COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 23.11.2005
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2005/0238 (COD)

Proposal for a

# DIRECTIVE …/…/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

**of […]**

**on port State control**

(Recast)

(presented by the Commission)

{SEC(2005) 1499}

# EXPLANATORY MEMORANDUM

## 1) CONTEXT OF THE PROPOSAL

- **Grounds for and objectives of the proposal**

1) Recast Directive 95/21/EC on port State control.

   This text has been the subject of numerous amendments which have made it particularly complex. The recasting will clarify the provisions of the Directive to make them more understandable, in line with the "better law-making" policy promoted by the Commission.

2) Reinforce and improve the effectiveness of port State control.

   The latter objective results from a number of undertakings entered into by the Commission and requests made by the other institutions, in particular as a result of the PRESTIGE accident in November 2002. As early as 3 December 2002, the Commission adopted a Communication (COM(2002) 681 final of 3.12.2002) on improving safety at sea in response to the PRESTIGE accident, followed on 6 December 2002 by Council conclusions concerning ship safety and the prevention of pollution in which the Council invites the Commission to present as soon as possible a proposal aimed at reinforcing port State control procedures. Finally, it should be emphasised that in its Resolution adopted on 27 April 2004 following the work of the temporary committee on improving safety at sea (the MARE Committee), the European Parliament also called for an improvement and intensification of ship inspections in European Union ports.

- **General context**

The existing regulations are contained in Directive 95/21/EC and its successive amendments. Part of the objective of the proposed measure is precisely to recast these elements in a consolidated text.

In addition, the proposal aims to:

– amend certain provisions, with a view to either simplification or clarification (for example in the case of the expanded inspection programme) or reinforcement (this is the case in particular with provisions on the role of pilots in detecting faults and rules concerning the banning of substandard ships),

– add a number of new provisions in areas which were not covered by port State control, such as maritime safety, in order to take account of recent developments in international and Community law.

- **Existing provisions in the area of the proposal**

Directive 95/21/EC.

- **Consistency with the other policies and objectives of the Union**

The reinforcement of ship inspections will have a direct environmental impact by reducing the risks of accidents and consequently of the pollution that such accidents may cause.

Moreover, the measure will have positive economic repercussions as a result of this reduction of the risks of accidents and pollution. These changes are also designed to establish fairer competition conditions for maritime transport operators by reducing unfair competition from substandard vessels, which will be the subject of stricter penalties, and by granting the operators of quality vessels the benefit of less rigorous inspections.

Finally, the measure contributes to European Union social policy through the monitoring of onboard living and working conditions and the introduction of stricter rules regarding the following up of complaints made by seamen.

## 2) CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

- **Consultation of interested parties**

*Consultation methods, main sectors targeted and general profile of respondents*

In May 2004 and then in February 2005, the Commission held a twin series of consultation meetings with the representatives of the Member States and the shipping industry, on the basis of working documents from its services containing a detailed list of questions on the proposed changes.

*Summary of responses and how they have been taken into account*

The results of the consultations and impact studies carried out have confirmed:

– the added value of carrying out a complete recasting of the existing text to meet the need for clarity and regulatory simplification,

– the need to tighten up measures concerning those vessels posing the greatest risks, particularly through the strengthening of the banning regime,

– the importance of establishing the bases of a new inspection system ensuring that no vessel can evade inspection and that the inspection intervals are differentiated in favour of vessels of a high standard so as not to adversely affect their competitiveness through unjustified constraints.

The data collected and the detailed conclusions of the impact assessment are contained in the attached document SEC …/… .

- **Collection and use of expertise**

*Scientific/expertise domains concerned*

Maritime safety, safeguarding of human life, environmental protection and security.

*Methodology used*

Commission participation in Paris Memorandum groups of experts, studies entrusted to the European Maritime Safety Agency on certain points (example: overview of the application of the possibility of refused access to ports since the entry into force of the Directive, examination of the possible impacts of the new inspection regime), collection and analysis of information obtained from the database of the Paris Memorandum of Understanding on port State control.

*Main organisations/experts consulted*

Work of the European Parliament temporary committee on the improvement of maritime safety following the sinking of the tanker Prestige in 2002 (conclusions of the "MARE" Committee).

Experts from EMSA and the Paris Memorandum.

*Summary of advice received and used*

The existence of potentially serious risks with irreversible consequences has been mentioned. The existence of such risks is universally accepted.

The advice of the Paris Memorandum experts helped to determine the scale of the problem and to isolate possible practical difficulties on subjects such as the inspection of ships at anchor. The work of the group of experts on the introduction of the new inspection regime, in which the Commission participated with the assistance of the Agency, allowed the broad lines of the future inspection regime to be determined.

The studies carried out by EMSA have revealed the shortcomings of the existing legislation, particularly those concerning the application of existing measures on refusal of access which have led to the proposed tightening up of the regime on this point. The experience gained by EMSA in managing the database on inspections of ro-ro passenger ships (under Directive 99/35/EC) has made it possible to propose a simplification and harmonisation of similar provisions in the two Directives.

*Methods used to make the results of these expert opinions available to the public*

The expert opinions are described in the impact assessment. Moreover, the Internet sites of the Paris Memorandum (http://www.parismou.org/) and EMSA (http://www.emsa.eu.int/) contain information on the application of the port State control regime (black lists of banned ships, black list of flags whose ships are most frequently detained).

- **Impact assessment**

The data collected and the detailed conclusions of the impact study are contained in the attached document SEC ../.. , which is summarised below:

Option 1: No action

The present arrangements are maintained. However, the status quo does not meet the demands made by the European Parliament and the Council or the undertakings made by the

Commission following the PRESTIGE accident. It obliges Member States to apply conditions which have been overtaken by developments in international law or the situation within the EU. The balance sheet is therefore negative from an environmental and social point of view. From an economic point of view, although there are no extra administrative costs for the authorities, this option allows the unfair competition suffered by quality shipowners from substandard ships to persist.

Option 2: Resolve the problem through increased cooperation between Member States.

Cooperation between Member States, whether directly or through the Paris Memorandum, is legally conceivable only in areas not already covered by the Directive. This could, however, lead to a divergence between Community rules and the procedures applied under these intergovernmental agreements which would be extremely detrimental to the effective and harmonised application of port State control. The social, environmental and economic impacts would therefore be negative, particularly as some Member States are not parties to the Paris Memorandum.

Option 3: Simplification and improvement of the existing legislation

Simply adopting a technical adaptation of the Directive has the advantage of leaving the existing framework in place and proposing only targeted changes to meet identified needs. The environmental, social and economic costs would therefore be low. However, its benefits are less than the more ambitious approach described in Option 4, particularly at the economic level, since although it tightens up sanctions on substandard vessels by making it easier to ban ships, it does not fully meet the objective of promoting high quality maritime transport.

Option 4: Modification of the existing regime

This would involve replacing the present regime based on a quantitative approach (25% of ships inspected by Member State) by a more qualitative and global approach at EU level. The new inspection system would be more cost effective by concentrating inspection resources on high risk ships and relaxing inspections of vessels of a high standard, which would provide the environmental, social and economic advantages without the drawbacks.

The impact assessment is contained in the Commission legislative and work programme, the report of which is available on the Commission's Internet site:

http://europa.eu.int/comm/secretariat_general/impact/index_en.htm."

## 3) LEGAL ELEMENTS OF THE PROPOSAL

- **Summary of the proposed measures**

It is proposed to:

– recast Directive 95/21/EC on port State control and its successive amendments in a single text,

– make a number of amendments in order to update, complement and reinforce the Directive with a view to improving safety and security at sea, and the protection of seamen and the environment.

- **Legal basis**

Article 80(2) of the Treaty.

- **Principle of subsidiarity**

The principle of subsidiarity applies insofar as the proposal does not affect an area where the Community has exclusive competence.

The objectives of the proposal cannot be achieved to a sufficient extent by the action of Member States for the following reasons.

Individual action by the Member States is by its nature incompatible with the objectives of port State control which seeks to ensure that in a particular geographical region, onboard inspections are carried out in a harmonised way.

Moreover, one of the objectives of action at regional level is to reduce costs and optimise through coordinated action the resources needed for an effective control of ships. Less rigorous application of port State control in a particular Member State would increase safety risks and might lead to the appearance of ports of convenience thus creating an unacceptable distortion of competition within the Community.

The objectives of the proposal can be achieved more effectively through Community action for the following reasons.

The proposal reinforces the provisions of an existing Directive.

Community action guarantees a harmonised application of inspection procedures in particular through the establishment of qualification standards and training programmes for inspectors, the sharing of information between Member States via a common information system and the following up of measures from one Member State to another (for example, in the matter of refusal of access).

The scope of the existing Directive is unchanged.

The proposal therefore conforms to the principle of subsidiarity.

- **Principle of proportionality**

The proposal conforms to the principle of proportionality for the following reasons.

The precise and detailed nature of the measures contained in the proposal is essential for the establishment of uniform inspection rules in the European Union.

The proposal combines greater effectiveness in removing substandard ships with better use of existing resources, while penalising reputable operators as little as possible..

- **Choice of instruments**

Proposed instrument(s): Directive.

Other instruments would not have been adequate for the following reasons.

This is primarily a question of recasting an existing Directive. Moreover, self-regulation is not a possibility since the objective of port State control is for the public authorities to check compliance with binding safety standards and to penalise failure to do so in a uniform and proportionate manner. A recommendation is excluded, since it would not make it possible to fix binding objectives and require compliance therewith by the Member States.

## 4) BUDGETARY IMPLICATIONS

The proposal has no budgetary implications for the Community.

## 5) ADDITIONAL INFORMATION

- **Simulation, pilot phase and transitional period**

The proposal has been or will be the subject of a transitional period.

- **Simplification**

The proposal introduces a simplification of the legislative framework, of the administrative procedures applying to the public authorities (whether national or European).

In accordance with the objectives of European Union policy on better law-making, a number of improvements have been made in the presentation of the text: repeated or cross-references to other provisions in the text have been kept to a minimum. Moreover, in order to improve the legibility of the text, the provisions concerning procedures or technical details of inspections have been consigned to the Annex, to ensure that the operative part contains only the principles, objectives and essential elements.

For reasons of clarity, and having regard to the very considerable number of amendments of varying degrees of importance made in the recasting exercise, the main amendments proposed are set out below in a thematic form according to objective.

The simplification results from the removal of certain obligations considered to be obsolete (for example procedures applicable where no ISM certificates are carried onboard), and from harmonisation with procedures and tools put in place under other Directives (harmonisation of checks for ro-ro passenger ships with the expanded inspections provided for under Directive 95/21/EC).

The proposal forms part of the Commission programme updating and simplifying the Community acquis.

- **Review/revision/sunset clause**

The proposal contains a revision clause.

- **Legislative recasting**

The proposal involves a recasting of the legislative provisions in force.

- **European Economic Area**

This draft Act concerns a field covered by the EEA Agreement and should therefore be extended to the European Economic Area.

- **Detailed explanation of the proposal by Article**

(1) Ensuring more effective application of the system of controls in ports and anchorages of the European Union (Articles 10 and 13)

As regards ports, the primary objective is to ensure that port State control is carried out in a uniform manner in ports of all States of the European Union. Thus the arrangements for banning a vessel will be based on detentions enforced in all Member States and not only in the Paris Memorandum ports as is the case in the present Directive. The proposal also lays down the inspection procedures applicable in anchorages.

(2) Reinforcing the notification obligations on pilots (Article 17)

The Directive already contains an obligation for pilots to report defects. The PRESTIGE accident showed that information had not been transmitted by sea pilots in the Baltic approaches in the absence of a clear legal basis. The existing provisions have therefore been amended to extend this obligation to deep sea pilots, including those on ships in transit. Moreover, it is proposed to amend the provisions of the Directive to ensure that reports made by pilots and port authorities are followed up more effectively by the Member States.

(3) Extending and simplifying access refusal measures (Article 10)

Refusal of access is a very effective dissuasive tool in the campaign against substandard vessels. The current rules will be

– extended to all ships: statistics show that bulk carriers and cargo ships are on average the most frequently detained in the European Union;

– simplified: the present criteria are obscure and difficult to implement. A clear message will be given, since the proposal is now based on two simple criteria: firstly, poor management of the vessel by its operator, as indicated by repeated detentions without a significant improvement in the condition of the vessel and secondly, inadequate monitoring by the flag State, attested to by its inclusion on the black and grey lists of the Paris Memorandum;

– tightened up: a minimum banning period is established in order to counter abuses already observed in the implementation of the Directive, in particular access refusals which are lifted too quickly, without any proper inspection of the condition of the vessel. Repeat offenders will be penalised more severely, with the ultimate possibility of permanent banning from European Union ports.

(4) Tightening up requirements concerning administrations responsible for inspections and the competence of inspectors (Articles 4 and 16)

In accordance with international law, port State control can be exercised by a State only if the latter is fully in compliance with the rules that it imposes on foreign vessels in its ports. The Directive will restate this minimum requirement imposed on Member States of the European Union.

Moreover, the competent authorities must be in a position to carry out the compulsory inspections when the ships concerned are in port, including if necessary at weekends and on public holidays, in order to ensure that the vessels concerned do not evade inspection.

Finally, it is proposed to tighten up requirements concerning the professional profile of inspectors, by requiring Member States to regularly check their qualifications, particularly in the light of new rules resulting from amendments to the Directive or international conventions. The Commission will also establish, with the assistance of EMSA, harmonised rules on the qualifications and training of inspectors in order to reach a high level of competence of inspectors in the enlarged European Union.

(5) Improving the planning, preparation and carrying out of inspections (Articles 7 and 18)

Under the improved cooperation between authorities pre-notifications received by ports and other bodies will have to be transmitted immediately to the inspectors, which will enable them to better plan and prepare their inspections.

Finally, it is laid down that when carrying out inspections, the inspector verifies whether defects detected but not corrected in a previous port have indeed been rectified in the meantime.

(6) Improving the expanded inspection regime (Article 8)

Practical improvements have been made to the expanded inspection regime: ships eligible for an expanded inspection will be informed in advance by the inspector that they will be subjected to the expanded inspection on their arrival in port and, in return, will have to take appropriate measures to be available for such an inspection.

Moreover, with a view to simplification, the expanded inspection scheme will be applied to the categories of vessels concerned from a uniform minimum age (12 years).

(7) Tightening up provisions concerning the human element (Article 12)

The Paris Memorandum statistics show a high number of anomalies connected with the qualifications of seamen onboard ships and their living and working conditions. Provisions tighten up controls on these aspects, in order in particular to respond to the worrying phenomenon of the increasing number of fraudulent certificates. Moreover, complaints by crew members regarding the safety and health of crews, living conditions and more generally the safety of the ship and the prevention of pollution will be dealt with systematically and seamen informed of the outcome of their complaint.

(8) Controls regarding security (Article 7)

Maritime transport is particularly vulnerable to the risk of terrorist or other criminal acts. In order to facilitate the application of Regulation (EC) No 725/2004 of the European Parliament and of the Council on enhancing ship and port facility security, the inspection procedures established under the Paris Memorandum have been introduced in the Directive.

(9) Greater transparency and wider dissemination of information on ships and operators (Article 20)

In order to reinforce the dissuasive effect on the operators of ships penalised under the Directive, the Commission, through the European Maritime Safety Agency, is planning to publish a black list of owners of ships which have been the subject of repeated detention or access refusal measures. A black list of ships banned under the terms of the Directive will also be published in accordance with the same procedures and updated constantly.

(10) Facilitating monitoring by the Commission of the implementation of the Directive by the Member States (Article 23)

The existing provisions, which do not allow satisfactory control by the Commission of implementation of the Directive by the Member States, will be amended to enable the European Maritime Safety Agency, acting on behalf of the Commission, to obtain precise electronic data on ships' movements. On this basis, detailed analyses of the operation of the regime in the ports of the Member States can be carried out, which will make it possible for example to optimise inspection resources on the basis of traffic or avoid the risk of seeing "ports of convenience" appear.

(11) Establishment of a new inspection regime (Article 5)

The current port State control regime is based on compliance with the purely quantitative threshold of 25% of ships inspected by Member State, which not only allows many ships to pass through the net but also sometimes causes the authorities to carry out unjustified inspections solely to reach this figure. The approach proposed establishes a collective objective which is to inspect all ships calling at ports in the Union, with high risk ships being inspected more frequently and quality ships less so.

The new inspection regime will help to ease the burden of inspections on quality ships on the basis of criteria relating to the ship itself and its flag (in particular the fact that the flag State applies the IMO voluntary audit system). However, it should be stressed that this new regime must not lead to a weakening of the present system which would result in greater insecurity. In particular, the aim of the new regime should not be a reduction of the resources allocated by the Member States to port State control but their more effective use.

The principle is simple but its implementation is complex: a precondition of such a regime, if the development of ports of convenience is to be avoided, is that an objective mechanism is found which guarantees a fair – and verifiable – distribution of the number of inspections between the Member States.

The details of such a mechanism are currently being studied under the Paris Memorandum – where a specific task force has been set up – and in EMSA.

It is therefore proposed at this stage to incorporate the principles of this new inspection regime in the Directive, along with its essential elements: establishment of a risk profile applicable to ships, incentives for ships with a low risk profile and the adaptation of existing procedures relating to inspections and follow-up.

Subsequent amendments to the Directive which become necessary will be introduced through the "comitology" procedure, once all the elements and practical details of the new inspection regime have been established.

However, until these technical details have been adopted and have entered into force at Community level, the existing regime continues to apply and in particular the threshold of 25% of individual ships inspected by Member State.

2005/0238 (COD)

↓ 95/21/EC

Proposal for a

**DIRECTIVE …/…/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**of […]**

↓ 2001/106/EC Art. 1 pt. 1 (adapted)

**on port State control ~~of shipping~~**

↓ 95/21/EC (adapted)

**(Text with EEA relevance)**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article ~~84(2)~~ ⌦ 80(2) ⌫ thereof,

Having regard to the proposal from the Commission[1],

Having regard to the opinion of the European Economic and Social Committee[2],

Having regard to the opinion of the Committee of the Regions[3],

Acting in accordance with the procedure laid down in Article ~~189c~~ ⌦ 251 ⌫ of the Treaty[4],

Whereas:

1 OJ C […], […], p. […].
2 OJ C […], […], p. […].
3 OJ C […], […], p. […].
4 OJ C […], […], p. […].

⇩ new

(1) Council Directive 95/21/EC of 19 June 1995 on port State control of shipping[5] has been substantially amended several times. Since further amendments are to be made, it should be recast in the interests of clarity.

🡻 95/21/EC Recital 1

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

🡻 95/21/EC Recital 2

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

🡻 95/21/EC Recital 3 (adapted)

~~The Council, at its meeting on 25 January 1993, adopted conclusions that urged the Community and the Member States to ensure more effective application and enforcement of adequate international maritime safety and environment protection standards and to implement the new measures when adopted;~~

🡻 95/21/EC Recital 4 (adapted)

~~In its resolution of 8 June 1993 on a common policy on safe seas[6], the Council urged the Commission to submit as soon as possible to the Council suggestions for specific action and formal proposals concerning criteria for the inspection of ships, including the harmonization of detention rules, and including the possibility of publication of the results of the inspections and refusal of access to Community ports;~~

🡻 95/21/EC Recital 5 (adapted)

(4) Safety, pollution prevention and shipboard living and working conditions may be effectively enhanced through a drastic reduction of substandard ships from Community waters, ⌦ which will be achieved ⌫ by strictly applying international Conventions, codes and resolutions.

[5] OJ L 157, 7.7.1995, p. 1. Directive as last amended by Directive 2002/84/EC (OJ L 324, 29.11.2002, p. 53).

[6] ~~OJ No C 271, 7. 10. 1993, p. 1.~~

↓ 95/21/EC Recital 6 (adapted)

(5) Monitoring the compliance of ships with the international standards for safety, pollution prevention and shipboard living and working conditions should rest primarily with the flag State. However, there ~~is~~ ⌦ has been ⌫ a serious failure on the part of a~~n increasing~~ number of flag States to implement and enforce international standards. Henceforth the monitoring of compliance with the international standards for safety, pollution prevention and shipboard living and working conditions ~~has~~ ⌦ should ⌫ also ~~to~~ be ensured by the port State.

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↓ 95/21/EC Recital 7

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

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⇩ new

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

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↓ 95/21/EC Recital 8 (adapted)

~~A framework in Community law for harmonizing inspection procedures is fundamental to ensuring the homogeneous application of the principles of shipping safety and prevention of pollution which lie at the heart of Community transport and environment policies;~~

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↓ 95/21/EC Recital 10 (adapted)

~~The adoption of a Council Directive is the appropriate procedure for laying down the legal framework and the harmonized rules and criteria for port State control.~~

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↓ 95/21/EC Recital 11 (adapted)

(8) Advantage should be taken of the experience gained during the operation of the Paris Memorandum of Understanding ~~(MOU)~~ on Port State Control ~~(PSC)~~, signed in Paris on 26 January 1982.

⇩ new

(9) The European Maritime Safety Agency (EMSA) established by Regulation (EC) No 1406/2002 of the European Parliament and of the Council,[7] 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 of a harmonised Community scheme for the qualification and training of port State control inspectors.

🡻 95/21/EC Recital 12 (adapted)

(10) The inspection by each Member State of at least ~~25% of the number~~ ⌦ one quarter ⌫ of individual foreign ships which enter its ports in a given year in practice means that a large number of ships operating within the Community area at any given time have undergone an inspection.

⇩ new

(11) An efficient port State control regime should however seek to ensure that all ships calling at a port within the European Union are regularly inspected, instead of limiting itself to the current objective of inspecting one quarter of incoming ships in each Member State. 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 IMO Member State Audit Scheme, should be rewarded by undergoing less frequent inspections. Such new inspection arrangements should be incorporated into the Community's port State control regime 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.

🡻 95/21/EC Recital 13 (adapted)

~~Further efforts should be made to develop a better targeting system.~~

🡻 95/21/EC Recital 14 (adapted)

(12) The rules and procedures for port-State inspections, including criteria for the detention of ships, ~~must~~ ⌦ 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.

[7] 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).

⇩ new

(13) Certain categories of ships present a major accident or pollution hazard when they reach a given age and should therefore be subject to an expanded inspection; the details of such expanded inspection need to be laid down

🡻 95/21/EC Recital 15 (adapted)

~~The casualty, detention and deficiency statistics published in the Commission's communication entitled «A common policy on safe seas» and in the annual report of the MOU show that certain categories of ships need to be subject to an expanded inspection.~~

🡻 2001/106/EC Recital 4 (adapted)

(14) Some ships pose a manifest risk to maritime safety and the marine environment because of their poor condition, flag and history~~, among which, in particular, ships flying the flag of a State described as «very high risk» or «high risk» in the black list as published in the annual report of the MOU~~. They should therefore be refused access to Community ports, unless it can be demonstrated that they can be operated safely in Community waters. Guidelines ~~must~~ ⌦ should ⌫ be established setting out the procedures applicable in the event of the imposition of such an access ban and of the lifting of the ban. In the interests of transparency, the list of ships refused access to Community ports should be made public.

⇩ new

(15) In order to reduce the burden placed on certain administrations and companies by repetitive inspections, a survey carried out on a ro-ro ferry or high-speed passenger craft 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[8], to the satisfaction of the host State, should be regarded as an expanded inspection under the port State control system.

🡻 95/21/EC Recital 16 (adapted)

(16) Non-compliance with the provisions of the relevant Conventions must be rectified. Ships which ~~are required to take~~ ⌦ need to be the subject of ⌫ corrective action must, where the ⌦ observed ⌫ deficiencies ~~in compliance~~ are clearly hazardous to safety, health or the environment, be detained until such time as the ~~non-compliance has~~⌦ shortcomings have ⌫ been rectified.

[8] OJ L 138, 1.6.1999, p. 1.

↓ 95/21/EC Recital 17

(17) A right of appeal should be made available against decisions for detention taken by the competent authorities, in order to prevent unreasonable decisions which are liable to cause undue detention and delay.

↓ 95/21/EC Recital 18 (adapted)

~~The facilities in the port of inspection may be such that the competent authority will be obliged to authorize the ship to proceed to an appropriate repair yard, provided that the conditions for the transfer are complied with. Non-complying ships would continue to pose a threat to safety, health or the environment and to enjoy commercial advantages by not being upgraded in accordance with the relevant provisions of the Conventions and should therefore be refused access to all ports in the Community.~~

↓ 95/21/EC Recital 19 (adapted)

~~There are circumstances where a ship which has been refused access to ports within the Community has to be granted permission to enter. Under such circumstances the ship should only be permitted access to a specific port if all precautions are taken to ensure it safe entry.~~

↓ 95/21/EC Recital 20 (adapted)

~~Given the complexity of the requirements of the Conventions as regards a ship's construction, equipment and manning, the severe consequences of the decisions taken by the inspectors, and the necessity for the inspectors to take completely impartial decisions, inspections must be carried out only by inspectors who are duly authorized public service employees or other such persons, and highly knowledgeable and experienced.~~

⇩ new

(18) Authorities and inspectors involved in port State control activities should have no conflict of interests, whether with the port of inspection or with the ships inspected and related interests. Inspectors should be adequately qualified and should receive appropriate training so as 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 qualification and training of inspectors.

↓ 95/21/EC Recital 21 (adapted)

(19) Pilots and port authorities ~~may~~ ⌦ should ⌫ be ~~able~~ ⌦ enabled ⌫ to provide useful information on ⌦ defects found on board ships ⌫ ~~the deficiencies of such ships and crews.~~

⇩ new

(20) Complaints regarding living and working conditions on board should be investigated. Any person lodging a complaint should be informed of the follow-up action given to that complaint.

🡻 95/21/EC Recital 22

(21) Cooperation between the competent authorities of the Member States and other authorities or organizations 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.

🡻 95/21/EC Recital 23 (adapted)
⇨ new

(22) ⇨ 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. ⇦ ~~The information system called Sirenac E established under the MOU provides a large amount of the additional information needed for the application of this Directive.~~

🡻 95/21/EC Recital 24 (adapted)

(23) 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, may be an effective deterrent discouraging shippers ⌦ from using ⌫ ~~to use~~ such ships, and an incentive to their owners to take corrective action ~~without being compelled to do so~~.

🡻 95/21/EC Recital 25 (adapted)

(24) All costs of inspecting ships which warrant detention ⌦, and those incurred in lifting a refusal of access, ⌫ should be borne by the owner or the operator.

🡻 95/21/EC Recital 26 (adapted)

~~For the purposes of implementing this Directive use should be made of the Committee set up pursuant to 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[9] in order to assist the Commission with the task of adapting Member States' inspection obligations on the basis of experience gained, taking into account~~

[9] ~~OJ No L 247, 5.10.1993, p. 19.~~

~~developments in the MOU, and also adopting the Annexes as necessary in the light of amendments to the Conventions, Protocols, codes and resolutions of relevant international bodies and to the MOU.~~

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↓ 2001/106/EC Recital 18 (adapted)

(25) The measures necessary for the implementation of ⌦ this ⌫ Directive ~~95/21/EC~~ 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[10].

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⇩ new

(26) Since the objectives of the action to be taken, namely to reduce substandard shipping in Community waters 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 may, therefore, on account of their scale and their effects, be better achieved at Community level, the Community can take 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 to achieve those objectives.

(27) The obligation to transpose this Directive into national law should be confined to those provisions which represent a substantive change as compared with the earlier Directive. The obligation to transpose the provisions which are unchanged arises under the earlier Directive.

(28) 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 XVII, Part B,

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↓ 95/21/EC (adapted)
⇨ new

HAVE ADOPTED THIS DIRECTIVE:

*Article 1*

**Purpose**

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

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[10] OJ L 184, 17.7.1999, p. 23.

(a) increasing compliance with international and relevant Community legislation on maritime safety, ⇨ maritime security, ⇦ protection of the marine environment and living and working conditions on board ships of all flags;

(b) establishing common criteria for control of ships by the port State and harmonizing procedures on inspection and detention. ~~, taking proper account of the commitments made by the maritime authorities of the Member States under the Paris Memorandum of Understanding on Port State Control (MOU).~~

*Article 2*

**Definitions**

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↓ 95/21/EC (adapted)

For the purpose of this Directive ~~including its Annexes~~:

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↓ 2001/106/EC Art. 1 pt. 2 (adapted)

1. "*Conventions"* means ⌦ the following Conventions, together with the Protocols and amendments thereto and related codes of mandatory status, in their up-to-date version ⌫:

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↓ 2001/106/EC Art. 1 pt. 2

(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);

(e) the Convention on the International Regulations for Preventing Collisions at Sea, 1972 (Colreg 72);

(f) the International Convention on Tonnage Measurement of Ships, 1969 (ITC 69);

(g) the Merchant Shipping (Minimum Standards) Convention, 1976 (ILO No 147);

(h) the International Convention on Civil Liability for Oil Pollution Damage, 1992 (CLC 92).

↓ 2001/106/EC Art. 1 pt. 2 (adapted)
→1 2002/84/EC Art. 4 pt. 1(a)

~~together with the Protocols and amendments to these Conventions and related codes of mandatory status,~~ →1 ~~in its up-to-date version~~ ←.

↓ 2001/106/EC Art. 1 point 2 (adapted)
→1 2002/84/EC Art. 4 pt. 1(b)

2. "⌦ *Paris* ⌫ *MOU"* means the Memorandum of Understanding on Port State Control, signed in Paris on 26 January 1982, →1 in its up-to-date version ←.

↓ 95/21/EC

3. "*Ship*" means any seagoing vessel to which one or more of the Conventions apply, flying a flag other than that of the port State.

4. "*Off-shore installation"* means a fixed or floating platform operating on or over the continental shelf of a Member State.

⇩ new

5. "*Anchorage"* means a place in a port or another area within the jurisdiction of a port suitable for ships to anchor.

↓ 95/21/EC

6. "*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.

⇩ new

7. "Competent authority" means a maritime authority responsible for port State control in accordance with this Directive.

8. "Competent authority for maritime security" means a competent authority for maritime security as defined in Article 2, point 7 of Regulation (EC) No 725/2004 of the European Parliament and of the Council[11].

[11] OJ L 129, 29.4.2004, p. 6.

↓ 95/21/EC (adapted)
⇨ new

9. "*Inspection"* means a visit on board a ship ⇨ by an inspector, in order to check the ship's compliance with the relevant Conventions and regulations and including at least the checks required by Article 7 (1) ⇦ ~~in order to check both the validity of the relevant certificates and other documents and the condition of the ship, its equipment and crew, as well as the living and working conditions of the crew.~~

10. "*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 ⌦ 7 (4) ⌫ ~~6 (3)~~, to an in-depth ⌦ examination ⌫ ~~inspection~~ covering the ship's construction, equipment, manning, living and working conditions and compliance with on-board operational procedures.

11. "*Expanded inspection"* means an inspection ⇨ whose scope includes as a minimum the items listed in Annex VIII Part C. An expanded inspection may include a more detailed inspection whenever there are clear grounds in accordance with Article 7 (4) ⇦ ~~as specified in Article 7.~~

⇩ new

12. "*Complaint"* means any information or report submitted by the master of the ship, a member of the crew, a professional body, an association, a trade union or, generally, any person with an interest in the safety of the ship, including an interest in safety or health hazards to its crew, shipboard living and working conditions and the prevention of pollution.

↓ 95/21/EC

13. "*Detention"* means the formal prohibition of a ship to proceed to sea due to established deficiencies which, individually or together, make the ship unseaworthy.

⇩ new

14. "*Refusal of access order*" means a document issued to the master of a ship and to the company responsible for the ship notifying them that the ship will be refused access to ports of the Community.

↓ 95/21/EC

15. "*Stoppage of an operation"* means a formal prohibition of a ship to continue an operation due to established deficiencies which, individually or together, would render the continued operation hazardous.

⇩ new

16. "*Company*" means the corporate 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.

17. "*Recognised Organisation"* means a classification society or other private body, carrying out statutory tasks on behalf of a flag State administration.

18. "*Statutory certificate*" means a certificate issued by or on behalf of a flag State in accordance with international Conventions.

19. "*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 regulations laid down and made public by that recognised organisation.

20. "*Inspection database*" means the central information system for port state inspection records.

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🡻 95/21/EC (adapted)
⇨ new

*Article 3*

**Scope**

1. This Directive applies to any ship and its crew ⇨ calling at a port or at an anchorage of a Member State. ⇦:

~~(a) calling at a port of a Member State or at an off-shore installation;; or~~

~~(b) anchored off such a port or such an installation.~~

⇨ For the purposes of this Directive a Member State may also exercise a power of inspection and detention, in accordance with international law, in relation to a ship which is in waters within its jurisdiction or at, or anchored off, an offshore installation or at any other installation or facility in the waters within its jurisdiction. ⇦

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

2. In the case of ships of a gross tonnage below 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 their application of 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 given to such ship and its crew is no more favourable than that given to a ship flying the flag of a State which is a party to that Convention.

4. Fishing vessels, ships of war, 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.

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↓ 2001/106/EC Art. 1 pt. 3 (adapted)

*Article 4*

**⌦ Obligations of Member States ⌫**

~~**Inspection body**~~

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⇩ new

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

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↓ 2001/106/EC Art. 1 pt. 3
⇨ new

2. Member States shall maintain appropriate ~~national maritime administrations with the requisite number of staff, in particular qualified inspectors, hereinafter called~~ competent authorities for the inspection of ships and shall take whatever measures are appropriate to ensure that their competent authorities perform their duties as laid down in this Directive. ⇨ In particular, they shall recruit and retain the requisite number of staff, including qualified inspectors, taking into account the volume and characteristics of shipping traffic at each port. ⇦

⇨ Member States shall put in place appropriate arrangements to ensure that inspectors are available for carrying out expanded and mandatory inspections in accordance with Article 8 and Annex I, Part A.1. ⇦

↓ 95/21/EC

*Article 5*

**Inspection commitments**

⇩ new

1. Member States shall contribute an individual inspection effort which, added to the number of inspections carried out by the other Member States and States signatory to the Paris MOU, shall ensure that all ships entering the ports or anchorages of the European Union are inspected. This effort shall ensure that ships posing a higher risk are subject to a more in-depth inspection carried out at more frequent intervals.

The inspection regime established with a view to achieving the objective referred to in the first subparagraph shall include the elements described in Annex II.

2. The detailed rules of the inspection referred to in paragraph 1 shall be adopted by the Commission in accordance with the procedure referred to in Article 24(2).

↓ 2001/106/EC Art. 1 point 4 (adapted)
⇨ new

⌦ 3. ⌫ ~~1~~. ⇨ As long as measures envisaged in paragraph 2 are not in force, ⇦ the total number of inspections ~~of the ships referred to in paragraph (2) and Article 7~~ to be carried out annually by the competent authority of each Member State shall correspond to at least 25% of the ~~average~~ annual number of individual ships which entered its ports~~, calculated on the basis of the three most recent calendar years for which statistics are available~~ ⇨ . This annual number shall be the average of the last three calendar years for which statistics are available. The end of the period used shall not be more than one year prior to the start of the inspection year. ⇦

⇩ new

4. In selecting ships for inspection, the competent authority shall comply with the rules set out in Annex I.

↓ 2001/106/EC Art. 1 point 4

~~2. (a) The competent authority shall, subject to the provisions of Article 7a, ensure that an inspection in accordance with Article 6 is carried out on any ship not subject to an expanded inspection with a target factor greater than 50 in the Sirenac~~

~~information system, provided that a period of at least one month has elapsed since the last inspection carried out in a port in the MOU region.~~

~~(b) In selecting other ships for inspection, the competent authorities shall determine the order of priority as follows:~~

~~– the first ships to be selected for inspection shall be those listed in Annex I, Part I, irrespective of their target factor,~~

~~– the ships listed in Annex I, Part II shall be selected in decreasing order, depending on the order of priority resulting from the value of their target factor ranges as referred to in the Sirenac information system.~~

~~3. Member States shall refrain from inspecting ships which have been inspected by any Member State within the previous six months, provided that:~~

~~– the ship is not listed in Annex I,~~

~~– no deficiencies have been reported, following a previous inspection,~~

~~– no clear grounds exist for carrying out an inspection,~~

~~– the ship is not covered by paragraph 2(a).~~

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↓ 95/21/EC

~~4. The provisions of paragraph 3 shall not apply to any of the operational controls specifically provided for in the Conventions.~~

~~5. The Member States and the Commission shall cooperate in seeking to develop priorities and practices which will enable ships likely to be defective to be targeted more effectively.~~

~~Any consequent amendment of this Article, except to the figure of 25% in paragraph 1, shall be made under the provisions of Article 19.~~

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⇩ new

*Article 6*

**Notification of arrival of ships**

The operator, agent or master of a ship calling at a port or anchorage of a Member State shall notify its arrival in accordance with Annex III.

↓ 95/21/EC (adapted)
⇨ new

*Article ⌦ 7 ⌫ ~~6~~*

**Inspection procedure**

1. The competent authority shall ensure that the inspector shall as a minimum:

(a) check the certificates and documents ⇨ required to be kept on board in accordance with the Community maritime safety legislation and international Conventions, in particular those ⇦ listed in Annex ⌦ IV ⌫ ~~, to the extent applicable~~;

⇨ (b) verify, where appropriate, whether outstanding deficiencies from the previous inspection carried out by a Member State or by a State signatory to the Paris MOU have been rectified; ⇦

⌦ (c) ⌫ ~~(b)~~ satisfy himself of the overall condition of the ship, ⌦ including the hygiene ⌫ of the ship, including ~~the~~ engine room and accommodation ~~and including hygienic conditions.~~

⇩ new

2. When a ship has been authorised to leave a port on condition that the deficiencies are rectified at the next port, the inspection at the next port shall be limited to verifying whether these deficiencies have been rectified.

However, the inspector may, in the exercise of his professional judgment, decide that the inspection must be extended to cover additional verifications.

↓ 95/21/EC (adapted)

⌦ 3. ⌫ ~~2.~~ The inspector may examine all relevant certificates and documents, other than those listed in Annex ⌦ IV ⌫ ~~II~~, which are required to be carried on board in accordance with the Conventions.

⌦ 4. ⌫ ~~3.~~ Whenever there are clear grounds for believing, after the inspection referred to in paragraphs 1, ~~and~~ 2 ⌦ and ⌫ 3, that the condition of a ship or of its equipment or crew does not substantially meet the relevant requirements of a Convention, a more detailed inspection shall be carried out, including further checking of compliance with on-board operational requirements.

"Clear grounds" 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 and VII, section C ⌫ ~~III~~.

⌦ 5. ⌫ ~~4.~~ The relevant procedures and guidelines for the control of ships specified in Annex ⌦ VI ⌫ ~~IV~~ shall also be observed.

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⇩ new

However, when the procedures and guidelines referred to in Annex VI, point 4, diverge from Community legislation in force, Member States shall not adopt any provision of national law or any administrative measure which would result in the implementation of procedures or in inspection practices contrary to such Community legislation. They shall ensure that their competent authorities are duly informed of the relevant guidelines or procedures to be implemented in accordance with Community legislation and they shall verify their proper implementation.

6. When carrying out security checks on board, the inspector shall follow the procedures set out in Annex VII.

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🡻 2001/106/EC Art. 1 pt. 5 (adapted)

*Article ⌦ 8 ⌫ ~~7~~*

**~~Mandatory~~ Expanded inspection of certain ships**

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🡻 2001/106/EC Art. 1 pt. 5 (adapted)
⇨ new

1. A ship in one of the categories in Annex ⌦ VIII, point B, ⌫ ~~V, section A, is~~ ⌦ shall be eligible for ⌫ ~~liable to~~ an expanded inspection after a period of 12 months since the last expanded inspection carried out in a port of ⇨ a Member State or of ⇦ a State signatory ~~of~~ ⌦ to ⌫ the ⌦ Paris ⌫ MOU.

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🡻 2001/106/EC Art. 1 pt. 5 (adapted)
⇨ new

2. If such a ship is selected for inspection in accordance with ⌦ Annex I, point A.2, ⌫ ~~Article 5(2) (b),~~ an expanded inspection shall be carried out. However an inspection in accordance with Article ⌦ 7 ⌫ ~~6~~ may be carried out in the period between two expanded inspections.

~~3. (a) The operator or master of a ship to which paragraph 1 applies shall communicate all the information listed in Annex V, section B, to the competent authority of the Member State of each port visited after a period of 12 months since the last expanded inspection. This information shall be provided at least three days~~

~~before the expected time of arrival in the port or before leaving the previous port if the voyage is expected to take fewer than three days.~~

~~b)~~ Any ship ⇨ referred to in paragraph 1 ⇦ not complying with ⇨ the notification requirements in Article 6 ⇦ ~~subparagraph (a)~~ shall be subject to an expanded inspection at the port of ⇨ anchorage or ⇦ destination.

⌦ 3. ⌫ ~~4.~~ Member States shall, subject to Article ⌦ 9, ⌫ ~~7a~~ ensure that an expanded inspection is carried out on a ship to which paragraph ⌦ 1 ⌫ ~~3~~ applies and which has a target factor of 7 or more ⌦ , as referred to in Annex I, ⌫ at its first port visited after a period of 12 months since the ~~last~~ ⌦ previous ⌫ expanded inspection.

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⬇ 2001/106/EC Art. 1 pt. 5 (adapted)

~~In cases where the Member States are unable to increase their capacity in time to carry out all the additional inspections required, particularly because of problems connected with the recruitment and training of inspectors, they shall be allowed until 1 January 2003 to build up their inspection service gradually. This period may be extended by six months for the port of Rotterdam. The Commission shall notify the Member States and the European Parliament of any such extension.~~

⌦ 4. ⌫ ~~5.~~ ⌦ An ⌫ expanded inspection shall be carried out in accordance with the procedures ⌦ set out ⌫ in ⌦ Annex VIII, point C ⌫~~, Annex V, section C~~.

~~6. Where there is a risk that an amendment or draft amendment to the MOU may weaken the scope of the obligation for expanded inspection under this Article, the Commission shall submit without delay to the Committee established by Article 18, draft measures with a view to reintroducing target factor values complying with the objectives of this Directive.~~

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⬇ 2001/106/EC Art. 1 pt. 6 (adapted)
⇨ new

*Article ⌦ 9 ⌫ ~~7a~~*

**Procedure in case certain ships cannot be inspected**

1. In cases where, for operational reasons, a Member State is unable to carry out an inspection of a ship with a target factor of more than 50 as referred to in ⌦ Annex I ⌫ ~~Article 5(2)(a)~~ or a mandatory expanded inspection as referred to in Article ⌦ 8(3) ⌫ ~~7(4)~~, the Member State shall, without delay, inform the ⇨ competent authorities of the next port, if it is a port of a Member State or of a State signatory to the Paris MOU ⇦ ~~Sirenac system~~ that such inspection did not take place.

2. Such cases shall be notified, at intervals of six months, to the Commission together with the reasons for not inspecting the ships concerned. ⇨ In addition, Member States shall provide

the total number of inspections as referred to in Article 8(2) and in Annex I, point A.1 carried out during these six months. ⇦

⇨ These notifications shall be provided within four months from the end of the period to which data pertained. ⇦

3. During any ⇨ three consecutive ⇦ calendar years, ⇨ the missed inspections ⇦ ~~such non-inspections~~ ⇨ as referred to in paragraph 1 ⇦ shall not exceed 5 % of the ~~average annual~~ number of ~~individual~~ ships eligible for the inspections referred to in paragraph 1 calling at the ports of the Member State ⇨ during that period. ⇦~~, calculated on the basis of the three most recent calendar years for which statistics are available.~~

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|---|
| ↓ 2001/106/EC Art. 1 pt. 6 (adapted) |

4. Ships referred to in paragraph 1 shall be subject to ⌦ a mandatory ⌫ ~~an~~ inspection, as provided for in ⌦ Annex I, point A.1 ⌫~~Article 5(2)(a)~~ or a mandatory expanded inspection as referred to in Article ⌦ 8(2) ⌫ ~~7(4)~~, as appropriate, in the next port of call in the Community.

5. By 22 July 2008 the figure of 5 % referred to in paragraph 3 shall be amended on the basis of an assessment by the Commission, if it is considered appropriate, in accordance with the procedure referred to ~~laid down~~ in Article ⌦ 24(2) ⌫ ~~19~~.

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|---|
| ↓ 2001/106/EC Art. 1 pt. 7 (adapted)<br>⇨ new |

*Article ⌦ 10 ⌫ ~~7b~~*

**Access refusal measures concerning certain ships**

1. A Member State shall ensure that ⇨ any ⇦ ~~a~~ ship ⇨ meeting the criteria listed in Annex IX, point A. ⇦ ~~in one of the categories of Annex XI, section A,~~ is refused access to its ports ⇨ and anchorages ⇦ , except in the situations described in Article ⇨ 15(6). ⇦ ~~11(6), if the ship:~~

~~either~~

~~– flies the flag of a State appearing in the black list as published in the annual report of the MOU, and~~

~~– has been detained more than twice in the course of the preceding 24 months in a port of a State signatory of the MOU,~~

~~or~~

~~– flies the flag of a State described as «very high risk» or «high risk» in the black list as published in the annual report of the MOU, and~~

~~— has been detained more than once in the course of the preceding 36 months in a port of a State signatory of the MOU.~~

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↓ 2001/106/EC Art. 1 pt. 7 (adapted)
⇨ new

The refusal of access shall become applicable ~~immediately~~ ⌦ as soon as ⌫ the ship has ⇨ left the port or anchorage ⇦ ~~been authorised to leave the port~~ where it has been the subject of a ~~second or~~ third detention ⇨ and where a refusal of access order has been issued ⇦ ~~as appropriate~~.

2. For the purposes of paragraph 1, Member States shall comply with the procedures laid down in Annex IX, ~~XI, section~~ ⌦ point ⌫ B.

~~3. The Commission shall publish every six months the information relating to ships that have been refused access to Community ports in application of this Article.~~

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↓ 2001/106/EC Art. 1 pt. 8 (adapted)

*Article ⌦ 11 ⌫ ~~8~~*

**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 ⌦ X ⌫ ~~IX~~. A copy of the inspection report shall be provided to the ship's master.

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⇩ new

*Article 12*

**Complaints**

All complaints regarding conditions on board shall be investigated.

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

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

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

↓ 95/21/EC (adapted)

*Article ⊠ 13 ⊠ ~~9~~*

**Rectification and detention**

↓ 2001/106/EC Art. 1 pt. 9(a) (adapted)

1. The competent authority shall be satisfied that any deficiencies confirmed or revealed by the inspection ~~referred to in Article 5(2) and Article 7~~ are or will be rectified in accordance with the Conventions.

↓ 95/21/EC

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 the operation in the course of which the deficiencies have been 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.

⇩ new

3. Without prejudice to restrictions on security grounds decided in accordance with Regulation (EC) No. 725/2004, a detention order issued by a competent authority may:

(a) include a direction that the ship shall remain in a particular place, or shall move to a particular anchorage or berth; and

(b) specify the circumstances in which the master of the ship may move the ship from a specified place for reasons of safety or prevention of pollution.

↓ 2001/106/EC Art. 1 pt. 9(b) (adapted)
⇨ new

⊠ 4. ⊠ ~~3.~~ When exercising his professional judgement as to whether or not a ship should be detained, the inspector shall apply the criteria set out in Annex ⊠ XI ⊠ ~~VI~~.

In this respect, ⊠ if the inspection reveals that the ship is ⊠ ~~the ship shall be detained, if~~ not equipped with a functioning voyage data recorder ~~system~~, when its use is compulsory in

accordance with ⇨ Directive 2002/59/EC of the European Parliament and of the Council[12] ⇦ ~~Annex XII~~, ⌦ the competent authority shall ensure that the ship is detained ⌫ .

If ⇨ the deficiencies justifying detention ⇦ ~~this deficiency~~ cannot be readily rectified in the port of detention, the competent authority may allow the ship to proceed to the ⇨ nearest available repair yard to the port of detention where it ⇦ ~~nearest appropriate port where it shall~~ ⌦ may ⌫ be readily rectified or ⌦ it may ⌫ require that the ⇨ deficiencies be ⇦ ~~deficiency is~~ rectified within a maximum period of 30 days ⇨ , in accordance with the guidelines developed by the Paris MOU ⇦ . For these purposes, the procedures laid down in Article ⌦ 15 ⌫ ~~11~~ shall apply.

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🡻 95/21/EC (adapted)

⌦ 5. ⌫ ~~4.~~ 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 have taken the steps necessary to ensure that it complies with the relevant requirements of the Conventions.

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🡻 2001/106/EC Art. 1 pt. 9(c) (adapted)

⌦ 6. ⌫ ~~5.~~ In ⌦ the event of ⌫ ~~the event that the inspections referred to in Article 5(2) and Article 7 give rise to~~ detention, the competent authority shall immediately inform, in writing and including the report of inspection, the ⌦ flag State ⌫ administration ~~of the State whose flag the ship is entitled to fly (hereinafter called «flag 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 class certificates or certificates issued on behalf of the flag State in accordance with ~~the~~ international Cc~~e~~onventions shall also be notified where relevant.

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🡻 95/21/EC (adapted)

⌦ 7. ⌫ ~~6.~~ The provisions of this Directive shall be without prejudice to the additional requirements of the Conventions concerning notification and reporting procedures related to port State control.

⌦ 8. ⌫ ~~7.~~ When exercising port State control 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.

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[12] OJ L 208, 5.8.2002, p. 10.

⇩ new

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 shall cooperate with the competent authority with a view to facilitating the accommodation of detained ships.

🡻 98/25/EC Art. 1 pt. 2

~~*Article 9a*~~

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

~~1. Where the inspection reveals that the copy of the document of compliance or the safety management certificate issued in accordance with the International management code for the safe operation of ships and for pollution prevention (ISM Code) are missing on board a vessel to which, within the Community, the ISM Code is applicable at the date of the inspection, the competent authority shall ensure that the vessel is detained.~~

~~2. Notwithstanding the absence of the documentation referred to in paragraph 1, if the inspection finds no other deficiencies warranting detention the competent authority may lift the detention order in order to avoid port congestion. Whenever such a decision is taken, the competent authority shall immediately inform the competent authorities of the other Member States thereof.~~

~~3. Member States shall take the measures necessary to ensure that all ships authorised to leave a port in a Member State under the circumstances referred to in paragraph 2 shall be refused access to all ports in the Community, except in the situations referred to in Article 11(6), until the owner or operator of the vessel has demonstrated, to the satisfaction of the competent authority of the Member State in which detention was ordered, that the ship has valid certificates issued in accordance with the ISM Code. Where deficiencies as referred to in Article 9(2) are found and cannot be rectified in the port of detention, the relevant provisions of Article 11 shall also apply.~~

↓ 95/21/EC (adapted)

*Article ⊠ 14 ⌫ ~~10~~*

**Right of appeal**

↓ 2001/106/EC Art. 1 pt. 10

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

↓ 95/21/EC

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.

⇩ new

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 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 or refusal of access order has been issued shall, within 24 hours of such a decision, ensure that the information published in accordance with Article 19 is rectified.

↓ 95/21/EC (adapted)
⇨ new

*Article ⊠ 15 ⌫ ~~11~~*

**Follow-up to inspections and detentions**

1. Where deficiencies as referred to in Article ⊠ 13 ⌫ ~~9~~ (2) cannot be rectified in the port of inspection, the competent authority of that Member State may allow the ship concerned to proceed to the ⇨ nearest available repair yard to the port of detention where follow-up action can be taken ⇦ ~~nearest appropriate repair yard available~~, as chosen by the master and the

authorities concerned, 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.

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⇩ new

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.

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🡻 95/21/EC (adapted)

⌦ 3. ⌫ ~~2.~~ 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 ⌦ 13(6) ⌫ ~~9 (5)~~ and any other authority as appropriate of all the conditions for the voyage.

~~3. The notification of the parties referred to in paragraph 2 shall be in accordance with Annex 2 to the MOU.~~

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 within the Community is refused to ⌫ ships referred to in paragraph 1 which proceed to sea:

⌦ (a) ⌫ ~~(i)~~ without complying with the conditions determined by the competent authority of any Member State in the port of inspection; or

⌦ (b) ⌫ ~~(ii)~~ which refuse to comply with the applicable requirements of the Conventions by not calling into the indicated repair yard~~;~~.

~~shall be refused access to any port within the Community;~~⌦ Such refusal shall be maintained ⌫ until the owner or operator has provided 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) ⌫ ~~(i)~~, 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) ⌫ ~~(ii)~~, 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. ~~Notwithstanding~~ ⌦ By way of derogation from ⌫ the provisions of paragraph 4, access to a specific port 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 minimize 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.

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↓ 95/21/EC (adapted)
⇨ new

*Article ⌦ 16 ⌫ ~~12~~*

**Professional profile of inspectors**

1. The inspections shall be carried out only by inspectors who fulfil the qualification criteria specified in Annex ⌦ XII ⌫ ~~VII~~ ⇨ and who are authorized 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 organizations which issue statutory and class~~ification~~ 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[13] ⇦ ~~the national legislation, indicating that the inspector is authorized to carry out inspections~~.

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↓ 95/21/EC

~~A common model for such an identity card shall be established in accordance with the procedure in Article 19.~~

[13] OJ L 196 , 7.8.1996, p. 8.

⇩ new

5. Member States shall ensure that the competence of inspectors is verified, and their knowledge as referred to in Annex XII is tested, before authorising them to carry out inspections and at intervals of five years thereafter.

6. Member States shall ensure that inspectors receive appropriate training in relation to changes to the port State control regime 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 qualification and training of inspectors.

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🡻 95/21/EC (adapted)
⇨ new

*Article ⌦ 17 ⌫ ~~13~~*

**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 ⇦ ~~Pilots of Member States, engaged in berthing or unberthing ships or engaged on ships bound for a port within a Member State,~~ shall 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 ⌦ defects ⌫ ~~deficiencies~~ 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, when exercising their normal duties, learn that a ship within their port has ⌦ defects ⌫ ~~deficiencies~~ which may prejudice the safety of the ship or poses an unreasonable threat of harm to the marine environment, such authority shall immediately inform the competent authority of the port State concerned.

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⇩ new

3. Member States shall require pilots and port authorities to use the model report in Annex XIII or that of an equivalent report, in electronic format whenever possible.

Member States shall ensure that proper follow-up action is taken on defects notified by pilots and port authorities.

Every year Member States shall provide the Commission with a report on the implementation of paragraphs 1 and 2, including details on action taken to follow up defects reported by pilots and port authorities.

↓ 95/21/EC (adapted)
⇨ new

*Article 18 ~~14~~*

**Cooperation**

1. Each Member State shall ⇨ ensure that its port authorities and other relevant authorities or bodies provide the competent port State control authority with the following types of information in their possession: ⇦ ~~make provision for cooperation between its competent authority, its port authorities and other relevant authorities or commercial organizations to ensure that its competent authority can obtain all relevant information on ships calling at its ports.~~

⇨ – information notified in accordance with Annex III; ⇦

⇨ – information concerning ships which have failed to comply with notification requirements in accordance with this Directive and with European Parliament and Council Directives 2000/59/EC[14] and 2002/59/EC[15], as well as, if appropriate, with Regulation (EC) No. 725/2004; ⇦

⇨ – information concerning ships which have proceeded to sea without having complied with Article 7 or 10 of Directive 2000/59/EC; ⇦

⇨ – information concerning ships which have been denied entry or expelled from port on security grounds. ⇦

↓2001/106/EC Art. 1 pt. 11 (adapted)
⇨ new

2. Member States shall maintain provisions for the exchange of information and cooperation between their competent authority and the competent authorities of all other Member States and maintain the established operational link between their competent authority, the Commission and the ⌦ inspection database. ⌫ ~~Sirenac information system set up in St Malo, France.~~

⇨ Member States shall take all appropriate measures to ensure the updating of the inspection database in the light of the requirements arising from this Directive. ⇦

For the purposes of carrying out ~~the~~ inspections ~~referred to in Article 5(2) and Article 7~~, inspectors shall consult the public and private databases relating to ship inspection accessible through the Equasis information system.

[14] OJ L 332, 28.12.2000, p. 81.
[15] OJ L 208, 5.2.2002, p. 10.

↓ 95/21/EC (adapted)
⇨ new

3. ⇨ Member States shall take all appropriate measures to ensure that the information related to inspections is transferred to the inspection database without delay. ⇦

The information referred to in ⌦ this ⌫ paragraph ~~2~~ shall be that specified in Annexes ⇨ X and XIV and all the information relevant for the selection of the ship in accordance with Article 5(4) ⇦ ~~4 to the MOU, and that required to comply with Article 15 of this Directive~~.

↓ 1999/97/EC Art. 1 pt. 2 (adapted)

*Article ⌦ 19 ⌫ ~~15~~*

**⌦ Publication ⌫ ~~Release~~ of information**

↓ 1999/97/EC Art. 1 point 2 (adapted)
⇨ new

1. The competent authority of each Member State shall take ⌦ the ⌫ necessary measures in order to ensure ⇨ the publication of information related to inspections, detentions and refusals of access in accordance with Annex XIV ⇦~~that information listed in Annex VIII, Part I, concerning ships which have been detained in, or which are subject to refusal of access to, a port of this Member State during the previous month, is published at least every month.~~

↓ 2001/106/EC Art. 1 pt. 12

~~2. The information listed in Annex VIII, Parts I and II, and the information on changes, suspensions and withdrawals of class referred to in Article 15(3) of Directive 94/57/EC, shall be available in the Sirenac system. It shall be made public through the Equasis information system, as soon as possible after the inspection has been completed or the detention has been lifted.~~

↓ 1999/97/EC Art. 1 pt. 2

~~3. Member States and the Commission shall cooperate in order to establish the appropriate technical arrangements referred to in paragraph 2.~~

~~4. Where appropriate, the Sirenac information system is amended in order to implement the abovementioned requirements.~~

↓ 2001/106/EC Art. 1 pt. 13 (adapted)

⌦ 2. ⌫ ~~5.~~ The provisions of this Article ⌦ shall ⌫ ~~do~~ not affect national legislation on liability.

⇩ new

*Article 20*

**Black-list on performance of ship operators and companies**

The Commission shall establish and publish every year a black-list showing the performance of ship operators and companies in accordance with the procedures and criteria laid down in Annex XV.

↓ 95/21/EC (adapted)

*Article ⌦ 21 ⌫ ~~16~~*

**Reimbursement of costs**

1. Should the inspections referred to in Articles ⌦ 7 and 8 ⌫ ~~6 and 7~~ 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 Article ⌦ 15(4) and Article 10 ⌫ ~~11(4)~~ shall be charged to the owner or operator of the ship.

↓ 2001/106/EC Art. 1 pt. 14 (adapted)

⌦ 3. ⌫ ~~2a~~. In the case of detention of a ⌦ ship ⌫ ~~vessel for deficiencies or lack of valid certificates as laid down in Article 9 and Annex VI~~, all costs relating to the detention in port shall be borne by the owner or operator of the ship.

↓ 95/21/EC (adapted)

⌦ 4. ⌫ ~~3~~. The detention shall not be lifted until full payment has been made or a sufficient guarantee has been given for the reimbursement of the costs.

↓ 2001/106/EC Art. 1 pt. 15 (adapted)

*Article ⊠ 22 ⊠ ~~17~~*

**Data to monitor implementation**

↓ 2001/106/EC Art. 1 point 15 (adapted)

Member States shall provide the Commission with the information listed in Annex ⊠ XVI ⊠ ~~X~~ at the intervals stated in that Annex.

⇩ new

Member States shall take all appropriate measures to ensure that the Commission has a full and unrestricted access to all data administered by the inspection database referred to in Article 18(2).

*Article 23*

**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.

↓ 2001/106/EC Art. 1 pt. 15 (adapted)

*Article ⊠ 24 ⊠ ~~18~~*

**~~Regulatory~~ Committee**

↓ 2002/84/EC Art. 4 pt. 2 (adapted)

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

European Parliament and of the Council ~~of 5 November 2002 establishing a Committee on Safe Seas and the Prevention of Pollution from Ships (COSS)~~[16].

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↓ 2001/106/EC Art. 1 pt. 15

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. The Committee shall adopt its rules of procedure.

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↓ 95/21/EC (adapted)

*Article ⌦ 25 ⌫ ~~19~~*

**Amendment procedure**

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↓ 2001/106/EC Art. 1 pt. 16 (adapted)

This Directive may, without broadening its scope, be amended in accordance with the procedure ~~laid down~~ ⌦ referred to ⌫ in Article ⌦ 24(2) ⌫ ~~18(2)~~, in order to:

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↓ 2001/106/EC Art. 1 pt. 16 (adapted)
⇨ new

(a) adapt the obligations referred to in Articles ~~except the figure of 25 % referred to in paragraph 1 thereof, in Articles~~ ⇨ 5 to 17 and 19 to 22 ⇦ and in the Annexes to which these Articles refer, on the basis of the experience gained from the implementation of this Directive and taking into account developments in the ⌦ Paris ⌫ MOU;

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↓ 95/21/EC (adapted)
⇨ new

(b) adapt the Annexes in order to take into account amendments which have entered into force to ⇨ the Community legislation on maritime safety and security, and to ⇦ the Conventions, Protocols, codes and resolutions of relevant international organizations and to the ⌦ Paris ⌫ MOU~~.~~;

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[16] OJ L 324, 29.11.2002, p. 1.

↓ 2002/84/EC Art. 4 pt. 3(a)
⇨ new

(c) ⇨ amend the definitions in, and ⇦ update, in Article 2~~(1)~~, the list of international Conventions which are relevant for the purposes of this Directive.

↓ 2002/84/EC Art. 4 pt. 3(b)

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.

⇩ new

*Article 26*

**Integration of the new inspection regime into Community law**

Additional measures may be adopted, in accordance with the procedure referred to in Article 24 (2), in order to:

– establish the values attributed to each risk parameter; Flag State performance, elements related to classification societies and company performance should be given higher values than other criteria;

– determine the combination of risk parameters corresponding to each level of ship risk profile;

– develop criteria and procedures related to the type and scope of inspections;

– develop the principles and modalities related to the inspection commitments of Member States;

Each year, the Commission shall review the implementation of the ship risk parameters and, if appropriate, make a proposal in accordance with the procedure referred to in Article 24(2) with a view to adjusting the parameters in the light of experience gained or policy objectives to be met.

↓ 2001/106/EC Art. 1 pt. 17
(adapted)

*Article ⌦ 27 ⌫ ~~19a~~*

**⌦ Sanctions ⌫ ~~Penalties~~**

Member States shall lay down a system of ⌦ sanctions ⌫ ~~penalties~~ for the breach of national provisions adopted pursuant to this Directive and shall take all the measures

necessary to ensure that those ⌦ sanctions ⌫ ~~penalties~~ are applied. The ⌦ sanctions ⌫ ~~penalties~~ thus provided shall be effective, proportionate and dissuasive.

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↓ 2001/106/EC Art. 3 (adapted)
⇨ new

⌦ *Article 28* ⌫

⌦ **Review** ⌫

The Commission shall review the implementation of this Directive no later ⇨ than 18 months after expiry of the time-limit for the transposition of this Directive ⇦~~22 July 2006~~. The review will examine, *inter alia*, the number of port State control inspectors in each Member State and the number of inspections carried out, including mandatory expanded inspections.

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.

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*Article 29*

**Implementation and notification**

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Articles […] and points […] of Annexes [….] [ articles or subdivisions thereof, and points of Annexes which have been changed as to their substance by comparison with the earlier Directive] not later than 18 months after the date fixed in Article 31. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

2. 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. They shall also include a statement that references in existing laws, regulations and administrative provisions to the directive[s] 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 the Directive within the Member States.

*Article 30*

**Repeal**

Directive 95/21/EC, as amended by the Directives listed in Annex XVII, Part A, is repealed, with effect from [date of entry into force of the recast Directive], 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 XVII, 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 XVIII.

*Article 31*

**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*.

Articles […] and points […] of annexes […] [articles or subdivisions thereof, and points of annexes which are unchanged by comparison with the earlier directive shall apply from [date of entry into force of the recast directive].

*Article 32*

**Addressees**

This Directive is addressed to the Member States.

Done at Brussels, […]

| | |
|---|---|
| *For the European Parliament* | *For the Council* |
| *The President* | *The President* |
| *[...]* | *[...]* |

↓ 98/42/EC Art. 1 pt. 2 and Annex pt. 1 (adapted)

## ANNEX I

## ⌦ SELECTING ⌫ SHIPS ~~TO BE CONSIDERED~~ FOR ~~PRIORITY~~ INSPECTION

(as referred to in Article 5(4) ~~(2)~~)

⇩ new

### A. Inspection commitments

1. The competent authority shall ensure that an inspection is carried out on any ship in port or at an anchorage, other than a ship which has been selected for an expanded inspection, with a target factor greater than 50 in the inspection database provided that a period of at least one month has elapsed since the last inspection carried out by a Member State or by a State signatory to the Paris MOU.

2. In selecting other ships for inspection, the competent authorities shall determine the order of priority as follows:

(a) the first ships to be selected for inspection shall be those listed in Part B.I of this Annex, irrespective of their target factor,

(b) the ships listed in Part B.II shall be selected in decreasing order, depending on the order of priority resulting from the value of their target factor ranges as referred to in the inspection database, provided that a period of at least one month has elapsed since the last inspection carried out in a port or anchorage of a Member State of the European Union or in the Paris MOU region.

3. Member States shall refrain from inspecting ships which have been inspected by any Member State of the European Union or the Paris MOU region within the previous six months, provided that:

(a) the ship, other than a ship eligible for an expanded inspection, has a target factor lower than 7,

(b) the ship is not an overriding priority under part B.I,

(c) no deficiencies have been reported following a previous inspection,

(d) no clear grounds exist for carrying out an inspection,

(e) the ship is not covered by paragraph 2(a).

4. A survey of a ro-ro ferry or a high-speed passenger craft carried out by a host State in accordance with Articles 6 and 8 of Directive 1999/35/EC[1] shall be considered as a more detailed or an expanded inspection, as relevant, and recorded as such in the inspection database. In the case of deficiencies which are clearly hazardous to safety, health or the environment, the ship shall be detained in accordance with Article 13.

**B. SHIPS TO BE CONSIDERED FOR PRIORITY INSPECTION**

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↓ 98/42/EC Art. 1 pt. 2 and Annex pt. 1 (adapted)
⇨ new

**⌦ B. ⌫ I. OVERRIDING FACTORS**

Regardless of the value of the target factor, the following ships shall be considered as an overriding priority for inspection ~~,~~ :

1. Ships which have been reported by pilots or port authorities as having ⌦ defects ⌫ ~~deficiencies~~ which may prejudice their safe navigation ~~(pursuant to Directive 93/75/EEC[2] and Article 13 of this Directive)~~ ⌦ or pose a threat of harm to the environment in accordance with Article 17 of this Directive ⌫ .

2. Ships which have failed to comply with the ⇨ relevant notification requirements ⇦~~obligations laid down in Directive 93/75/EEC~~⇨ referred to in Article 6 of this Directive, in Directive 2000/59/EC, Directive 2002/59/EC and, if appropriate, in Regulation (EC) No 725/2004 ⇦.

3. Ships which have been the subject of a report or notification by another Member State.

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⇩ new

4. Ships which have been reported by a Member State for failure to comply with the Recommendation on navigation through the entrances to the Baltic Sea as given in the Annexes to Resolution MSC.138(76) of the IMO.

[1] OJ L 138, 1.6.1999, p. 1.
[2] ~~OJ No L 247, 5.10.1993, p. 19.~~

| |
|---|
| ↓ 98/42/EC Art. 1 pt. 2 and Annex pt. 1 (adapted)<br>→1 1999/97/EC Art. 1 pt. 3 and Annex pt. 1(a)<br>⇨ new |

5. ~~4.~~ Ships which have been the subject of a report or complaint by the master, a crew member, or any person or organisation with a legitimate interest in the safe operation of the ship, shipboard living and working conditions or the prevention of pollution, unless the Member State concerned deems the report or complaint to be manifestly unfounded~~; the identity of the person lodging the report or complaint must not be revealed to the master or the shipowner of the ship concerned~~.

6. ~~5.~~ Ships which have been:

(a) involved in a collision, grounding or stranding on their way to the port~~;~~;

(b) accused of an alleged violation of the provisions on discharge of harmful substances or effluents~~;~~;

(c) manoeuvred in an erratic or unsafe manner whereby routing measures, adopted by the IMO, or safe navigation practices and procedures have not been followed~~;~~; or

(d) otherwise operated in such a manner as to pose a danger to persons, property or the environment.

7. ~~6.~~ Ships which have been suspended →1 or withdrawn ←from their class for safety reasons ~~in the course of the preceding six months~~ ⇨ since the last inspection in the European Union or in the Paris MOU region. ⇦.

| |
|---|
| ⇩ new |

8. Ships carrying certificates issued by a former recognised organisation whose recognition has been withdrawn. in accordance with Article 9 of Directive XX/XX on common rules and standards for ship inspection and survey organizations and for the relevant activities of maritime administrations

| |
|---|
| ↓ 2001/106/EC Art. 1 pt. 19 (adapted)<br>⇨ new |

**⌦ B. ⌫ II. OVERALL TARGETING FACTOR**

⇨ The competent authority shall select the ships listed below in decreasing order, depending on the order of priority resulting from the value of their target factor ranges as referred to in the inspection database. ⇦ ~~The following ships shall be considered as priority for inspection.~~

1. Ships visiting a port of a Member State for the first time or after an absence of 12 months or more. In applying these criteria Member States shall also take into account those inspections which have been carried out by members of the ⌦ Paris ⌫ MOU. In the absence of appropriate data for this purpose, Member States shall rely upon the available ~~Sirenae~~ data ⌦ in the inspection database ⌫ and inspect those ships which ⌦ do not appear in the inspection database ⌫ ~~have not been registered in the Sirenae following the entry into force of that database on 1 January 1993~~.

2. Ships not inspected by any Member State within the previous six months.

3. Ships whose statutory certificates on the ship's construction and equipment, issued in accordance with the Cc~~e~~onventions, and the class~~ification~~ certificates, have been issued by organisations which are not recognised under the terms of [Council Directive 94/57/EC].

4. Ships flying the flag of a State ⌦ whose detention rate, as calculated on the last three calendar years of inspections recorded in the inspection database, falls into ⌫~~appearing in~~ the black list as ⌦ defined by ⌫ ~~in~~ the annual report of the ⌦ Paris ⌫ MOU.

5. Ships which have been permitted to leave the port ⇨ or anchorage ⇦ of a Member State on certain conditions, such as:

   (a) deficiencies to be rectified before departure;

   (b) deficiencies to be rectified at the next port of call;

   (c) deficiencies to be rectified within 14 days;

   (d) deficiencies for which other conditions have been specified.

   If ship-related action has been taken and all deficiencies have been rectified, this is taken into account.

6. Ships for which deficiencies have been recorded during a previous inspection, according to the number of deficiencies.

7. Ships which have been detained in a previous port ⇨ or anchorage ⇦ .

8. Ships flying the flag of a country which has not ratified all relevant international Cc~~e~~onventions referred to in Article 2 of this Directive.

9. Ships classed with classification ⇨ societies described as having a performance level of “low” or “very low” in the table of “three-year detention rates per Classification Society” published by the Paris MOU. ⇦ ~~society with deficiency ratio above average.~~

↓ 2001/106/EC Art. 1 pt. 19 (adapted)
⇨ new

10. Ships of the categories referred to in Annex ⌦ VIII(B). ⌫ ~~V(A).~~

11. Ships above 13 years old.

~~In determining the order of priority for the inspection of the ships listed above, the competent authority shall take into account the overall target factor displayed on the Sirenac information system, according to Annex I, Section I, of the MOUItems 5, 6 and 7 shall only apply to inspections carried out in the last 12 months. The overall target factor shall not be less than the sum of the values established for items 3, 4, 8, 9, 10 and 11.~~

~~However,~~ For the purpose of Article ⌦ 8(3) ⌫ ~~7.4~~, the overall target factor shall not take into account item 10.

⇨ For the purposes of items 4 and 9, the lists defined by the Paris MOU shall enter into force as from the 1 July each year following the calendar year on which the statistics are based. ⇦

⇩ new

## ANNEX II

**Main elements of the Community Port State Inspection Regime (as referred to in Article 5(2))**

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

**I. SHIP RISK PROFILE**

The risk profile of a ship is determined by a combination of the following parameters:

(a) Type of ship

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

(b) Age of ship

Older ships are considered as posing a higher risk.

(c) Flag State performance

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

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

(iii) Ships flying the flag of a State for which an independent audit has been carried out in accordance with the Code for the implementation of mandatory IMO instruments which has demonstrated compliance with the relevant instruments are considered as posing a lower risk.

(d) Recognised organisations

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

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

(iii) Ships with certificates issued by organisations recognised under the terms of Council Directive 94/57/EC are considered as posing a lower risk.

(e) Company performance

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

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

(f) Inspection history in the European Union and Paris MOU region

(i) Ships which have been detained more than once are considered as posing a higher risk.

(ii) Ships which have not been detained within the previous 36 months and have had few deficiencies are considered as posing a lower risk.

The risk parameters referred to in the first subparagraph shall be combined to determine the following ship risk profiles:

– high risk,

– standard risk,

– low risk.

In determining these risk profiles greater emphasis will be given to the parameters for flag State performance, recognised organisations and company performance

**II –INSPECTION OF SHIPS**

Ships calling at Community ports are subject to periodic inspections at regular intervals, and to additional inspections when unexpected factors arise.

**1. Periodic inspections**

The intervals between periodic inspections shall be determined by the ship risk profile. The interval between periodic inspections of high risk ships shall not exceed 6 months. The interval between periodic inspections of ships of other risk profiles shall increase as the risk decreases.

Member States shall carry out a periodic inspection on:

– Any ship with a high risk profile which has not been inspected in a port of the European Union or of the Paris MOU region during the last 6 months. High risk ships become eligible for inspection as from the fifth month.

– Any ship with a standard risk profile which has not been inspected in a port of the European Union or of the Paris MOU region during the last 12 months. Standard risk ships become eligible for inspection as from the tenth month.

– Any ship with a low risk profile which has not been inspected in a port of the EU or of the Paris MOU region during the last 36 months. Low risk ships become eligible for inspection as from the 24th month.

**2. Additional inspections**

Ships to which the following unexpected factors apply are subject to an inspection regardless of the period since their last periodic inspection.

– Ships which have been suspended or withdrawn from their class for safety reasons since the last inspection in the European Union or in the Paris MOU region.

– Ships carrying certificates issued by a formerly recognised organisation whose recognition has been withdrawn since the last inspection in the European Union or in the Paris MOU region.

– Ships which have been the subject of a report or notification by another Member State.

– Ships which cannot be identified in the inspection database.

– Ships which :

  – have been involved in a collision, grounding or stranding on their way to the port;

  – have been accused of an alleged violation of the provisions on discharge of harmful substances or effluents, or

  – have manoeuvred in an erratic or unsafe manner whereby routing measures, adopted by the IMO, or safe navigation practices and procedures have not been followed.

  – otherwise been operated in such a manner as to pose a danger to persons, property or the environment, or

  – not complied with recommendations on navigation adopted by the IMO.

– Ships which have been reported by pilots or port authorities as having defects which may prejudice their safe navigation or pose a threat of harm to the environment in accordance with Article 17 of this Directive .

– Ships which have failed to comply with the relevant notification requirements referred to in Article 6 of this Directive, in Directive 2000/59/EC, Directive 2002/59/EC and if appropriate in Regulation (EC) No. 725/2004.

– Ships which have been the subject of a report or complaint by the master, a crew member, or any person or organisation with a legitimate interest in the safe operation of the ship, shipboard living and working conditions or the prevention of pollution, unless the Member State concerned deems the report or complaint to be manifestly unfounded.

– Ships which have been previously detained more than three months ago.

– Ships which have been reported with outstanding deficiencies.

– Ships which have been reported with problems concerning their cargo, in particular noxious and dangerous cargoes.

– Ships which have been operated in such a manner as to pose a danger to persons, property or the environment.

**3. Scope of inspections**

Periodic and additional inspections shall include an examination of pre-identified areas for each ship which will vary according to the type of the ship, the type of inspection and the findings of previous port state controls. Periodic inspections of high risk ships and ships posing a higher risk due to their type and age, and re-inspections of ships to which a refusal of access order has been issued in accordance with Annex XII shall be more in-depth.

The inspection database will indicate the elements to identify the risk areas to be checked at each inspection.

**III – INSPECTION COMMITMENTS OF MEMBER STATES**

Member States shall contribute an equitable effort towards the objective of inspecting all eligible ships calling at EU ports.

A Member State shall carry out a proportion of the total number of inspections required in the Paris MOU Region. This proportion is based on the number of individual ships calling at ports of the Member State concerned relative to the sum of the number of individual ships calling at each Member State.

In addition the compliance of Member States with the above objective shall be evaluated in the light of the number of missed periodic inspections.

A mechanism shall be developed, as appropriate, for a fair sharing of the inspections between Member States.

⇩ new

## ANNEX III

**Notification**

**(as referred to in Article 6)**

1. The operator, agent or master of a ship eligible for an expanded inspection in accordance with Article 8(1) bound for a port or anchorage of a Member State shall notify the information listed below to the port authority or to the authority or body designated for that purpose at least three days before the expected time of arrival in the port or anchorage or before leaving the previous port or anchorage if the voyage is expected to take fewer than three days:

(a) ship identification (name, call sign, IMO identification number or MMSI number);

(b) planned duration of the call;

(c) for tankers:

(i) configuration: single hull, single hull with SBT, double hull;

(ii) condition of the cargo and ballast tanks: full, empty, inerted;

(iii) volume and nature of the cargo;

(d) planned operations at the port or anchorage of destination (loading, unloading, other);

(e) planned statutory survey inspections and substantial maintenance and repair work to be carried out whilst in the port or anchorage of destination;

(f) date of last expanded inspection in the Paris MOU.

2. The operators, agents or masters of other ships bound for a port of a Member State shall notify their arrival in accordance with Article 4 of Directive 2002/59/EC.

3. On receipt of the information listed above, the relevant port authority or body shall forward such information to the port State control competent authority. Electronic means shall be used whenever possible.

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

↓ 95/21/EC (adapted)

**ANNEX ⊠ IV ⊠ ~~II~~**

**LIST OF CERTIFICATES AND DOCUMENTS**

(⊠ as ⊠ referred to in Article 7~~6~~(1))

↓ 95/21/EC

1. International Tonnage Certificate (1969).

2. – Passenger Ship Safety Certificate;

– Cargo Ship Safety Construction Certificate;

– Cargo Ship Safety Equipment Certificate;

– Cargo Ship Safety Radiotelegraphy Certificate;

– Cargo Ship Safety Radiotelephony Certificate;

– Cargo Ship Safety Radio Certificate;

↓ 1999/97/EC Art. 1 pt. 4(a)

– Exemption certificate, including, where appropriate, the list of cargoes;

↓ 95/21/EC

– Cargo Ship Safety Certificate.

⇩ new

3. International Ship Security Certificate (ISSC).

4. Continuous Synopsis Record.

↓ 95/21/EC

5. ~~3.~~ International Certificate of Fitness for Carriage of Liquefied Gases in Bulk;

– Certificate of Fitness for the Carriage of Liquefied Gases in Bulk.

6. ~~4.~~ International Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk;

– Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk.

7. ~~5.~~ International Oil Pollution Prevention Certificate.

8. ~~6.~~ International Pollution Prevention Certificate for the Carriage of Noxious Liquid Substances in Bulk.

9. ~~7.~~ International Load Line Certificate (1966);

– International Load Line Exemption Certificate.

10. ~~8.~~ Oil record book, parts I and II.

11. ~~9.~~ Cargo record book.

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↓ 2001/106/EC Art. 1 pt. 20(a)
⇨ new

12. ~~10.~~ Minimum Safe Manning Document.

13. ~~10a.~~ Certificates ⇨ or any other documents ⇦ issued in accordance with the STCW Convention.

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↓ 95/21/EC

14. ~~11~~. Medical certificates, (see ILO Convention No 73 concerning Medical Examination of Seafarers).

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⇩ new

15. Table of shipboard working arrangements (ILO Convention No.180 and STCW 95).

16. Records of hours of work and rest of seafarers (ILO Convention No.180).

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↓ 95/21/EC

17. ~~12.~~ Stability information.

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↓ 98/42/EC Art. 1 pt. 2 and Annex pt. 2.1

18. ~~13.~~ Copy of the Document of Compliance and the Safety Management Certificate issued, in accordance with the International Management Code for the Safe Operation of Ships and for Pollution Prevention (SOLAS, Chapter IX).

↓ 95/21/EC
⇨ new

19. ~~14~~. Certificates as to the ship's hull strength and machinery installations issued by the ~~classification society~~ ⇨ recognised organisation ⇦ in question (only to be required if the ship maintains its class with a ~~classification society~~ ⇨ recognised organisation ⇦).

↓ 98/42/EC Art. 1 pt. 2 and Annex pt. 2.2
⇨ new

20. ~~15~~. Document of compliance with the special requirements for ships carrying dangerous goods.

21. ~~16~~. High speed craft safety certificate and permit to operate high speed craft.

22. ~~17~~. Dangerous goods special list or manifest, or detailed stowage plan.

23. ~~18~~. Ship's log book with respect to the records of tests and drills, ⇨ including security drills, ⇦ and the log for records of inspection and maintenance of lifesaving appliances and arrangements ⇨ and of fire fighting appliances and arrangements ⇦ .

24. ~~19~~. Special purpose ship safety certificate.

25. ~~20~~. Mobile offshore drilling unit safety certificate.

26. ~~21~~. For oil tankers, the record of oil discharge monitoring and control system for the last ballast voyage.

27. ~~22~~. The muster list, fire control plan, and for passenger ships, a damage control plan.

28. ~~23~~. Shipboard oil pollution emergency plan.

29. ~~24~~. Survey report files (in case of bulk carriers and oil tankers).

30. ~~25~~. Reports of previous port State control inspections.

31. ~~26~~. For ro-ro passenger ships, information on the A/A-maximum ratio.

32. ~~27~~. Document of authorization for the carriage of grain.

33. ~~28~~. Cargo securing manual.

↓ 1999/97/EC Art. 1 pt. 4(b)

34. ~~29~~. Garbage management plan and garbage record book.

35. ~~30~~. Decision support system for masters of passenger ships.

36. ~~31.~~ SAR cooperation plan for passenger ships trading on fixed routes.

37. ~~32.~~ List of operational limitations for passenger ships.

38. ~~33.~~ Bulk carrier booklet.

39. ~~34.~~ Loading and unloading plan for bulk carriers.

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↓ 2001/106/EC Art. 1 pt. 20(b)

40. ~~35.~~ Certificate of insurance or any other financial security in respect of civil liability for oil pollution damage (International Convention on Civil Liability for Oil Pollution Damage, 1992).

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⇩ new

41. Certificates required under Directive 2006/XX/EC concerning civil liability and financial guarantees of shipowners.

42. Certificate required under Regulation (EC) No. XXXX/2006 on the liability of carriers of passengers by sea and inland waterways in the event of accidents.

↓ 98/42/EC Art. 1 pt. 2 and Annex pt. 3 (adapted)
→1 2001/106/EC Art. 1 pt. 21

## ANNEX ⊠ V ⊠ ~~III~~

## EXAMPLES OF "~~«~~CLEAR GROUNDS"~~»~~ FOR A MORE DETAILED INSPECTION

(as referred to in Article 7 ~~6~~(3))

1. Ships identified in Annex I, Part B.I and Part B.II, paragraphs II-3, II-4, II-5b, II-5c→1 and II-8 ←.

2. The oil record book has not been properly kept.

3. During examination of the certificates and other documentation, ~~(see Article 6(1)(a) and (2)),~~ inaccuracies have been revealed.

↓ 98/42/EC Art. 1 pt. 2 and Annex pt. 3 (adapted)

4. Indications that the crew members are unable to comply with the requirements ⊠ related to on-board communication ⊠ ~~of~~ ⊠ set out in ⊠ Article ~~8~~ ⊠ 17 ⊠ of ~~Council~~ Directive ~~94/58/EC~~ ⊠ 2001/25/EC ⊠ of ⊠ the European Parliament and of the Council ⊠ ~~22 November 1994 on the minimum level of training of seafarers~~[1].

⇩ new

5. A certificate has been fraudulently obtained or the holder of a certificate is not the person to whom that certificate was originally issued,

6. The ship has a master, officer or rating holding a certificate issued by a country which has not ratified the STCW Convention.

↓ 98/42/EC Art. 1 pt. 2 and Annex pt. 3

7. ~~5.~~ Evidence of cargo and other operations not being conducted safely, or in accordance with IMO guidelines, e.g. the content of oxygen in the inert-gas main supply to the cargo tanks is above the prescribed maximum level.

8. ~~6.~~ Failure of the master on an oil tanker to produce the record of the oil discharge monitoring and control system for the last ballast voyage.

[1] OJ L 136, 18.5.2001, p. 17.

9. ~~7.~~ Absence of an up-to-date muster list, or crew members not aware of their duties in the event of fire or an order to abandon the ship.

10. ~~8.~~ The emission of false distress alerts not followed by proper cancellation procedures.

11. ~~9.~~ The absence of principal equipment or arrangements required by the conventions.

12. ~~10~~. Excessively unsanitary conditions on board the ship.

13. ~~11.~~ Evidence from the inspector's general impression and observations that serious hull or structural deterioration or deficiencies exist that may place at risk the structural, watertight or weathertight integrity of the ship.

14. ~~12~~. Information or evidence that the master or crew is not familiar with essential shipboard operations relating to the safety of ships or the prevention of pollution, or that such operations have not been carried out.

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⇩ new

15. The absence of a table of shipboard working arrangements or of records of hours of work or rest of seafarers.

↓ 98/42/EC Art. 1 pt. 2 and Annex pt. 4 (adapted)
⇨ new

**ANNEX ⊠ VI ⊠ ~~IV~~**

**PROCEDURES FOR THE CONTROL OF SHIPS**

(as referred to in Article 7 ~~6~~(~~4~~5))

1. Principles of safe manning (IMO Resolution ⊠ A.890(21) as amended) ⊠ ~~481(XII) and Annexes which are contents of Minimum Safe Manning Document (Annex 1) and Guidelines for the Application of Principles of Safe Manning (Annex 2)~~.

2. The provisions of the International Maritime Dangerous Goods Code.

3. International Labour Organisation (ILO) publication "~~«~~Inspection of Labour Conditions on Board Ship: Guidelines for procedures"~~»~~.

4. Annex I, "~~«~~Port State Control Procedures"~~»~~ to the Paris MOU ⇨ and the relevant instructions or guidelines issued by the Paris MOU ⇦ .

⇩ new

5. IMO Resolution MSC.159(78) (adopted on 21 May 2004) "Interim guidance on control and compliance measures to enhance maritime security".

⇩ new

## ANNEX VII

**Procedures for the control of ships on security aspects**

(as referred to in Article 7(6))

A. Prior to boarding.

1. This guidance applies only to ships mentioned in articles 3(1), 3(2) and 3(3) of Regulation (EC) No. 725/2004, as long as they do not fly the flag of the port state of inspection.

2. Inspectors should be aware of the security level of the port facility at which a ship is to be inspected.

3. Reports or complaints relating to security received by inspectors prior to boarding the ship should be passed to the competent authority for maritime security[1] who will decide on priority for security inspection by an Officer Duly Authorised for Security.

4. While the master of a ship has discretion for ship security, he is not entitled to deny access to a duly authorised inspector to carry out an inspection. There may be cases when it is mandatory to carry out a port State control inspection but the master attempts to limit the inspection on grounds of security. If the inspector considers this to be unreasonable he should consult the competent security authority.

5. Inspectors should be aware that on a ship at security level 3 the protective measures set up may restrict the scope of the "safety" port State control inspection.

For example a full emergency drill may not be allowed. There may also be circumstances where the competent security authority restricts port State control activity.

B. Initial inspection

During the initial inspection the inspector should:

1. while approaching and boarding the ship and moving around the ship take note of security aspects as defined in the relevant guidelines of the Paris MOU, taking into account the security level imposed by the port and ship. Inspectors are not required to test the security system and should only consider those aspects which arise during the course of their normal business on board;

2. check that the International Ship Security Certificate (ISSC) or the Interim ISSC is on board, valid and has been issued by the ship's Administration, an organisation authorised by it or by another State at the request of the Administration;

3. ask the master with which security level the ship is complying and confirm that this is at least the level imposed by the port;

[1] The Authority designated by the State for the application of security measures.

4. when checking other documentation ask for evidence that security drills have been carried out at appropriate intervals – at least every 3 months but also after certain crew changes - (ISPS Code Part A section 13 and Part B paragraphs 13.6 and 13.7) and seek information on any exercise involving the ship;

5. check the records of the last 10 calls at port facilities including any ship/port or ship/ship interfaces which should include for each interface:

– security level at which ship operated - any special or additional security measures that were taken,

– that appropriate ship security measures were maintained during any ship/ship activity.

6. assess whether key members of the ship's personnel are able to communicate effectively with each other.

C. Clear grounds

1. The inspector may establish clear grounds for further control measures on security during the initial PSC inspection as follows:

1.1. ISSC is not valid or it has expired

1.2. The ship is at a lower security level than the port

1.3. Drills related to the security of the ship have not been carried out

1.4. Records for the last 10 ship/port or ship/ship interfaces are incomplete

1.5. Evidence or observation that key members of ship's personnel cannot communicate with each other

1.6. Evidence from observations that serious deficiencies exist in security arrangements

1.7 Information from third parties such as a report or a complaint concerning security related information

1.8 The ship holds a subsequent, consecutively issued Interim International Ship Security Certificate (ISSC) and in the professional judgement of the inspector one of the purposes of the ship or company in requesting such a certificate is to avoid full compliance with SOLAS74 Ch XI-2 and part A of the ISPS Code, beyond the period of the initial Interim Certificate. ISPS Code Part A specify the circumstances when an Interim Certificate may be issued.

2. If clear grounds as described above are established the inspector will immediately inform the competent security authority (unless the inspector is also a Officer Duly Authorised for Security). The competent security authority will then decide on what further control measures are necessary taking into account the security level in accordance with Regulation 9 of SOLAS Chapter XI.

3. Clear grounds other than those above are a matter for the Officer Duly Authorised for Security.

D. Further control measures.

1. If there is no valid International Ship Security Certificate (ISSC) or Interim ISSC onboard the inspector will detain the ship and apply the detention procedure in Annex XI of this Directive.

2. All other control measures will be decided by the competent security authority. These are listed in SOLAS 74 Chapter XI-2.

3. Subject to applicable requirements in Community legislation, national legislation and arrangements the competent security authority may request the inspector to make further verifications before coming to a decision or until Officers Duly Authorised for Security can board the ship.

These verifications should be limited to:

(a) verifying that a security plan is on board and that a ship security officer (SSO) is on board;

(b) verifying that the master and ship's personnel, in particular the SSO, duty officer and person(s) controlling access, are familiar with essential shipboard security procedures;

(c) verifying that communication has been established between the SSO and the Port Facility Security Officer;

(d) verifying that records exist for maintaining the ship's security system including:

– internal audits and reviews of security activities,

– periodic review of the ship security assessment,

– periodic review of the ship security plan,

– implementation of any amendments to the ship security plan,

– maintenance, calibration and testing of any security equipment provided on board including testing of the ship security alert system;

(e) checking records of any:

– security threats,

– breaches of security,

– changes in security levels,

– communications relating to the direct security of the ship.

4. Where the only means to verify or rectify the non compliance is to review the relevant requirements of the ship security plan, limited access to specific sections of the plan relating to the non compliance is exceptionally allowed, but only with the consent of the flag State, or the master, of the ship concerned. These specific sections are listed in Part A of the ISPS Code.

5. Some provisions of the plan relating to certain confidential information cannot be subject to inspection unless agreed by the flag State concerned.

These specific sections are listed in Part A of the ISPS Code.

6. If the competent security takes further control actions which limit the scope of or prevent the completion of the "safety" port state control inspection the inspector should liaise with the competent security authority and endeavour to complete the safety inspection when the ship has been cleared. The principle of not unduly delaying a ship still applies. However the fact that security breaches have been found would normally justify the inspector completing the initial safety inspection or continuing where clear grounds for a more detailed inspection of non-security aspects have been found.

7. If the competent security authority decides to expel the ship the inspector should ensure that the competent security authority is made fully aware of the possible safety and/or environmental consequences of the ship leaving the berth and/or putting to sea. This may include risks arising from the interruption of cargo operations. The competent security authority should decide on the necessary action taking account of all risks.

8. If a ship is detained on non-security grounds but then expelled before the ship is finally released, the detention will count towards a refusal of access in accordance with Article 10.

↓ 2001/106/EC Art. 1 pt. 22 (adapted)

## ANNEX ⊠ VIII ⊠ ~~V~~

## ⊠ PROCEDURES FOR EXPANDED INSPECTIONS OF SHIPS ⊠

⊠ (as referred to in Article 8) ⊠

⇩ new

A. MEASURES TO FACILITATE THE CONDUCT OF AN EXPANDED INSPECTION

On reception of a pre-notification provided by a ship eligible for an expanded inspection, the competent authority shall inform the ship without delay whether or not an expanded inspection will be carried out.

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 or anchorage until the inspection is completed.

↓ 2001/106/EC Art. 1 pt. 22 (adapted)
⇨ new

B.~~A.~~ CATEGORIES OF SHIPS SUBJECT TO EXPANDED INSPECTION (as referred to in Article 8 ~~7~~(1))

1. Gas and chemical tankers older than ⇨ 12 ⇦ ~~10~~ years of age, as determined on the basis of the date of construction indicated in the ship's safety certificates.

2. Bulk carriers older than 12 years of age, as determined on the basis of the date of construction indicated in the ship's safety certificates.

3. Oil tankers with a gross tonnage of more than 3 000 ⊠ gt ⊠ ~~gross tonnes~~ and older than ⇨ 12 ⇦ ~~15~~ years of age, as determined on the basis of the date of construction indicated in the ship's safety certificates.

4. Passenger ships older than ⇨ 12 ⇦ ~~15~~ years of age other than the passenger ships referred to in Article 2(a) and (b) 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~~.

↓ 2001/106/EC Art. 1 pt. 22

**B. INFORMATION TO BE NOTIFIED TO THE COMPETENT AUTHORITY**

(as referred to in Article 7(3)(a)

A. name,

B. flag,

C. IMO identification number, if any,

D. dead-weight tonnage,

E. date of construction of the ship, as determined on the basis of the date indicated in the ship's safety certificates,

F. for tankers:

F.a. configuration: single hull, single hull with SBT, double hull,

F.b. condition of the cargo and ballast tanks: full, empty, inerted,

F.c. volume and nature of the cargo,

G. probable time of arrival at the port of destination or pilot station, as required by the competent authority,

H. planned duration of the call,

I. planned operations at the port of destination (loading, unloading, other),

J. planned statutory survey inspections and substantial maintenance and repair work to be carried out whilst in the port of destination.

C. PROCEDURES RELATING TO EXPANDED INSPECTION OF CERTAIN CATEGORIES OF SHIPS (as referred to in Article 8(4)) ~~7(5))~~

Subject to their practical feasibility or any constraints relating to the safety of persons, the ship or the port, the following items at least must be part of an expanded inspection. Inspectors must be aware that it may jeopardise the safe execution of certain on-board operations, e.g. cargo handling, if tests having a direct effect thereon are required to be carried out during such operations.

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↓ 2001/106/EC Art. 1 pt. 22 (adapted)

**1. SHIPS IN GENERAL (categories in ~~section A~~ ⌦ point B ⌫)**

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↓ 2001/106/EC Art. 1 pt. 22 (adapted)
⇨ new

– ⇨ Simulated main power failure (black-out test) ⇦ ~~Black-out and start of emergency generator,~~

– inspection of emergency lighting,

– operation of emergency fire-pump with two fire hoses connected to the fire main-line,

– operation of bilge pumps,

– closing of watertight doors,

– lowering of one lifeboat to the water,

– test of remote emergency stop for, e.g., boilers, ventilation and fuel pumps,

– testing of steering gear including auxiliary steering gear,

– inspection of emergency source of power to radio installations,

– inspection and, ⌦ as far as ⌫ ~~to the extent possible~~, test of engine room separator.

## 2. GAS AND CHEMICAL TANKERS

↓ 2001/106/EC Art. 1 pt. 22 (adapted)

In addition to the items listed under ~~section 1~~ ⌦ point C(1) ⌫ , the following items are to be considered as part of the expanded inspection for gas and chemical tankers:

↓ 2001/106/EC Art. 1 pt. 22

– cargo tank monitoring and safety devices relating to temperature, pressure and ullage,

– oxygen analysing and explosimeter devices, including their calibration. Availability of chemical detection equipment (bellows) with an appropriate number of suitable gas detection tubes for the specific cargo being carried,

– cabin escape sets giving suitable respiratory and eye protection for every person on board (if required by the products listed on the International Certificate of Fitness or Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk or Liquefied Gases in Bulk, as applicable),

– check that the product being carried is listed in the International Certificate of Fitness or Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk or Liquefied Gases in Bulk, as applicable,

– the fixed fire-fighting installations on deck, whether they be foam or dry chemical or other as required by the product carried.

## 3. BULK CARRIERS

↓ 2001/106/EC Art. 1 pt. 22 (adapted)

In addition to the items listed under ~~section 1~~ ⌦ point C(1) ⌫ , the following items are to be considered as part of the expanded inspection for bulk carriers:

↓ 2001/106/EC Art. 1 pt. 22

– possible corrosion of deck machinery mountings,

– possible deformation and/or corrosion of hatch covers,

– possible cracks or local corrosion in transverse bulkheads,

– access to cargo holds,

– verification that the following documents are on board, review them and confirm that the flag State or classification society has endorsed them:

(1) reports of structural surveys,

(2) condition evaluation reports,

(3) thickness measurement reports,

(4) descriptive document referred to by IMO resolution A.744(18).

## 4. OIL TANKERS

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↓ 2001/106/EC Art. 1 pt. 22 (adapted)

In addition to the items listed under ~~section 1~~ ⌦ point C(1) ⌫ , the following items are to be considered as part of an expanded inspection of oil tankers:

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↓ 2001/106/EC Art. 1 pt. 22

– fixed deck foam system,

– fire-fighting equipment in general,

– inspection of fire dampers in engine room, pump room and accommodation,

– control of pressure of inert gas and oxygen content thereof,

– ballast tanks: at least one of the ballast tanks within the cargo area to be examined from tank manhole/deck access in first instance and entered if inspector establishes clear ground for further inspection,

– verification that the following documents are on board, review them and confirm that the flag State or classification society has endorsed them:

(1) reports of structural surveys,

(2) condition evaluation reports,

(3) thickness measurement reports,

(4) descriptive document referred to by IMO resolution A.744(18).

## 5. PASSENGER SHIPS NOT COVERED BY DIRECTIVE 1999/35/EC

↓ 2001/106/EC Art. 1 pt. 22 (adapted)

In addition to the items listed under ~~section C 1~~ ⌦ point C(1) ⌫ , the following items may also be considered as part of the expanded inspection for passenger ships:

↓ 2001/106/EC Art. 1 pt. 22

– testing of fire detection and alarm system,

– testing of proper closing of fire doors,

– test of public address system,

– fire drill where, as a minimum, all sets of firemen's outfits must be demonstrated and part of the catering crew take part,

– demonstration that key crew members are acquainted with the damage control plan.

If deemed appropriate, the inspection may be continued while the ship is on passage to or from the port in the Member State, with the consent of the ship's master or the operator. Inspectors must not obstruct the operation of the ship, nor must they induce situations that, in the master's judgement, could endanger the safety of the passengers, the crew and the ship.

↓ 2001/106/EC Art. 1 pt. 22 (adapted)

**ANNEX ⊠ IX ⊠ ~~XI~~**

⇩ new

**PROVISIONS CONCERNING REFUSAL OF ACCESS TO COMMUNITY PORTS**

(as referred to in Article 10)

↓ 2001/106/EC Art. 1 pt. 25

~~A. CATEGORIES OF SHIPS SUBJECT TO REFUSAL OF ACCESS TO COMMUNITY PORTS~~

~~(as referred to in Article 7b9(1))~~

~~1. Gas and chemical tankers.~~

~~2. Bulk carriers.~~

~~3. Oil tankers.~~

~~4. Passenger ships.~~

⇩ new

A. CRITERIA FOR REFUSAL OF ACCESS (as referred to in Article 10(1))

1. The refusal of access is applicable to any ship flying the flag of a State whose detention rate falls into the black list or grey list as defined by the Paris MOU which has been detained or issued with a prevention of operation order under Council Directive 99/35/EC more than twice in the course of the preceding 36 months in a port of a Member State or of a State signatory of the MOU.

2. For the purposes of paragraph1, the list defined by the Paris MOU shall enter into force as from 1 July each year.

↓ 2001/106/EC Art. 1 pt. 25 (adapted)
⇨ new

B. PROCEDURES RELATING TO REFUSAL OF ACCESS TO COMMUNITY PORTS (as referred to in Article 10(1)) ~~7b~~

1. If the conditions described in ⌦ Point A ⌫ ~~Article 7b~~ are met, the competent authority of the port ⇨ or anchorage ⇦ in which the ship is detained for the ~~second or~~ third time~~, as appropriate,~~ ⌦ shall ⌫ ~~must~~ inform the ⇨ master ⇦ ~~captain and the owner or the operator~~ of the ship in writing ⇨ that a refusal of access order will be issued which will become applicable immediately after the ship has left the port or anchorage ⇦ ~~of the access refusal order served on the ship~~ ⇨ . The refusal of access order shall become applicable immediately after the ship has left the port or anchorage after the deficiencies leading to the detention have been remedied. ⇦

2. The competent authority ⌦ shall ⌫ ~~must~~ ⇨ send a copy of the order of refusal of access to ⇦ ~~inform~~ the flag State administration, the recognised organisation concerned, the other Member States ⇨ , and the other signatories to the MOU, ⇦ the Commission ~~the Centre administratif des affaires maritimes~~ and the ⌦ Paris ⌫ MOU Secretariat. ⇨ The competent authority shall also update the inspection database with information on the refusal of access without delay ⇦.

~~The access refusal order will take effect as soon as the ship has been authorised to leave the port after the deficiencies leading to the detention have been remedied.~~

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⇩ new

3. 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 4 to 10 are met.

If the ship is subject to a second refusal of access, the period shall be of twelve months. Any subsequent detention in a port of the Community shall result in the ship being permanently refused access in any port or anchorage within the Community.

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🡻 2001/106/EC Art. 1 pt. 25
⇨ new

4. ~~2.~~ In order to have the access refusal order lifted, the owner or the operator must address a formal request to the competent authority of the Member State that imposed the access refusal order. This request must be accompanied by a ⇨ document ⇦ ~~certificate~~ from the flag State administration ⇨ issued following an on-board visit by a surveyor duly authorized by the flag State administration, ⇦ showing that the ship fully conforms to the applicable provisions of the international C~~c~~onventions. ⇨ The flag State administration shall provide evidence to the competent authority that a visit on board has taken place. ⇦

5. The request for the lifting of the access refusal order must also be accompanied, where appropriate, by a ⇨ document ⇦ ~~certificate~~ from the classification society which has the ship in class ⇨ following an on-board visit by a surveyor from the classification society, ⇦ showing that the ship conforms to the class standards stipulated by that society. ⇨ The classification society shall provide evidence to the competent authority that a visit on board has taken place. ⇦

6. ~~3.~~ The access refusal order may be lifted only ⇨ , after the period of three months referred to in paragraph 3 above has elapsed and ⇦ following a re-inspection of the ship at an agreed port ⇨ or anchorage. ⇦ ~~by inspectors of the competent authority of the Member State that imposed the access refusal order and if evidence is provided to the satisfaction of this Member State that the vessel fully complies with the applicable requirements of the International Conventions~~

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↓ 2001/106/EC Art. 1 pt. 25 (adapted)
⇨ new

~~If the agreed port is located within the Community,~~ If the agreed port or anchorage is located in a Member State, the competent authority of ~~the Member State of the~~ ⇨ that State ⇦ ~~port of destination~~ may, ⌦ at the request ⌫ ~~with the agreement~~ of the competent authority ~~of the Member State that imposed~~ ⇨ which issued ⇦ the access refusal order, authorise the ship to ⇨ enter the agreed port in order to carry out the re-inspection ⇦ ~~proceed to the port of destination in question, for the sole purpose of verifying that the ship meets the conditions specified in paragraph 2~~. ⇨ In such cases, no cargo operations shall take place at the port until the refusal of access order has been lifted. ⇦

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⇩ new

7. If the detention which led to the issue of a refusal of access order included deficiencies in the ship's structure, the competent authority which issued the refusal of access order may require that certain spaces, including cargo spaces and tanks, are made available for examination during the re-inspection.

8. The re-inspection shall be carried out by the competent authority of the Member State that imposed the refusal of access order, or by the competent authority of the port of destination with the agreement of the competent authority of the Member State that imposed the refusal of access order. The competent authority may require up to 14 days notice for the re-inspection. Evidence shall be provided to the satisfaction of this Member State that the ship fully complies with the applicable requirements of the International Conventions.

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↓ 2001/106/EC Art. 1 pt. 25 (adapted)

9. The re-inspection shall consist of an expanded inspection that must cover at least the relevant items of Annex VIII ~~V~~, ~~section~~ ⌦ point ⌫ C.

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↓ 2001/106/EC Art. 1 pt. 25

10. All costs of this expanded inspection will be borne by the owner or the operator.

↓ 2001/106/EC Art. 1 pt. 25 (adapted)
⇨ new

11. ~~4.~~ If the results of the expanded inspection satisfy the Member State in accordance with ~~paragraph 2~~ ⌦ Annex VIII point C ⌫, the access refusal order must be lifted ⌦ and the company of the ship informed thereof in writing. ⌫ ~~The owner or the operator of the ship must be informed thereof in writing.~~

12. The competent authority ⌦ shall ⌫ ~~must~~ also notify its decision in writing to the flag State administration, the classification society concerned, the other Member States, ⇨ the other signatories to the Paris MOU, ⇦ the Commission, ~~the Centre administratif des affaires maritimes~~ and the ⌦ Paris ⌫ MOU Secretariat. ⇨ The competent authority must also update the inspection database with information on the removal of the access without delay. ⇦

~~5~~ 13. Information relating to ships that have been refused access to Community ports must be made available in the ~~SIReNaC system~~ ⌦ inspection database ⌫ and published in conformity with the provisions of Article ~~15~~ 19 and of Annex ~~VIII~~ XIV.

## ~~ANNEX XII~~

### ~~International and Community requirements concerning voyage data recorder systems~~

~~Ships in the following classes must, inasmuch as they call at a port of a Member State of the Community, be fitted with a voyage data recorder system meeting the performance standards of IMO Resolution A.861(20) and the testing standards set by Standard No 61996 of the International Electronics Commission (IEC):~~

~~(a) passenger ships built on or after 1 July 2002,~~

~~(b) ro-ro passenger ships built before 1 July 2002, not later than the first survey on or after 1 July 2002,~~

~~(c) passenger ships other than ro-ro passenger ships, built before 1 July 2002, not later than 1 January 2004,~~

~~(d) ships other than passenger ships, of 3 000 gross tonnage and upwards, built on or after 1 July 2002.~~

~~Ships in the following classes and built before 1 July 2002 must, inasmuch as they call at a port of a Member State of the Community, be fitted with a voyage data recorder system meeting the relevant IMO standards:~~

~~(a) cargo ships of 20 000 gross tonnage and upwards, not later than the date fixed by the IMO or, in the absence of a decision in IMO, not later than 1 January 2007,~~

~~(b) cargo ships of 3 000 gross tonnage and upwards but less than 20 000 gross tonnage, not later than the date fixed by the IMO or, in the absence of a decision in IMO, not later than 1 January 2008.~~

↓ 2001/106/EC Art. 1 pt. 25 (adapted)
⇨ new

**ANNEX ⌦ X ⌫ ~~IX~~**

**Inspection report**

(as referred to in Article 11)~~8~~

The inspection report must contain at least the following items.

**I. GENERAL**

1. Competent authority that wrote the report
2. Date and place of inspection
3. Name of the ship inspected
4. Flag
5. Type of ship ⇨ (as indicated in the Safety Management Certificate) ⇦
6. IMO number
7. Call sign
8. Tonnage (gt)
9. Deadweight tonnage (where relevant)
10. Year of construction as determined on the basis of the date indicated in the ship's safety certificates
11. The ⇨ recognised organisation or recognised organisations ⇦ ~~classification society or classification societies~~, where relevant, which has/have issued to this ship the class certificates, if any
12. The ⇨ recognised organisation or recognised organisations ⇦ ~~classification society or classification societies~~ and/or any other party which has/have issued to this ship certificates in accordance with the applicable conventions on behalf of the flag State
13. Name and address of the ship's owner or the operator
14. Name and address of the charterer responsible for the selection of the ⌦ ship ⌫ ~~vessel~~ and type of charter in the case of ships carrying liquid or solid cargoes in bulk

15. Final date of writing the inspection report

16. Indication that detailed information on an inspection or a detention may be subject to publication.

## II. INFORMATION RELATING TO INSPECTION

1. Certificates issued in application of the relevant international conventions, authority or organisation that issued the certificate(s) in question, including the date of issue and expiry

2. Parts or elements of the ship that were inspected (in the case of more detailed or expanded inspection)

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⇩ new

3. Port and date of the last intermediate or annual survey and the name of the organisation which carried out the survey

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🡻 2001/106/EC Art. 1 pt. 25)

4. ~~3.~~ Type of inspection (inspection, more detailed inspection, expanded inspection)

5. ~~4.~~ Nature of the deficiencies

6. ~~5.~~ Measures taken.

## III. ADDITIONAL INFORMATION IN THE EVENT OF DETENTION

1. Date of detention order

2. Date of lifting the detention order

3. Nature of the deficiencies warranting the detention order (references to Conventions, if relevant)

~~4. Information on the last intermediate or annual survey~~

4. ~~5.~~ Indication, where relevant, of whether the classification society or any other private body that carried out the survey has a responsibility in relation to the deficiencies which, alone or in combination, led to detention

5. ~~6.~~ Measures taken.

↓ 95/21/EC (adapted)

## ANNEX ⊠ XI ⊠ ~~VI~~

## CRITERIA FOR DETENTION OF A SHIP

(as referred to in Article 13(4) ~~9 (3)~~)

**INTRODUCTION**

Before determining whether deficiencies found during an inspection warrant detention of the ship involved, the inspector must apply the criteria mentioned below in ~~sections~~ ⊠ points ⊠ 1 and 2.

~~Section~~ ⊠ Point ⊠ 3 includes examples of deficiencies that may for themselves warrant detention of the ship involved (see Article ~~9~~13(4)).

↓ 98/42/EC Art. 1 pt. 2 and Annex pt. 5.1 (adapted)

Where the ground for detention is the result of accidental damage suffered on the ship's voyage to a port, no detention order shall be issued, provided that:

(a) ~~1.~~ due account has been given to the requirements contained in Regulation I/11(c) of SOLAS 74 regarding notification to the flag State administration, the nominated surveyor or the recognised organisation responsible for issuing the relevant certificate;

(b) ~~2.~~ prior to entering a port, the master or shipowner has submitted to the port State control authority details on the circumstances of the accident and the damage suffered and information about the required notification of the flag State administration;

(c) ~~3.~~ appropriate remedial action, to the satisfaction of the Authority, is being taken by the ship; and

(d) ~~4.~~ the authority has ensured, having been notified of the completion of the remedial action, that deficiencies which were clearly hazardous to safety, health or the environment have been rectified.

↓ 95/21/EC

**1. MAIN CRITERIA**

When exercising his professional judgement as to whether or not a ship should be detained the inspector must apply the following criteria:

**Timing:**

Ships which are unsafe to proceed to sea must be detained upon the first inspection irrespective of how much time the ship will stay in port.

**Criterion:**

The ship is detained if its deficiencies are sufficiently serious to merit an inspector returning to satisfy himself that they have been rectified before the ship sails.

The need for the inspector to return to the ship is a measure of the seriousness of the deficiencies. However, it does not impose such an obligation for every case. It implies that the authority must verify one way or another, preferably by a further visit, that the deficiencies have been rectified before departure.

## 2. APPLICATION OF MAIN CRITERIA

When deciding whether the deficiencies found in a ship are sufficiently serious to merit detention the inspector must assess whether:

1. the ship has relevant, valid documentation;

2. the ship has the crew required in the Minimum Safe Manning Document.

During inspection the inspector must further assess whether the ship and/or crew is able to:

3. navigate safely throughout the forthcoming voyage;

4. safely handle, carry and monitor the condition of the cargo throughout the forthcoming voyage;

5. operate the engine room safely throughout the forthcoming voyage;

6. maintain proper propulsion and steering throughout the forthcoming voyage;

7. fight fires effectively in any part of the ship if necessary during the forthcoming voyage;

8. abandon ship speedily and safely and effect rescue if necessary during the forthcoming voyage;

9. prevent pollution of the environment throughout the forthcoming voyage;

10. maintain adequate stability throughout the forthcoming voyage;

11. maintain adequate watertight integrity throughout the forthcoming voyage;

12. communicate in distress situations if necessary during the forthcoming voyage;

13. provide safe and healthy conditions on board throughout the forthcoming voyage;

↓ 2001/106/EC Art. 1 pt. 23(a)

14. provide the maximum of information in case of accident.

↓ 95/21/EC

If the answer to any of these assessments is negative, taking into account all deficiencies found, the ship must be strongly considered for detention. A combination of deficiencies of a less serious nature may also warrant the detention of the ship.

3. To assist the inspector in the use of these guidelines, there follows a list of deficiencies, grouped under relevant conventions and/or codes, which are considered of such a serious nature that they may warrant the detention of the ship involved. This list is not intended to be exhaustive.

↓ 98/42/EC Art. 1 pt. 2 and Annex pt. 5.2

~~However, the detainable deficiencies in the area of STCW 78 listed under item 3.8 below are the only grounds for detention under this Convention.~~

↓ 95/21/EC (adapted)
→1 2001/106/EC Art. 1 pt. 23(b)
⇨ new

### *3.1. General*

→1 The lack of valid certificates and documents ← as required by the relevant instruments. However, ships flying the flag of States not party to a Convention (relevant instrument) or not having implemented another relevant instrument, are not entitled to carry the certificates provided for by the Convention or other relevant instrument. Therefore, absence of the required certificates should not by itself constitute reason to detain these ships; however, in applying the «no more favourable treatment» clause, substantial compliance with the provisions is required before the ship sails.

### *3.2. Areas under the Solas Convention ~~(References are given in brackets)~~*

1. Failure of the proper operation of propulsion and other essential machinery, as well as electrical installations.

2. Insufficient cleanliness of engine room, ⌦ excessive ⌫ amount of oily-water mixtures in bilges, insulation of piping including exhaust pipes in engine room contaminated by oil, improper operation of bilge pumping arrangements.

3. Failure of the proper operation of emergency generator, lighting, batteries and switches.

4. Failure of the proper operation of the main and auxiliary steering gear.

5. Absence, insufficient capacity or serious deterioration of personal life-saving appliances, survival craft and launching arrangements.

6. Absence, non-compliance or substantial deterioration of fire detection system, fire alarms, firefighting equipment, fixed fire-extinguishing installation, ventilation valves, fire dampers, quick-closing devices to the extent that they cannot comply with their intended use.

7. Absence, substantial deterioration or failure of proper operation of the cargo deck area fire protection on tankers.

8. Absence, non-compliance or serious deterioration of lights, shapes or sound signals.

9. Absence or failure of the proper operation of the radio equipment for distress and safety communication.

10. Absence or failure of the proper operation of navigation equipment, taking the provisions of Solas Regulation ⌦ V/16.2 ⌫ ~~V/12(o)~~ into account.

11. Absence of corrected navigational charts, and/or all other relevant nautical publications necessary for the intended voyage, taking into account that ⇨ a type approved electronic chart display and information system (ECDIS) operating on official data ⇦ ~~electronic charts~~ may be used as a substitute for the charts.

12. Absence of non-sparking exhaust ventilation for cargo pump rooms ~~(Solas Regulation II-2/59.3.1)~~.

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↓ 98/42/EC Art. 1 pt. 2 and Annex pt. 5.3 (adapted)

13. Serious deficiency in the operational requirements, as described in Section 5.5 of Annex I to the ⌦ Paris ⌫ MOU.

14. Number, composition or certification of crew not corresponding with the safe manning document.

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↓ 2001/106/EC Art. 1 pt. 23(c)

15. Failure to carry out the enhanced survey programme in accordance with SOLAS 74, Chapter XI, Regulation 2.

~~16. Absence or failure of a VDR, when its use is compulsory.~~

↓ 95/21/EC (adapted)

### *3.3. Areas under the IBC Code ~~(References are given in brackets)~~*

1. Transport of a substance not mentioned in the Certificate of Fitness or missing cargo information ~~16.2)~~.

2. Missing or damaged high-pressure safety devices ~~(8.2.3)~~.

3. Electrical installations not intrinsically safe or not corresponding to code requirements ~~(10.2.3)~~.

4. Sources of ignition in hazardous locations ~~referred to in 10.2 (11.3.15)~~.

5. Contraventions of special requirements ~~(15)~~.

6. Exceeding of maximum allowable cargo quantity ~~quality~~ per tank ~~(16.1)~~.

7. Insufficient heat protection for sensitive products ~~(16.6)~~.

### *3.4. Areas under the IGC Code ~~(References are given in brackets)~~*

1. Transport of a substance not mentioned in the Certificate of Fitness or missing cargo information ~~(18.1)~~.

2. Missing closing devices for accommodation~~s~~ or service spaces ~~(3.2.6)~~.

3. Bulkhead not gastight ~~(3.3.2)~~.

4. Defective air locks ~~(3.6)~~.

5. Missing or defective quick-closing valves ~~(5.6)~~.

6. Missing or defective safety valves ~~(8.2)~~.

7. Electrical installations not intrinsically safe or not corresponding to code requirements ~~(10.2.4)~~.

8. Ventilators in cargo area not operable ~~(12.1)~~.

9. Pressure alarms for cargo tanks not operable ~~(13.4.1)~~.

10. Gas detection plant and/or toxic gas detection plant defective ~~(13.6)~~.

11. Transport of substances to be inhibited without valid inhibitor certificate ~~(17/19)~~.

### *3.5. Areas under the Load Lines Convention*

1. Significant areas of damage or corrosion, or pitting of plating and associated stiffening in decks and hull affecting seaworthiness or strength to take local

loads, unless proper temporary repairs for a voyage to a port for permanent repairs have been carried out.

2. A recognized case of insufficient stability.

3. The absence of sufficient and reliable information, in an approved form, which by rapid and simple means, enables the master to arrange for the loading and ballasting of his ship in such a way that a safe margin of stability is maintained at all stages and at varying conditions of the voyage, and that the creation of any unacceptable stresses in the ship's structure are avoided.

4. Absence, substantial deterioration or defective closing devices, hatch closing arrangements and watertight doors.

5. Overloading.

6. Absence of draft mark or draft mark impossible to read.

***3.6. Areas under the Marpol Convention, Annex I ~~(References are given in brackets)~~***

1. Absence, serious deterioration or failure of proper operation of the oily-water filtering equipment, the oil discharge monitoring and control system or the 15 ppm alarm arrangements.

2. Remaining capacity of slop and/or sludge tank insufficient for the intended voyage.

3. Oil Record Book not available ~~(20 (5))~~.

4. Unauthorized discharge bypass fitted.

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↓ 2001/106/EC Art. 1 pt. 23(d)

5. Survey report file missing or not in conformity with Regulation 13G(3)(b) of the Marpol Convention.

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↓ 95/21/EC (adapted)

***3.7. Areas under the Marpol Convention, Annex II ~~(References are given in brackets)~~***

1. Absence of the P&A Manual.

2. Cargo is not categorized ~~(3 (4))~~.

3. No cargo record book available ~~(9 (6))~~.

4. Transport of oil-like substances without satisfying the requirements or without an appropriately amended certificate ~~(14)~~.

5. Unauthorized discharge bypass fitted.

⇩ new

***3.8. Areas under the Marpol Convention, Annex V***

1. Absence of the garbage management plan.

2. No garbage record book available.

3. Ship's personnel not familiar with disposal/discharge requirements of garbage management plan.

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🡻 95/21/EC
⇨ new

***~~3.8~~3.9 Areas under the STCW Convention ⇨ and Directive 2001/25/EC of the European Parliament and of the Council ⇦***

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🡻 98/42/EC Art. 1 pt. 2 and Annex pt. 5.4
⇨ new

1. Failure of seafarers to hold a certificate, to have an appropriate certificate, to have a valid dispensation or to provide documentary proof that an application for an endorsement has been submitted to the flag State administration.

⇨ 2. Evidence that a certificate has been fraudulently obtained or the holder of a certificate is not the person to whom that certificate was originally issued. ⇦

3. ~~2~~. Failure to comply with the applicable safe manning requirements of the flag state administration.

4. ~~3.~~ Failure of navigational or engineering watch arrangements to conform to the requirements specified for the ship by the flag State administration.

5. ~~4~~. Absence in a watch of a person qualified to operate equipment essential to safe navigation, safety radio communications or the prevention of marine pollution.

6. ~~5.~~ Failure to provide proof of professional proficiency for the duties assigned to seafarers for the safety of the ship and the prevention of pollution.

7. ~~6.~~ 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.

↓ 95/21/EC
⇨ new

***3.10*** ~~***3.9.***~~ ***Areas under the ILO Conventions***

1. Insufficient food for voyage to next port.

2. Insufficient potable water for voyage to next port.

3. Excessively unsanitary conditions on board.

4. No heating in accommodation of a ship operating in areas where temperatures may be excessively low.

5. Excessive garbage, blockage by equipment or cargo or otherwise unsafe conditions in passageways/accommodations.

⇨ 6. Clear evidence that watch keeping and other duty personnel for the first watch or subsequent relieving watches are impaired by fatigue ⇦

***3.11*** ~~***3.10.***~~ ***Areas which may not warrant a detention, but where e.g. cargo operations have to be suspended.***

Failure of the proper operation (or maintenance) of inert gas system, cargo-related gear or machinery are considered sufficient grounds for stopping cargo operation.

↓ 95/21/EC (adapted)
→1 Corrigendum 95/21/EC
(OJ L 291, 14.11.1996, p. 42)

## ANNEX ⊠ XII ⊠ ~~VII~~

## MINIMUM CRITERIA FOR INSPECTORS

→1 (as referred to in Article 16 ~~12~~(1) and (5)) ←

⇩ new

1. Inspectors must have appropriate theoretical knowledge and practical experience of ships and their operation. They must be competent in the enforcement of the requirements of international Conventions and of the relevant port State control procedures. This knowledge and competence in enforcing international and Community requirements must be acquired through documented training programmes including examination and revalidation at intervals specified in Article 16.

↓ 95/21/EC (adapted)

~~1. The inspector must be authorized to carry out port State control by the competent authority of the Member State.~~

2. ⊠ Inspectors must, as a minimum, have ⊠ either:

⇩ new

(a) appropriate qualifications from a marine or nautical institution and relevant seagoing experience as a certificated ship officer holding or having held a valid STCW II/2 or III/2 certificate of competency; or

↓ 95/21/EC (adapted)
⇨ new

(b)~~(c)~~ passed an examination ⇨ recognised by the competent Authority ⇦ as a naval architect, mechanical engineer or an engineer related to the maritime fields and worked in that capacity for at least five years; ⇨ or ⇦

⊠ (c) a relevant university degree or equivalent and have trained and qualified at a school for ship safety inspectors. ⊠

↓ 95/21/EC (adapted)

3. The inspector must have completed a minimum of one year's service as a flag-State inspector dealing with surveys and certification in accordance with the Conventions.

4. The inspectors mentioned under ⌦ 2(a) ⌫ ~~(a) and (b)~~ must have served for a period of not less than five years at sea as officers in the deck- or engine-department respectively.

~~– and be in possession of:~~

~~(a) a certificate of competency as master, enabling that person to take command of a ship of 1 600 GT or more (see STCW, Regulation II/2); or~~

~~(b) a certificate of competency as chief engineer enabling him to take up that task on board a ship whose main power plant has a power equal or superior to 3 000 KW, (see STCW, Regulation III/2); or~~

~~(c) have passed an examination as a naval architect, mechanical engineer or an engineer related to the maritime fields and worked in that capacity for at least five years,;~~

~~– The inspectors mentioned under (a) and (b) must have served for a period of not less than five years at sea as officer in the deck- or engine-department respectively.~~

~~Or:~~

~~The inspector must:~~

~~– hold a relevant university degree or an equivalent training, and~~

~~– have been trained and qualified at a school for ship safety inspectors, and~~

~~– have served at least two years as a flag-State inspector dealing with surveys and certification in accordance with the Conventions.~~

5. ~~3.~~ ⌦ The inspectors must have the ⌫ ability to communicate orally and in writing with seafarers in the language most commonly spoken at sea.

~~4. Appropriate knowledge of the provisions of the international Conventions and of the relevant procedures on port State control.~~

6. ~~5.~~ Inspectors not fulfilling the above criteria are also accepted if they are employed by the competent authority of a Member State for port State control at the date of adoption of this Directive.

⇩ new

7. Where in a Member State inspections referred to in Article 7(5) are performed by port State control inspectors; those inspectors shall have appropriate qualifications, which shall include sufficient theoretical and practical experience in maritime security. This shall normally include:

(a) a good understanding of maritime security and how it is applied to the operations being examined;

(b) a good working knowledge of security technologies and techniques;

(c) a knowledge of inspection principles, procedures and techniques;

(d) a working knowledge of the operations being examined.

⇩ new

## ANNEX XIII

**Report from Pilot or Port Authority to Port State or Coastal State.**

(as referred to in Article 17(1))

| | |
|---|---|
| Date | |
| Port/position | |

Ship information

| | |
|---|---|
| Name | |
| IMO number | |
| Call Sign | |
| Flag | |

Defects

| Description | |
|---|---|
| 1 | |
| 2 | |
| 3 | |
| 4 | |
| 5 | |
| 6 | |
| … | |

Sailing Information

| | | | |
|---|---|---|---|
| From (port/anchorage) | | Date | |
| To (port/anchorage) | | Date | |

Actions initiated by competent authority

| | Description |
|---|---|
| 1 | |
| 2 | |
| 3 | |
| 4 | |
| 5 | |
| 6 | |
| … | |

*Name of the pilot/port representative:*

Competent authority:

↓ 2001/106/EC Art. 1 pt. 24 (adapted)

## ANNEX ⊠ XIV ⊠ ~~VIII~~

**Publication of information related to ~~detentions and~~ inspections, ⊠ detentions and refusals of access ⊠ in ports of Member States**

(as referred to in Article 19(1) ~~15~~)

⇩ new

1. Members States shall publish the information listed in paragraphs 3.1 and 3.2 below in a public website within 72 hours after the inspection has been completed or the detention has been lifted or the refusal of access has been imposed.

2. The Commission shall publish regularly in a website the information relating to ships that have been refused access to Community ports in application of Articles 10 and 15.

↓ 2001/106/EC Art. 1 pt. 24 (adapted)
⇨ new

3. ~~1.~~ Information published in accordance with Article 19 ~~15~~ (1) must include the following:

(a) name of the ship,

(b) IMO number,

(c) type of ship,

(d) tonnage (gt),

(e) year of construction as determined on the basis of the date indicated in the ship's safety certificates,

(f) name and address of the ⇨ company ⇦ ~~shipowner or operator~~ of the ship,

(g) in the case of ships carrying liquid or solid cargoes in bulk, the name and address of the charterer responsible for the selection of the ⊠ ship ⊠ ~~vessel~~ and the type of charter,

(h) flag State,

~~– the classification society or classification societies, where relevant, which has/have issued to this ship the class certificates, if any;~~

– the classification society or classification societies and/or any other party which has/have issued to this ship certificates in accordance with the applicable conventions on behalf of the flag State, stating the certificates delivered,

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⇩ new

(i) class and statutory certificates issued in accordance with the relevant international Conventions, and the authority or organisation that issued each one of the certificates in question, including the date of issue and expiry,

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🡻 2001/106/EC Art. 1 pt. 24 (adapted)
⇨ new

– port and date of the last expanded inspection stating, where appropriate, whether a detention was ordered,

(j) port and date of the last ⇨ intermediate or annual ⇦ special survey ⇨ for the certificates in point (i) above ⇦ and the name of the ⇨ authority or ⇦ organisation which carried out the survey,

– number of detentions during the 24 previous months,

(k) ⇨ date, ⇦ country, and port ⇨ or anchorage ⇦ of detention,

– date when the detention was lifted,

– duration of detention, in days,

– number of deficiencies found and the reasons for detention, in clear and explicit terms,

– description of the measures taken by the competent authority and, where relevant, by the classification society as a follow-up to detention,

– if the ship has been refused access to any port within the Community, the reasons for such measure in clear and explicit terms,

– indication, where relevant, of whether the classification society or any other private body that carried out the survey has a responsibility in relation to the deficiencies which, alone or in combination, led to detention,

– description of the measures taken in the case of a ship which has been allowed to proceed to the nearest appropriate repair yard, or which has been refused access to a Community port.

4. II. ⇨ For ships which have been detained, information published in accordance with Article 19 must also include ⇦ Information concerning ships inspected made public in accordance with Article 15(2) must include the following:

~~– name of the ship,~~

~~– IMO number,~~

~~– type of ship,~~

~~– tonnage (gt),~~

~~– year of construction,~~

~~– name and address of shipowner or operator of the ship,~~

~~– in the case of ships carrying liquid or solid cargoes in bulk, the name and address of the charterer responsible for the selection of the vessel and the type of charter,~~

~~– flag State,~~

~~– the classification society or classification societies, where relevant, which has/have issued to this ship the class certificates, if any,~~

~~– the classification society or classification societies and/or any other party which has/have issued to this ship certificates in accordance with the applicable conventions on behalf of the flag State, stating the certificates delivered,~~

~~– country, port and date of inspection,~~

~~– number and nature of deficiencies.~~

⌦ (a) number of detentions during the previous ⌫ ⇨ 36 ⇦ ~~24~~ ⌦ ~~previous~~ months ⌫,

⌦ (b) date when the detention was lifted, ⌫

⌦ (c) duration of detention, in days, ⌫

⌦ (d) the reasons for detention, in clear and explicit terms, ⌫

⌦ (e) indication, where relevant, of whether the recognised organisation that carried out the survey has a responsibility in relation to the deficiencies which, alone or in combination, led to detention, ⌫

⌦ (f) description of the measures taken in the case of a ship which has been allowed to proceed to the nearest appropriate repair yard, ⌫

⌦ (g) if the ship has been refused access to any port within the Community, the reasons for the measure in clear and explicit terms, ⌫

⇩ new

## ANNEX XV

**Blacklist of operators and companies**

(as referred to in Article 20)

The blacklist of operators and companies shall include the name and address of :

– ship operators and companies operating a ship or ships that have been refused access in a port of a Member State during the last 12 months;

– ship operators or companies operating a fleet in which more than one ship has been detained in a port of a Member State during the last 12 months;

– ship operators or companies with one ship detained more than once in a port of a Member State during the last 12 months.

↓ 2001/106/EC Art. 1 pt. 25 (adapted)
⇨ new

**ANNEX ⌦ XVI ⌫ ~~V~~**

**Data provided in the context of monitoring implementation ~~in application of Article 17~~**

⌦ (as referred to in Article 22) ⌫

1. Every year Member States must provide the Commission with the following data for the preceding year by 1 ⇨ July ⇦ ~~April~~ at the latest.

1.1. Number of inspectors acting on their behalf in the framework of port State control ~~of shipping~~.

This information must be communicated to the Commission using the following model table ⌦ (1) (2). ⌫

| Port/area | Number of full-time inspectors ⌦ (A) ⌫ | number of part-time inspectors ⌦ (B) ⌫ | Conversion ⌦ of (B) ⌫ to full-time ⌦ (C) ⌫ | ⇨ Total ⇦ ⇨ (A+C) ⇦ |
|---|---|---|---|---|
| Port X …. | | | | |
| Port Y …. | | | | |
| TOTAL | | | | |

(1) Where the inspections carried out in the context of port State control represent only part of the inspectors' work, the total number of inspectors must be converted to a number equivalent to full-time inspectors. ⇨ Where the same inspector works in more than one port or geographical area the applicable part-time equivalent must be counted in each port ⇦.

⌦ (2) ⌫ This information must be provided at national level and for each port of the Member State concerned. For the purposes of this Annex, a port is taken to mean an individual port and the geographical area covered by an inspector or team of inspectors, comprising several individual ports where appropriate. ~~The same inspector may work in more than one port/geographical area.~~

1.2. Total number of individual ships that entered their ports at national level. ⇨ The figure shall be the number of foreign ships covered by the Directive that entered their ports at national level counted only once. ⇦

2. Member States must ~~either~~:

(a) provide the Commission ~~the Commission~~ every ⇨ three ⇦ ~~six~~ months with a list of movements of individual ships, other than regular ⇨ passenger and freight ⇦ ferry services, that entered their ports or which have notified to a port authority their arrival in an anchorage, containing ⇨ for each movement of the

ship its ⇦ ~~the~~ IMO number, ~~of the ships and~~ its date of arrival~~;~~ ~~or alternatively~~ ⇨ and the port or anchorage. The list shall be provided in the form of a spreadsheet programme enabling an automatic retrieval and processing of the above mentioned information. The list shall be provided within 4 months from the end of the period to which data pertained, ⇦

⇨ and ⇦

(b) ~~provide to Sirenac the IMO numbers and the date of arrival of the ships, other than regular ferry services, that daily entered their ports. Member States must~~ provide the Commission with ⇨ separate ⇦ ~~the~~ lists of regular ⇨ passenger ⇦ ferry services ⇨ and regular freight ferry services ⇦ referred to in points (a) ~~and (b)~~, not later than six months following the implementation of this Directive, and thereafter each time changes take place in such services. ⇨ The list shall contain for each ship its IMO number, its name and the route covered by the ship. The list shall be provided in the form of a spreadsheet programme enabling an automatic retrieval and processing of the above mentioned information. ⇦

↑

# ANNEX XVII

## Part A

## Repealed Directive with its successive amendments

(as referred to in Article 30)

| | |
|---|---|
| Council Directive 95/21/EC<br>(OJ L 157, 7.7.1995, p. 1) | |
| Council Directive 98/25/EC<br>(OJ L 133, 7.5.1998, p. 19) | |
| Commission Directive 98/42/EC<br>(OJ L 184, 27.6.1998, p. 40) | |
| Commission Directive 1999/97/EC<br>(OJ L 331, 23.12.1999, p. 67) | |
| Directive 2001/106/EC of the European Parliament and of the Council<br>(OJ L 19, 22.1.2002, p. 17) | |
| Directive 2002/84/EC of the European Parliament and of the Council<br>(OJ L 324, 29.11.2002, p. 53) | Only Article 4 |

**Part B**

**List of time-limits for transposition into national law**
(as referred to in Article 30)

| Directive | Time-limit for transposition |
|---|---|
| Directive 95/21/EC | 30 June 1996 |
| Directive 98/25/EC | 30 June 1998 |
| Directive 98/42/EC | 30 September 1998 |
| Directive 1999/97/EC | 13 December 2000 |
| Directive 2001/106/EC | 22 July 2003[1] |
| Directive 2002/84/EC | 23 November 2003 |

[1] Under Article 3 of Directive 2001/106/EC, "*The Commission shall review the implementation of this Directive no later than 22 July 2006. The review will examine, inter alia, the number of port State control inspectors in each Member State and the number of inspections carried out, including mandatory expanded inspections. 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*".

↑

## ANNEX XVIII

### CORRELATION TABLE

| Directive 95/21/EC | This Directive |
|---|---|
| Article 1, introductory words | Article 1, introductory words |
| Article 1, first indent | Article 1(a) |
| Article 1, second indent | Article 1(b) |
| Article 2, introductory words | Article 2, introductory words |
| Article 2(1), introductory words | Article 2(1), introductory words |
| Article 2(1), first indent | Article 2(1)(a) |
| Article 2(1), second indent | Article 2(1)(b) |
| Article 2(1), third indent | Article 2(1)(c) |
| Article 2(1), fourth indent | Article 2(1)(d) |
| Article 2(1), fifth indent | Article 2(1)(e) |
| Article 2(1), sixth indent | Article 2(1)(f) |
| Article 2(1), seventh indent | Article 2(1)(g) |
| Article 2(1), eighth indent | Article 2(1)(h) |
| Article 2(2) | Article 2(2) |
| - | Article 2(3) |
| Article 2(3) | Article 2(4) |
| Article 2(4) | Article 2(5) |
| - | Article 2(6) |
| Article 2(5) | Article 2(7) |
| - | Article 2(8) |
| - | Article 2(9) |

| | |
|---|---|
| Article 2(6) | Article 2(10) |
| Article 2(7) | Article 2(11) |
| Article 2(8) | Article 2(12) |
| - | Article 2(13) |
| Article 2(9) | Article 2(14) |
| - | Article 2(15) |
| Article 2(10) | Article 2(16) |
| - | Article 2(17) |
| - | Article 2(18) |
| - | Article 2(19) |
| Article 3(1), first subparagraph, introductory words | Article 3(1), first subparagraph, introductory words |
| Article 3(1), first subparagraph, first indent | Article 3(1), first subparagraph, point (a) |
| Article 3(1), first subparagraph, second indent | Article 3(1), first subparagraph, point (b) |
| Article 3(1), second subparagraph | Article 3(1), second subparagraph |
| Article 3(2) to (4) | Article 3(2) to (4) |
| - | Article 4(1) |
| Article 4 | Article 4(2), first subparagraph |
| - | Article 4(2), second subparagraph |
| - | Article 5(1) to 5(3) |
| Article 5(1) | Article 5(4) |
| - | Article 5(5) |
| Article 5(2) to 5(5) | - |
| - | Article 6 |
| Article 6(1) introductory words | Article 7(1) introductory words |
| Article 6(1)(a) | Article 7(1)(a) |
| - | Article 7(1)(b) |

| | |
|---|---|
| Article 6(1)(b) | Article 7(1)(c) |
| - | Article 7(2) |
| Article 6(2) | Article 7(3) |
| Article 6(3) | Article 7(4) |
| Article 6(4) | Article 7(5) |
| Article 7(1) and (2) | Article 8(1) and (2) first subparagraph |
| Article 7(3)(a) | - |
| Article 7(3)(b) | Article 8(2), second subparagraph |
| Article 7(4) first subparagraph | Article 8(3), first subparagraph |
| Article 7(4), second subparagraph | - |
| Article 7(5) | Article 8(4) |
| Article 7(6) | - |
| Article 7a(1) | Article 9(1) |
| Article 7a(2) | Article 9(2), first subparagraph |
| - | Article 9(2), second subparagraph |
| Article 7a(3) to (5) | Article 9(3) to (5) |
| Article 7b(1) and (2) | Article 10(1) and (2) |
| Article 7b(3) | - |
| Article 8 | Article 11 |
| - | Article 12 |
| Article 9 (1) and (2) | Article 13 (1) and (2) |
| - | Article 13 (3) |
| Article 9 (3) to (7) | Article 13 (4) to (8) |
| - | Article 13 (9) |
| Article 9a | - |
| Article 10(1) to (3) | Article 14(1) to (3) |
| - | Article 14(4) |

| | |
|---|---|
| Article 11(1) | Article 15(1) |
| - | Article 15(2) |
| Article 11(2) | Article 15(3), first subparagraph |
| Article 11(3) first subparagraph | - |
| Article 11(3) second subparagraph | Article 15(3) second subparagraph |
| Article 11(4) to (6) | Article 15(4) to (6) |
| Article 12 (1) to (3) | Article 16(1) to (3) |
| Article 12(4) first subparagraph | Article 16(4), first subparagraph |
| Article 12(4) second subparagraph | - |
| - | Article 16(5) to (7) |
| Article 13(1) | Article 17(1), first subparagraph |
| - | Article 17(1), second subparagraph |
| Article 13(2) | Article 17(2) |
| - | Article 17(3) |
| Article 14(1) | Article 18(1) |
| Article 14(2) first subparagraph | Article 18(2), first subparagraph |
| - | Article 18(2), second subparagraph |
| Article 14(2) second subparagraph | Article 18(2), third subparagraph |
| Article 14(3) | Article 18(3) |
| Article 15(1) | Article 19(1) |
| Article 15(2) to (4) | - |
| Article 15(5) | Article 19(2) |
| - | Article 20 |
| Article 16(1) and (2) | Article 21(1) and (2) |
| Article 16(2a) | Article 21(3) |
| Article 16(3) | Article 21(4) |
| Article 17 | Article 22(1) |

| | |
|---|---|
| - | Article 22 (2) |
| - | Article 23 |
| Article 18 | Article 24 |
| Article 19 | Article 25 |
| - | Article 26 |
| Article 19a | Article 27 |
| Article 3 Directive 2001/106/EC | Article 28 |
| Article 20 | Article 29 |
| - | Article 30 |
| Article 21 | Article 31 |
| Article 22 | Article 32 |
| Annex I | Annex I |
| - | Annex II |
| - | Annex III |
| Annex II | Annex IV |
| Annex III | Annex V |
| Annex IV | Annex VI |
| - | Annex VII |
| Annex V | Annex VIII |
| Annex VI | Annex XI |
| Annex VII | Annex XII |
| Annex VIII | Annex XIV |
| Annex IX | Annex X |
| Annex X | Annex XVI |
| Annex XI | Annex IX |
| Annex XII | - |
| - | Annex XIII |

| | |
|---|---|
| - | Annex XV |
| - | Annex XVII |
| - | Annex XVIII |

# LEGISLATIVE FINANCIAL STATEMENT

## 1. NAME OF THE PROPOSAL:

Proposal for a Directive of the European Parliament and of the Council on port State control.

## 2. ABM / ABB FRAMEWORK

**Policy area: Energy and transport**

**Activities: Maritime and inland waterway transport, intermodality**

## 3. BUDGET LINES

### 3.1. Budget lines (operational lines and related technical and administrative assistance lines (ex- BA lines)) including headings: Not applicable

### 3.2. Duration of the action and of the financial impact: not applicable

### 3.3. Budgetary characteristics *(add rows if necessary)*: not applicable

| Budget line | Expenditure type | | New | EFTA contribution | Contributions from applicant countries | Heading in financial perspective |
|---|---|---|---|---|---|---|
| | Comp/ Non-comp | Diff[1]/ Non-diff[2] | YES/ NO | YES/ NO | YES/NO | **No** |
| | Comp/ Non-comp | Diff/Non-diff | YES/ NO | YES/ NO | YES/NO | **No** |

[1] Differentiated appropriations.
[2] Non-differentiated appropriations.

## 4. SUMMARY OF RESOURCES

### 4.1. Financial resources

*4.1.1. Summary of commitment appropriations (CA) and payment appropriations (PA)*

*EUR million (to 3 decimal places)*

| Expenditure type | Section No | | Year n | n +1 | n + 2 | n +3 | n +4 | n + 5 and later | Total |
|---|---|---|---|---|---|---|---|---|---|
| **Operational expenditure**[3] | | | | | | | | | |
| Commitment appropriations (CA) | 8.1 | a | 0 | 0 | 0 | 0 | 0 | 0 | None |
| Payment appropriations (PA) | | b | 0 | 0 | 0 | 0 | 0 | 0 | None |
| **Administrative expenditure within reference amount**[4] | | | | | | | | | |
| Technical & administrative assistance (NDA) | 8.2.4 | c | 0 | 0 | 0 | 0 | 0 | 0 | None |
| **TOTAL REFERENCE AMOUNT** | | | | | | | | | |
| **Commitment appropriations** | | **a+c** | **0** | **0** | **0** | **0** | **0** | **0** | Not appli-cable. |
| **Payment appropriations** | | **b+c** | **0** | **0** | **0** | **0** | **0** | **0** | Not appli-cable. |
| **Administrative expenditure <u>not</u> included in reference amount**[5] | | | | | | | | | |
| Human resources and associated expenditure (NDA) | 8.2.5 | d | **0.054** | **0.054** | **0.054** | **0.054** | **0.054** | **0.054** | **0.324** |
| Administrative costs, other than human resources and associated costs, not included in reference amount (NDA) | 8.2.6 | e | **0** | **0** | **0** | **0** | **0** | **0** | **0** |
| **Total indicative financial cost of action** | | | | | | | | | |
| **TOTAL CA including cost of human resources** | | a+c +d+ e | **0.054** | **0.054** | **0.054** | **0.054** | **0.054** | **0.054** | **0.324** |
| **TOTAL PA including cost of human resources** | | b+c +d+ e | **0.054** | **0.054** | **0.054** | **0.054** | **0.054** | **0.054** | **0.324** |

[3] Expenditure that does not fall under Chapter xx 01 of the Title xx concerned.

[4] Expenditure within article xx 01 04 of Title xx.

[5] Expenditure within chapter xx 01 other than articles xx 01 04 or xx 01 05.

**Co-financing details**

The legislative proposal does not involve co-financing by Member States

*EUR million (to 3 decimal places)*

| Co-financing body | | Year n | n + 1 | n + 2 | n + 3 | n + 4 | n+5 and later | Total |
|---|---|---|---|---|---|---|---|---|
| …… | f | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| TOTAL CA including co-financing | a+c+d +e+f | 0 | 0 | 0 | 0 | 0 | 0 | 0 |

*4.1.2. Compatibility with financial programming*

☒ Proposal is compatible with existing financial programming.
☐ Proposal will entail reprogramming of the relevant heading in the financial perspective.
☐ Proposal may require application of the provisions of the Interinstitutional Agreement[6] (flexibility instrument or revision of the financial perspective).

*4.1.3. Financial impact on revenue*

☒ Proposal has no financial implications on revenue
☐ Proposal has financial impact – the effect on revenue is as follows:

***NB: All details and observations relating to the method of calculating the effect on revenue should be shown in a separate annex.***

*EUR million (to one decimal place)*

| | | Prior to action [Year n-1] | Situation following action | | | | | |
|---|---|---|---|---|---|---|---|---|
| Budget line | Returns | | [Year n] | [n+1] | [n+2] | [n+3] | [n+4] | [n+5][7] |
| | *a) Revenue in absolute terms* | | 0 | 0 | 0 | 0 | 0 | 0 |
| | *b) Change in revenue* | *Δ* | 0 | 0 | 0 | 0 | 0 | 0 |

[6] See points 19 and 24 of the Interinstitutional Agreement.
[7] Additional columns should be added if necessary, i.e. if the duration of the action exceeds 6 years.

**4.2. Human resources FTE (including officials, temporary and external staff) – see details under point 8.2.1.**

(Management by existing staff).

| **Annual requirements** | Year n (2007*) | n + 1 | n + 2 | n + 3 | n + 4 | n+5 and later |
|---|---|---|---|---|---|---|
| Total number of human resources | 0.5 | 0.5 | 0.5 | 0.5 | 0.5 | 0.5 |

## 5. CHARACTERISTICS AND OBJECTIVES

### 5.1. Need to be met in the short or long term

The objective of port State control is to verify, through inspections carried out in the ports of a particular State by the competent authorities, that third country ships calling there conform to the applicable international conventions and pose no risk to maritime safety, the marine environment or on-board living and working conditions. It is now essential to clarify, simplify and improve the body of Community law on port State control. This objective is both a legal necessity, to take account of developments in international, Community and Paris Memorandum law, and the consequences of extending port State control rules to the new Member States, and a political imperative to take account of the new directions of European Union policy resulting from the Lisbon strategy and the improvement in the regulatory environment of the European Union.

### 5.2. Value-added of Community involvement and coherence of the proposal with other financial instruments and possible synergy

Individual action by the Member States is by its nature incompatible with the objectives of port State control which seeks to ensure that in a particular geographical region, on-board inspections are carried out in a harmonised way. Moreover, one of the objectives of actions at regional level is to reduce costs and optimise through coordinated action the resources needed for an effective control of ships. Less rigorous application of port State control in a particular Member State would increase safety risks and might lead to the appearance of ports of convenience thus creating an unacceptable distortion of competition within the Community.

### 5.3. Objectives, expected results and related indicators of the proposal in the context of the ABM framework

The revision of Directive 95/21/EC on port State control proposed by the Commission is based on the following elements:

- a recasting of Directive 95/21/EC and its numerous amendments in a single consolidated text;
- compliance with the policy demands made by the European Parliament, the Council and the Commission after the Prestige accident to improve maritime safety;

- the updating of a number of provisions of the Directive in the light of developments in international conventions and agreements and Community legislation;

- the introduction of measures aimed at improving the application of the Directive and the monitoring of its application, in particular through increased cooperation and exchange of information;

- the reinforcement of certain existing provisions, in order in particular to impose more stringent penalties on substandard ships; this entails in particular the extension and reinforcement of refusal of access for multiple detentions;

- a number of provisions aimed that relaxing inspections for quality ships;

- the introduction of the principles of a new inspection regime, in the light in particular of the limits encountered by the present regime.

### 5.4. Method of implementation (indicative)

Show below the method(s)[8] chosen for the implementation of the action.

☐ ***Centralised management***

☒ Directly by the Commission

☐ Indirectly by delegation to:

☐ Executive Agencies,

☐ bodies set up by the Communities, as referred to in Art. 185 of the Financial Regulation,

☐ national public-sector bodies/bodies with a public-service mission.

☐ ***Shared or decentralised management***

☐ with Member States

☐ with third countries

☐ ***Joint management with international organisations (please specify)***

Comments:

## 6. MONITORING AND EVALUATION

The draft Directive contains a provision requiring the Member States to notify the Commission of the national implementing measures to be adopted with a view to transposing the Directives into national law.

In the event of failure to notify these national implementing measures (or in the event of incomplete notification), the infringement procedures will automatically be launched in accordance with Article 226 of the Treaty.

The European Maritime Safety Agency will help to monitor the implementation of the Directive by the Member States.

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[8] If a number of methods are indicated, please provide details in the "comments" section.

## 6.1. Evaluation

*6.1.1.* Ex ante *evaluation*

The Commission has focussed the impact assessment on the principal measures introduced in the Directive which could have an impact on operators and maritime authorities, in order to evaluate in particular whether the measures introduced would lead to an increase in the number of ships affected by the said measures.

The effects on the various parties involved are as follows:

- EU bodies: the proposal reinforces the current provisions on publication (black list) and the monitoring of the implementation of the Directive. In practice the EMSA will be entrusted with these implementing tasks.

- The maritime authorities responsible for port State control: pending the possible introduction of the new inspection regime, this proposal will not bring about any major change in the activities of the authorities responsible for port State control.

- The port authorities: they will play a greater role in improving port State control, in particular through the exchange of information between ports and the inspection centres. These administrative and logistical measures may cause local cost increases for port authorities but are necessary in order to ensure that application of the Directive is fully effective.

- Pilot services: the proposed measure is a direct response to an explicit request made by the Council of Transport Ministers following the Prestige accident. Its quantitative impact on the number of ships reported is impossible to predict.

- Ship operators: in general terms, the proposal improves the capacity of operators of quality ships (fewer inspections, better planning of ports of call, better qualified inspectors and thus a reduction in the risk of incorrect or unjustified decisions).

- Seamen: the new provisions will guarantee that complaints relating to on-board living and working conditions are followed up more effectively.

*6.1.2. Measures taken following an intermediate/*ex post *evaluation (lessons learned from similar experiences in the past)*

Not applicable

*6.1.3. Terms and frequency of future evaluations*

Not applicable

## 7. ANTI-FRAUD MEASURES

Not applicable

## 8. DETAILS OF RESOURCES

### 8.1. Objectives of the proposal in terms of their financial cost: not applicable

*Commitment appropriations in EUR million (to 3 decimal places)*

| **(Headings of Objectives, actions and outputs should be provided)** | **Type of outputs** | **Av. cost** | **Year n** | | **Year n+1** | | **Year n+2** | | **Year n+3** | | **Year n+4** | | **Year n+5 and later** | | **TOTAL** | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | Number of outputs | Total cost | Number of outputs | Total cost | Number of outputs | Total cost | Number of outputs | Total cost | Number of outputs | Total cost | Number of outputs | Total cost | Number of outputs | Total cost |
| OPERATIONAL OBJECTIVE No 1[9]…… | | | | | | | | | | | | | | | | |
| **Action 1……** | | | | | | | | | | | | | | | | |
| - Output 1 | | | | | | | | | | | | | | | | |
| - Output 2 | | | | | | | | | | | | | | | | |
| **Action 2……** | | | | | | | | | | | | | | | | |
| - Output 1 | | | | | | | | | | | | | | | | |
| Sub-total Objective 1 | | | | | | | | | | | | | | | | |
| OPERATIONAL OBJECTIVE No 2…… | | | | | | | | | | | | | | | | |
| **Action 1……** | | | | | | | | | | | | | | | | |
| - Output 1 | | | | | | | | | | | | | | | | |
| Sub-total Objective 2 | | | | | | | | | | | | | | | | |

[9] As described under Section 5.3.

| | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| OPERATIONAL OBJECTIVE No n | | | | | | | | | | | | | | | | |
| Sub-total Objective n | | | | | | | | | | | | | | | | |
| **TOTAL COST** | | | | | | | | | | | | | | | | |

## 8.2. Administrative expenditure

### *8.2.1. Number and type of human resources*

| Types of post | | Staff to be assigned to management of the action using existing and/or additional resources (**number of posts/FTEs**) | | | | | |
|---|---|---|---|---|---|---|---|
| | | Year n | Year n+1 | Year n+2 | Year n+3 | Year n+4 | Year n+5 |
| Officials and temporary staff[10] (06 01 01) | A*/ AD | 0.5 | 0.5 | 0.5 | 0.5 | 0.5 | 0.5 |
| | B*, C*/ AST | 0 | 0 | 0 | 0 | 0 | 0 |
| Staff financed[11] by Article XX 01 02 | | 0 | 0 | 0 | 0 | 0 | 0 |
| Other staff financed[12] by art. XX 01 04/05 | | 0 | 0 | 0 | 0 | 0 | 0 |
| **TOTAL** | | 0.5 | 0.5 | 0.5 | 0.5 | 0.5 | 0.5 |

### *8.2.2. Description of tasks deriving from the action: tasks*

The changes to the Community port State control system extend Community competence in the area of maritime safety. An increase in human resources - estimated at ½ A official-is necessary for proper monitoring of the implementation of the Directive.

### *8.2.3. Sources of human resources (statutory)*

☐ Posts currently allocated to the management of the programme to be replaced or extended

☐ Posts pre-allocated within the APS/PDB exercise for year n

☐ Posts to be requested in the next APS/PDB procedure

☒ Posts to be redeployed using existing resources within the managing service (internal redeployment)

☐ Posts required for year n although not foreseen in the APS/PDB exercise of the year in question

[10] Cost of which is NOT covered by the reference amount.
[11] Cost of which is NOT covered by the reference amount.
[12] Cost of which is included within the reference amount

*8.2.4. Other administrative expenditure included in reference amount (XX 01 04/05 – Expenditure on administrative management)*

*EUR million (to 3 decimal places)*

| Budget line (Number and title) | Year n | Year n+1 | Year n+2 | Year n+3 | Year n+4 | Year n+5 and later | TOTAL |
|---|---|---|---|---|---|---|---|
| **1. Technical and administrative assistance (including related staff costs)** | | | | | | | 0 |
| Executive Agencies[13] | | | | | | | 0 |
| Other technical and administrative assistance | | | | | | | 0 |
| - *intra muros* | | | | | | | 0 |
| - *extra muros* | | | | | | | 0 |
| **Total technical and administrative assistance** | | | | | | | 0 |

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*8.2.5. Financial cost of human resources and associated costs not included in the reference amount*

*EUR million (to 3 decimal places)*

| Type of human resources | Year n | Year n+1 | Year n+2 | Year n+3 | Year n+4 | Year n+5 and later |
|---|---|---|---|---|---|---|
| Officials and temporary staff (06 01 01) | 0.054 | 0.054 | 0.054 | 0.054 | 0.054 | 0.054 |
| Staff financed by Article XX 01 02 (auxiliary, END, contract staff, etc.) (specify budget line) | 0 | 0 | 0 | 0 | 0 | 0 |
| **Total cost of Human Resources and associated costs (NOT in reference amount)** | 0.054 | 0.054 | 0.054 | 0.054 | 0.054 | 0.054 |

Calculation – **Officials and temporary staff**

*(0.5 x €108 000 = €54 000 )*

Calculation – ***Staff financed under Article XX 01 02***

None

[13] Reference should be made to the specific legislative financial statement for the Executive Agency/Agencies concerned.

*8.2.6. Other administrative expenditure not included in reference amount*

*EUR million (to 3 decimal places)*

| | Year n | Year n+1 | Year n+2 | Year n+3 | Year n+4 | Year n+5 and later | TOTAL |
|---|---|---|---|---|---|---|---|
| XX 01 02 11 01 – Missions | 0 | 0 | 0 | 0 | 0 | 0 | 0* |
| XX 01 02 11 02 – Meetings and conferences | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| XX 01 02 11 03 – Committees[14] | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| XX 01 02 11 04 - Studies and consultations | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| XX 01 02 11 05 - Information systems | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| **2. Total other management expenditure (XX 01 02 11)** | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| **3. Other expenditure of an administrative nature** (specify including reference to budget line) | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| **Total administrative expenditure, other than human resources and associated costs (NOT included in reference amount)** | 0 | 0 | 0 | 0 | 0 | 0 | 0 |

* No impact on the current budget for missions

Calculation - ***Other administrative expenditure not included in reference amount***

*Not applicable*

[14] Specify the type of committee and the group to which it belongs.