DIRECTIVE 2001/105/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 19 December 2001

amending Council Directive 94/57/EC on common rules and standards for ship inspection and survey organisations and for the relevant activities of maritime administrations

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 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) Safety and pollution prevention at sea may be enhanced by a proper and compulsory implementation by flag States of the existing relevant conventions in force at international level.

(2) Council Directive 94/57/EC [5] established a system of Community-wide recognition of organisations that, in compliance with the international conventions, may be authorised to a various extent to inspect ships and issue the relevant safety certificates on behalf of the Member States.

(3) The practical implementation of that Directive showed that some adjustments to the Community-wide recognition of organisations might have contributed greatly towards the strengthening of such a system while simplifying the monitoring and reporting obligations imposed on Member States.

(4) Since the adoption of Directive 94/57/EC some developments have occurred in the relevant legislation at Community and international level requiring that further adjustments to Directive 94/57/EC be made.

(5) In particular, for the purposes of Directive 94/57/EC, it is appropriate to apply the amendments to the international conventions together with the protocols and related codes of mandatory status, referred to in Article 2(d) of Directive 94/57/EC, which entered into force after the adoption of the Directive as well as the relevant International Maritime Organisation (IMO) Resolutions.

(6) With a view to promoting the effective implementation of the obligations of the flag States laid down in the international conventions, the IMO Assembly adopted on 27 November 1997 Resolution A.847(20) on guidelines to assist flag States in the implementation of IMO instruments.

(7) IMO adopted the International Safety Management (ISM) Code through Assembly Resolution A.741(18) of 4 November 1993 which was made mandatory through the new Chapter IX of the International Convention for the Safety of Life at Sea (SOLAS) Convention.

(8) With a view to ensuring a uniform implementation of the ISM Code, guidelines on the implementation of the ISM Code by maritime administrations were adopted on 23 November 1995 by IMO through Resolution A.788(19).

(9) With a view to harmonising the statutory surveys and inspections to be carried out by the flag administrations pursuant to the international conventions, IMO adopted Resolution A.746(18) of 4 November 1993 on Survey Guidelines under the Harmonised System of Survey and Certification.

(10) A good record of safety and pollution prevention performance — measured in respect of all ships classed by an organisation, irrespective of the flag they fly — is an important indication of the performance of an organisation and is therefore essential for granting the initial recognition and maintaining it.

(11) In order to grant the initial recognition to the organisations wishing to be authorised to work on behalf of the Member States, compliance with the provisions of Directive 94/57/EC can be assessed more effectively in a harmonised and centralised manner by the Commission together with the Member States requesting the recognition.

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[1] OJ C 212 E, 25.7.2000, p. 114 and OJ C 154 E, 29.5.2001, p. 51.
[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. 150), Council Common Position of 26 February 2001 (OJ C 101, 30.3.2001, p. 1), 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 319, 12.12.1994, p. 20. Directive as amended by Commission Directive 97/58/EC (OJ L 274, 7.10.1997, p. 8).

(12) Similarly, the continuous a posteriori monitoring of the recognised organisations to assess their compliance with the provisions of Directive 94/57/EC can be carried out more effectively in a harmonised and centralised manner. Therefore it is appropriate that the Commission, together with the Member State requesting the recognition, be entrusted with this task on behalf of the whole Community.

(13) In addition to the authority of Member States to suspend the authorisation of an organisation working on their behalf, a similar authority should apply at Community level, the Commission being allowed, on the basis of the Committee procedure, to suspend the recognition of an organisation for a limited period of time where the safety and pollution prevention performance of the organisation is worsening and it fails to take the appropriate corrective measures.

(14) In accordance with the Community-wide approach, the decision to withdraw the recognition of an organisation which fails to fulfil the provisions set out in the Directive, including cases where safety and pollution prevention performance becomes unsatisfactory, has to be taken at Community level, and therefore by the Commission, on the basis of the Committee procedure.

(15) Since Directive 94/57/EC ensures freedom to provide services in the Community, the Community should be entitled to negotiate with those third countries where some of the recognised organisations are located equal treatment for the recognised organisations located in the Community.

(16) The divergence in the financial liability regimes of the organisations working on behalf of the Member States represented a difficulty in the proper implementation of Directive 94/57/EC. In order to contribute to solving this problem it is appropriate to bring about a degree of harmonisation at Community level of the liability arising out of any incident caused by a recognised organisation, as decided by a court of law, including settlement of a dispute through arbitration procedures.

(17) The measures necessary for the implementation of Directive 94/57/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].

(18) Since transparency and exchange of information between interested parties, as well as public right of access to information, are fundamental tools for preventing accidents at sea, the recognised organisations should provide all relevant statutory information concerning the conditions of the ships in their class to the port State control authorities and make it available to the general public.

(19) In an attempt to prevent ships from changing class in order to avoid carrying out necessary repairs, the recognised organisations should exchange all relevant information among themselves concerning the conditions of ships changing class.

(20) An organisation should not be controlled by shipowners or shipbuilders, or by others engaged commercially in the manufacture, equipping, repair or operation of ships. An organisation should not be substantially dependent on a single commercial enterprise for its revenue. When submitting their request for recognition, classification societies and their surveyors should give an undertaking in writing on an individual basis not to accept statutory work where there is a likelihood of a conflict of interests, i.e. where there is identity with the owner or operator of the ship to be inspected or there are business, personal or family links to the owner or operator of the ship.

(21) The qualitative criteria to be met by the technical organisations in order to be recognised at Community level and to maintain such recognition should include provisions to ensure that only exclusive surveyors can carry out the inspections and surveys required by international conventions, i.e. statutory tasks related to the issue of relevant safety certificates. Those organisations must have tight control over all their personnel and offices, including all branches and offices within and outside the Community, and they must establish their own safety and pollution prevention performance targets and indicators. Those organisations must put in place a system to measure the quality of their services.

(22) Directive 94/57/EC should be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Directive 94/57/EC is hereby amended as follows:

1. in Article 2, points (b), (c), (d), (i) and (j) shall be replaced by the following:

'(b) "ship flying the flag of a Member State" means a ship registered in and flying the flag of a Member State in accordance with its legislation. Ships not corresponding to this definition are assimilated to ships flying the flag of a third country;

(c) "inspections and surveys" means inspections and surveys that it is mandatory to carry out under the international conventions;

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

(d) "international conventions" means the 1974 International Convention for the Safety of Life at Sea (SOLAS), the 1966 International Convention on Load Lines and the 1973/1978 International Convention for the Prevention of Pollution from Ships, together with the protocols and amendments thereto, and related codes of mandatory status in all Member States, in force on 19 December 2001;

(i) "class certificate" means a document issued by a classification society certifying the structural and mechanical fitness of a ship for a particular use or service in accordance with the rules and regulations laid down and made public by that society;

(j) "cargo ship safety radio certificate" means the certificate introduced by the amended SOLAS 1974/1978 Radio Regulations, adopted by the IMO;'

2. in Article 3, the following sentence shall be added at the end of paragraph 1:

'Member States shall act in accordance with the relevant provisions of the Annex and the Appendix to IMO Resolution A.847(20) on guidelines to assist flag States in the implementation of IMO instruments.';

3. Article 4 shall be replaced by the following:

'*Article 4*

1. Member States which wish to grant an authorisation to any organisation which is not yet recognised, shall submit a request for recognition to the Commission together with complete information on, and evidence of, compliance with the criteria set out in the Annex and on the requirement and undertaking that it will comply with the provisions of Article 15(2), (4) and (5). The Commission, together with the respective Member States submitting the request, shall carry out assessments of the organisations for which the request for recognition was received in order to verify that the organisations meet and undertake to comply with the above mentioned requirements. A decision on recognition shall take into account the safety and pollution prevention performance records of the organisation, referred to in Article 9. Recognition shall be granted by the Commission in accordance with the procedure referred to in Article 7(2).

2. Member States may submit to the Commission special requests for a limited recognition of three years for organisations which meet all the criteria of the Annex other than those set out under paragraphs 2 and 3 of section A. The same procedure as that referred to in paragraph 1 will apply to these special requests with the exception that the criteria of the Annex for which compliance has to be assessed during the assessment carried out by the Commission, together with the Member State, shall be all the criteria other than those set out under paragraphs 2 and 3 of section A. The effects of these limited recognitions shall be limited exclusively to the Member State or States which have submitted a request for such recognition.

3. All the organisations which are granted recognition shall be closely monitored by the committee set up under Article 7, particularly those referred to in paragraph 2 above, with a view to possible decisions concerning whether or not to extend the limited recognition. With regard to these latter organisations, a decision on the extension of such recognition shall not take into account the criteria set out under paragraphs 2 and 3 of section A of the Annex but shall take into account the safety and pollution prevention performance records of the organisation, referred to in Article 9(2). Any decision on the extension of the limited recognition shall specify under which conditions, if any, such extension is granted.

4. The Commission shall draw up and update a list of the organisations recognised in compliance with paragraphs 1, 2 and 3. The list shall be published in the *Official Journal of the European Communities*.

5. The organisations which on 22 January 2002 are already recognised on the basis of this Directive shall continue to be recognised. Nevertheless, those organisations shall be required to comply with the new provisions laid down in this Directive and their compliance shall be assessed during the first assessments referred to in Article 11.';

4. Article 5 shall be amended as follows:

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

'1. In applying Article 3(2), Member States shall in principle not refuse to authorise any of the recognised organisations to undertake such functions, subject to the provisions of paragraph 3 and Articles 6 and 11. However, they may restrict the number of organisations they authorise in accordance with their needs provided there are transparent and objective grounds for so doing. At the request of a Member State, the Commission shall, in accordance with the procedure laid down in Article 7, adopt appropriate measures.';

(b) paragraph 2 shall be deleted;

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

'3. In order for a Member State to accept that a recognised organisation located in a third State is to carry out the duties mentioned in Article 3 or part of them it may request the third State in question to grant reciprocal treatment for those recognised organisations which are located in the Community. In addition, the Community may request the third State where a recognised organisation is located to grant reciprocal treatment for those recognised organisations which are located in the Community.';

5. Article 6 shall be amended as follows:

(a) paragraph 2 shall be replaced by the following:

'2. The working relationship shall be regulated by a formalised written and non-discriminatory agreement or equivalent legal arrangements setting out the specific duties and functions assumed by the organisations and including at least:

(a) the provisions set out in Appendix II of IMO Resolution A.739(18) on guidelines for the authorisation of organisations acting on behalf of the administration, while drawing inspiration from the Annex, Appendixes and Attachment to IMO MSC/Circular 710 and MEPC/Circular 307 on model agreement for the authorisation of recognised organisations acting on behalf of the administration;

(b) the following provisions concerning financial liability:

(i) if liability arising out of any incident is finally and definitely imposed on the administration by a court of law or as part of the settlement of a dispute through arbitration procedures, together with a requirement to compensate the injured parties for loss or damage to property or personal injury or death, which is proved in that court of law to have been caused by a wilful act or omission or gross negligence of the recognised organisation, its bodies, employees, agents or others who act on behalf of the recognised organisation, the administration shall be entitled to financial compensation from the recognised organisation to the extent that the said loss, damage, injury or death is, as decided by that court, caused by the recognised organisation;

(ii) if liability arising out of any incident is finally and definitely imposed on the administration by a court of law or as part of the settlement of a dispute through arbitration procedures, together with a requirement to compensate the injured parties for personal injury or death, which is proved in that court of law to have been caused by any negligent or reckless act or omission of the recognised organisation, its employees, agents or others who act on behalf of the recognised organisation, the administration shall be entitled to financial compensation from the recognised organisation to the extent that the said personal injury or death is, as decided by that court, caused by the recognised organisation; the Member States may limit the maximum amount payable by the recognised organisation, which must, however, be at least equal to EUR 4 million;

(iii) if liability arising out of any incident is finally and definitely imposed on the administration by a court of law or as part of the settlement of a dispute through arbitration procedures, together with a requirement to compensate the injured parties for loss or damage to property, which is proved in that court of law to have been caused by any negligent or reckless act or omission of the recognised organisation, its employees, agents or others who act on behalf of the recognised organisation, the administration shall be entitled to financial compensation from the recognised organisation, to the extent that the said loss or damage is, as decided by that court, caused by the recognised organisation; the Member States may limit the maximum amount payable by the recognised organisation, which must, however, be at least equal to EUR 2 million;

(c) provisions for a periodical audit by the administration or by an impartial external body appointed by the administration into the duties the organisations are undertaking on its behalf, as referred to in Article 11(1);

(d) the possibility for random and detailed inspections of ships;

(e) provisions for reporting essential information about their classed fleet, changes, suspensions and withdrawals of class, as referred to in Article 15(3).';

(b) the following paragraph shall be added:

'5. The Commission shall, not later than 22 July 2006, submit a report to the European Parliament and to the Council evaluating the economic impact of the liability regime provided for in this Article on the parties concerned and, more particularly, its consequences for the financial equilibrium of recognised organisations.

This report shall be drawn up in cooperation with the competent authorities of the Member States and the parties concerned, in particular recognised organisations/classification societies. The Commission shall, if necessary in the light of this evaluation, submit a proposal amending this Directive with more specific reference to the principle of liability and the maximum liabilities.';

6. Article 7 shall be replaced by the following:

'*Article 7*

1. The Commission shall be assisted by a committee.

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.';