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 (Text with EEA relevance)

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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 consulted the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the Treaty[(3)],

Whereas:

(1) In view of the high number of shipping accidents involving bulk carriers with an associated loss of human lives, further measures should be taken to enhance safety in maritime transport within the framework of the common transport policy.

(2) Assessments of the causes of bulk carrier casualties indicate that loading and unloading of solid bulk cargoes, if not properly conducted, can contribute to the loss of bulk carriers, either by over-stressing the ship's structure or by mechanically damaging its structural members in the cargo holds. The protection of the safety of bulk carriers can be enhanced through the adoption of measures aimed at reducing the risk of structural damage and losses due to improper loading and unloading operations.

(3) At international level, the International Maritime Organisation (the 'IMO'), through a number of Assembly Resolutions, has adopted recommendations on the safety of bulk carriers addressing ship/port interface issues in general and loading and unloading operations in particular.

(4) By Assembly Resolution A.862(20), the IMO adopted a Code of Practice for the Safe Loading and Unloading of Bulk Barriers ('the BLU Code'), and urged contracting governments to implement this Code at the earliest possible opportunity and to inform IMO of any non-compliance. In the Resolution, the IMO further urged contracting governments in whose territories solid bulk cargo loading and unloading terminals

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are situated to introduce laws so that a number of key principles necessary for the implementation of this Code could be enforced.

(5) The impact of loading and unloading operations on bulk carrier safety, in view of the global character of trade in dry cargo in bulk, has transboundary implications. The development of action to prevent the foundering of bulk carriers due to improper loading and unloading practices is therefore best done at Community level by establishing harmonised requirements and procedures to implement the IMO recommendations laid down in the Assembly Resolution A.862(20) and the BLU Code.

(6) In view of the subsidiarity principle set out in Article 5 of the Treaty, a Directive is the appropriate legal instrument as it provides a framework for the Member States' uniform and compulsory application of the requirements and procedures for the safe loading and unloading of bulk carriers, while leaving each Member State the right to decide which implementation tools best fit its internal system. In accordance with the principle of proportionality, this Directive does not go beyond what is necessary for the objectives pursued.

(7) The safety of bulk carriers and their crews can be enhanced by reducing the risks of improper loading and unloading at dry bulk cargo terminals. This can be implemented by establishing harmonised procedures for cooperation and communication between ship and terminal and by laying down suitability requirements for ships and terminals.

(8) In the interests of enhancing bulk carrier safety and avoiding distortion of competition, the harmonised procedures and suitability criteria should apply to all bulk carriers, irrespective of the flag they fly, and to all terminals in the Community at which, under normal circumstances, such carriers call for the purpose of loading or unloading solid bulk cargoes.

(9) Bulk carriers calling at terminals for the loading or unloading of solid bulk cargoes should be suitable for that purpose. Equally, terminals should also be suitable for receiving and loading or unloading visiting bulk carriers. For these purposes suitability criteria have been established in the BLU Code.

(10) Terminals should, in the interests of enhancing cooperation and communication with the ship's master on matters relating to the loading and unloading of solid bulk cargoes, appoint a terminal representative responsible for such operations in the terminal and make information books with the terminal's and port's requirements available to the masters. There are, for this purpose, provisions in the BLU Code.

(11) The development, implementation and maintenance of a quality management system by the terminals would ensure that the cooperation and communication procedures and the actual loading and unloading by the terminal are planned and executed in accordance with a harmonised framework that is internationally recognised and auditable. In view of its international recognition, the quality management system should be compatible with the ISO 9000 series of standards adopted by the International Standardisation Organisation. To allow new terminals sufficient time to achieve the relevant certification, it is important to ensure that a temporary authorisation to operate is available to them for a limited period of time.

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(12) For the purpose of ensuring that loading and unloading operations are carefully prepared, agreed and conducted in order to avoid endangering the safety of the ship or crew, the responsibilities of the master and the terminal representative should be laid down. To this end, relevant provisions can be found in the 1974 International Convention for the Safety of Life at Sea (1974 SOLAS Convention), IMO Assembly Resolution A.862(20) and the BLU Code. For the same purpose, procedures for the preparation, agreement and conduct of loading or unloading operations can be based on the provisions of those international instruments.

(13) In the general interests of the Community, in deflecting sub-standard shipping from its ports, the terminal representative should notify apparent deficiencies on board a bulk carrier which could prejudice the safety of loading or unloading operations.

(14) It is necessary that the competent authorities of the Member States prevent or halt loading or unloading operations whenever they have clear indications that ship or crew safety is endangered by these operations. The authorities should also intervene in the interests of safety in the event of disagreement between the master and the terminal representative as to the application of these procedures. The safety-related action of the competent authorities should not be dependent on commercial interests related to terminals.

(15) It is necessary to lay down procedures for the purpose of reporting damage to ships incurred during loading or unloading operations to the appropriate bodies, such as the relevant classification societies, and of repairing such damage if necessary. Where such damage could impair the safety or seaworthiness of the ship, the decision as to the necessity and urgency of repairs should be taken by the port State control authorities in consultation with the administration of the flag State. In view of the technical expertise necessary to take such a decision, the authorities should have the right to call upon a recognised organisation to inspect the damage and to advise them on any need for repairs.

(16) Enforcement of this Directive should be enhanced by efficient monitoring and verification procedures in the Member States. Reporting the results of this monitoring effort will provide valuable information on the effectiveness of the harmonised requirements and procedures laid down in this Directive.

(17) In IMO Assembly Resolution A.797(19) of 23 November 1995 on the safety of ships carrying solid bulk cargoes it is requested that port State authorities submit confirmation that loading and unloading terminals for solid bulk cargoes comply with the IMO Codes and recommendations on ship/shore cooperation. Notification of the adoption of this Directive to the IMO will provide an appropriate response to this request and a clear signal to the international maritime community that the Community is committed to supporting the efforts undertaken at international level to enhance the safe loading and unloading of bulk carriers.

(18) The measures necessary for the implementation of this Directive 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[(4)].

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(19) It should be possible to amend certain provisions of this Directive in accordance with that procedure, so as to bring them into line with international and Community instruments adopted, amended or entering into force after the entry into force of this Directive and for the implementation of the procedures laid down in this Directive, without broadening its scope.

(20) Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work[(5)] and its relevant individual Directives are applicable to the work relating to the loading and unloading of bulk carriers,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Purpose

The purpose of this Directive is to enhance the safety of bulk carriers calling at terminals in the Member States in order to load or unload solid bulk cargoes, by reducing the risks of excessive stresses and physical damage to the ship's structure during loading or unloading, through the establishment of:

1. harmonised suitability requirements for those ships and terminals; and

2. harmonised procedures for cooperation and communication between those ships and terminals.

Article 2

Scope

This Directive shall apply to:

1. all bulk carriers, irrespective of their flag, calling at a terminal for the loading or unloading of solid bulk cargoes; and

2. all terminals in the Member States visited by bulk carriers falling under the scope of this Directive.

Without prejudice to the provisions of Regulation VI/7 of the 1974 SOLAS Convention, this Directive shall not apply to facilities that only in exceptional circumstances are used for loading and unloading dry cargo in bulk into or from bulk carriers, and shall not apply in cases where the loading or unloading is carried out solely with the equipment of the bulk carrier concerned.

Article 3

Definitions

For the purposes of this Directive:

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1. ‘international conventions’ shall mean the conventions in force on 4 December 2001, as defined in Article 2(1) of Council Directive 95/21/EC[(6)];

2. ‘1974 SOLAS Convention’ shall mean the International Convention for the Safety of Life at Sea, together with the Protocols and amendments thereto, **[**[F1]in its up-to-date version**]**;

3. ‘BLU Code’ shall mean the Code of Practice for the Safe Loading and Unloading of Bulk Carriers, as contained in the Annex to IMO Assembly Resolution A.862(20) of 27 November 1997, as it stands on 4 December 2001;

4. ‘bulk carrier’ shall bear the meaning given to it in Regulation IX/1.6 of the 1974 SOLAS Convention and interpreted by Resolution 6 of the 1997 SOLAS Conference, namely:
   - — a ship constructed with single deck, top-side tanks and hopper-side tanks in cargo paces and intended primarily to carry dry cargo in bulk, or
   - — an ore carrier, meaning a sea-going single deck ship having two longitudinal bulkheads and a double bottom throughout the cargo region and intended for the carriage of ore cargoes in the centre holds only, or
   - — a combination carrier as defined in Regulation II-2/3.27 of the 1974 SOLAS Convention;

5. ‘dry cargo in bulk’ or ‘solid bulk cargo’ shall mean solid bulk cargo as defined in Regulation XII/1.4 of the 1974 SOLAS Convention, excluding grain;

6. ‘grain’ shall bear the meaning given to it in Regulation VI/8.2 of the 1974 SOLAS Convention;

7. ‘terminal’ shall mean any fixed, floating or mobile facility equipped and used for the loading or unloading of dry cargo in bulk into or from bulk carriers;

8. ‘terminal operator’ shall mean the owner of a terminal, or any organisation or person to whom the owner has transferred the responsibility for loading or unloading operations conducted at the terminal for a particular bulk carrier;

9. ‘terminal representative’ shall mean any person appointed by the terminal operator, who has the overall responsibility for, and authority to, control the preparation, the conduct and the completion of loading or unloading operations conducted by the terminal for a particular bulk carrier;

10. ‘master’ shall mean the person who has command over a bulk carrier or a ship's officer designated by the master for the loading or unloading operations;

11. ‘recognised organisation’ shall mean an organisation recognised in accordance with Article 4 of Council Directive 94/57/EC[(7)];

12. ‘administration of the flag State’ shall mean the competent authorities of the State whose flag the bulk carrier is entitled to fly;

13. ‘port State control authority’ shall mean the competent authority of a Member State empowered to apply the control provisions of Directive 95/21/EC;

14. ‘competent authority’ shall mean a national, regional or local public authority in the Member State empowered by national legislation to implement and enforce the requirements of this Directive;