

I

(Acts whose publication is obligatory)

COUNCIL DIRECTIVE 95/21/EC

of 19 June 1995

concerning the enforcement, in respect of shipping using Community ports and sailing in the waters under the jurisdiction of the Member States, of international standards for ship safety, pollution prevention and shipboard living and working conditions (port State control)

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the Economic and Social Committee ⁽²⁾,

Acting in accordance with Article 189c of the Treaty ⁽³⁾,

Whereas the Community is seriously concerned about shipping casualties and pollution of the seas and coastlines of the Member States;

Whereas the Community is equally concerned about on-board living and working conditions;

Whereas 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;

Whereas, in its resolution of 8 June 1993 on a common policy on safe seas ⁽⁴⁾, 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;

Whereas safety, pollution prevention and shipboard living and working conditions may be effectively enhanced

through a drastic reduction of substandard ships from Community waters, by strictly applying international Conventions, codes and resolutions;

Whereas 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; whereas, however, there is a serious failure on the part of an increasing number of flag States to implement and enforce international standards; whereas henceforth the monitoring of compliance with the international standards for safety, pollution prevention and shipboard living and working conditions has also to be ensured by the port State;

Whereas a harmonized 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;

Whereas 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;

Whereas pollution of the seas is by nature a trans-boundary phenomenon; whereas, in accordance with the principle of subsidiarity, the development of the means of taking preventive action in this field as regards the seas adjacent to the Member States is best done at Community level, since Member States cannot take adequate and effective action in isolation;

Whereas 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;

Whereas 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;

Whereas the inspection by each Member State of at least 25% of the number of individual foreign ships which

⁽¹⁾ OJ No C 107, 15. 4. 1994, p. 14 and OJ No C 347, 8. 12. 1994, p. 15.

⁽²⁾ OJ No 393, 31. 12. 1994, p. 50.

⁽³⁾ Opinion of the European Parliament of 27 October 1994 (OJ No C 347, 8. 12. 1994, p. 15), Council common position of 14 March 1995 (OJ No C 93, 13. 4. 1995, p. 25) and European Parliament Decision of 18 May 1995 (not yet published in the Official Journal).

⁽⁴⁾ OJ No C 271, 7. 10. 1993, p. 1.

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;

Whereas further efforts should be made to develop a better targeting system;

Whereas the rules and procedures for port-State inspections, including criteria for the detention of ships, must be harmonized 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;

Whereas 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;

Whereas non-compliance with the provisions of the relevant Conventions must be rectified; whereas ships which are required to take corrective action must, where the deficiencies in compliance are clearly hazardous to safety, health or the environment, be detained until such time as the non-compliance has been rectified;

Whereas 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;

Whereas 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; whereas 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;

Whereas there are circumstances where a ship which has been refused access to ports within the Community has to be granted permission to enter; whereas under such circumstances the ship should only be permitted access to a specific port if all precautions are taken to ensure it safe entry;

Whereas, 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;

Whereas pilots and port authorities may be able to provide useful information on the deficiencies of such ships and crews;

Whereas 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;

Whereas 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;

Whereas publication of information concerning ships which do not comply with international standards on safety, health and protection of the marine environment, may be an effective deterrent discouraging shippers to use such ships, and an incentive to their owners to take corrective action without being compelled to do so;

Whereas all costs of inspecting ships which warrant detention should be borne by the owner or the operator;

Whereas 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⁽¹⁾ in order to assist the Commission with the task of adapting Member States' inspection obligations on the basis of experience gained, taking into account 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,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Purpose

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

- increasing compliance with international and relevant Community legislation on maritime safety, protection

⁽¹⁾ OJ No L 247, 5. 10. 1993, p. 19.

of the marine environment and living and working conditions on board ships of all flags,

- 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

For the purpose of this Directive including its Annexes:

1. 'Conventions' means:

- the International Convention on Load Lines, 1966 (LL 66),
- the International Convention for the Safety of Life at Sea, 1974 (Solas 74),
- the International Convention for the Prevention of Pollution from Ships, 1973, and the 1978 Protocol relating thereto (Marpol 73/78),
- the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STEW 78),
- the Convention on the International Regulations for Preventing Collisions at Sea, 1972 (Colreg 72),
- the International Convention on Tonnage Measurement of Ships, 1969 and
- the Merchant Shipping (Minimum Standards) Convention, 1976 (ILO No 147),

together with the Protocols and amendments to these Conventions and related codes of mandatory status, in force at the date of adoption of this Directive.

2. 'MOU' means the Memorandum of Understanding on Port State Control, signed in Paris on 26 January 1982, as it stands at the date of adoption of this Directive.
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.

5. 'Inspector' means a public-sector employee or other person, duly authorized by the competent authority of a Member State to carry out port-State control inspections, and responsible to that competent authority.

6. 'Inspection' means a visit on board a ship 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.

7. '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 6 (3), to an in-depth inspection covering the ship's construction, equipment, manning, living and working conditions and compliance with on-board operational procedures.

8. 'Expanded inspection' means an inspection as specified in Article 7.

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

10. '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.

Article 3

Scope

1. This Directive applies to any ship and its crew:
 - calling at a port of a Member State or at an off-shore installation, or
 - anchored off such a port or such an installation.

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

2. In 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 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.

Article 4

Inspection body

Member States shall maintain appropriate national maritime administrations, 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.

Article 5

Inspection commitments

1. The competent authority of each Member State shall carry out an annual total number of inspections corresponding to at least 25% of the number of individual ships which entered its ports during a representative calendar year.

2. In selecting ships for inspection the competent authority shall give priority to the ships referred to in Annex I.

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, and
- no deficiencies have been reported, following a previous inspection, and
- no clear grounds exist for carrying out an inspection.

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.

Article 6

Inspection procedure

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

- (a) check the certificates and documents listed in Annex II, to the extent applicable;
- (b) satisfy himself of the overall condition of the ship, including the engine room and accommodation and including hygienic conditions.

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

3. Whenever there are clear grounds for believing, after the inspection referred to in paragraphs 1 and 2, 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 III.

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

Article 7

Expanded inspection of certain ships

1. Where there are clear grounds for a detailed inspection of a ship belonging to the categories listed in Annex V, Member States shall ensure that an expanded inspection is carried out.

2. Annex V, section B, contains non-mandatory guidelines for expanded inspection.

3. The ships referred to in paragraph 1 shall be subject to an expanded inspection by any of the competent authorities of the Member States only once during a period of 12 months. However, these ships may be subject to the inspection provided for in Article 6 (1) and (2).

4. In the case of passenger ships operating on a regular schedule in or out of a port in a Member State, an expanded inspection of each ship shall be carried out by the competent authority of that Member State. When a

passenger ship operates such a schedule between ports in Member States, one of the States between which the ship is operating shall undertake the expanded inspection.

Article 8

Report of inspection to the master

1. On completion of an inspection, a more detailed inspection, or an expanded inspection, the master of the ship shall be provided by the inspector with a document in the form specified in Annex 3 to the MOU, giving the results of the inspection and details of any decisions taken by the inspector, and of corrective action to be taken by the master, owner or operator.

2. In the case of deficiencies warranting the detention of a ship, the document to be given to the master in accordance with paragraph 1 shall include information about the future publication of the detention order in accordance with the provisions of this Directive.

Article 9

Rectification and detention

1. The competent authority shall be satisfied that any deficiencies confirmed or revealed by the inspection referred to in Articles 6 and 7 are or will be rectified in accordance with the Conventions.

2. In the case of deficiencies which are clearly hazardous to safety, health or the environment, the competent authority of the port State where the ship is being inspected shall ensure that the ship is detained, or 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.

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

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.

5. In the event that the inspections referred to in Articles 6 and 7 give rise to detention, the competent authority shall immediately inform, in writing, the administration of the State whose flag the ship is entitled

to fly (hereinafter called 'flag administration') or the Consul or, in his absence, the nearest diplomatic representative of the State, of all the circumstances in which intervention was deemed necessary. In addition, nominated surveyors or recognized organizations responsible for the issue of the ship's certificates shall also be notified where relevant.

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.

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.

Article 10

Right of appeal

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 taken by the competent authority. An appeal shall not cause the detention to be suspended.

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

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

Article 11

Follow-up to inspections and detention

1. Where deficiencies as referred to in Article 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 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.

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 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 ships referred to in paragraph 1 which proceed to sea:

- (i) without complying with the conditions determined by the competent authority of any Member State in the port of inspection; or
- (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, 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 that the ship fully complies with all applicable requirements of the Conventions.

5. In the circumstances referred to in paragraph 4 (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 (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 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 adequate measures to the satisfaction of the competent authority of such Member State have been implemented by the owner, the operator or the master of the ship to ensure safe entry.

Article 12

Professional profile of inspectors

1. The inspections shall be carried out only by inspectors who fulfil the qualification criteria specified in Annex VII.

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 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 classification certificates or which carry out the surveys necessary for the issue of those certificates to ships.

4. Each inspector shall carry a personal document in the form of an identity card issued by his competent authority in accordance with the national legislation, indicating that the inspector is authorized to carry out inspections.

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

Article 13

Reports from pilots and port authorities

1. 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 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 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.

Article 14

Cooperation

1. Each Member State shall 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.

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 Sirenac E information system set up in St Malo, France.

3. The information referred to in paragraph 2 shall be that specified in Annex 4 to the MOU, and that required to comply with Article 15 of this Directive.

Article 15

Publication of detentions

Each competent authority shall as a minimum publish quarterly information concerning ships detained during the previous three-month period and which have been detained more than once during the past 24 months. The information published shall include the following:

- name of the ship,
- name of the shipowner or the operator of the ship,
- IMO number,
- flag State,
- the classification society, where relevant, and, if applicable, any other Party which has issued certificates to such ship in accordance with the Conventions on behalf of the flag State,
- reason for detention,
- port and date of detention.

Article 16

Reimbursement of costs

1. Should the inspections referred to in Articles 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 11 (4) shall be charged to the owner or operator of the ship.

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.

Article 17

Data to monitor implementation

1. Member States shall supply the following information to the Commission and the MOU Secretariat:

- number of inspectors working on their behalf on port State inspection in accordance with this Directive. For authorities where inspectors perform port-State inspections on a part-time basis only, the total must be converted into a number of full-time employed inspectors,
- number of individual ships entering their ports in a representative calendar year within the previous five-year period.

2. The information listed in paragraph 1 shall be forwarded within three months following the entry into force of this Directive and thereafter by 1 October once every three calendar years.

Article 18

Regulatory Committee

The Commission shall be assisted by the Committee set up pursuant to Article 12 of Directive 93/75/EEC in accordance with the procedure laid down in that Article.

Article 19

Amendment procedure

This Directive may be amended in accordance with the procedure laid down in Article 18, in order to:

- (a) adapt the inspection and publication obligations of Member States mentioned in Article 5 (except the figure of 25 % referred to in paragraph 1 thereof), and in Articles 6, 7 and 15 on the basis of the experience gained from implementation of this Directive and taking into account developments in the MOU;
- (b) adapt the Annexes in order to take into account amendments which have entered into force to the Conventions, Protocols, codes and resolutions of relevant international organizations and to the MOU.

Article 20

Implementation

1. Member States shall adopt the laws, regulations and administrative provisions necessary to implement this

Directive not later than 30 June 1996 and shall forthwith inform the Commission thereof.

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

3. Member States shall communicate to the Commission the text of the provisions of national law which they have adopted in the field governed by this Directive.

Article 21

This Directive shall enter into force on the 20th day following that of its publication.

Article 22

This Directive is addressed to the Member States.

Done at Luxembourg, 19 June 1995.

For the Council

The President

B. PONS

ANNEX I

SHIPS TO BE CONSIDERED FOR PRIORITY INSPECTION

(as referred to in Article 5 (2)) (*)

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 MOU. In the absence of appropriate data for this purpose, Member States shall rely upon the available Sirenac E data and inspect those ships which have not been registered in the Sirenac E database following the entry into force of that database on 1 January 1993.
2. Ships flying the flag of a State appearing in the three-year rolling average table of above-average detentions and delays published in the annual report of the MOU.
3. Ships which have been permitted to leave the port of a Member State on condition that the deficiencies noted must be rectified within a specified period, upon expiry of such period.
4. Ships which have been reported by pilots or port authorities as having deficiencies which may prejudice their safe navigation (pursuant to Council Directive 93/75/EEC of 13 September 1993 and Article 13 of this Directive).
5. Ships whose statutory certificates on the ship's construction and equipment, issued in accordance with the Conventions, and the classification certificates, have been issued by an organization which is not recognized under the terms of Council Directive 94/57/EC of 22 November 1994 ⁽¹⁾ on common rules and standards for ship inspection and survey organizations and for the relevant activities of maritime administrations.
6. Ships which have failed to comply with the obligations laid down in Council Directive 93/75/EEC.
7. Ships which are in a category for which expanded inspection has been decided (pursuant to Article 7 of this Directive).
8. Ships which have been suspended from their class for safety reasons in the course of the preceding six months.

(*) The sequence of the criteria is not indicative of the order of their importance.

⁽¹⁾ OJ No L 319, 12. 12. 1994, p. 20.

ANNEX II

LIST OF CERTIFICATES AND DOCUMENTS

(referred to in Article 6 (1))

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,
 - Exemption Certificate,
 - Cargo Ship Safety Certificate.
 3. International Certificate of Fitness for Carriage of Liquefied Gases in Bulk;
 - Certificate of Fitness for the Carriage of Liquefied Gases in Bulk.
 4. International Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk;
 - Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk.
 5. International Oil Pollution Prevention Certificate.
 6. International Pollution Prevention Certificate for the Carriage of Noxious Liquid Substances in Bulk.
 7. International Load Line Certificate (1966);
 - International Load Line Exemption Certificate.
 8. Oil record book, parts I and II.
 9. Cargo record book.
 10. Minimum Safe Manning Document;
 - Certificates of Competency.
 11. Medical certificates, (see ILO Convention No 73 concerning Medical Examination of Seafarers).
 12. Stability information.
 13. Copy of Document of Compliance and Certificate issued in accordance with The International Management Code for the Safe Operation of Ships and for Pollution Prevention (IMO Resolution A.741 (18)).
 14. Certificates as to the ship's hull strength and machinery installations issued by the classification society in question (only to be required if the ship maintains its class with a classification society).
-

ANNEX III

EXAMPLES OF 'CLEAR GROUNDS' FOR A MORE DETAILED INSPECTION

(as referred to in Article 6 (3))

1. Ships identified in Annex I, with the exception of No 1.
2. A report or notification by another Member State.
3. A report or complaint by the master, a crew member, or any person or organization 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 the complaint must not be revealed to the master or the shipowner of the ship concerned.
4. The ship has been involved in a collision on its way to the port.
5. The oil record book has not been properly kept.
6. The ship has been accused of an alleged violation of the provisions on discharge of harmful substances or effluents.
7. During examination of the certificates and other documentation, (see Article 6 (1) (a) and (2)), inaccuracies have been revealed.
8. Indications that the crew members are unable to comply with the requirements of Article 8 of Directive 94/58/EC of 22 November 1994 on the minimum level of training of seafarers ⁽¹⁾.
9. 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 mains supply to the cargo tanks is above the prescribed maximum level.
10. 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.
11. 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 ship.

⁽¹⁾ OJ No L 319, 12. 12. 1994, p. 28.

ANNEX IV

PROCEDURES FOR THE CONTROL OF SHIPS

(as referred to in Article 6 (4))

1. Procedures for the Control of Ships (IMO Resolution A.466 (XII)), as amended.
 2. Principles of Safe Manning (IMO Resolution A.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).
 3. Procedures for the Control of Ships and Discharges under Annex I to Marpol 73/78 (IMO Resolution A.542 (13)).
 4. Procedures for the Control of Ships and Discharges under Annex II to Marpol 73/78 (IMO Resolution MEPC 26 (23)).
 5. Procedures for the Control of Operational Requirements Related to the Safety of Ships and Pollution Prevention (IMO Resolution A.742 (18)).
 6. The Provisions of the International Maritime Dangerous Goods Code.
 7. International Labour Organization (ILO) publication 'Inspection of Labour Conditions on Board Ship: Guidelines for Procedure'.
 8. Annex I to the Paris MOU guidelines for surveyors.
-

ANNEX V

A. CATEGORIES OF SHIPS SUBJECT TO EXPANDED INSPECTION

(as referred to in Article 7 (1))

1. Oil tankers, five years or less from the date of phasing out in accordance with Marpol 73/78, Annex I, Regulation 13G, i.e.
 - a crude oil tanker of 20 000 tonnes deadweight and above or a product carrier of 30 000 tonnes deadweight and above, not meeting the requirements of a new oil tanker as defined in Regulation 1 (26) of Annex I to Marpol 73/78, will be subject to expanded inspection 20 years after its date of delivery as indicated on the Supplement, Form B, to the IOPP Certificate, or 25 years after that date, if the ship's wing tanks or double-bottom spaces not used for the carriage of oil meet the requirements of Regulation 13G (4) of that Annex, unless it has been reconstructed to comply with Regulation 13F of the same Annex,
 - an oil tanker as mentioned above meeting the requirements of a new oil tanker as defined in Regulation 1 (26) of Annex I to Marpol 73/78 will be subject to expanded inspection 25 years after its date of delivery as indicated on the Supplement, Form B, to the IOPP Certificate, unless it complies with or has been reconstructed to comply with Regulation 13F of that Annex.
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. Passenger ships.
4. Gas and chemical tankers older than 10 years of age, as determined on the basis of the date of construction indicated in the ship's safety certificates.

B. NON-MANDATORY GUIDELINES FOR EXPANDED INSPECTION OF CERTAIN CATEGORIES OF SHIPS

(as referred to in Article 7 (2))

To the extent applicable the following items may be considered as part of an expanded inspection. Inspectors must be aware that it may jeopardize the safe execution of certain on-board operations, e.g. cargo operation, if tests having a direct effect thereon, are required to be carried out during such operations.

1. SHIPS IN GENERAL (categories in section A)

- Black-out and start of emergency generator,
- Inspection of emergency lighting,
- Operation of emergency fire-pump with two firehoses connected to the fire main-line,
- Operation of bilge pumps,
- Closing of watertight doors,
- Lowering of one seaside 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, to the extent possible, test of engine-room separator.

2. OIL TANKERS

In addition to the items listed under section 1, the following items may also be considered as part of the expanded inspection for oil tankers:

- Fixed-deck foam system,

- Fire-fighting equipment in general,
- Inspection of fire dampers to engine room, pump room and accommodation,
- Control of pressure of inert gas and oxygen content thereof,
- Check of the Survey Report File (see IMO Resolution A.744(18)) to identify possible suspect areas requiring inspection.

3. BULK CARRIERS

In addition to the items listed under section 1, the following items may also be considered as part of the expanded inspection for bulk carriers:

- Possible corrosion of deck machinery foundations,
- Possible deformation and/or corrosion of hatch covers,
- Possible cracks or local corrosion in transverse bulkheads,
- Access to cargo holds,
- Check of the Survey Report File, (see IMO Resolution A.744(18)) to identify possible suspect areas requiring inspection.

4. GAS AND CHEMICAL TANKERS

In addition to the items listed under section 1, the following items can also be considered as part of the expanded inspection for gas and chemical tankers:

- 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.

5. PASSENGER SHIPS

In addition to the items listed under section 1, the following items may also be considered as part of the expanded inspection for passenger ships.

- 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 fireman'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 shipmaster or the operator. Inspectors must not obstruct the operation of the ship, nor must they induce situations that, in the master's judgment, could endanger the safety of the passengers, the crew and the ship.

ANNEX VI

CRITERIA FOR DETENTION OF A SHIP

(as referred to in Article 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 1 and 2.

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

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.

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

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

3.1. *General*

The lack of valid certificates 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, excess 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/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 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).

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 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 accommodations 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.
- 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.

3.8. *Areas under the STCW Convention*

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

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.

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.

ANNEX VII

MINIMUM CRITERIA FOR INSPECTORS

(as referred to in Article 11 (1))

1. The inspector must be authorized to carry out port-State control by the competent authority of the Member State.
 2. Either:
 - 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,
 - 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.
 3. 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.
 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.
-