DIRECTIVE 2001/106/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 19 December 2001

amending Council Directive 95/21/EC 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 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 laid down in Article 251 of the Treaty ([4]), in the light of the joint text approved by the Conciliation Committee on 13 November 2001,

Whereas:

(1) Council Directive 95/21/EC ([5]) establishes a system of port State control of shipping in the European Community based on uniform inspection and detention procedures.

(2) It is necessary to take account of the changes that have been made to the International Maritime Organisation (IMO) conventions, protocols, codes and resolutions and of developments in the framework of the Paris Memorandum of Understanding (MOU).

(3) It is understood that nothing in this Directive has the effect of transferring to port States the responsibilities of flag States including those of the recognised organisations acting on behalf of the flag States.

(4) 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 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.

(5) Ships with a high target factor present a particularly serious accident or pollution risk, justifying the need to inspect them frequently at Community ports of call.

(6) The categories of ships listed in Annex V to Directive 95/21/EC also present a major accident or pollution hazard when they reach a certain age. The broad discretionary power of the inspection authority as to whether to select such ships for expanded inspection prevents the achievement of uniform practices within the Community. It is therefore necessary to make inspection of these ships mandatory. In particular, given the risks of major pollution caused by oil tankers and in view of the fact that the great majority of deficiencies leading to detention concern ships older than 15 years, the expanded inspection regime should be applied to oil tankers from the age of 15 years.

(7) The content of the expanded inspections for which guidelines have been laid down may vary considerably at the discretion of the inspection authority. In order to achieve uniform practices within the Community, these guidelines should therefore be made mandatory. However, there should be provision for making an exception when the conduct of an inspection of such ships, in particular in view of the state of the ship's cargo tanks or of operational constraints relating to loading or unloading activities, is impossible or would involve excessive risks for the safety of the ship, its crew, the inspector or the safety of the port area.

(8) Member States should be entitled to organise the mandatory inspections efficiently so as to achieve the highest value added from a strengthened inspection regime, taking into account the various operational conditions and making use of cooperation between ports and Member States, while adhering to the overall quantitative inspection targets.

([1]) OJ C 212 E, 25.7.2000, p. 102 and OJ C 154, 29.4.2001, p. 67.
([2]) OJ C 14, 16.1.2001, p. 22.
([3]) OJ C 22, 24.1.2001, p. 19.
([4]) Opinion of the European Parliament of 30 November 2000, (OJ C 228, 13.8.2001, p. 133), Council Common Position of 26 February 2001 (OJ C 101, 30.3.2001, p. 15) and Decision of the European Parliament of 16 May 2001 (not yet published in the Official Journal). Decision of the European Parliament of 24 October 2001 and Decision of the Council of 6 December 2001.
([5]) OJ L 157, 7.7.1995, p. 1. Directive as last amended by Commission Directive 1999/97/EC (OJ L 331, 23.12.1999, p. 67).

(9) As the recruitment and training of qualified inspectors requires some time, the Member States should be allowed to build up their inspection service gradually; given the characteristics of the port of Rotterdam, particularly the volume of traffic calling there, provision should be made for the possibility of extending slightly the period for recruiting and training inspectors for this port.

(10) Structural defects in a ship are likely to increase the risk of an accident at sea. In the case of a ship carrying a bulk cargo of oil, such accidents can have disastrous consequences for the environment. The inspection authority should carry out a visual examination of the accessible parts of the ship in order to detect any serious corrosion and take whatever follow-up action may be necessary, in particular vis-à-vis the classification societies responsible for the structural quality of ships.

(11) Expanded inspection based on mandatory verification of certain aspects of the ship takes a considerable amount of time and organisation. The task of preparing the inspection should be facilitated, which in turn will improve its effectiveness. To this end, the master or operator of any ship entering a Community port should notify certain information of an operational nature.

(12) The growing importance of port State control in the battle against sub-standard practices is resulting in an overall increase in inspectors' tasks. A particular effort should therefore be made to avoid redundant inspections and to improve the information available to inspectors on the content of inspections performed in previous ports. Consequently, the inspection report produced by the inspector on completion of an inspection, a more detailed inspection or an expanded inspection should state which parts of the ship have already been inspected; the inspector at the following port of call will thus be able, where appropriate, to decide to refrain from inspecting a part of the ship if no deficiency was detected during the previous inspection.

(13) Essential technological progress has been made in the field of on-board equipment, which enables voyage data to be recorded (by means of voyage data recorder (VDR system) or 'black boxes') in order to facilitate post-accident investigations. In view of the importance of such equipment for maritime safety and in parallel with the efforts being made on this subject within the IMO, it should be made mandatory after a period of up to five years after the entry into force of this Directive for cargo ships built before 1 July 2002 calling at Community ports and, when compulsory, its absence or failure should warrant detention.

(14) The administration of the flag State of a ship inspected or the classification society concerned should be informed of the result of inspection in order to ensure more effective monitoring of the development and, where appropriate, the deterioration in the state of the ship in order to take the necessary remedial action while there is still time.

(15) Accidental pollution by oil is likely to cause considerable damage to the environment and the economy of the region concerned. It is therefore necessary to verify whether oil tankers calling at European Community ports have appropriate cover for such risks.

(16) The transparency of information relating to ships inspected and detained is a key element of any policy designed to deter the use of ships that fall short of the safety standards. It is necessary in this context to include the identity of the ship's charterer in the list of information published. The public should also be given fuller and clearer information on the inspections and detentions carried out in Community ports. This concerns in particular information on the more extensive inspections performed on-board ships, both by the port State authorities and by the classification societies, and an explanation of the measures taken by the port State authorities or the classification societies concerned following a detention order under the Directive.

(17) It is essential to monitor the application of the Directive in order to avoid the risk of varying levels of safety and distortion of competition between ports and regions of the European Community. The Commission should therefore have more detailed information, particularly on the movements of ships in ports, in order to be able to carry out a detailed examination of the conditions under which the Directive is being applied. Such information should be provided to the Commission sufficiently frequently to enable it to intervene more rapidly whenever anomalies are found in the application of the Directive.

(18) The measures necessary for the implementation of 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 [1],

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Directive 95/21/EC is hereby amended as follows:

1. the title shall be replaced by the following:

'Directive 95/21/EC of the Council of 19 June 1995 on port State control of shipping;'

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

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

'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 (STCW 78),

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

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

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

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

together with the Protocols and amendments to these Conventions and related codes of mandatory status, in force on 19 December 2001.

2. "MOU" means the Memorandum of Understanding on Port State Control, signed in Paris on 26 January 1982, as it stands on 19 December 2001;'

3. Article 4 shall be replaced by the following:

'*Article 4*

Inspection body

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.';

4. Article 5(1), (2) and (3) shall be replaced by the following:

'1. 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.

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).';

5. Article 7 shall be replaced by the following:

'*Article 7*

Mandatory expanded inspection of certain ships

1. A ship in one of the categories in Annex V, section A, is liable to an expanded inspection after a period of 12 months since the last expanded inspection carried out in a port of a State signatory of the MOU.

2. If such a ship is selected for inspection in accordance with Article 5(2)(b), an expanded inspection shall be carried out. However an inspection in accordance with Article 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 not complying with subparagraph (a) shall be subject to an expanded inspection at the port of destination.

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

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.

5. Expanded inspection shall be carried out in accordance with the procedures in 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.';

6. the following Article 7a shall be inserted:

'*Article 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 Article 5(2)(a) or a mandatory expanded inspection as referred to in Article 7(4), the Member State shall, without delay, inform the 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.

3. During any calendar year, such non-inspections 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, calculated on the basis of the three most recent calendar years for which statistics are available.

4. Ships referred to in paragraph 1 shall be subject to an inspection, as provided for in Article 5(2)(a) or a mandatory expanded inspection as referred to in Article 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 laid down in Article 19.';

7. the following Article 7b shall be inserted:

'*Article 7b*

Access refusal measures concerning certain ships

1. A Member State shall ensure that a ship in one of the categories of Annex XI, section A, is refused access to its ports, except in the situations described in Article 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.

The refusal of access shall become applicable immediately the ship has been authorised to leave the port where it has been the subject of a second or third detention as appropriate.

2. For the purposes of paragraph 1, Member States shall comply with the procedures laid down in Annex XI, section 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.';

8. Article 8 shall be replaced by the following:

'*Article 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 IX. A copy of the inspection report shall be provided to the ship's master.';

9. in Article 9:

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

'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.';

(b) paragraph 3 shall be replaced by the following:

'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. In this respect, the ship shall be detained, if not equipped with a functioning voyage data recorder system, when its use is compulsory in accordance with Annex XII. If this deficiency cannot be readily rectified in the port of detention, the competent authority may allow the ship to proceed to the nearest appropriate port where it shall be readily rectified or require that the deficiency is rectified within a maximum period of 30 days. For these purposes, the procedures laid down in Article 11 shall apply.';

(c) paragraph 5 shall be replaced as follows:

'5. In 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 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 conventions shall also be notified where relevant.';

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

'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.';

11. Article 14(2) shall be replaced by the following:

'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 information system set up in St Malo, France.

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.';

12. Article 15(2) shall be replaced by the following:

'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.';

13. in Article 15 the following paragraph shall be added:

'5. The provisions of this Article do not affect national legislation on liability.';

14. in Article 16 the following paragraph shall be inserted:

'2a. In the case of detention of a 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.';

15. Articles 17 and 18 shall be replaced by the following:

'Article 17

Data to monitor implementation

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

Article 18

Regulatory Committee

1. The Commission shall be assisted by the Committee set up pursuant to Article 12 of Directive 93/75/EEC.

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.';

16. in Article 19, the introductory phrase and subparagraph (a) shall be replaced by the following:

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

(a) adapt the obligations referred to in Article 5, except the figure of 25 % referred to in paragraph 1 thereof, in Articles 6, 7, 7a, 7b, 8, 15 and 17, 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 MOU;'

17. the following Article 19a shall be inserted:

'Article 19a

Penalties

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

18. the following paragraph shall be added to Article 20:

'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.';

19. Annex I, Part II shall be replaced by the text in Annex I to this Directive;

20. in Annex II:

(a) item 10 shall be replaced by the following items:

'10. Minimum Safe Manning Document;

10a Certificates issued in accordance with the STCW Convention.';