COUNCIL DIRECTIVE 98/25/EC

of 27 April 1998

amending 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 COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 84(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 189c of the Treaty [3],

(1) Whereas Article 2(1) of Directive 95/21/EC [4] defines 'Conventions' in terms of the Conventions cited in that Article in force at the time of adoption of the Directive; whereas Article 2(2) stipulates that 'MOU' means the Memorandum of Understanding on port State control, signed in Paris on 26 January 1982, as it stood at the date of adoption of the Directive;

(2) Whereas since the adoption of Directive 95/21/EC, amendments to the Solas 74 Convention, to the Marpol 73/78 Convention and to the STCW 78 Convention have entered into force; whereas the latest amendments to the Paris MOU have entered into force on 14 January 1998; whereas it is appropriate to apply these amendments for the purpose of the Directive;

(3) Whereas the International management code for the safe operation of ships and for pollution prevention (ISM Code) adopted by the International Maritime Organisation on 4 November 1993 and made mandatory through the new Chapter IX of the Solas Convention establishes a safety management system applicable both shipboard and on shore by the company responsible for operation of the ship and verified by the administration of the country in which the company conducts its business;

(4) Whereas the ISM Code is an essential contribution to maritime safety and to protection of the marine environment in Community waters;

(5) Whereas the ISM Code enters into force at international level on 1 July 1998 for all passenger ships and for oil tankers, chemical tankers, gas carriers, bulk carriers and cargo high-speed craft with a gross tonnage of 500 tonnes or more;

(6) Whereas Council Regulation (EC) No 3051/95 of 8 December 1995 on the safety management of roll-on/roll-off passenger ferries (ro-ro ferries) [5] aims at advanced mandatory enforcement of the provisions of the ISM Code to all ro-ro ferries to or from Community ports, regardless of their flag;

(7) Whereas delays in implementing the provisions of the ISM Code at international level by companies and administrations would create cause for concern from the point of view of marine safety and protection of the environment;

(8) Whereas it is therefore necessary to establish specific Community-wide measures to deal with cases where no ISM certificates are on board; whereas these measures must include detention of all ships without certificates issued pursuant to the ISM Code;

(9) Whereas, however, in the absence of other serious deficiencies warranting detention of the vessel, the Member State concerned should be able to give authorisation to lift the detention order on the ship when it is necessary in order to avoid port congestion;

(10) Whereas, in this case, Member States need to take, in conformity with Article 11 of Directive 95/21/EC, well-coordinated measures to ensure that ships which have been authorised to leave port without proper ISM certification are refused access to all ports within the Community until valid certificates have been issued under the ISM Code, without prejudice to paragraph 6 of the said Article;

[1] OJ C 264, 30. 8. 1997, p. 33.
[2] Opinion delivered on 10 December 1997 (OJ C 73, 9. 3. 1998, p. 64).
[3] Opinion of the European Parliament of 4 December 1997 (OJ C 388, 22. 12. 1997, p. 16), Council common position of 12 February 1998 (OJ C 91, 26. 3. 1998, p. 28) and Decision of the European Parliament of 31 March 1998 (OJ C 138, 4. 5. 1998).
[4] OJ L 157, 7. 7. 1995, p. 1.
[5] OJ L 320, 30. 12. 1995, p. 14.