COMMISSION OF THE EUROPEAN COMMUNITIES

COM(94) 501 final
Brussels, 15.11.1994

94/0068 (SYN)

Amended proposal for a

COUNCIL DIRECTIVE

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.

(presented by the Commission pursuant to Article 189 A (2) of the EC-Treaty)

EXPLANATORY MEMORANDUM

During its 24-28 October 1994 session, the European Parliament approved, subject to a number of amendments, the Commission's proposal for a Council directive 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.

The amendments adopted by the Parliament do not affect the purpose of the draft Directive rather they enhance the expected effectiveness of certain provisions or clarify them. Although the Commission agreed in principle with almost all the amendments, it did not accept those amendments which are not in line with the provisions of the relevant international conventions of the International Maritime Organization and the International Labour Organization, or which transfer power to an international forum over which the European Union has no jurisdiction, or finally which duplicate equivalent provisions which already exist elsewhere in the draft Directive.

More precisely, the Commission could not accept

- the amendment to article 3 (4) since the text proposed by the Parliament, if accepted, would broaden the scope of derogations to the Directive, and run contrary to those international laws (in particular the SOLAS Convention) on which the Commission's proposal is based.

- the amendments to articles 4 and 5 (1) since the proposed texts are redundant; in fact they correspond to the provisions of article 20 and of article 3 (1) respectively.

- the amendment to article 5 (3) because the European Union cannot simply accept without a right of control, the inspections carried out by inspectors in countries over which it has no jurisdiction.

- the amendment to article 10 (4) since it would considerably weaken the right of member States to refuse rogue vessels access into their ports, a right of refusal which is granted also under international law.

The Commission has accepted without reservation the amendments to articles 2, 5(4), 7 (3a), 8 (1a), 9 (4), 9 (4a), 9 (4b), 10 (1), 10 (5), 10 (6), 11 (1a) and (2a), 14, 15 (1), 15 (3), 17, 18, 19 Annex I and Annex III.

Most amendments constitute drafting improvements, bringing more clarity into the text. Some amendments make the proposal politically more widely acceptable, it is the case of article 2 (§ 5&6) and 5 (4), others bring an added value to it. In particular :

- the amendments to articles 7 (3a), 8 (1a), 9 (4), 9 (4a), 11 (1a and 2a), and to article 14 bring more clarity on the inspector's profile, and in particular its independence from commercial interests as well as on its tasks.

- other new articles 9 (4b) and 9 A proposed by the Parliament grant the operator a right of appeal and of compensation while limiting potential abuses of such a right. These provisions are in line with current legal practices in several Member States in other transport modes.

- the amendments to the annexes I and III will have the effect of increasing the number and the types of vessels to be targeted by the inspectors for more accurate controls while the amendment to article 15 increases the financial burden for the detained ships.

All these amendments are undisputable added value to the proposed Directive.

Finally the Commission has accepted the substance of the amendments related to articles 3 (5) and to Annex VII, subject to drafting improvements.

Amended proposal for a
COUNCIL DIRECTIVE

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.

--------Original text--------	--------Amended text--------
Article 2	
For the purpose of this Directive including its Annexes,	unchanged
'Conventions': Means the International Convention on Load Lines, 1966, the International Convention for the Prevention of Pollution from Ships, 1973, and the Protocol of 1978 related thereto, the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, the Convention on the International Regulations for Preventing Collisions at Sea, 1972, the International Convention on Tonnage Measurement of Ships, 1969 and the Merchant Shipping (Minimum Standards) Convention, 1976 (ILO No. 147), together with the Protocols and amendments to these Conventions and related Codes of mandatory status, in force at the date of adoption of this Directive.	1. 'Conventions': (rest unchanged)
'MOU': Means the Memorandum of Understanding on Port State Control, signed in Paris on 26 January 1982, as amended at the date of the adoption of this Directive.	2. 'MOU': (rest unchanged)
'Ship': Means any seagoing vessel to which one or more of the Conventions apply, flying a flag other than the one of the port State.	3. 'Ship': (rest unchanged)

--------Original text--------	--------Amended text--------
	4. 'Surveyor': Means a civil servant, duly authorized by the competent authority of a Member State.
'Inspection': Means a visit on board a ship in order to control both the validity of the relevant certificates and other documents and the condition of the ship, its equipment and crew.	5. 'Inspection': Means a visit on board a ship in order to control both the validity of the relevant certificates and other documents and the condition of the ship, its equipment and its crew and their living and working conditions.
'A more detailed inspection': Means an inspection where the ship, its equipment and crew as a whole or, as appropriate, parts thereof are subjected to an in depth inspection in the circumstances as specified in article 6, paragraph 3, as regards the ship's construction, equipment, manning and compliance with on board operational procedures.	6. 'A more detailed inspection': Means an inspection where the ship, its equipment and crew as a whole or, as appropriate, parts thereof are subjected to an in depth inspection in the circumstances as specified in article 6, paragraph 3, as regards the ship's construction, equipment, manning, living and working conditions and compliance with on board operational procedures.
'Enhanced control': Means a thorough inspection in the cases specified in article 7.	7. 'Enhanced control': (rest unchanged)
'Special inspection regime': Means an inspection scheme referred to in article 5, paragraph 4 limited in its extent and with a low frequency.	Delete
'Detention': Means the formal prohibition against a ship to proceed to sea or to continue an operation due to identified deficiencies which, singly or together, make the ship unseaworthy, or render the continuation of such an operation hazardous, irrespective of the time the ship is going to stay in port.	8. 'Detention': (rest unchanged)
'Surveyor': Means a civil servant, duly authorized by the competent authority of a Member State.	

Original text	Amended text
	Article 3, paragraph 5 (new)
	5. The Member States shall supply the Commission with all necessary information for the development of priorities and practices which will allow better targeting of ships likely to be defective. Any consequent amendment of article 5 will be made under the provisions of Article 17.
	Article 5 (4)
4. The Commission, in accordance with the procedure laid down in article 19, will establish the provisions for the categories of ships, and the conditions under which Member States shall apply the special inspection regime for these categories of ships. The special inspection regime shall not be applied whenever there are clear grounds as referred to in article 6, paragraph 3.	4. Delete
	Article 7(3a) (new)
	3a. Enhanced control of passenger ships operating regular services between ports of Member States shall be carried out by the competent authorities of one of these Member States.
	Article 8
On the completion of an inspection, a more detailed inspection, or an enhanced control, the master of the ship shall be provided by the surveyor with a document in the form specified in Annex 3 to the MOU, giving the results of the inspection and details of any decisions taken by	1. (rest unchanged)

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--------Original text--------	--------Amended text--------
the surveyor, and of corrective action to be taken by the master or owner.	
	1a. Where deficiencies lead to the detention of the ship, the report to the master pursuant to paragraph 1 should contain information on the future publication of the detention as provided for in this Directive.
Article 9(4), 4(a) and 4(b) (new)	
4. In the event the inspections referred to in articles 6 and 7 give rise to an intervention of any kind, the surveyor carrying out the inspection shall act in accordance with the provisions of Regulation 19, (d)-(f) of Chapter I to the Protocol of 1978 relating to the International Convention for the Safety of Life at Sea, 1974.	4. In the event the inspections referred to in articles 6 and 7 give rise to detention, the competent authority shall forthwith inform in writing the administration, or the Consul, or, in his absence, the nearest diplomatic representative of the flag State of the circumstances necessitating the intervention. In addition, the surveyor or the recognized body responsible for the classification of the ship shall also be informed.
	4a. The provisions of this Directive shall be without prejudice to any additional requirements in the Conventions regarding the notification and reporting procedures in respect of port State control.
	4b. In the exercise of port State control pursuant to this Directive every effort must be made to ensure that ships are not unduly detained or prevented from proceeding to sea. Should ships be unduly detained or prevented from proceeding to sea, compensation for the loss or damage incurred shall be paid.
	Article 9a Right of appeal (new)
	1. The owner or operator of a ship or his representative in the Member State shall have the right of appeal against a decision concerning a detention of a ship or prohibition of

--------Original text--------	--------Amended text--------
	operations related to a ship taken by the competent authority or its surveyor.
	2. In accordance with their legislation, the Member States shall set up and operate appropriate appeals procedures for this purpose.
	3. The competent authority shall duly inform the master of the ship of the right of appeal under paragraph 1.
Article 10 (1),	(5) and (6)
1. Where deficiencies referred to in article 9, paragraph 2 cannot be rectified in the port of inspection, the competent authority of that Member State may allow such ship to proceed to a repair yard located in the Community, and as decided by the master, provided that the conditions determined by the competent authority of that Member State are complied with. Such conditions shall ensure that the ship can so proceed without risk to the safety and health of passengers, or crew, or risk to other ships, or without being an unreasonable threat of harm to the marine environment.	1. Where deficiencies referred to in article 9, paragraph 2 cannot be rectified in the port of inspection, the competent authority of that Member State may allow such ship to proceed to the nearest suitable repair yard as decided by the master and the authorities concerned, provided that the conditions are determined by the competent authority of the flag State and approved by the Member State concerned. Such conditions shall ensure that the ship can so proceed without risk to the safety and health of passengers, or crew, or risk to other ships, or without being an unreasonable threat of harm to the marine environment.
5. The competent authority of the Member State where the ship was found defective shall, in the circumstances as referred to in paragraph 4 immediately alert the competent authorities of all the other Member States.	5. unchanged
Notwithstanding the provisions of paragraph 4, access to a specific port may be permitted in case of force majeure, provided adequate measures, to the satisfaction of the competent authority of such Member State, have been implemented by the owner or the master of the ship to ensure safe entry, and provided that an appropriate financial security has been assured.	6. Notwithstanding (rest unchanged)

--------Original text--------

--------Amended text--------

Article 11(1a) and (2a) (new)

1a. Should the surveyor not have the required knowledge relating to certain technical areas he may have the inspection carried out by a surveyor belonging to an organization which is recognized under the directive on common rules and standards for ship inspection organizations (OJ No. ...).

2a. Surveyors shall carry individual authorization in the form of an identity card issued by the competent authority pursuant to national legislation authorizing him to inspect the vessel.

A Community form shall be produced under the procedure laid down in Article 17.

Article 14

Each competent authority shall publish quarterly the number of detentions which have been carried out by that authority in the previous three months. The publication shall include the name of the ship, IMO number, flag State, the shipowner and the classification society, whether or not it has issued the statutory certificates on behalf of the flag State, and, if applicable, any other Party which has issued certificates to such ship in accordance with the Conventions on behalf of the flag State.

Each competent authority shall publish quarterly which ships have been detained in the previous three months and which have been detained more than once in the previous 24 months. The publication shall contain:

- the name of the ship,
- IMO number,
- flag State,
- the shipowner,
- the classification society and, if applicable, any other Party which has issued certificates to such ship in accordance with the Conventions on behalf of the flag State, where relevant,
- the grounds for detention, and
- the port and date of detention.

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--------Original text--------	--------Amended text--------
Article 15(1) and (3) (new)	
1. A fee shall be levied on the owner, or the operator of a ship which has been inspected in accordance with this Directive, and on which deficiencies, justifying a detention, have been revealed. The total fee levied in accordance with this article shall cover, but not exceed, the total costs in any normal accounting period for the inspections carried out after the formal notice of detention has been issued.	1. Where an inspection referred to in Articles 6 or 7 confirms or reveals deficiencies in relation to the requirements of a Convention which justify the detention of a ship, the total cost chargeable for the inspection in any normal accounting period shall be borne by the operator or his representative in the port State. 3. The detention shall not be lifted until such costs have been reimbursed in full or adequate security has been lodged.
Article 17	
The Commission shall be assisted by the Committee set up by Article 12 of Directive 93/75/EC in accordance with the procedure laid down in Article 19.	**The Commission shall be assisted by the Committee set up by Article 12 of Directive 93/75/EC in accordance with the procedure laid down in that article.**
Article 18	
The Commission, in accordance with the procedure laid down in Article 19, may:	In accordance with the procedure laid down in Article 17, the Directive may be amended:
(a) amend the inspection obligation of Member States mentioned in Article 5 on the basis of the experience resulting from the application of this Directive and taking into account the developments in the MOU;	(a) to adapt the inspection and publication obligations of Member States mentioned in Articles 5, 6, 7 and 14 on the basis of the experience resulting from the application of this Directive and taking into account the developments in the MOU;
(b) amend the Annexes in order to take into account amendments to the Conventions, protocols, codes, resolutions of relevant international bodies and to the MOU.	(b) to adapt the Annexes in order to take into account amendments to the Conventions, protocols, codes, resolutions of relevant international bodies and to the MOU.

--------Original text--------	--------Amended text--------
Article 19	
1. The representative of the Commission shall submit to the Committee referred to in Article 17 a draft of the measures to be taken;	Delete
2. The Committee shall deliver its opinion on the draft within a time limit which the chairman may lay down according to the urgency of the matter, if necessary by taking a vote;	Delete
3. The opinion shall be recorded in the minutes; in addition each Member State has the right to have its position recorded in the minutes;	Delete
4. The Commission shall take the utmost account of the opinion delivered by the Committee. It shall inform the Committee of the manner in which its opinion has been taken into account.	Delete
Annex I, introductory words, points (1) and 8a (new)	
Priority list of ships to be inspected as referred to in Article 5, paragraph 2	Priority list of ships to be inspected as referred to in Article 5, paragraph 2
	These criteria are not listed in order of priority
1. Ships visiting a port of a Member State for the first time. In their application of this criteria Member States shall also take into account those inspections which have been carried out by members to the MOU. In the absence of appropriate data to implement this obligation, Member States shall rely upon the available SIRENAC E data and inspect those ships which have not been registered in the SIRENAC E database, after the entry into force of that database the 1st January 1993.	1. Ships visiting a port of a Member State for the first time or after an absence of 12 months or more. In their application of this criteria Member States shall also take into account those inspections which have been carried out by members to the MOU. In the absence of appropriate data to implement this obligation, Member States shall rely upon the available SIRENAC E data and inspect those ships which have not been registered in the SIRENAC E database, after the entry into force of that database the 1st January 1993.
	8a. Chemical tankers.

--------Original text--------	--------Amended text--------
Annex III, introductory words and paragraphs-1 (new) and 2	
(Non exhaustive list)	
The following are examples of 'clear grounds' for a more detailed inspection as referred to in Article 6(3).	List of examples of 'clear grounds' for a more detailed inspection as referred to in Article 6(3). (non exhaustive list)
	-1. Ships within the meaning of Annex I with the exception of points 1 and 82
2. 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.	2. 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 making the report or complaint may not be disclosed to the master or owner of the ship in question.
Annex VII	
Minimum criteria for surveyors as referred to in Article 11, paragraph 1	Minimum criteria for surveyors as referred to in Article 11, paragraph 1
1. The surveyor has to be authorised to carry out flag State control by the competent authority of the member State.	1. The surveyor has to be authorised to carry out port State control by the competent authority of the member State.
2. A minimum of two years of service as a flag State surveyor has to be completed.	2. A. EITHER: - A minimum of one year of service as a flag State inspector dealing with survey and certification in accordance with the Conventions has to be completed.
3. Possession of an authorization to detain a ship in accordance with the appropriate national legislation.	Delete

A.1

--------Original text--------	--------Amended text--------
4. Possession of:	- Be in possession of:
a) a certificate of competency as master, cfr. STCW, Reg. II/2, or	a) a certificate of competency as master, enabling that person to take command of a ship of 1600 GT or more, cfr. STCW, Reg. II/2, or
b) a certificate of competency as chief engineer, cfr. STCW, Reg. III/2, or	b) a certificate of competency as chief engineer enabling that person to take up that task on board a ship whose main power plant has a power equal or superior to 3000 KW, cfr. STCW, Reg. III/2, or
c) a certificate of competency as radio officer, cfr. STCW, Reg. IV/1, or	Delete
d) having passed examination as a naval architect, a mechanical engineer or an engineer related to the maritime fields and worked in that capacity for at least 5 years.	c) having passed examination as a naval architect, a mechanical engineer or an engineer related to the maritime fields and worked in that capacity for at least 5 years.
5. The surveyors mentioned under 4 a)-c) must have served at least as a Chief Officer, a Second Engineer (in some Member States that position is referred to as First Engineer) or a Radio Officer respectively, for a period of not less than two years.	- The inspectors mentioned under a) and b) must have served for a period of not less than five years at sea as officer in the deck- or engine- department respectively.
	B. OR :
	- hold a relevant university degree or an equivalent training, and - have been trained and qualified at a school for ship safety inspectors, and - have served at least 2 years as a flag State inspector dealing with the survey and certification in accordance with the Conventions.

--------Original text--------

6. Ability to communicate orally and in writing in the English language.

--------Amended text--------

3. Ability to communicate orally and in writing with seafarers in the language most commonly spoken at sea.

4. Appropriate knowledge of the provisions of the international conventions and of the relevant procedures on port State control.

5. Inspectors not fulfilling the above criteria are also accepted if they were employed by the competent authority of a Member State for port State control at the date of adoption of this Directive.

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