, the Commission shall submit a report to the European Parliament and the Council setting out how the Agency has undertaken the additional responsibilities assigned by this Regulation with a view to identifying further efficiency gains and, if necessary, the case for modifying its objectives and tasks.

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*Article 24***Entry into force**

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

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

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<sup>(23)</sup> OJ L 357, 31.12.2002, p. 72; corrigendum in OJ L 2, 7.1.2003, p. 39.

**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)  
and amending the Regulations on maritime safety and the prevention from ships**

amended by

Commission Regulation (EC) No 415/2004  
of 5 March 2004,

Commission Regulation (EC) No 93/2007  
of 30 January 2007,

Regulation (EC) No 596/2009 of the European Parliament and of the Council  
of 18 June 2009,

Regulation (EU) No 530/2012 of the European Parliament and of the Council  
of 13 June 2012,

Commission Regulation (EU) 2016/103  
of 27 January 2016

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 <sup>(24)</sup>,

Having regard to the opinion of the Economic and Social Committee <sup>(25)</sup>,

Having regard to the opinion of the Committee of the Regions <sup>(26)</sup>,

Acting in accordance with the procedure referred to in Article 251 of the Treaty <sup>(27)</sup>,

Whereas:

- (1) The measures implementing the existing Regulations and Directives in the field of maritime safety were adopted by a regulatory procedure involving the Committee set up by Council Directive 93/75/EEC of 13 September 1993 concerning minimum requirements for vessels bound for or leaving Community ports and carrying dangerous or polluting goods <sup>(28)</sup> and, in certain cases, an ad hoc committee. These committees were governed by the rules set out in Council Decision 87/373/EEC of 13 July 1987 laying down the procedures for the exercise of implementing powers conferred on the Commission <sup>(29)</sup>.

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<sup>(24)</sup> OJ C 365 E, 19.12.2000, p. 276.

<sup>(25)</sup> OJ C 139, 11.5.2001, p. 21.

<sup>(26)</sup> OJ C 253, 12.9.2001, p. 1.

<sup>(27)</sup> Opinion of the European Parliament of 13 February 2001 (OJ C 276, 1.10.2001, p. 42), Council Common Position of 27 May 2002 (OJ C 170 E, 16.7.2002, p. 37) and Decision of the European Parliament of 24 September 2002 (not yet published in the Official Journal).

<sup>(28)</sup> OJ L 247, 5.10.1993, p. 19. Directive as last amended by Directive 98/74/EC (OJ L 276, 13.10.1998, p. 7).

<sup>(29)</sup> OJ L 197, 18.7.1987, p. 33.

- (2) By its Resolution of 8 June 1993 on a common policy on safe seas <sup>(30)</sup>, the Council approved in principle the establishment of a Committee on Safe Seas and the Prevention of Pollution from Ships (COSS) and called on the Commission to present a proposal to set up such a committee.
- (3) The role of COSS is to centralise the tasks of the committees set up under the Community legislation on maritime safety, the prevention of pollution from ships and the protection of shipboard living and working conditions and to assist and advise the Commission on all matters of maritime safety and prevention or reduction of pollution of the environment by shipping activities.
- (4) In keeping with the Resolution of 8 June 1993, a Committee on Safe Seas and the Prevention of Pollution from Ships should be set up and assigned the tasks previously devolved to the committees established under the aforesaid legislation. All new Community legislation adopted in the field of maritime safety should stipulate recourse to the Committee thereby set up.
- (5) Decision 87/373/EEC has been replaced by Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission <sup>(31)</sup>, the provisions of which should therefore be applied to COSS. The purpose of the latter decision is to define the Committee procedures applicable and ensure more comprehensive information to the European Parliament and the public on the work of the committees.
- (6) The measures required to implement the aforesaid legislation should be adopted in accordance with Decision 1999/468/EC.
- (7) The aforesaid legislation should also be amended to substitute COSS for the Committee set up by Directive 93/75/EEC or, where appropriate, for the ad hoc committee established under any particular act. This Regulation should in particular amend the relevant provisions of Council Regulations (EEC) No 613/91 of 4 March 1991 on the transfer of ships from one register to another within the Community <sup>(32)</sup>, (EC) No 2978/94 of 21 November 1994 on the implementation of IMO Resolution A.747(18) on the application of tonnage measurement of ballast spaces in segregated ballast oil tankers <sup>(33)</sup>, (EC) No 3051/95 of 8 December 1995 on the safety management of roll-on/roll-off passenger ferries (ro-ro ferries) <sup>(34)</sup> and Regulation (EC) No 417/2002 of the European Parliament and of the Council of 18 February 2002 on the accelerated phasing-in of double hull or equivalent design requirements for single hull oil tankers and repealing Council Regulation (EC) No 2978/94 <sup>(35)</sup>, in order to insert a reference to COSS and to stipulate the regulatory procedure laid down in Article 5 of Decision 1999/468/EC.
- (8) Moreover, the aforesaid legislation is based on the application of rules resulting from international instruments in force at the date of adoption of the Community act in question, or at the date specified by the latter. As a consequence, Member States cannot apply the subsequent amendments to these international instruments until the Community Directives or Regulations have been amended. This has major disadvantages owing to the difficulty of ensuring that the date of entry into force of the amendment at international level coincides with that of the Regulation integrating this amendment into Community law, not least the delayed application within the Community of the most recent and most stringent international safety standards.
- (9) However, it is necessary to draw a distinction between the provisions of a Community act making reference, for the purposes of their application, to an international instrument and Community provisions reproducing an international instrument in full or in part. In the latter case, the most recent amendments to the international instruments cannot in any case be rendered applicable until the Community provisions concerned have been amended.

<sup>(30)</sup> OJ C 271, 7.10.1993, p. 1.

<sup>(31)</sup> OJ L 184, 17.7.1999, p. 23.

<sup>(32)</sup> OJ L 68, 15.3.1991, p. 1.

<sup>(33)</sup> OJ L 319, 12.12.1994, p. 1.

<sup>(34)</sup> OJ L 320, 30.12.1995, p. 14. Regulation as amended by Commission Regulation (EC) No 179/98 (OJ L 19, 24.1.1998, p. 35).

<sup>(35)</sup> OJ L 64, 7.3.2002, p. 1.

- (10) Member States should therefore be permitted to apply the most recent provisions of international instruments, with the exception of those explicitly incorporated in a Community act. This can be done by stating that the international convention applicable for the purposes of the Directive or Regulation concerned is that 'in its up-to-date version', without mentioning the date.
- (11) For reasons of transparency, the relevant amendments to international instruments that are integrated in Community maritime legislation should be made public in the Community through their publication in the *Official Journal of the European Communities*.
- (12) A specific conformity checking procedure should, however, be set up to enable the Commission, after consulting COSS, to take whatever measures may be necessary to exclude the risk of amendments to the international instruments being incompatible with the aforesaid legislation or Community policy on maritime safety, the prevention of pollution from ships and the protection of shipboard living and working conditions in force or with the objectives pursued by that legislation. Such a procedure should also prevent international amendments from lowering the standard of maritime safety achieved in the Community.
- (13) The conformity checking procedure will only be fully effective if the planned measures are adopted as speedily as possible, but at all events before the expiry of the deadline for the entry into force of the international amendment. Consequently, the time available to the Council to act on the proposed measures in accordance with Article 5(6) of Decision 1999/468/EC should be one month,

HAVE ADOPTED THIS REGULATION:

#### *Article 1*

#### **Purpose**

The purpose of this Regulation is to improve the implementation of the Community legislation referred to in Article 2(2) on maritime safety, the prevention of pollution from ships and shipboard living and working conditions:

- (a) by centralising the tasks of the committees set up under Community maritime legislation and replaced by this Regulation by establishing a single Committee on Safe Seas and the Prevention of Pollution from Ships, to be known as COSS;
- (b) by accelerating the update of, and facilitating subsequent amendments to, Community maritime legislation in the light of developments in the international instruments referred to in Article 2(1).

#### *Article 2*

#### **Definitions**

For the purposes of this Regulation:

1. 'international instruments' shall mean the conventions, protocols, resolutions, codes, compendia of rules, circulars, standards and provisions adopted by an international conference, the International Maritime Organisation (IMO), the International Labour Organisation (ILO) or the parties to a memorandum of understanding referred to in the provisions of the Community maritime legislation in force;
2. "Community maritime legislation" shall mean the following acts:
  - (a) Council Regulation (EC) No 2978/94 of 21 November 1994 on the implementation of IMO resolution A.747(18) on the application of tonnage measurement of ballast spaces in segregated ballast oil tankers <sup>(36)</sup>;

<sup>(36)</sup> OJ L 319, 12.12.1994, p. 1.

- (b) Council Directive 96/98/EC of 20 December 1996 on marine equipment <sup>(37)</sup>;
- (c) Council Directive 97/70/EC of 11 December 1997 setting up a harmonised safety regime for fishing vessels of 24 metres in length and over <sup>(38)</sup>;
- (d) Council Directive 98/41/EC of 18 June 1998 on the registration of persons sailing on board passenger ships operating to or from ports of the Member States of the Community <sup>(39)</sup>;
- (e) Council Directive 1999/32/EC of 26 April 1999 relating to a reduction in the sulphur content of certain liquid fuels and amending Directive 93/12/EEC <sup>(40)</sup> for the purpose of implementation of its Article 4(d)(2);
- (f) 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>(41)</sup>;
- (g) 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>(42)</sup>;
- (h) Directive 2001/96/EC of the European Parliament and of the Council of 4 December 2001 establishing harmonised requirements and procedures for the safe loading and unloading of bulk carriers <sup>(43)</sup>;
- (i) 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 and repealing Council Directive 93/75/EEC <sup>(44)</sup>;
- (j) Regulation (EC) No 782/2003 of the European Parliament and of the Council of 14 April 2003 on the prohibition of organotin compounds on ships <sup>(45)</sup>;
- (k) Directive 2003/25/EC of the European Parliament and of the Council of 14 April 2003 on specific stability requirements for ro-ro passenger ships <sup>(46)</sup>;
- (l) Regulation (EC) No 789/2004 of the European Parliament and of the Council of 21 April 2004 on the transfer of cargo and passenger ships between registers within the Community and repealing Council Regulation (EEC) No 613/91 <sup>(47)</sup>;
- (m) 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, including criminal penalties, for pollution offences <sup>(48)</sup>;
- (n) Regulation (EC) No 336/2006 of the European Parliament and of the Council of 15 February 2006 on the implementation of the International Safety Management Code within the Community and repealing Council Regulation (EC) No 3051/95 <sup>(49)</sup>;

<sup>(37)</sup> OJ L 46, 17.2.1997, p. 25.

<sup>(38)</sup> OJ L 34, 9.2.1998, p. 1.

<sup>(39)</sup> OJ L 188, 2.7.1998, p. 35.

<sup>(40)</sup> OJ L 121, 11.5.1999, p. 13.

<sup>(41)</sup> OJ L 138, 1.6.1999, p. 1.

<sup>(42)</sup> OJ L 332, 28.12.2000, p. 81.

<sup>(43)</sup> OJ L 13, 16.1.2002, p. 9.

<sup>(44)</sup> OJ L 208, 5.8.2002, p. 10.

<sup>(45)</sup> OJ L 115, 9.5.2003, p. 1.

<sup>(46)</sup> OJ L 123, 17.5.2003, p. 22.

<sup>(47)</sup> OJ L 138, 30.4.2004, p. 19.

<sup>(48)</sup> OJ L 255, 30.9.2005, p. 11.

<sup>(49)</sup> OJ L 64, 4.3.2006, p. 1.

- (o) 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>(50)</sup>;
- (p) 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>(51)</sup>;
- (q) Directive 2009/16/EC of the European Parliament and of the Council of 23 April 2009 on port State control <sup>(52)</sup>;
- (r) 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 <sup>(53)</sup>;
- (s) Directive 2009/21/EC of the European Parliament and of the Council of 23 April 2009 on compliance with flag State requirements <sup>(54)</sup>;
- (t) 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 <sup>(55)</sup>;
- (u) 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>(56)</sup>;
- (v) Directive 2009/45/EC of the European Parliament and of the Council of 6 May 2009 on safety rules and standards for passenger ships <sup>(57)</sup>;
- (w) Regulation (EU) No 530/2012 of the European Parliament and of the Council of 13 June 2012 on the accelerated phasing-in of double-hull or equivalent design requirements for single-hull oil tankers <sup>(58)</sup>;
- (x) Commission Regulation (EU) No 788/2014 of 18 July 2014 laying down detailed rules for the imposition of fines and periodic penalty payments and the withdrawal of recognition of ship inspection and survey organisations pursuant to Articles 6 and 7 of Regulation (EC) No 391/2009 of the European Parliament and of the Council <sup>(59)</sup>;
- (y) Directive 2014/90/EU of the European Parliament and of the Council of 23 July 2014 on marine equipment and repealing Council Directive 96/98/EC <sup>(60)</sup>.

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<sup>(50)</sup> OJ L 323, 3.12.2008, p. 33

<sup>(51)</sup> OJ L 131, 28.5.2009, p. 47.

<sup>(52)</sup> OJ L 131, 28.5.2009, p. 57.

<sup>(53)</sup> OJ L 131, 28.5.2009, p. 114.

<sup>(54)</sup> OJ L 131, 28.5.2009, p. 132.

<sup>(55)</sup> OJ L 131, 28.5.2009, p. 11.

<sup>(56)</sup> OJ L 131, 28.5.2009, p. 24.

<sup>(57)</sup> OJ L 163, 25.6.2009, p. 1.

<sup>(58)</sup> OJ L 172, 30.6.2012, p. 3.

<sup>(59)</sup> OJ L 214, 19.7.2014, p. 12.

<sup>(60)</sup> OJ L 257, 28.8.2014, p. 146.

*Article 3***Establishment of a Committee**

1. The Commission shall be assisted by a Committee on Safe Seas and the Prevention of Pollution from Ships (hereinafter called COSS).
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 one month.

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 4***Integration of amendments to international instruments in Community law**

For the purposes of Community maritime legislation, the applicable international instruments shall be those which have entered into force, including the most recent amendments thereto, with the exception of the amendments excluded from the scope of the Community maritime legislation resulting from the conformity checking procedure established by Article 5.

*Article 5***Conformity checking procedure**

1. For the purposes of this Regulation and with a view to reducing the risks of conflict between the Community maritime legislation and international instruments, Member States and the Commission shall cooperate, through coordination meetings and/or any other appropriate means, in order to define, as appropriate, a common position or approach in the competent international fora.

2. A conformity checking procedure is hereby established in order to exclude from the scope of the Community maritime legislation any amendment to an international instrument only if, on the basis of an evaluation by the Commission, there is a manifest risk that the international amendment, within the scope of the Regulations or the Directives referred to in Article 2(2), will lower the standard of maritime safety, of prevention of pollution from ships or of protection of shipboard living and working conditions established by Community maritime legislation, or be incompatible with the latter.

The conformity checking procedure may be used solely to make amendments to the Community maritime legislation in the fields expressly covered by the regulatory procedure and strictly within the framework of exercise of implementing powers conferred on the Commission.

3. In the circumstances referred to in paragraph 2, the conformity checking procedure shall be initiated by the Commission, which, where appropriate, may act at the request of a Member State.

The Commission shall submit to the COSS, without delay, after the adoption of an amendment to an international instrument a proposal for measures with the aim of excluding the amendment in question from the Community text concerned.

The conformity checking procedure, including, if applicable, the procedures set up in Article 5(6) of Decision 1999/468/EC, shall be completed at least one month before the expiration of the period established internationally for the tacit acceptance of the amendment concerned or the envisaged date for the entry into force of said amendment.

4. In the event of a risk as referred to in the first subparagraph of paragraph 2, Member States shall refrain, during the period of the conformity checking procedure, from any initiative intended to integrate the amendment in national legislation or to apply the amendment to the international instrument concerned.

*Article 6***Information**

All relevant amendments to international instruments that are integrated in Community maritime legislation, in accordance with Articles 4 and 5, shall be published, for information purposes, in the *Official Journal of the European Communities*.

*Article 7***Powers of COSS**

COSS shall exercise the powers conferred on it by virtue of the Community legislation in force. Article 2(2) may be amended in accordance with the regulatory procedure with scrutiny referred to in Article 3(3) in order to include a reference to the Community acts conferring implementing power on COSS that have entered into force following the adoption of this Regulation. Those measures, designed to amend non-essential elements of this Regulation, shall be adopted in accordance with the procedure referred to in Article 3(3).

*Article 8***Amendment to Regulation (EEC) No 613/91**

Regulation (EEC) No 613/91 is hereby amended as follows:

1. Article 1(a) shall be replaced by the following:

‘(a) “Conventions” means the 1974 International Convention for the Safety of Life at Sea (1974 Solas), the 1966 International Convention on Load Lines (LL66) and the International Convention for the Prevention of Pollution from Ships (Marpol 73/78), in their up-to-date versions, and related resolutions of mandatory status adopted by the International Maritime Organisation (IMO).’

2. Articles 6 and 7 shall be replaced by the following:

*Article 6*

1. The Commission shall be assisted by the Committee on Safe Seas and the Prevention (COSS) created by Article 3 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) (\*).

2. Where reference is made to this paragraph, Articles 5 and 7 of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission (\*\*) 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.

3. The Committee shall adopt its rules of procedure.

*Article 7*

The amendments to the international instruments referred to in Article 1 may be excluded from the scope of this Regulation, pursuant to Article 5 of Regulation (EC) No 2099/2002.

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(\*) OJ L 324, 29.11.2002, p. 1.

(\*\*) OJ L 184, 17.7.1999, p. 23.’

*Article 9***Amendment to Regulation (EC) No 2978/94**

Regulation (EC) No 2978/94 is hereby amended as follows:

1. Article 3(g) shall be replaced by the following:

‘(g) “Marpol 73/78” means the International Convention for the Prevention of Pollution from Ships, 1973, as amended by the Protocol of 1978 relating thereto, in their up-to-date versions.’

2. The following paragraph shall be added to Article 6:

‘The amendments to the international instruments referred to in Article 3 may be excluded from the scope of this Regulation, pursuant to Article 5 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) (\*).

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(\* ) OJ L 324, 29.11.2002, p. 1.’

3. Article 7 shall be replaced by the following:

*‘Article 7*

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.

2. Where reference is made to this paragraph, Articles 5 and 7 of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission (\*) 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. The Committee shall adopt its rules of procedure.

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(\* ) OJ L 184, 17.7.1999, p. 23.’

*Article 10***Amendment to Regulation (EC) No 3051/95**

Regulation (EC) No 3051/95 is hereby amended as follows:

1. The following subparagraph shall be added to Article 9:

‘The amendments to the international instruments referred to in Article 2 may be excluded from the scope of this Regulation, pursuant to Article 5 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) (\*).

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(\* ) OJ L 324, 29.11.2002, p. 1.’

2. Article 10 shall be replaced by the following:

*‘Article 10*

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.

2. Where reference is made to this paragraph, Articles 5 and 7 of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission (\*) 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.

3. The Committee shall adopt its rules of procedure.

(\*) OJ L 184, 17.7.1999, p. 23.'

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Article 12

**Entry into force**

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

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

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