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► **M4** COUNCIL DIRECTIVE 95/21/EC
of 19 June 1995
on port State control of shipping ◀

(OJ L 157, 7.7.1995, p. 1)

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► <u>M1</u> Council Directive 98/25/EC of 27 April 1998	L 133	19	7.5.1998
► <u>M2</u> Commission Directive 98/42/EC of 19 June 1998	L 184	40	27.6.1998
► <u>M3</u> Commission Directive 1999/97/EC of 13 December 1999	L 331	67	23.12.1999
► <u>M4</u> Directive 2001/106/EC of the European Parliament and of the Council of 19 December 2001	L 19	17	22.1.2002
► <u>M5</u> Directive 2002/84/EC of the European Parliament and of the Council of 5 November 2002	L 324	53	29.11.2002

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► **C1** Corrigendum, OJ L 291, 14.11.1996, p. 42 (95/21/EC)

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COUNCIL DIRECTIVE 95/21/EC
of 19 June 1995
on port State control of shipping

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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 Article 189c of the Treaty⁽³⁾,

Whereas the Community is seriously concerned about shipping casualties and pollution of the seas and coastlines of the Member States;

Whereas the Community is equally concerned about on-board living and working conditions;

Whereas the Council, at its meeting on 25 January 1993, adopted conclusions that urged the Community and the Member States to ensure more effective application and enforcement of adequate international maritime safety and environment protection standards and to implement the new measures when adopted;

Whereas, in its resolution of 8 June 1993 on a common policy on safe seas⁽⁴⁾, the Council urged the Commission to submit as soon as possible to the Council suggestions for specific action and formal proposals concerning criteria for the inspection of ships, including the harmonization of detention rules, and including the possibility of publication of the results of the inspections and refusal of access to Community ports;

Whereas safety, pollution prevention and shipboard living and working conditions may be effectively enhanced through a drastic reduction of substandard ships from Community waters, by strictly applying international Conventions, codes and resolutions;

Whereas monitoring the compliance of ships with the international standards for safety, pollution prevention and shipboard living and working conditions should rest primarily with the flag State; whereas, however, there is a serious failure on the part of an increasing number of flag States to implement and enforce international standards; whereas henceforth the monitoring of compliance with the international standards for safety, pollution prevention and shipboard living and working conditions has also to be ensured by the port State;

Whereas a harmonized approach to the effective enforcement of these international standards by the Member States in respect of ships sailing in the waters under their jurisdiction and using their ports will avoid distortions of competition;

Whereas a framework in Community law for harmonizing inspection procedures is fundamental to ensuring the homogeneous application of the principles of shipping safety and prevention of pollution which lie at the heart of Community transport and environment policies;

⁽¹⁾ OJ No C 107, 15. 4. 1994, p. 14 and OJ No C 347, 8. 12. 1944, p. 15.

⁽²⁾ OJ No 393, 31. 12. 1994, p. 50.

⁽³⁾ Opinion of the European Parliament of 27 October 1994 (OJ No C 347, 8. 12. 1994, p. 15), Council common position of 14 March 1995 (OJ No C 93, 13. 4. 1995, p. 25) and European Parliament Decision of 18 May 1995 (not yet published in the Official Journal) (SIC! OJ No C 151, 19. 6. 1995, p. 227).

⁽⁴⁾ OJ No C 271, 7. 10. 1993, p. 1.

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Whereas pollution of the seas is by nature a trans-boundary phenomenon; whereas, in accordance with the principle of subsidiarity, the development of the means of taking preventive action in this field as regards the seas adjacent to the Member States is best done at Community level, since Member States cannot take adequate and effective action in isolation;

Whereas the adoption of a Council Directive is the appropriate procedure for laying down the legal framework and the harmonized rules and criteria for port State control;

Whereas advantage should be taken of the experience gained during the operation of the Paris Memorandum of Understanding (MOU) on Port State Control (PSC), signed in Paris on 26 January 1982;

Whereas the inspection by each Member State of at least 25% of the number of individual foreign ships which enter its ports in a given year in practice means that a large number of ships operating within the Community area at any given time have undergone an inspection;

Whereas further efforts should be made to develop a better targeting system;

Whereas the rules and procedures for port-State inspections, including criteria for the detention of ships, must be harmonized to ensure consistent effectiveness in all ports, which would also drastically reduce the selective use of certain ports of destination to avoid the net of proper control;

Whereas the casualty, detention and deficiency statistics published in the Commission's communication entitled 'A common policy on safe seas' and in the annual report of the MOU show that certain categories of ships need to be subject to an expanded inspection;

Whereas non-compliance with the provisions of the relevant Conventions must be rectified; whereas ships which are required to take corrective action must, where the deficiencies in compliance are clearly hazardous to safety, health or the environment, be detained until such time as the non-compliance has been rectified;

Whereas a right of appeal should be made available against decisions for detention taken by the competent authorities, in order to prevent unreasonable decisions which are liable to cause undue detention and delay;

Whereas the facilities in the port of inspection may be such that the competent authority will be obliged to authorize the ship to proceed to an appropriate repair yard, provided that the conditions for the transfer are complied with; whereas non-complying ships would continue to pose a threat to safety, health or the environment and to enjoy commercial advantages by not being upgraded in accordance with the relevant provisions of the Conventions and should therefore be refused access to all ports in the Community;

Whereas there are circumstances where a ship which has been refused access to ports within the Community has to be granted permission to enter; whereas under such circumstances the ship should only be permitted access to a specific port if all precautions are taken to ensure it safe entry;

Whereas, given the complexity of the requirements of the Conventions as regards a ship's construction, equipment and manning, the severe consequences of the decisions taken by the inspectors, and the necessity for the inspectors to take completely impartial decisions, inspections must be carried out only by inspectors who are duly authorized public service employees or other such persons, and highly knowledgeable and experienced;

Whereas pilots and port authorities may be able to provide useful information on the deficiencies of such ships and crews;

Whereas cooperation between the competent authorities of the Member States and other authorities or organizations is necessary to ensure an effective follow-up with regard to ships with deficiencies which have

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been permitted to proceed and for the exchange of information about ships in port;

Whereas the information system called Sirenac E established under the MOU provides a large amount of the additional information needed for the application of this Directive;

Whereas publication of information concerning ships which do not comply with international standards on safety, health and protection of the marine environment, may be an effective deterrent discouraging shippers to use such ships, and an incentive to their owners to take corrective action without being compelled to do so;

Whereas all costs of inspecting ships which warrant detention should be borne by the owner or the operator;

Whereas for the purposes of implementing this Directive use should be made of the Committee set up pursuant to Article 12 of Council Directive 93/75/EEC of 13 September 1993 concerning minimum requirements for vessels bound for or leaving Community ports and carrying dangerous or polluting goods⁽¹⁾ in order to assist the Commission with the task of adapting Member States' inspection obligations on the basis of experience gained, taking into account developments in the MOU, and also adopting the Annexes as necessary in the light of amendments to the Conventions, Protocols, codes and resolutions of relevant international bodies and to the MOU,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Purpose

The purpose of this Directive is to help drastically to reduce substandard shipping in the waters under the jurisdiction of Member States by:

- increasing compliance with international and relevant Community legislation on maritime safety, protection of the marine environment and living and working conditions on board ships of all flags,
- establishing common criteria for control of ships by the port State and harmonizing procedures on inspection and detention, taking proper account of the commitments made by the maritime authorities of the Member States under the Paris Memorandum of Understanding on Port State Control (MOU).

Article 2

Definitions

For the purpose of this Directive including its Annexes:

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1. 'Conventions' means:

- the International Convention on Load Lines, 1966 (LL 66),
- the International Convention for the Safety of Life at Sea, 1974 (SOLAS 74),
- the International Convention for the Prevention of Pollution from Ships, 1973, and the 1978 Protocol relating thereto (Marpol 73/78),
- the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW 78),
- the Convention on the International Regulations for Preventing Collisions at Sea, 1972 (Colreg 72),
- the International Convention on Tonnage Measurement of Ships, 1969 (ITC 69),
- the Merchant Shipping (Minimum Standards) Convention, 1976 (ILO No 147),

⁽¹⁾ OJ No L 247, 5. 10. 1993, p. 19.

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— the International Convention on Civil Liability for Oil Pollution Damage, 1992 (CLC 92),

together with the Protocols and amendments to these Conventions and related codes of mandatory status, ► **M5** in its up-to-date version ◀.

2. ‘*MOU*’ means the Memorandum of Understanding on Port State Control, signed in Paris on 26 January 1982, ► **M5** in its up-to-date version ◀.

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3. ‘*Ship*’ means any seagoing vessel to which one or more of the Conventions apply, flying a flag other than that of the port State.
4. ‘*Off-shore installation*’ means a fixed or floating platform operating on or over the continental shelf of a Member State.
5. ‘*Inspector*’ means a public-sector employee or other person, duly authorized by the competent authority of a Member State to carry out port-State control inspections, and responsible to that competent authority.
6. ‘*Inspection*’ means a visit on board a ship in order to check both the validity of the relevant certificates and other documents and the condition of the ship, its equipment and crew, as well as the living and working conditions of the crew.
7. ‘*More detailed inspection*’ means an inspection where the ship, its equipment and crew as a whole or, as appropriate, parts thereof are subjected, in the circumstances specified in Article 6 (3), to an in-depth inspection covering the ship's construction, equipment, manning, living and working conditions and compliance with on-board operational procedures.
8. ‘*Expanded inspection*’ means an inspection as specified in Article 7.
9. ‘*Detention*’ means the formal prohibition of a ship to proceed to sea due to established deficiencies which, individually or together, make the ship unseaworthy.
10. ‘*Stoppage of an operation*’ means a formal prohibition of a ship to continue an operation due to established deficiencies which, individually or together, would render the continued operation hazardous.

*Article 3***Scope**

1. This Directive applies to any ship and its crew:
 - calling at a port of a Member State or at an off-shore installation, or
 - anchored off such a port or such an installation.

Nothing in this Article shall affect the rights of intervention available to a Member State under the relevant international Conventions.

2. In case of ships of a gross tonnage below 500, Member States shall apply those requirements of a relevant Convention which are applicable and shall, to the extent that a Convention does not apply, take such action as may be necessary to ensure that the ships concerned are not clearly hazardous to safety, health or the environment. In their application of this paragraph, Member States shall be guided by Annex 1 to the MOU.

3. When inspecting a ship flying the flag of a State which is not a party to a Convention, Member States shall ensure that the treatment given to such ship and its crew is no more favourable than that given to a ship flying the flag of a State which is a party to that Convention.

4. Fishing vessels, ships of war, naval auxiliaries, wooden ships of a primitive build, government ships used for non-commercial purposes and pleasure yachts not engaged in trade shall be excluded from the scope of this Directive.

▼ **M4***Article 4***Inspection body**

Member States shall maintain appropriate national maritime administrations with the requisite number of staff, in particular qualified inspectors, hereinafter called 'competent authorities', for the inspection of ships and shall take whatever measures are appropriate to ensure that their competent authorities perform their duties as laid down in this Directive.

▼ **B***Article 5***Inspection commitments**▼ **M4**

1. The total number of inspections of the ships referred to in paragraph (2) and Article 7 to be carried out annually by the competent authority of each Member State shall correspond to at least 25 % of the average annual number of individual ships which entered its ports, calculated on the basis of the three most recent calendar years for which statistics are available.

2. (a) The competent authority shall, subject to the provisions of Article 7a, ensure that an inspection in accordance with Article 6 is carried out on any ship not subject to an expanded inspection with a target factor greater than 50 in the Sirenac information system, provided that a period of at least one month has elapsed since the last inspection carried out in a port in the MOU region.

(b) In selecting other ships for inspection, the competent authorities shall determine the order of priority as follows:

- the first ships to be selected for inspection shall be those listed in Annex I, Part I, irrespective of their target factor,
- the ships listed in Annex I, Part II shall be selected in decreasing order, depending on the order of priority resulting from the value of their target factor ranges as referred to in the Sirenac information system.

3. Member States shall refrain from inspecting ships which have been inspected by any Member State within the previous six months, provided that:

- the ship is not listed in Annex I,
- no deficiencies have been reported, following a previous inspection,
- no clear grounds exist for carrying out an inspection,
- the ship is not covered by paragraph 2(a).

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4. The provisions of paragraph 3 shall not apply to any of the operational controls specifically provided for in the Conventions.

5. The Member States and the Commission shall cooperate in seeking to develop priorities and practices which will enable ships likely to be defective to be targeted more effectively.

Any consequent amendment of this Article, except to the figure of 25% in paragraph 1, shall be made under the provisions of Article 19.

*Article 6***Inspection procedure**

1. The competent authority shall ensure that the inspector shall as a minimum:

- (a) check the certificates and documents listed in Annex II, to the extent applicable;
- (b) satisfy himself of the overall condition of the ship, including the engine room and accommodation and including hygienic conditions.

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2. The inspector may examine all relevant certificates and documents, other than those listed in Annex II, which are required to be carried on board in accordance with the Conventions.

3. Whenever there are clear grounds for believing, after the inspection referred to in paragraphs 1 and 2, that the condition of a ship or of its equipment or crew does not substantially meet the relevant requirements of a Convention, a more detailed inspection shall be carried out, including further checking of compliance with on-board operational requirements.

‘Clear grounds’ exist when the inspector finds evidence which in his professional judgement warrants a more detailed inspection of the ship, its equipment or its crew.

Examples of ‘clear grounds’ are set out in Annex III.

4. The relevant procedures and guidelines for the control of ships specified in Annex IV shall also be observed.

▼M4*Article 7***Mandatory expanded inspection of certain ships**

1. A ship in one of the categories in Annex V, section A, is liable to an expanded inspection after a period of 12 months since the last expanded inspection carried out in a port of a State signatory of the MOU.

2. If such a ship is selected for inspection in accordance with Article 5(2)(b), an expanded inspection shall be carried out. However an inspection in accordance with Article 6 may be carried out in the period between two expanded inspections.

3. (a) The operator or master of a ship to which paragraph 1 applies shall communicate all the information listed in Annex V, section B, to the competent authority of the Member State of each port visited after a period of 12 months since the last expanded inspection. This information shall be provided at least three days before the expected time of arrival in the port or before leaving the previous port if the voyage is expected to take fewer than three days.

(b) Any ship not complying with subparagraph (a) shall be subject to an expanded inspection at the port of destination.

4. Member States shall, subject to Article 7a, ensure that an expanded inspection is carried out on a ship to which paragraph 3 applies and which has a target factor of 7 or more at its first port visited after a period of 12 months since the last expanded inspection.

In cases where the Member States are unable to increase their capacity in time to carry out all the additional inspections required, particularly because of problems connected with the recruitment and training of inspectors, they shall be allowed until 1 January 2003 to build up their inspection service gradually. This period may be extended by six months for the port of Rotterdam. The Commission shall notify the Member States and the European Parliament of any such extension.

5. Expanded inspection shall be carried out in accordance with the procedures in Annex V, section C.

6. Where there is a risk that an amendment or draft amendment to the MOU may weaken the scope of the obligation for expanded inspection under this Article, the Commission shall submit without delay to the Committee established by Article 18, draft measures with a view to reintroducing target factor values complying with the objectives of this Directive.

▼ **M4***Article 7a***Procedure in case certain ships cannot be inspected**

1. In cases where, for operational reasons, a Member State is unable to carry out an inspection of a ship with a target factor of more than 50 as referred to in Article 5(2)(a) or a mandatory expanded inspection as referred to in Article 7(4), the Member State shall, without delay, inform the Sirenac system that such inspection did not take place.
2. Such cases shall be notified, at intervals of six months, to the Commission together with the reasons for not inspecting the ships concerned.
3. During any calendar year, such non-inspections shall not exceed 5 % of the average annual number of individual ships eligible for the inspections referred to in paragraph 1 calling at the ports of the Member State, calculated on the basis of the three most recent calendar years for which statistics are available.
4. Ships referred to in paragraph 1 shall be subject to an inspection, as provided for in Article 5(2)(a) or a mandatory expanded inspection as referred to in Article 7(4), as appropriate, in the next port of call in the Community.
5. By 22 July 2008 the figure of 5 % referred to in paragraph 3 shall be amended on the basis of an assessment by the Commission, if it is considered appropriate, in accordance with the procedure laid down in Article 19.

*Article 7b***Access refusal measures concerning certain ships**

1. A Member State shall ensure that a ship in one of the categories of Annex XI, section A, is refused access to its ports, except in the situations described in Article 11(6), if the ship:

either

- flies the flag of a State appearing in the black list as published in the annual report of the MOU, and
- has been detained more than twice in the course of the preceding 24 months in a port of a State signatory of the MOU,

or

- flies the flag of a State described as 'very high risk' or 'high risk' in the black list as published in the annual report of the MOU, and
- has been detained more than once in the course of the preceding 36 months in a port of a State signatory of the MOU.

The refusal of access shall become applicable immediately the ship has been authorised to leave the port where it has been the subject of a second or third detention as appropriate.

2. For the purposes of paragraph 1, Member States shall comply with the procedures laid down in Annex XI, section B.
3. The Commission shall publish every six months the information relating to ships that have been refused access to Community ports in application of this Article.

*Article 8***Report of inspection to the master**

On completion of an inspection, a more detailed inspection or an expanded inspection, the inspector shall draw up a report in accordance with Annex IX. A copy of the inspection report shall be provided to the ship's master.

▼ B*Article 9***Rectification and detention**▼ M4

1. The competent authority shall be satisfied that any deficiencies confirmed or revealed by the inspection referred to in Article 5(2) and Article 7 are or will be rectified in accordance with the Conventions.

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2. In the case of deficiencies which are clearly hazardous to safety, health or the environment, the competent authority of the port State where the ship is being inspected shall ensure that the ship is detained, or the operation in the course of which the deficiencies have been revealed is stopped. The detention order or stoppage of an operation shall not be lifted until the hazard is removed or until such authority establishes that the ship can, subject to any necessary conditions, proceed to sea or the operation be resumed without risk to the safety and health of passengers or crew, or risk to other ships, or without there being an unreasonable threat of harm to the marine environment.

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3. When exercising his professional judgment as to whether or not a ship should be detained, the inspector shall apply the criteria set out in Annex VI. In this respect, the ship shall be detained, if not equipped with a functioning voyage data recorder system, when its use is compulsory in accordance with Annex XII. If this deficiency cannot be readily rectified in the port of detention, the competent authority may allow the ship to proceed to the nearest appropriate port where it shall be readily rectified or require that the deficiency is rectified within a maximum period of 30 days. For these purposes, the procedures laid down in Article 11 shall apply.

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4. In exceptional circumstances, where the overall condition of a ship is obviously substandard, the competent authority may suspend the inspection of that ship until the responsible parties have taken the steps necessary to ensure that it complies with the relevant requirements of the Conventions.

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5. In the event that the inspections referred to in Article 5(2) and Article 7 give rise to detention, the competent authority shall immediately inform, in writing and including the report of inspection, the administration of the State whose flag the ship is entitled to fly (hereinafter called 'flag administration') or, when this is not possible, the Consul or, in his absence, the nearest diplomatic representative of that State, of all the circumstances in which intervention was deemed necessary. In addition, nominated surveyors or recognised organisations responsible for the issue of class certificates or certificates issued on behalf of the flag State in accordance with the international conventions shall also be notified where relevant.

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6. The provisions of this Directive shall be without prejudice to the additional requirements of the Conventions concerning notification and reporting procedures related to port State control.

7. When exercising port State control under this Directive, all possible efforts shall be made to avoid a ship being unduly detained or delayed. If a ship is unduly detained or delayed, the owner or operator shall be entitled to compensation for any loss or damage suffered. In any instance of alleged undue detention or delay the burden of proof shall lie with the owner or operator of the ship.

▼ M1*Article 9a***Procedure applicable in the absence of ISM certificates**

1. Where the inspection reveals that the copy of the document of compliance or the safety management certificate issued in accordance with the International management code for the safe operation of ships

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and for pollution prevention (ISM Code) are missing on board a vessel to which, within the Community, the ISM Code is applicable at the date of the inspection, 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 lift the detention order in order to avoid port congestion. 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 authorised 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, except in the situations referred to in Article 11(6), until the owner or operator of the vessel has demonstrated, to the satisfaction of the competent authority of the Member State in which detention was ordered, that the ship has valid certificates issued in accordance with the ISM Code. Where deficiencies as referred to in Article 9(2) are found and cannot be rectified in the port of detention, the relevant provisions of Article 11 shall also apply.

▼B*Article 10***Right of appeal****▼M4**

1. The owner or the operator of a ship or his representative in the Member State shall have a right of appeal against a detention decision or refusal of access taken by the competent authority. An appeal shall not cause the detention or refusal of access to be suspended.

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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 11***Follow-up to inspections and detention**

1. Where deficiencies as referred to in Article 9 (2) cannot be rectified in the port of inspection, the competent authority of that Member State may allow the ship concerned to proceed to the nearest appropriate repair yard available, as chosen by the master and the authorities concerned, provided that the conditions determined by the competent authority of the flag State and agreed by that Member State are complied with. Such conditions shall ensure that the ship can proceed without risk to the safety and health of passengers or crew, or risk to other ships, or without there being an unreasonable threat of harm to the marine environment.

2. In the circumstances referred to in paragraph 1, the competent authority of the Member State in the port of inspection shall notify the competent authority of the State where the repair yard is situated, the parties mentioned in Article 9 (5) and any other authority as appropriate of all the conditions for the voyage.

3. The notification of the parties referred to in paragraph 2 shall be in accordance with Annex 2 to the MOU.

The competent authority of a Member State receiving such notification shall inform the notifying authority of the action taken.

4. Member States shall take measures to ensure that ships referred to in paragraph 1 which proceed to sea:

- (i) without complying with the conditions determined by the competent authority of any Member State in the port of inspection; or

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- (ii) which refuse to comply with the applicable requirements of the Conventions by not calling into the indicated repair yard;

shall be refused access to any port within the Community, until the owner or operator has provided evidence to the satisfaction of the competent authority of the Member State where the ship was found defective that the ship fully complies with all applicable requirements of the Conventions.

5. In the circumstances referred to in paragraph 4 (i), the competent authority of the Member State where the ship was found defective shall immediately alert the competent authorities of all the other Member States.

In the circumstances referred to in paragraph 4 (ii), the competent authority of the Member State in which the repair yard lies shall immediately alert the competent authorities of all the other Member States.

Before denying entry, the Member State may request consultations with the flag administration of the ship concerned.

6. Notwithstanding the provisions of paragraph 4, access to a specific port may be permitted by the relevant authority of that port State in the event of *force majeure* or overriding safety considerations, or to reduce or minimize the risk of pollution or to have deficiencies rectified, provided adequate measures to the satisfaction of the competent authority of such Member State have been implemented by the owner, the operator or the master of the ship to ensure safe entry.

Article 12

Professional profile of inspectors

1. The inspections shall be carried out only by inspectors who fulfil the qualification criteria specified in Annex VII.
2. When the required professional expertise cannot be provided by the competent authority of the port State, the inspector of that competent authority may be assisted by any person with the required expertise.
3. The inspectors carrying out port State control and the persons assisting them shall have no commercial interest either in the port of inspection or in the ships inspected, nor shall the inspectors be employed by or undertake work on behalf of non-governmental organizations which issue statutory and classification certificates or which carry out the surveys necessary for the issue of those certificates to ships.
4. Each inspector shall carry a personal document in the form of an identity card issued by his competent authority in accordance with the national legislation, indicating that the inspector is authorized to carry out inspections.

A common model for such an identity card shall be established in accordance with the procedure in Article 19.

Article 13

Reports from pilots and port authorities

1. Pilots of Member States, engaged in berthing or unberthing ships or engaged on ships bound for a port within a Member State, shall immediately inform the competent authority of the port State or the coastal State, as appropriate, whenever they learn in the course of their normal duties that there are deficiencies which may prejudice the safe navigation of the ship, or which may pose a threat of harm to the marine environment.
2. If port authorities, when exercising their normal duties, learn that a ship within their port has deficiencies which may prejudice the safety of the ship or poses an unreasonable threat of harm to the marine environment, such authority shall immediately inform the competent authority of the port State concerned.

▼B*Article 14***Cooperation**

1. Each Member State shall make provision for cooperation between its competent authority, its port authorities and other relevant authorities or commercial organizations to ensure that its competent authority can obtain all relevant information on ships calling at its ports.

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2. Member States shall maintain provisions for the exchange of information and cooperation between their competent authority and the competent authorities of all other Member States and maintain the established operational link between their competent authority, the Commission and the Sirenac information system set up in St Malo, France.

For the purposes of carrying out the inspections referred to in Article 5(2) and Article 7, inspectors shall consult the public and private databases relating to ship inspection accessible through the Equasis information system.

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3. The information referred to in paragraph 2 shall be that specified in Annex 4 to the MOU, and that required to comply with Article 15 of this Directive.

▼M3*Article 15***Release of information**

1. The competent authority of each Member State shall take necessary measures in order to ensure that information listed in Annex VIII, Part I, concerning ships which have been detained in, or which are subject to refusal of access to, a port of this Member State during the previous month, is published at least every month.

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2. The information listed in Annex VIII, Parts I and II, and the information on changes, suspensions and withdrawals of class referred to in Article 15(3) of Directive 94/57/EC, shall be available in the Sirenac system. It shall be made public through the Equasis information system, as soon as possible after the inspection has been completed or the detention has been lifted.

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3. Member States and the Commission shall cooperate in order to establish the appropriate technical arrangements referred to in paragraph 2.

4. Where appropriate, the Sirenac information system is amended in order to implement the abovementioned requirements.

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5. The provisions of this Article do not affect national legislation on liability.

▼B*Article 16***Reimbursement of costs**

1. Should the inspections referred to in Articles 6 and 7 confirm or reveal deficiencies in relation to the requirements of a Convention warranting the detention of a ship, all costs relating to the inspections in any normal accounting period shall be covered by the shipowner or the operator or by his representative in the port State.

2. All costs relating to inspections carried out by the competent authority of a Member State under the provisions of Article 11 (4) shall be charged to the owner or operator of the ship.

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2a. In the case of detention of a vessel for deficiencies or lack of valid certificates as laid down in Article 9 and Annex VI, all costs relating to the detention in port shall be borne by the owner or operator of the ship.

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3. The detention shall not be lifted until full payment has been made or a sufficient guarantee has been given for the reimbursement of the costs.

▼M4*Article 17***Data to monitor implementation**

Member States shall provide the Commission with the information listed in Annex X at the intervals stated therein in that Annex.

*Article 18***Regulatory Committee****▼M5**

1. The Commission shall be assisted by the Committee on Safe Seas and the Prevention of Pollution from Ships (COSS) created by Article 3 of Regulation (EC) No 2099/2002 of the European Parliament and of the Council of 5 November 2002 establishing a Committee on Safe Seas and the Prevention of Pollution from Ships (COSS)⁽¹⁾.

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2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at three months.

3. The Committee shall adopt its rules of procedure.

▼B*Article 19***Amendment procedure****▼M4**

This Directive may, without broadening its scope, be amended in accordance with the procedure laid down in Article 18(2), in order to:

(a) adapt the obligations referred to in Article 5, except the figure of 25 % referred to in paragraph 1 thereof, in Articles 6, 7, 7a, 7b, 8, 15 and 17, and in the Annexes to which these Articles refer, on the basis of the experience gained from the implementation of this Directive and taking into account developments in the MOU.

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(b) adapt the Annexes in order to take into account amendments which have entered into force to the Conventions, Protocols, codes and resolutions of relevant international organizations and to the MOU.

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(c) update, in Article 2(1), the list of international conventions which are relevant for the purposes of this Directive.

The amendments to the international instruments referred to in Article 2 may be excluded from the scope of this Directive, pursuant to Article 5 of Regulation (EC) No 2099/2002.

⁽¹⁾ OJ L 324, 29.11.2002, p. 1.

▼M4*Article 19a***Penalties**

Member States shall lay down a system of penalties for the breach of national provisions adopted pursuant to this Directive and shall take all the measures necessary to ensure that those penalties are applied. The penalties thus provided shall be effective, proportionate and dissuasive.

▼B*Article 20***Implementation**

1. Member States shall adopt the laws, regulations and administrative provisions necessary to implement this Directive not later than 30 June 1996 and shall forthwith inform the Commission thereof.
2. 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.
3. Member States shall communicate to the Commission the text of the provisions of national law which they have adopted in the field governed by this Directive.

▼M4

4. In addition, the Commission shall inform the European Parliament and the Council on a regular basis of progress in the implementation of the Directive within the Member States.

▼B*Article 21*

This Directive shall enter into force on the 20th day following that of its publication.

Article 22

This Directive is addressed to the Member States.

▼ **M2***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 ► **M3** or withdrawn ◀ from their class for safety reasons in the course of the preceding six months.

▼ **M4****II. Overall targeting factor**

The following ships shall be considered as priority for inspection.

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.
2. Ships not inspected by any Member State within the previous six months.
3. Ships whose statutory certificates on the ship's construction and equipment, issued in accordance with the conventions, and the classification certificates, have been issued by organisations which are not recognised under the terms of Council Directive 94/57/EC.
4. Ships flying the flag of a State appearing in the black list as published in the annual report of the MOU.
5. Ships which have been permitted to leave the port of a Member State on certain conditions, such as:
 - (a) deficiencies to be rectified before departure;
 - (b) deficiencies to be rectified at the next port of call;
 - (c) deficiencies to be rectified within 14 days;
 - (d) deficiencies for which other conditions have been specified.

If ship-related action has been taken and all deficiencies have been rectified, this is taken into account.
6. Ships for which deficiencies have been recorded during a previous inspection, according to the number of deficiencies.

▼M4

7. Ships which have been detained in a previous port.
8. Ships flying the flag of a country which has not ratified all relevant international conventions referred to in Article 2 of this Directive.
9. Ships classed with classification society with deficiency ratio above average.
10. Ships of the categories referred to in Annex V(A).
11. Ships above 13 years old.

In determining the order of priority for the inspection of the ships listed above, the competent authority shall take into account the overall target factor displayed on the Sirenac information system, according to Annex I, Section I, of the MOU. A higher target factor is indicative of a higher priority. The overall target factor is the sum of the applicable target factor values as defined within the framework of the MOU. Items 5, 6 and 7 shall only apply to inspections carried out in the last 12 months. The overall target factor shall not be less than the sum of the values established for items 3, 4, 8, 9, 10 and 11.

However, for the purpose of Article 7.4, the overall target factor shall not take into account item 10.

▼B*ANNEX II***LIST OF CERTIFICATES AND DOCUMENTS**

(referred to in Article 6 (1))

1. International Tonnage Certificate (1969)
2. — Passenger Ship Safety Certificate,
— Cargo Ship Safety Construction Certificate,
— Cargo Ship Safety Equipment Certificate,
— Cargo Ship Safety Radiotelegraphy Certificate,
— Cargo Ship Safety Radiotelephony Certificate;
— Cargo Ship Safety Radio Certificate,
- ▼M3
— Exemption certificate, including, where appropriate, the list of cargoes,
- ▼B
— Cargo Ship Safety Certificate.
3. International Certificate of Fitness for Carriage of Liquefied Gases in Bulk;
— Certificate of Fitness for the Carriage of Liquefied Gases in Bulk.
4. International Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk;
— Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk.
5. International Oil Pollution Prevention Certificate.
6. International Pollution Prevention Certificate for the Carriage of Noxious Liquid Substances in Bulk.
7. International Load Line Certificate (1966);
— International Load Line Exemption Certificate.
8. Oil record book, parts I and II.
9. Cargo record book.
- ▼M4
10. Minimum Safe Manning Document.
- 10a. Certificates issued in accordance with the STCW Convention.
- ▼B
11. Medical certificates, (see ILO Convention No 73 concerning Medical Examination of Seafarers).
12. Stability information.
- ▼M2
13. Copy of the Document of Compliance and the Safety Management Certificate issued, in accordance with the International Management Code for the Safe Operation of Ships and for Pollution Prevention (SOLAS, Chapter IX).
- ▼B
14. Certificates as to the ship's hull strength and machinery installations issued by the classification society in question (only to be required if the ship maintains its class with a classification society).
- ▼M2
15. Document of compliance with the special requirements for ships carrying dangerous goods.
16. High speed craft safety certificate and permit to operate high speed craft.
17. Dangerous goods special list or manifest, or detailed stowage plan.
18. Ship's log book with respect to the records of tests and drills and the log for records of inspection and maintenance of lifesaving appliances and arrangements.
19. Special purpose ship safety certificate.
20. Mobile offshore drilling unit safety certificate.
21. For oil tankers, the record of oil discharge monitoring and control system for the last ballast voyage.
22. The muster list, fire control plan, and for passenger ships, a damage control plan.
23. Shipboard oil pollution emergency plan.
24. Survey report files (in case of bulk carriers and oil tankers).
25. Reports of previous port State control inspections.

▼ M2

26. For ro-ro passenger ships, information on the A/A-maximum ratio.
27. Document of authorization for the carriage of grain.
28. Cargo securing manual.

▼ M3

29. Garbage management plan and garbage record book.
30. Decision support system for masters of passenger ships.
31. SAR cooperation plan for passenger ships trading on fixed routes.
32. List of operational limitations for passenger ships.
33. Bulk carrier booklet.
34. Loading and unloading plan for bulk carriers.

▼ M4

35. Certificate of insurance or any other financial security in respect of civil liability for oil pollution damage (International Convention on Civil Liability for Oil Pollution Damage, 1992).

▼ **M2***ANNEX III***EXAMPLES OF 'CLEAR GROUNDS' FOR A MORE DETAILED INSPECTION**

(as referred to in Article 6(3))

1. Ships identified in Annex I, Part I and Part II, paragraphs II-3, II-4, II-5b, II-5c ► **M4** and II-8 ◀.
2. The oil record book has not been properly kept.
3. During examination of the certificates and other documentation, (see Article 6(1)(a) and (2)), inaccuracies have been revealed.
4. Indications that the crew members are unable to comply with the requirements of Article 8 of Council Directive 94/58/EC of 22 November 1994 on the minimum level of training of seafarers⁽¹⁾.
5. Evidence of cargo and other operations not being conducted safely, or in accordance with IMO guidelines, e.g. the content of oxygen in the inert-gas main supply to the cargo tanks is above the prescribed maximum level.
6. Failure of the master on an oil tanker to produce the record of the oil discharge monitoring and control system for the last ballast voyage.
7. Absence of an up-to-date muster list, or crew members not aware of their duties in the event of fire or an order to abandon the ship.
8. The emission of false distress alerts not followed by proper cancellation procedures.
9. The absence of principal equipment or arrangements required by the conventions.
10. Excessively unsanitary conditions on board the ship.
11. Evidence from the inspector's general impression and observations that serious hull or structural deterioration or deficiencies exist that may place at risk the structural, watertight or weathertight integrity of the ship.
12. Information or evidence that the master or crew is not familiar with essential shipboard operations relating to the safety of ships or the prevention of pollution, or that such operations have not been carried out.

⁽¹⁾ OJ L 319, 12. 12. 1994, p. 28.

▼ M2

ANNEX IV

PROCEDURES FOR THE CONTROL OF SHIPS

(as referred to in Article 6(4))

1. Principles of safe manning (IMO Resolution A.481(XII) and Annexes which are contents of Minimum Safe Manning Document (Annex 1) and Guidelines for the Application of Principles of Safe Manning (Annex 2).
2. The provisions of the International Maritime Dangerous Goods Code.
3. International Labour Organisation (ILO) publication 'Inspection of Labour Conditions on Board Ship: Guidelines for procedures'.
4. Annex I, 'Port State Control Procedures' to the Paris MOU.

▼M4

ANNEX V

A. CATEGORIES OF SHIPS SUBJECT TO EXPANDED INSPECTION (as referred to in Article 7(1))

1. Gas and chemical tankers older than 10 years of age, as determined on the basis of the date of construction indicated in the ship's safety certificates.
2. Bulk carriers older than 12 years of age, as determined on the basis of the date of construction indicated in the ship's safety certificates.
3. Oil tankers with a gross tonnage of more than 3 000 gross tonnes and older than 15 years of age, as determined on the basis of the date of construction indicated in the ship's safety certificates.
4. Passenger ships older than 15 years of age other than the passenger ships referred to in Article 2(a) and (b) of Council Directive 1999/35/EC of 29 April 1999 on a system of mandatory surveys for the safe operation of regular ro-ro ferry and high speed passenger craft services⁽¹⁾.

B. INFORMATION TO BE NOTIFIED TO THE COMPETENT AUTHORITY (as referred to in Article 7(3)(a))

- A. name,
- B. flag,
- C. IMO identification number, if any,
- D. dead-weight tonnage,
- E. date of construction of the ship, as determined on the basis of the date indicated in the ship's safety certificates,
- F. for tankers:
 - F.a. configuration: single hull, single hull with SBT, double hull,
 - F.b. condition of the cargo and ballast tanks: full, empty, inerted,
 - F.c. volume and nature of the cargo,
- G. probable time of arrival at the port of destination or pilot station, as required by the competent authority,
- H. planned duration of the call,
- I. planned operations at the port of destination (loading, unloading, other),
- J. planned statutory survey inspections and substantial maintenance and repair work to be carried out whilst in the port of destination.

C. PROCEDURES RELATING TO EXPANDED INSPECTION OF CERTAIN CATEGORIES OF SHIPS (as referred to in Article 7(5))

Subject to their practical feasibility or any constraints relating to the safety of persons, the ship or the port, the following items at least must be part of an expanded inspection. Inspectors must be aware that it may jeopardise the safe execution of certain on-board operations, e.g. cargo handling, if tests having a direct effect thereon are required to be carried out during such operations.

1. SHIPS IN GENERAL (categories in section A)

- Black-out and start of emergency generator,
- inspection of emergency lighting,
- operation of emergency fire-pump with two fire hoses connected to the fire main-line,
- operation of bilge pumps,
- closing of watertight doors,
- lowering of one lifeboat to the water,
- test of remote emergency stop for, e.g., boilers, ventilation and fuel pumps,
- testing of steering gear including auxiliary steering gear,
- inspection of emergency source of power to radio installations,

⁽¹⁾ OJ L 138, 1.6.1999, p. 1.

▼ **M4**

- inspection and, to the extent possible, test of engine room separator.

2. GAS AND CHEMICAL TANKERS

In addition to the items listed under section 1, the following items are to be considered as part of the expanded inspection for gas and chemical tankers:

- cargo tank monitoring and safety devices relating to temperature, pressure and ullage,
- oxygen analysing and explosimeter devices, including their calibration. Availability of chemical detection equipment (bellows) with an appropriate number of suitable gas detection tubes for the specific cargo being carried,
- cabin escape sets giving suitable respiratory and eye protection for every person on board (if required by the products listed on the International Certificate of Fitness or Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk or Liquefied Gases in Bulk, as applicable),
- check that the product being carried is listed in the International Certificate of Fitness or Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk or Liquefied Gases in Bulk, as applicable,
- the fixed fire-fighting installations on deck, whether they be foam or dry chemical or other as required by the product carried.

3. BULK CARRIERS

In addition to the items listed under section 1, the following items are to be considered as part of the expanded inspection for bulk carriers:

- possible corrosion of deck machinery mountings,
- possible deformation and/or corrosion of hatch covers,
- possible cracks or local corrosion in transverse bulkheads,
- access to cargo holds,
- verification that the following documents are on board, review them and confirm that the flag State or classification society has endorsed them:
 - (1) reports of structural surveys,
 - (2) condition evaluation reports,
 - (3) thickness measurement reports,
 - (4) descriptive document referred to by IMO resolution A.744(18).

4. OIL TANKERS

In addition to the items listed under section 1, the following items are to be considered as part of an expanded inspection of oil tankers:

- fixed deck foam system,
- fire-fighting equipment in general,
- inspection of fire dampers in engine room, pump room and accommodation,
- control of pressure of inert gas and oxygen content thereof,
- ballast tanks: at least one of the ballast tanks within the cargo area to be examined from tank manhole/deck access in first instance and entered if inspector establishes clear ground for further inspection,
- verification that the following documents are on board, review them and confirm that the flag State or classification society has endorsed them:
 - (1) reports of structural surveys,
 - (2) condition evaluation reports,
 - (3) thickness measurement reports,
 - (4) descriptive document referred to by IMO resolution A.744(18).

5. PASSENGER SHIPS NOT COVERED BY DIRECTIVE 1999/35/EC

In addition to the items listed under section C 1, the following items may also be considered as part of the expanded inspection for passenger ships:

- testing of fire detection and alarm system,
- testing of proper closing of fire doors,
- test of public address system,

▼ M4

- fire drill where, as a minimum, all sets of firemen's outfits must be demonstrated and part of the catering crew take part,
- demonstration that key crew members are acquainted with the damage control plan.

If deemed appropriate, the inspection may be continued while the ship is on passage to or from the port in the Member State, with the consent of the ship's master or the operator. Inspectors must not obstruct the operation of the ship, nor must they induce situations that, in the master's judgement, could endanger the safety of the passengers, the crew and the ship.

▼B*ANNEX VI***CRITERIA FOR DETENTION OF A SHIP**

(as referred to in Article 9 (3))

Introduction

Before determining whether deficiencies found during an inspection warrant detention of the ship involved, the inspector must apply the criteria mentioned below in sections 1 and 2.

Section 3 includes examples of deficiencies that may for themselves warrant detention of the ship involved (see Article 9 (3)).

▼M2

Where the ground for detention is the result of accidental damage suffered on the ship's voyage to a port, no detention order shall be issued, provided that:

1. due account has been given to the requirements contained in Regulation I/11(c) of SOLAS 74 regarding notification to the flag State administration, the nominated surveyor or the recognised organisation responsible for issuing the relevant certificate;
2. prior to entering a port, the master or shipowner has submitted to the port State control authority details on the circumstances of the accident and the damage suffered and information about the required notification of the flag State administration;
3. appropriate remedial action, to the satisfaction of the Authority, is being taken by the ship; and
4. the authority has ensured, having been notified of the completion of the remedial action, that deficiencies which were clearly hazardous to safety, health or the environment have been rectified.

▼B**1. Main criteria**

When exercising his professional judgement as to whether or not a ship should be detained the inspector must apply the following criteria:

Timing:

Ships which are unsafe to proceed to sea must be detained upon the first inspection irrespective of how much time the ship will stay in port.

Criterion:

The ship is detained if its deficiencies are sufficiently serious to merit an inspector returning to satisfy himself that they have been rectified before the ship sails.

The need for the inspector to return to the ship is a measure of the seriousness of the deficiencies. However, it does not impose such an obligation for every case. It implies that the authority must verify one way or another, preferably by a further visit, that the deficiencies have been rectified before departure.

2. Application of main criteria

When deciding whether the deficiencies found in a ship are sufficiently serious to merit detention the inspector must assess whether:

1. the ship has relevant, valid documentation;
2. the ship has the crew required in the Minimum Safe Manning Document.

During inspection the inspector must further assess whether the ship and/or crew is able to:

3. navigate safely throughout the forthcoming voyage;
4. safely handle, carry and monitor the condition of the cargo throughout the forthcoming voyage;
5. operate the engine room safely throughout the forthcoming voyage;
6. maintain proper propulsion and steering throughout the forthcoming voyage;
7. fight fires effectively in any part of the ship if necessary during the forthcoming voyage;

▼B

8. abandon ship speedily and safely and effect rescue if necessary during the forthcoming voyage;
9. prevent pollution of the environment throughout the forthcoming voyage;
10. maintain adequate stability throughout the forthcoming voyage;
11. maintain adequate watertight integrity throughout the forthcoming voyage;
12. communicate in distress situations if necessary during the forthcoming voyage;
13. provide safe and healthy conditions on board throughout the forthcoming voyage;

▼M4

14. provide the maximum of information in case of accident.

▼B

If the answer to any of these assessments is negative, taking into account all deficiencies found, the ship must be strongly considered for detention. A combination of deficiencies of a less serious nature may also warrant the detention of the ship.

3. To assist the inspector in the use of these guidelines, there follows a list of deficiencies, grouped under relevant conventions and/or codes, which are considered of such a serious nature that they may warrant the detention of the ship involved. This list is not intended to be exhaustive.

▼M2

However, the detainable deficiencies in the area of STCW 78 listed under item 3.8 below are the only grounds for detention under this Convention.

▼B3.1. *General*

►**M4** The lack of valid certificates and documents ◀ as required by the relevant instruments. However, ships flying the flag of States not party to a Convention (relevant instrument) or not having implemented another relevant instrument, are not entitled to carry the certificates provided for by the Convention or other relevant instrument. Therefore, absence of the required certificates should not by itself constitute reason to detain these ships; however, in applying the 'no more favourable treatment' clause, substantial compliance with the provisions is required before the ship sails.

3.2. *Areas under the Solas Convention* (References are given in brackets)

1. Failure of the proper operation of propulsion and other essential machinery, as well as electrical installations.
2. Insufficient cleanliness of engine room, excess amount of oily-water mixtures in bilges, insulation of piping including exhaust pipes in engine room contaminated by oil, improper operation of bilge pumping arrangements.
3. Failure of the proper operation of emergency generator, lighting, batteries and switches.
4. Failure of the proper operation of the main and auxiliary steering gear.
5. Absence, insufficient capacity or serious deterioration of personal life-saving appliances, survival craft and launching arrangements.
6. Absence, non-compliance or substantial deterioration of fire detection system, fire alarms, firefighting equipment, fixed fire-extinguishing installation, ventilation valves, fire dampers, quick-closing devices to the extent that they cannot comply with their intended use.
7. Absence, substantial deterioration or failure of proper operation of the cargo deck area fire protection on tankers.
8. Absence, non-compliance or serious deterioration of lights, shapes or sound signals.
9. Absence or failure of the proper operation of the radio equipment for distress and safety communication.
10. Absence or failure of the proper operation of navigation equipment, taking the provisions of Solas Regulation V/12(o) into account.
11. Absence of corrected navigational charts, and/or all other relevant nautical publications necessary for the intended voyage, taking into account that electronic charts may be used as a substitute for the charts.

▼B

12. Absence of non-sparking exhaust ventilation for cargo pump rooms (Solas Regulation II-2/59.3.1).

▼M2

13. Serious deficiency in the operational requirements, as described in Section 5.5 of Annex I to the MOU.
14. Number, composition or certification of crew not corresponding with the safe manning document.

▼M4

15. Failure to carry out the enhanced survey programme in accordance with SOLAS 74, Chapter XI, Regulation 2.
16. Absence or failure of a VDR, when its use is compulsory.

▼B

- 3.3. *Areas under the IBC Code* (References are given in brackets)
 1. Transport of a substance not mentioned in the Certificate of Fitness or missing cargo information (16.2).
 2. Missing or damaged high-pressure safety devices (8.2.3).
 3. Electrical installations not intrinsically safe or not corresponding to code requirements (10.2.3).
 4. Sources of ignition in hazardous locations referred to in 10.2 (11.3.15).
 5. Contraventions of special requirements (15).
 6. Exceeding of maximum allowable cargo quality per tank (16.1).
 7. Insufficient heat protection for sensitive products (16.6).
- 3.4. *Areas under the IGC Code* (References are given in brackets)
 1. Transport of a substance not mentioned in the Certificate of Fitness or missing cargo information (18.1).
 2. Missing closing devices for accommodations or service spaces (3.2.6).
 3. Bulkhead not gastight (3.3.2).
 4. Defective air locks (3.6).
 5. Missing or defective quick-closing valves (5.6).
 6. Missing or defective safety valves (8.2).
 7. Electrical installations not intrinsically safe or not corresponding to code requirements (10.2.4).
 8. Ventilators in cargo area not operable (12.1).
 9. Pressure alarms for cargo tanks not operable (13.4.1).
 10. Gas detection plant and/or toxic gas detection plant defective (13.6).
 11. Transport of substances to be inhibited without valid inhibitor certificate (17/19).
- 3.5. *Areas under the Load Lines Convention*
 1. Significant areas of damage or corrosion, or pitting of plating and associated stiffening in decks and hull affecting seaworthiness or strength to take local loads, unless proper temporary repairs for a voyage to a port for permanent repairs have been carried out.
 2. A recognized case of insufficient stability.
 3. The absence of sufficient and reliable information, in an approved form, which by rapid and simple means, enables the master to arrange for the loading and ballasting of his ship in such a way that a safe margin of stability is maintained at all stages and at varying conditions of the voyage, and that the creation of any unacceptable stresses in the ship's structure are avoided.
 4. Absence, substantial deterioration or defective closing devices, hatch closing arrangements and watertight doors.
 5. Overloading.
 6. Absence of draft mark or draft mark impossible to read.
- 3.6. *Areas under the Marpol Convention, Annex I* (References are given in brackets)
 1. Absence, serious deterioration or failure of proper operation of the oily-water filtering equipment, the oil discharge monitoring and control system or the 15 ppm alarm arrangements.
 2. Remaining capacity of slop and/or sludge tank insufficient for the intended voyage.

▼B

3. Oil Record Book not available (20 (5)).
4. Unauthorized discharge bypass fitted.

▼M4

5. Survey report file missing or not in conformity with Regulation 13G(3)(b) of the Marpol Convention.

▼B

- 3.7. *Areas under the Marpol Convention, Annex II* (References are given in brackets)
 1. Absence of the P&A Manual.
 2. Cargo is not categorized (3 (4)).
 3. No cargo record book available (9 (6)).
 4. Transport of oil-like substances without satisfying the requirements or without an appropriately amended certificate (14).
 5. Unauthorized discharge bypass fitted.
- 3.8. *Areas under the STCW Convention*

▼M2

1. Failure of seafarers to hold a certificate, to have an appropriate certificate, to have a valid dispensation or to provide documentary proof that an application for an endorsement has been submitted to the flag State administration.
2. Failure to comply with the applicable safe manning requirements of the flag state administration.
3. Failure of navigational or engineering watch arrangements to conform to the requirements specified for the ship by the flag State administration.
4. Absence in a watch of a person qualified to operate equipment essential to safe navigation, safety radio communications or the prevention of marine pollution.
5. Failure to provide proof of professional proficiency for the duties assigned to seafarers for the safety of the ship and the prevention of pollution.
6. Inability to provide for the first watch at the commencement of a voyage and for subsequent relieving watches persons who are sufficiently rested and otherwise fit for duty.

▼B

- 3.9. *Areas under the ILO Conventions*
 1. Insufficient food for voyage to next port.
 2. Insufficient potable water for voyage to next port.
 3. Excessively unsanitary conditions on board.
 4. No heating in accommodation of a ship operating in areas where temperatures may be excessively low.
 5. Excessive garbage, blockage by equipment or cargo or otherwise unsafe conditions in passageways/accommodations.
- 3.10. *Areas which may not warrant a detention, but where e.g. cargo operations have to be suspended.*

Failure of the proper operation (or maintenance) of inert gas system, cargo-related gear or machinery are considered sufficient grounds for stopping cargo operation.

▼B

ANNEX VII

MINIMUM CRITERIA FOR INSPECTORS

► C1 (as referred to in Article 12 (1)) ◀

1. The inspector must be authorized to carry out port-State control by the competent authority of the Member State.
2. Either:
 - The inspector must have completed a minimum of one year's service as a flag-State inspector dealing with surveys and certification in accordance with the Conventions,
 - and be in possession of:
 - (a) a certificate of competency as master, enabling that person to take command of a ship of 1 600 GT or more (see STCW, Regulation II/2); or
 - (b) a certificate of competency as chief engineer enabling him to take up that task on board a ship whose main power plant has a power equal or superior to 3 000 KW, (see STCW, Regulation III/2); or
 - (c) have passed an examination as a naval architect, mechanical engineer or an engineer related to the maritime fields and worked in that capacity for at least five 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.
- Or:
- The inspector must:
 - 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 two years as a flag-State inspector dealing with surveys and certification in accordance with the Conventions.
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 are employed by the competent authority of a Member State for port-State control at the date of adoption of this Directive.

▼ **M4***ANNEX VIII***Publication of information related to detentions and inspections in ports of Member States** (as referred to in Article 15)

- I. Information published in accordance with Article 15(1) must include the following:
- name of the ship,
 - IMO number,
 - type of ship,
 - tonnage (gt),
 - year of construction as determined on the basis of the date indicated in the ship's safety certificates,
 - name and address of the shipowner or operator of the ship,
 - in the case of ships carrying liquid or solid cargoes in bulk, the name and address of the charterer responsible for the selection of the vessel and the type of charter,
 - flag State,
 - the classification society or classification societies, where relevant, which has/have issued to this ship the class certificates, if any,
 - the classification society or classification societies and/or any other party which has/have issued to this ship certificates in accordance with the applicable conventions on behalf of the flag State, stating the certificates delivered,
 - port and date of the last expanded inspection stating, where appropriate, whether a detention was ordered,
 - port and date of the last special survey and the name of the organisation which carried out the survey,
 - number of detentions during the 24 previous months,
 - country and port of detention,
 - date when the detention was lifted,
 - duration of detention, in days,
 - number of deficiencies found and the reasons for detention, in clear and explicit terms,
 - description of the measures taken by the competent authority and, where relevant, by the classification society as a follow-up to detention,
 - if the ship has been refused access to any port within the Community, the reasons for such measure in clear and explicit terms,
 - indication, where relevant, of whether the classification society or any other private body that carried out the survey has a responsibility in relation to the deficiencies which, alone or in combination, led to detention,
 - description of the measures taken in the case of a ship which has been allowed to proceed to the nearest appropriate repair yard, or which has been refused access to a Community port.
- II. Information concerning ships inspected made public in accordance with Article 15(2) must include the following:
- name of the ship,
 - IMO number,
 - type of ship,
 - tonnage (gt),
 - year of construction,
 - name and address of shipowner or operator of the ship,
 - in the case of ships carrying liquid or solid cargoes in bulk, the name and address of the charterer responsible for the selection of the vessel and the type of charter,
 - flag State,
 - the classification society or classification societies, where relevant, which has/have issued to this ship the class certificates, if any,
 - the classification society or classification societies and/or any other party which has/have issued to this ship certificates in accordance with the applicable conventions on behalf of the flag State, stating the certificates delivered,
 - country, port and date of inspection,
 - number and nature of deficiencies.

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ANNEX IX

Inspection report drawn up in accordance with Article 8

The inspection report must contain at least the following items.

I. General

1. Competent authority that wrote the report
2. Date and place of inspection
3. Name of the ship inspected
4. Flag
5. Type of ship
6. IMO number
7. Call sign
8. Tonnage (gt)
9. Deadweight tonnage (where relevant)
10. Year of construction as determined on the basis of the date indicated in the ship's safety certificates
11. The classification society or classification societies, where relevant, which has/have issued to this ship the class certificates, if any
12. The classification society or classification societies and/or any other party which has/have issued to this ship certificates in accordance with the applicable conventions on behalf of the flag State
13. Name and address of the ship's owner or the operator
14. Name and address of the charterer responsible for the selection of the vessel and type of charter in the case of ships carrying liquid or solid cargoes in bulk
15. Final date of writing the inspection report
16. Indication that detailed information on an inspection or a detention may be subject to publication.

II. Information relating to inspection

1. Certificates issued in application of the relevant international conventions, authority or organisation that issued the certificate(s) in question, including the date of issue and expiry
2. Parts or elements of the ship that were inspected (in the case of more detailed or expanded inspection)
3. Type of inspection (inspection, more detailed inspection, expanded inspection)
4. Nature of the deficiencies
5. Measures taken.

III. Additional information in the event of detention

1. Date of detention order
2. Date of lifting the detention order
3. Nature of the deficiencies warranting the detention order (references to Conventions, if relevant)
4. Information on the last intermediate or annual survey
5. Indication, where relevant, of whether the classification society or any other private body that carried out the survey has a responsibility in relation to the deficiencies which, alone or in combination, led to detention
6. Measures taken.

▼ **M4***ANNEX X***Data provided in the context of monitoring implementation in application of Article 17**

1. Every year Member States must provide the Commission with the following data for the preceding year by 1 April at the latest.

1.1. Number of inspectors acting on their behalf in the framework of port State control of shipping.

This information must be communicated to the Commission using the following model table.

Port/area	Number of full-time inspectors	Number of part-time inspectors ⁽¹⁾	Conversion to full-time
Port X ...			
Port Y ...			
TOTAL			

⁽¹⁾ Where the inspections carried out in the context of port State control represent only part of the inspectors' work, the total number of inspectors must be converted to a number equivalent to full-time inspectors.

This information must be provided at national level and for each port of the Member State concerned. For the purposes of this Annex, a port is taken to mean an individual port and the geographical area covered by an inspector or team of inspectors, comprising several individual ports where appropriate. The same inspector may work in more than one port/geographical area.

1.2. Total number of individual ships that entered their ports at national level.

2. Member States must either:

- (a) provide the Commission every six months with a list of movements of individual ships, other than regular ferry services, that entered their ports, containing the IMO number of the ships and the date of arrival; or alternatively
- (b) provide to Sirenac the IMO numbers and the date of arrival of the ships, other than regular ferry services, that daily entered their ports.

Member States must provide the Commission with the list of regular ferry services referred to in points (a) and (b), not later than six months following the implementation of this Directive, and thereafter each time changes take place in such services.

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ANNEX XI

A. CATEGORIES OF SHIPS SUBJECT TO REFUSAL OF ACCESS TO COMMUNITY PORTS (as referred to in Article 7b(1))

1. Gas and chemical tankers.
2. Bulk carriers.
3. Oil tankers.
4. Passenger ships.

B. PROCEDURES RELATING TO REFUSAL OF ACCESS TO COMMUNITY PORTS (as referred to in Article 7b(2))

1. If the conditions described in Article 7b are met, the competent authority of the port in which the ship is detained for the second or third time, as appropriate, must inform the captain and the owner or the operator of the ship in writing of the access refusal order served on the ship.

The competent authority must also inform the flag State administration, the classification society concerned, the other Member States, the Commission, the Centre administratif des affaires maritimes and the MOU Secretariat.

The access refusal order will take effect as soon as the ship has been authorised to leave the port after the deficiencies leading to the detention have been remedied.

2. In order to have the access refusal order lifted, the owner or the operator must address a formal request to the competent authority of the Member State that imposed the access refusal order. This request must be accompanied by a certificate from the flag State administration showing that the ship fully conforms to the applicable provisions of the international conventions. The request for the lifting of the access refusal order must also be accompanied, where appropriate, by a certificate from the classification society which has the ship in class showing that the ship conforms to the class standards stipulated by that society.
3. The access refusal order may only be lifted following a re-inspection of the ship at an agreed port by inspectors of the competent authority of the Member State that imposed the access refusal order and if evidence is provided to the satisfaction of this Member State that the vessel fully complies with the applicable requirements of the International Conventions.

If the agreed port is located within the Community, the competent authority of the Member State of the port of destination may, with the agreement of the competent authority of the Member State that imposed the access refusal order, authorise the ship to proceed to the port of destination in question, for the sole purpose of verifying that the ship meets the conditions specified in paragraph 2.

The re-inspection shall consist of an expanded inspection that must cover at least the relevant items of Annex V, section C.

All costs of this expanded inspection will be borne by the owner or the operator.

4. If the results of the expanded inspection satisfy the Member State in accordance with paragraph 2, the access refusal order must be lifted. The owner or the operator of the ship must be informed thereof in writing.

The competent authority must also notify its decision in writing to the flag State administration, the classification society concerned, the other Member States, the Commission, the Centre administratif des affaires maritimes and the MOU Secretariat.

5. Information relating to ships that have been refused access to Community ports must be made available in the Sirenac system and published in conformity with the provisions of Article 15 and of Annex VIII.

▼ **M4***ANNEX XII***International and Community requirements concerning voyage data recorder systems**

Ships in the following classes must, inasmuch as they call at a port of a Member State of the Community, be fitted with a voyage data recorder system meeting the performance standards of IMO Resolution A.861(20) and the testing standards set by Standard No 61996 of the International Electronics Commission (IEC):

- passenger ships built on or after 1 July 2002,
- ro-ro passenger ships built before 1 July 2002, not later than the first survey on or after 1 July 2002,
- passenger ships other than ro-ro passenger ships, built before 1 July 2002, not later than 1 January 2004,
- ships other than passenger ships, of 3 000 gross tonnage and upwards, built on or after 1 July 2002.

Ships in the following classes and built before 1 July 2002 must, inasmuch as they call at a port of a Member State of the Community, be fitted with a voyage data recorder system meeting the relevant IMO standards:

- cargo ships of 20 000 gross tonnage and upwards, not later than the date fixed by the IMO or, in the absence of a decision in IMO, not later than 1 January 2007,
- cargo ships of 3 000 gross tonnage and upwards but less than 20 000 gross tonnage, not later than the date fixed by the IMO or, in the absence of a decision in IMO, not later than 1 January 2008.