DIRECTIVE 1999/95/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 13 December 1999

concerning the enforcement of provisions in respect of seafarers' hours of work on board ships calling at Community ports

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],

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

Whereas:

(1) Community action in the field of social policy aims, *inter alia*, at improving the health and safety of workers in their working environment;

(2) Community action in the field of maritime transport aims, *inter alia*, at improving shipboard living and working conditions of seafarers, safety at sea and the prevention of pollution caused by maritime accidents;

(3) During its eighty-fourth session of 8 to 22 October 1996 the International Labour Organisation Conference (ILO) adopted ILO Convention No 180 concerning Seafarers' Hours of Work and the Manning of Ships, 1996 (hereinafter 'ILO Convention No 180' and the Protocol to the Merchant Shipping (Minimum Standards) Convention, 1976 (hereinafter 'the Protocol to ILO Convention No 147');

(4) Council Directive 99/63/EC of 21 June 1999 concerning the Agreement on the organisation of working time of seafarers concluded by the European Community Shipowners' Association (ECSA) and the Federation of Transport Workers' Unions in the European Union (FST) [4] adopted under Article 139(2) of the Treaty, aims to put into effect the said Agreement concluded on 30 September 1998 (hereinafter the 'Agreement'); the content of the Agreement reflects certain provisions of ILO Convention No 180; the Agreement applies to seafarers on board every seagoing ship, whether publicly or privately owned, which is registered in the territory of any Member State and is ordinarily engaged in commercial maritime operations;

(5) The purpose of this Directive is to apply the provisions of Directive 1999/63/EC which reflect the provisions of ILO Convention No 180, to any ship calling at a Community port, irrespective of the flag it flies in order to identify and remedy any situation which is manifestly hazardous for the safety or health of seafarers; however, Directive 1999/63/EC includes requirements which are not to be found in ILO Convention No 180 and which should not therefore be enforced on board ships not flying the flag of a Member State;

(6) Directive 1999/63/EC applies to seafarers on board every seagoing ship registered in the territory of a Member State; Member States should monitor compliance with all the provisions of the said Directive by ships registered in their territory;

(7) In order to protect safety and to avoid distortions of competition, Member States should be allowed to verify compliance with the relevant provisions of Directive 1999/63/EC by all sea-going vessels calling at their ports, irrespective of the State in which they are registered;

(8) In particular, ships flying the flag of a State which is not a party to ILO Convention No 180 or the Protocol to ILO Convention No 147 should not receive more favourable treatment than those flying the flag of a State which is a party to either the Convention or Protocol or to both of them;

(9) For the control of the effective enforcement of Directive 1999/63/EC, it is necessary that Member States carry out inspections on board ships, notably after having received a complaint by the master, a crew member, or any person or organisation with a legitimate interest in the safe operation of the ship, shipboard living and working conditions or the prevention of pollution;

(10) For the purposes of this Directive Member States, on their own initiative, may designate, as appropriate, Port State Control inspectors to carry out inspections on board vessels calling at Community ports;

(11) Evidence that a ship does not comply with the requirements of Directive 1999/63/EC may be obtained after verification of the shipboard working arrangements and seafarers' records of hours of work or hours of rest, or when the inspector has a reasonable belief that seafarers are excessively fatigued;

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[1] OJ C 43, 17.2.1999, p. 16.
[2] OJ C 138, 18.5.1999, p. 33.
[3] Opinion of the European Parliament of 14 April 1999 (OJ C 219, 30.7.1999, p, 240), Council common position of 12 July 1999 (OJ C 249, 1.9.1999, p, 7) and Decision of the European Parliament of 4 November 1999 (not yet published in the Official Journal).
[4] OJ L 167, 2.7.1999, p. 37.

(12) In order to rectify any conditions on board a ship which are clearly hazardous to safety or health, the competent authority of the Member State in whose port the ship has called may impose a prohibition on leaving the port until the deficiencies found have been rectified or the crew is sufficiently rested;

(13) Since Directive 1999/63/EC reflects the provisions of ILO Convention No 180, verification of compliance with the provisions of that Directive by ships registered in the territory of a third State can take place only when this Convention has entered into force,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Purpose and scope

1. The purpose of this Directive is to provide a mechanism for the verification and enforcement of compliance by ships calling at ports of Member States with Directive 1999/63/EC in order to improve maritime safety, working conditions and the health and safety of seafarers on board ships.

2. Member States shall take appropriate measures to ensure that ships which are not registered in their territory or not flying their flag comply with clauses 1 to 12 of the Agreement annexed to Directive 1999/63/EC.

Article 2

Definitions

For the purposes of this Directive,

(a) 'ship' means any seagoing vessel, whether publicly or privately owned, which is ordinarily engaged in commercial maritime operations. Fishing vessels are not included in this definition,

(b) 'competent authority' means the authorities designated by the Member States to perform functions under this Directive,

(c) 'inspector' means a public-sector employee or other person, duly authorised by the competent authority of a Member State to inspect the working conditions on board, and responsible to that competent authority,

(d) 'complaint' means any information or report submitted by a member of the crew, a professional body, an association, a trade union or, generally, any person with an interest in the safety of the ship, including an interest in safety or health hazards to its crew.

Article 3

Preparation of reports

Without prejudice to Article 1 (2), if a Member State in whose port a ship calls voluntarily in the normal course of its business or for operational reasons receives a complaint which it does not consider manifestly unfounded or obtains evidence that the ship does not conform to the standards referred to in Directive 1999/63/EC, it shall prepare a report addressed to the government of the country in which the ship is registered and, when an inspection carried out pursuant to Article 4 provides relevant evidence, the Member State shall take the measures necessary to ensure that any conditions on board which are clearly hazardous to the safety or the health of the crew are rectified.

The identity of the person lodging the report or the complaint must not be revealed to the master or the owner of the ship concerned.

Article 4

Inspection and more detailed inspection

1. When carrying out an inspection, in order to obtain evidence that a ship does not conform to the requirements of Directive 1999/63/EC, the inspector shall determine whether:

— a table with the shipboard working arrangements has been established in the working language or languages of the ship and in English according to the model format reproduced in Annex I, or in an alternative equivalent format, and is posted on board in an easily accessible place;

— seafarers' records of hours of work or hours of rest have been established in the working language or languages of the ship and in English according to the model format reproduced in Annex II, or in an alternative equivalent format, and are kept on board and there is proof that the records have been endorsed by the competent authority of the State where the ship is registered.

2. If a complaint has been received or the inspector from his own observations on board believes that the seafarers may be unduly fatigued, the inspector shall conduct a more detailed inspection, pursuant to paragraph 1, to determine whether the working hours or rest periods recorded conform to the standards laid down in Directive 1999/63/EC and that they have been duly observed, taking into account other records relating to the operation of the ship.

Article 5

The rectification of deficiencies

1. If the inspection or the more detailed inspection reveals that the ship does not conform to the requirements of Directive 1999/63/EC, the Member State shall take the measures necessary to ensure that any conditions on board which are clearly hazardous to the safety or health of seafarers are rectified. Such measures may include a prohibition on leaving the port until deficiencies have been rectified or the seafarers have been sufficiently rested.

2. If there is clear evidence that watchkeeping personnel for the first watch or subsequent relieving watches are unduly fatigued, the Member State shall ensure that the ship shall not leave port until the deficiencies found have been rectified or the seafarers in question have been sufficiently rested.

Article 6

Follow-up procedures

1. In the event that a ship is prohibited from leaving the port pursuant to Article 5, the competent authority of the Member State shall inform the master, the owner or operator, the administration of the flag State or the State where the ship is registered or the Consul, or in his absence the nearest diplomatic representative of the State, of the results of the inspections referred to in Article 4, of any decisions taken by the inspector and of corrective actions required, if necessary.

2. When carrying out an inspection under this Directive, all possible efforts should be made to avoid a ship being unduly delayed. If a ship is unduly delayed, the owner or operator shall be entitled to compensation for any loss or damage suffered. In any instance of alleged undue delay, the burden of proof shall lie with the owner or operator of the ship.

Article 7

Right of appeal

1. The owner or the operator of the 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 8

Administrative cooperation

1. Member States shall take the necessary steps to provide, in conditions compatible with those laid down in Article 14 of 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) [1], for cooperation between their relevant authorities and the relevant competent authorities of other Member States to ensure the effective application of this Directive and shall notify the Commission of the provision made.

2. Information on the measures taken pursuant to Articles 4 and 5 shall be published in accordance with procedures such as those set out in the first paragraph of Article 15 of Directive 95/21/EC.

Article 9

'No more favourable' treatment clause

When inspecting a ship registered in the territory of or flying the flag of a State which has not signed ILO Convention No 180 or the Protocol to ILO Convention No 147, Member States shall, once the Convention and the Protocol are in force, ensure that the treatment given to such ships and their crew is no more favourable than that given to a ship flying the flag of a State which is a party to either ILO Convention No 180 or the Protocol to ILO Convention No 147 or both of them.

Article 10

Final provisions

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than 30 June 2002.

2. When Member States adopt the measures referred to in paragraph 1, 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 reference shall be laid down by Member States.

3. Member States shall immediately notify to the Commission all provisions of domestic law which they adopt in the field governed by this Directive. The Commission shall inform the other Member States thereof.

Article 11

Ships from non-Member States

This Directive shall apply to ships not registered in the territory of, or not flying the flag of, a Member State only on the date of entry into force of ILO Convention No 180 and the date of entry into force of the Protocol to ILO Convention No 147.

Article 12

Entry into force

This Directive shall enter into force on the day of its publication in the *Official Journal of the European Communities*.

Article 13

Addressees

This Directive is addressed to the Member States.

Done at Brussels, 13 December 1999.

The European Parliament	*For the Council*
The President	*The President*
N. FONTAINE	S. HASSI

[1] OJ L 157, 7.7.1995, p. 1. Directive as last amended by Directive 98/42/EC (OJ L 184, 27.6.1998, p. 40).