COMMISSION DIRECTIVE 98/42/EC

of 19 June 1998

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)

(Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council 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], as amended by Directive 98/25/EC [2], and in particular Article 19 thereof,

Whereas it is necessary to take account of amendments which have entered into force to the Conventions, Protocols, Codes and Resolutions of the International Maritime Organization (IMO), and developments and considerations within the Paris Memorandum of Understanding (MOU);

Whereas since the adoption of Directive 95/21/EC further efforts have been made to develop a better targeting system; whereas the target factor system developed in the framework of the Paris MOU should be incorporated into that Directive;

Whereas the list of certificates and documents referred to in Annex II to Directive 95/21/EC should be modified in order to take into account amendments which have entered into force to international legislation;

Whereas the list of 'clear grounds' for a more detailed inspection given in Annex III to the said Directive should be amended in the light of a more complete list as given by IMO Resolution A.787(19);

Whereas according to Annex IV to the said Directive, the procedures and guidelines for the control of ships to be observed by the inspector are those described in IMO Resolutions A.466(XII) as amended, A.542(13), MEPC.26(23) and A.742(18); whereas the said Annex IV should be amended in order to take account of the revocation of those Resolutions by IMO Resolution A.787(19); whereas the procedures described in Resolution A.787(19) have been incorporated into Annex I, 'Port State Control Procedures' to the Paris MOU;

Whereas in order to decide whether or not a ship should be detained, the inspector shall apply the criteria set out in Annex VI to the said Directive; whereas however it would be inappropriate to detain a vessel on the grounds of damage accidentally suffered, provided certain conditions are met;

Whereas the said Annex VI should also be amended in the light of the provisions included in IMO Resolution A.787(19), in particular with regard to the areas under the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW) of 1978;

Whereas the measures provided for in this Directive are in accordance with the opinion of the Committee set up pursuant to Article 12 of Council Directive 93/75/EEC [3], as last amended by Commission Directive 97/34/EC [4],

HAS ADOPTED THIS DIRECTIVE:

Article 1

Directive 95/21/EC is amended as follows:

1. Article 5(2) is replaced by the following:

   '2. In selecting ships for inspection the competent authority shall give overriding priority to the ships referred to in Annex I, Part I. In determining the order of priority for inspection of the other ships listed in Annex I, the competent authority shall use the ship's overall target factor referred to in Annex I, Part II.';

2. Annexes I, II, III, IV and VI are amended as provided for in the Annex to this Directive.

[1] OJ L 157, 7. 7. 1995, p. 1.
[2] OJ L 133, 7. 5. 1998, p. 19.
[3] OJ L 247, 5. 10. 1993, p. 19.
[4] OJ L 158, 17. 6. 1997, p. 40.

Article 2

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 30 September 1998 at the latest. They shall immediately inform the Commission thereof.

When these provisions are adopted by Member States, they shall contain a reference to this Directive or shall be accompanied by such a reference at the time of their official publication. The procedure for making such a reference shall be laid down by Member States.

2. Member States shall communicate to the Commission the provisions of national law which they adopt in the field covered by this Directive.

Article 3

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

Article 4

This Directive is addressed to the Member States.

Done at Brussels, 19 June 1998.

For the Commission

Neil KINNOCK

Member of the Commission

ANNEX

1. Annex I is replaced by the following:

'*ANNEX I*

SHIPS TO BE CONSIDERED FOR PRIORITY INSPECTION

(as referred to in Article 5(2))

I. Overriding factors

Regardless of the value of the target factor, the following ships shall be considered as an overriding priority for inspection.

1. Ships which have been reported by pilots or port authorities as having deficiencies which may prejudice their safe navigation (pursuant to Directive 93/75/EEC and Article 13 of this Directive).

2. Ships which have failed to comply with the obligations laid down in Directive 93/75/EEC.

3. Ships which have been the subject of a report or notification by another Member State.

4. Ships which have been the subject of a report or complaint by the master, a crew member, or any person or organization with a legitimate interest in the safe operation of the ship, shipboard living and working conditions or the prevention of pollution, unless the Member State concerned deems the report or complaint to be manifestly unfounded; the identity of the person lodging the report or complaint must not be revealed to the master or the shipowner of the ship concerned.

5. Ships which have been:

— involved in a collision, grounding or stranding on their way to the port,

— accused of an alleged violation of the provisions on discharge of harmful substances or effluents,

— manoeuvred in an erratic or unsafe manner whereby routing measures, adopted by the IMO, or safe navigation practices and procedures have not been followed, or

— otherwise operated in such a manner as to pose a danger to persons, property or the environment.

6. Ships which have been suspended from their class for safety reasons in the course of the preceding six months.

II. Overall targeting factor

The following ships shall be considered as priority for inspection.

	Target factor value
1. Ships visiting a port of a Member State for the first time or after an absence of 12 months or more. In applying these criteria Member States shall also take into account those inspections which have been carried out by members of the MOU. In the absence of appropriate data for this purpose, Member States shall rely upon the available Sirenac data and inspect those ships which have not been registered in the Sirenac following the entry into force of that database on 1 January 1993.	+20
2. Ships not inspected by any Member State within the previous six months.	+10