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(Acts whose publication is obligatory)

**REGULATION (EC) No 2099/2002 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 5 November 2002
establishing a Committee on Safe Seas and the Prevention of Pollution from Ships (COSS) and
amending the Regulations on maritime safety and the prevention of pollution from ships**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

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

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

Having regard to the opinion of the Committee of the Regions ⁽³⁾,

Acting in accordance with the procedure referred to in Article 251 of the Treaty ⁽⁴⁾,

Whereas:

(1) The measures implementing the existing Regulations and Directives in the field of maritime safety were adopted by a regulatory procedure involving the Committee set up by Council Directive 93/75/EEC of 13 September 1993 concerning minimum requirements for vessels bound for or leaving Community ports and carrying dangerous or polluting goods ⁽⁵⁾ and, in certain cases, an ad hoc committee. These committees were governed by the rules set out in Council Decision 87/373/EEC of 13 July 1987 laying down the procedures for the exercise of implementing powers conferred on the Commission ⁽⁶⁾.

(2) By its Resolution of 8 June 1993 on a common policy on safe seas ⁽⁷⁾, the Council approved in principle the establishment of a Committee on Safe Seas and the Prevention of Pollution from Ships (COSS) and called on the Commission to present a proposal to set up such a committee.

(3) The role of COSS is to centralise the tasks of the committees set up under the Community legislation on maritime safety, the prevention of pollution from ships and the protection of shipboard living and working conditions and to assist and advise the Commission on all matters of maritime safety and prevention or reduction of pollution of the environment by shipping activities.

(4) In keeping with the Resolution of 8 June 1993, a Committee on Safe Seas and the Prevention of Pollution from Ships should be set up and assigned the tasks previously devolved to the committees established under the aforesaid legislation. All new Community legislation adopted in the field of maritime safety should stipulate recourse to the Committee thereby set up.

(5) Decision 87/373/EEC has been replaced by Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ⁽⁸⁾, the provisions of which should therefore be applied to COSS. The purpose of the latter decision is to define the Committee procedures applicable and ensure more comprehensive information to the European Parliament and the public on the work of the committees.

(6) The measures required to implement the aforesaid legislation should be adopted in accordance with Decision 1999/468/EC.

(7) The aforesaid legislation should also be amended to substitute COSS for the Committee set up by Directive 93/75/EEC or, where appropriate, for the ad hoc committee established under any particular act. This Regulation should in particular amend the relevant provisions of Council Regulations (EEC) No 613/91 of 4

⁽¹⁾ OJ C 365 E, 19.12.2000, p. 276.

⁽²⁾ OJ C 139, 11.5.2001, p. 21.

⁽³⁾ OJ C 253, 12.9.2001, p. 1.

⁽⁴⁾ Opinion of the European Parliament of 13 February 2001 (OJ C 276, 1.10.2001, p. 42), Council Common Position of 27 May 2002 (OJ C 170 E, 16.7.2002, p. 37) and Decision of the European Parliament of 24 September 2002 (not yet published in the Official Journal).

⁽⁵⁾ OJ L 247, 5.10.1993, p. 19. Directive as last amended by Directive 98/74/EC (OJ L 276, 13.10.1998, p. 7).

⁽⁶⁾ OJ L 197, 18.7.1987, p. 33.

⁽⁷⁾ OJ C 271, 7.10.1993, p. 1.

⁽⁸⁾ OJ L 184, 17.7.1999, p. 23.

March 1991 on the transfer of ships from one register to another within the Community ⁽¹⁾, (EC) No 2978/94 of 21 November 1994 on the implementation of IMO Resolution A.747(18) on the application of tonnage measurement of ballast spaces in segregated ballast oil tankers ⁽²⁾, (EC) No 3051/95 of 8 December 1995 on the safety management of roll-on/roll-off passenger ferries (ro-ro ferries) ⁽³⁾ and Regulation (EC) No 417/2002 of the European Parliament and of the Council of 18 February 2002 on the accelerated phasing-in of double hull or equivalent design requirements for single hull oil tankers and repealing Council Regulation (EC) No 2978/94 ⁽⁴⁾, in order to insert a reference to COSS and to stipulate the regulatory procedure laid down in Article 5 of Decision 1999/468/EC.

(8) Moreover, the aforesaid legislation is based on the application of rules resulting from international instruments in force at the date of adoption of the Community act in question, or at the date specified by the latter. As a consequence, Member States cannot apply the subsequent amendments to these international instruments until the Community Directives or Regulations have been amended. This has major disadvantages owing to the difficulty of ensuring that the date of entry into force of the amendment at international level coincides with that of the Regulation integrating this amendment into Community law, not least the delayed application within the Community of the most recent and most stringent international safety standards.

(9) However, it is necessary to draw a distinction between the provisions of a Community act making reference, for the purposes of their application, to an international instrument and Community provisions reproducing an international instrument in full or in part. In the latter case, the most recent amendments to the international instruments cannot in any case be rendered applicable until the Community provisions concerned have been amended.

(10) Member States should therefore be permitted to apply the most recent provisions of international instruments, with the exception of those explicitly incorporated in a Community act. This can be done by stating that the international convention applicable for the purposes of the Directive or Regulation concerned is that 'in its up-to-date version', without mentioning the date.

(11) For reasons of transparency, the relevant amendments to international instruments that are integrated in Community maritime legislation should be made public in the Community through their publication in the *Official Journal of the European Communities*.

(12) A specific conformity checking procedure should, however, be set up to enable the Commission, after consulting COSS, to take whatever measures may be necessary to exclude the risk of amendments to the international instruments being incompatible with the aforesaid legislation or Community policy on maritime safety, the prevention of pollution from ships and the protection of shipboard living and working conditions in force or with the objectives pursued by that legislation. Such a procedure should also prevent international amendments from lowering the standard of maritime safety achieved in the Community.

(13) The conformity checking procedure will only be fully effective if the planned measures are adopted as speedily as possible, but at all events before the expiry of the deadline for the entry into force of the international amendment. Consequently, the time available to the Council to act on the proposed measures in accordance with Article 5(6) of Decision 1999/468/EC should be one month,

HAVE ADOPTED THIS REGULATION:

Article 1

Purpose

The purpose of this Regulation is to improve the implementation of the Community legislation referred to in Article 2(2) on maritime safety, the prevention of pollution from ships and shipboard living and working conditions:

- (a) by centralising the tasks of the committees set up under Community maritime legislation and replaced by this Regulation by establishing a single Committee on Safe Seas and the Prevention of Pollution from Ships, to be known as COSS;
- (b) by accelerating the update of, and facilitating subsequent amendments to, Community maritime legislation in the light of developments in the international instruments referred to in Article 2(1).

Article 2

Definitions

For the purposes of this Regulation:

1. 'international instruments' shall mean the conventions, protocols, resolutions, codes, compendia of rules, circulars, standards and provisions adopted by an international conference, the International Maritime Organisation (IMO), the International Labour Organisation (ILO) or the parties to a memorandum of understanding referred to in the provisions of the Community maritime legislation in force;

⁽¹⁾ OJ L 68, 15.3.1991, p. 1.

⁽²⁾ OJ L 319, 12.12.1994, p. 1.

⁽³⁾ OJ L 320, 30.12.1995, p. 14. Regulation as amended by Commission Regulation (EC) No 179/98 (OJ L 19, 24.1.1998, p. 35).

⁽⁴⁾ OJ L 64, 7.3.2002, p. 1.

2. 'Community maritime legislation' shall mean the Community acts in force listed below:

- (a) Council Regulation (EEC) No 613/91;
- (b) Council Directive 93/75/EEC;
- (c) Council Regulation (EC) No 2978/94;
- (d) Council Directive 94/57/EC of 22 November 1994 on common rules and standards for ship inspection and survey organisations and for the relevant activities of maritime administrations ⁽¹⁾;
- (e) Council Directive 95/21/EC of 19 June 1995 on port State control ⁽²⁾;
- (f) Council Regulation (EC) No 3051/95;
- (g) Council Directive 96/98/EC of 20 December 1996 on marine equipment ⁽³⁾;
- (h) Council Directive 97/70/EC of 11 December 1997 setting up a harmonised safety regime for fishing vessels of 24 metres in length and over ⁽⁴⁾;
- (i) Council Directive 98/18/EC of 17 March 1998 on safety rules and standards for passenger ships ⁽⁵⁾;
- (j) Council Directive 98/41/EC of 18 June 1998 on the registration of persons sailing on board passenger ships operating to or from ports of the Member States of the Community ⁽⁶⁾;
- (k) 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 ⁽⁷⁾;
- (l) Directive 2000/59/EC of the European Parliament and of the Council of 27 November 2000 on port reception facilities for ship-generated waste and cargo residues ⁽⁸⁾;
- (m) Directive 2001/25/EC of the European Parliament and of the Council of 4 April 2001 on the minimum level of training of seafarers ⁽⁹⁾;
- (n) Directive 2001/96/EC of the European Parliament and of the Council of 4 December 2001 establishing harmonised requirements and procedures for the safe loading and unloading of bulk carriers ⁽¹⁰⁾;
- (o) Regulation (EC) No 417/2002 of the European Parliament and of the Council.

Article 3

Establishment of a Committee

1. The Commission shall be assisted by a Committee on Safe Seas and the Prevention of Pollution from Ships (hereinafter called COSS).

⁽¹⁾ OJ L 319, 12.12.1994, p. 20. Directive as last amended by European Parliament and Council Directive 2001/105/EC (OJ L 19, 22.1.2002, p. 9).

⁽²⁾ OJ L 157, 7.7.1995, p. 1. Directive as last amended by European Parliament and Council Directive 2001/106/EC (OJ L 19, 22.1.2002, p. 17).

⁽³⁾ OJ L 46, 17.2.1997, p. 25. Directive as last amended by Commission Directive 2002/75/EC (OJ L 254, 23.9.2002, p. 1).

⁽⁴⁾ OJ L 34, 9.2.1998, p. 1. Directive as amended by Commission Directive 2002/35/EC (OJ L 112, 27.4.2002, p. 21).

⁽⁵⁾ OJ L 144, 15.5.1998, p. 1. Directive as amended by Commission Directive 2002/25/EC (OJ L 98, 15.4.2002, p. 1).

⁽⁶⁾ OJ L 188, 2.7.1998, p. 35.

⁽⁷⁾ OJ L 138, 1.6.1999, p. 1.

⁽⁸⁾ OJ L 332, 28.12.2000, p. 81.

⁽⁹⁾ OJ L 136, 18.5.2001, p. 17.

⁽¹⁰⁾ OJ L 13, 16.1.2002, p. 9.

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

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

3. The Committee shall adopt its rules of procedure.

Article 4

Integration of amendments to international instruments in Community law

For the purposes of Community maritime legislation, the applicable international instruments shall be those which have entered into force, including the most recent amendments thereto, with the exception of the amendments excluded from the scope of the Community maritime legislation resulting from the conformity checking procedure established by Article 5.

Article 5

Conformity checking procedure

1. For the purposes of this Regulation and with a view to reducing the risks of conflict between the Community maritime legislation and international instruments, Member States and the Commission shall cooperate, through coordination meetings and/or any other appropriate means, in order to define, as appropriate, a common position or approach in the competent international fora.

2. A conformity checking procedure is hereby established in order to exclude from the scope of the Community maritime legislation any amendment to an international instrument only if, on the basis of an evaluation by the Commission, there is a manifest risk that the international amendment, within the scope of the Regulations or the Directives referred to in Article 2(2), will lower the standard of maritime safety, of prevention of pollution from ships or of protection of shipboard living and working conditions established by Community maritime legislation, or be incompatible with the latter.

The conformity checking procedure may be used solely to make amendments to the Community maritime legislation in the fields expressly covered by the regulatory procedure and strictly within the framework of exercise of implementing powers conferred on the Commission.

3. In the circumstances referred to in paragraph 2, the conformity checking procedure shall be initiated by the Commission, which, where appropriate, may act at the request of a Member State.

The Commission shall submit to the COSS, without delay, after the adoption of an amendment to an international instrument a proposal for measures with the aim of excluding the amendment in question from the Community text concerned.

The conformity checking procedure, including, if applicable, the procedures set up in Article 5(6) of Decision 1999/468/EC, shall be completed at least one month before the expiration of the period established internationally for the tacit acceptance of the amendment concerned or the envisaged date for the entry into force of said amendment.

4. In the event of a risk as referred to in the first subparagraph of paragraph 2, Member States shall refrain, during the period of the conformity checking procedure, from any initiative intended to integrate the amendment in national legislation or to apply the amendment to the international instrument concerned.

Article 6

Information

All relevant amendments to international instruments that are integrated in Community maritime legislation, in accordance with Articles 4 and 5, shall be published, for information purposes, in the *Official Journal of the European Communities*.

Article 7

Powers of COSS

COSS shall exercise the powers conferred on it by virtue of the Community legislation in force. Article 2(2) may be amended by the procedure set out in Article 3(2) in order to include a reference to the Community acts conferring implementing powers on COSS that have entered into force following the adoption of this Regulation.

Article 8

Amendment to Regulation (EEC) No 613/91

Regulation (EEC) No 613/91 is hereby amended as follows:

1. Article 1(a) shall be replaced by the following:

(a) "Conventions" means the 1974 International Convention for the Safety of Life at Sea (1974 Solas), the 1966 International Convention on Load Lines (LL66) and the International Convention for the Prevention of Pollution

from Ships (Marpol 73/78), in their up-to-date versions, and related resolutions of mandatory status adopted by the International Maritime Organisation (IMO).'

2. Articles 6 and 7 shall be replaced by the following:

'Article 6

1. The Commission shall be assisted by the Committee on Safe Seas and the Prevention 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) (*).

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

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

3. The Committee shall adopt its rules of procedure.

Article 7

The amendments to the international instruments referred to in Article 1 may be excluded from the scope of this Regulation, pursuant to Article 5 of Regulation (EC) No 2099/2002.

(*) OJ L 324, 29.11.2002, p. 1.

(**) OJ L 184, 17.7.1999, p. 23.'

Article 9

Amendment to Regulation (EC) No 2978/94

Regulation (EC) No 2978/94 is hereby amended as follows:

1. Article 3(g) shall be replaced by the following:

(g) "Marpol 73/78" means the International Convention for the Prevention of Pollution from Ships, 1973, as amended by the Protocol of 1978 relating thereto, in their up-to-date versions.'

2. The following paragraph shall be added to Article 6:

'The amendments to the international instruments referred to in Article 3 may be excluded from the scope of this Regulation, pursuant to Article 5 of Regulation (EC) No 2099/2002 of the European Parliament and of the Council of 5 November 2002 establishing a Committee on Safe Seas and the Prevention of Pollution from Ships (COSS) (*).

(*) OJ L 324, 29.11.2002, p. 1.'

3. Article 7 shall be replaced by the following:

'Article 7

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

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

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

3. The Committee shall adopt its rules of procedure.

(*) OJ L 184, 17.7.1999, p. 23.'

Article 10

Amendment to Regulation (EC) No 3051/95

Regulation (EC) No 3051/95 is hereby amended as follows:

1. The following subparagraph shall be added to Article 9:

'The amendments to the international instruments referred to in Article 2 may be excluded from the scope of this Regulation, pursuant to Article 5 of Regulation (EC) No 2099/2002 of the European Parliament and of the Council of 5 November 2002 establishing a Committee on Safe Seas and the Prevention of Pollution from Ships (COSS) (*).

(*) OJ L 324, 29.11.2002, p. 1.'

2. Article 10 shall be replaced by the following:

'Article 10

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

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

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

3. The Committee shall adopt its rules of procedure.

(*) OJ L 184, 17.7.1999, p. 23.'

Article 11

Amendment to Regulation (EC) No 417/2002

Regulation (EC) No 417/2002 is hereby amended as follows:

1. Article 3(1) shall be replaced by the following:

'1. "Marpol 73/78" means the International Convention for the Prevention of Pollution from Ships, 1973, as amended by the Protocol of 1978 relating thereto, in their up-to-date versions.'

2. In Article 10(1) shall be replaced by the following:

'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 5 November 2002 of the European Parliament and of the Council establishing a Committee on Safe Seas and the Prevention of Pollution from Ships (COSS) (*).

(*) OJ L 324, 29.11.2002, p. 1.'

3. The following subparagraph shall be added to Article 11:

'The amendments to the international instrument referred to in Article 3(1) may be excluded from the scope of this Regulation, pursuant to Article 5 of Regulation (EC) No 2099/2002.'

Article 12

Entry into force

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

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

Done at Brussels, 5 November 2002.

For the European Parliament

The President

P. COX

For the Council

The President

T. PEDERSEN