Proposal for a Council Directive 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)

(97/C 264/06)

(Text with EEA relevance)

COM(97) 416 final — 97/0215(SYN)

(Submitted by the Commission on 28 July 1997)

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,

Having regard to the opinion of the Economic and Social Committee,

Acting in accordance with the procedure laid down in Article 189c of the Treaty,

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],

1. Whereas, for the purpose of Directive 95/21/EC, Article 2 (1) thereof stipulates that international conventions means the conventions in force at the time 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 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 Organization on 4 November 1993 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 Council Regulation (EC) No 3051/95 of 8 December 1995 on the safety management of roll-on/roll-off passenger ferries [2] 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;

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

7. Whereas the delays in implementing the provisions of the ISM Code at international level by companies and administrations from several flag States are creating a situation giving extreme cause for concern from the point of view of marine safety and protection of the environment;

[1] OJ No L 157, 7. 7. 1995, p. 1.

[2] OJ No L 320, 30. 12. 1995, p. 14.

8. Whereas in expanding the control measures it is necessary to at Community level with a view to enforcement of the obligations imposed by the ISM Code as soon as they enter into force; whereas these measures must include detention of all ships without certificates issued pursuant to the ISM Code;

9. Whereas in the absence of other serious deficiencies warranting detention of the vessel, the Member State concerned should give authorisation to lift the detention order on the ship; whereas, however, the ship in question should be refused access to Community ports until valid certificates have been issued under the ISM Code;

10. Whereas it must be possible to adapt Directive 95/21/EC to amendments to the international conventions and the memorandum of Understanding mentioned in Article 2 by a simplified procedure; whereas the procedure provided for in Article 18 of the Directive appears the most appropriate for such amendments; whereas Article 19 must be extended to this end,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Directive 95/21/EC is hereby amended as follows:

1. in Article 2 (1) 'in force at the date of adoption of this Directive' is replaced by 'in force on 1 July 1998'.

2. The following Article is added:

'Article 9a

Procedure applicable in the absence of ISM certificates

1. Where the inspection reveals that the copy of the document of compliance or certificate issued in accordance with the International management Code for the Safe Operation of Ships and for Pollution Prevention (ISM Code) are missing, the competent authority shall ensure that the vessel is detained.

2. Notwithstanding the absence of the documentation referred to in paragraph 1, if the inspection finds no other deficiencies warranting detention the competent authority may authorize the ship to leave port. Whenever such a decision is taken, the competent authority shall immediately inform the competent authorities of the other Member States thereof.

3. Member States shall take the measures necessary to ensure that all ships authorized to leave a port in a Member State under the circumstances referred to in paragraph 2 shall be refused access to all ports in the Community until the owner or operator of the vessel has demonstrated, to the satisfaction of the Member State in which detention was ordered, that the ship has valid certificates issued in accordance with the ISM Code.'

3. In Article 19 the following point is added:

'(c) apply, for the purpose of this Directive, subsequent amendments which have entered into force to the international conventions and to the Memorandum of Understanding mentioned in Article 2 (1) and (2).'

Article 2

1. Member States shall adopt the laws, regulations and administrative provisions necessary to implement this Directive not later than 1 July 1998 and shall forthwith inform the Commission thereof.

When Member States adopt these measures, 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 a reference shall be laid down by Member States.

2. Member States shall communicate to the Commission the text of the provisins of national law which they have adopted in the field governed by this Directive.

Article 3

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

Article 4

This Directive is addressed to the Member States.