

## COUNCIL DIRECTIVE 94/57/EC

of 22 November 1994

on common rules and standards for ship inspection and survey organizations and for the relevant activities of maritime administrations

THE COUNCIL OF THE EUROPEAN UNION,

for under conventions such as Solas 74, Load Lines 66 and Marpol 73/78, and for the implementation of the provisions thereof;

Having regard to the Treaty establishing the European Community and in particular Article 84 (2) thereof,

Whereas in compliance with such conventions all Member States may authorize to a various extent technical organizations for the certification of such compliance and may delegate the issue of the relevant safety certificates;

Having regard to the proposal from the Commission (1),

Having regard to the opinion of the Economic and Social Committee (2),

Whereas worldwide a large number of the existing classification societies do not ensure either adequate implementation of the rules or reliability when acting on behalf of national administrations as they do not have adequate structures and experience to be relied upon and to enable them to carry out their duties in a highly professional manner;

Acting in accordance with the procedure referred to in Article 189c of the Treaty (3),

Whereas in its resolution of 8 June 1993 on a common policy on safe seas, the Council has set the objective of removing all substandard vessels from Community waters and has given priority to Community action to secure the effective and uniform implementation of international rules by elaborating common standards for classification societies (4);

Whereas the objective of submitting classification societies to adequate standards cannot be sufficiently achieved by the Member States acting individually and can be better achieved by the Community;

Whereas safety and pollution prevention at sea may be effectively enhanced by strictly applying international conventions, codes and resolutions while furthering the objective of freedom to provide services;

Whereas the appropriate way to act is by means of a Council Directive laying down minimum criteria for recognition of organizations, while leaving recognition itself, the means of enforcement, and the implementation of the Directive to the Member States;

Whereas the control of compliance of ships with the uniform international standards for safety and prevention of pollution of the seas is the responsibility of flag and port States;

Whereas EN 45004 and EN 29001 standards combined with International Association of Classification Societies (IACS) standards constitute an adequate guarantee of performance quality of organizations;

Whereas Member States are responsible for the issuing of international certificates for safety and pollution provided

Whereas the issue of the Cargo Ship Safety Radio Certificate may be entrusted to private bodies having sufficient expertise and qualified personnel;

(1) OJ No C 167, 18. 6. 1993, p. 13.

(2) OJ No C 34, 2. 2. 1994, p. 14.

(3) Opinion of the European Parliament of 9 March 1994 (OJ No C 91, 28. 3. 1994, p. 9), Council common position of 19 September 1994 (OJ No C 301, 27. 10. 1994, p. 75) and Decision of the European Parliament of 16 November 1994 (not yet published in the Official Journal).

(4) OJ No C 271, 7. 10. 1993, p. 1.

Whereas organizations wishing to be recognized for the purpose of this Directive must submit to the Member States complete information and evidence of their compliance with the minimum criteria, and the Member States must notify to the Commission and to the other Member States the organizations they have recognized;

Whereas a three-year recognition may be granted by the Commission for organizations which do not meet the criteria fixing the minimum number and tonnage of classed vessels and minimum number of exclusive surveyors laid down in the Annex but meet all the other criteria; whereas such organizations should be granted an extension of recognition after the period of three years provided they continue to meet the same criteria; whereas the effects of the three-year recognition should be limited to the requesting Member States, for that period only;

Whereas the establishment of the internal market involves free circulation of services so that organizations meeting a set of common criteria which guarantee their professionalism and reliability cannot be prevented from supplying their services within the Community provided a Member State has decided to delegate such statutory duties; whereas such a Member State may nevertheless restrict the number of organizations it authorizes in accordance with its needs based on objective and transparent grounds, subject to control exercised by the Commission through the comitology procedures;

Whereas the implementation of the principle of freedom to provide ship inspection and survey services could be gradual, but not beyond prescribed time limits;

Whereas a tighter involvement of the national administrations in ship surveys and in the issue of the related certificates is necessary to ensure full compliance with the international safety rules even if the Member States rely upon organizations outside their administration for carrying out statutory duties; whereas it is appropriate, therefore, to establish a close working relationship between the administrations and the organizations, which may require that the organization has a local representation on the territory of the Member State on behalf of which it performs its duties;

Whereas a committee of a regulatory nature should be established in order to assist the Commission in its effort to ensure effective application of the existing maritime safety and environmental standards while taking account of the national ratification procedures;

Whereas the Commission must act according to the procedure laid down in Article 13 in order to take due account of progress in international fora and to update the minimum criteria;

Whereas on the basis of the information provided in accordance with Article 11 by the Member States about the performance of the organizations working on their

behalf, the Commission will decide whether it will request Member States to withdraw the recognition of recognized organizations which no longer fulfil the set of common minimum criteria, acting in accordance with the procedure of Article 13;

Whereas Member States must nevertheless be left the possibility of suspending their authorization to an organization for reasons of serious danger to safety or environment; whereas the Commission must rapidly decide in accordance with the procedure referred to above whether it is necessary to overrule such national measure;

Whereas each Member State should periodically assess the performance of the organizations working on its behalf and provide the Commission and all the other Member States with precise information related to such performance;

Whereas Member States, as port authorities, are required to enhance safety and prevention of pollution in Community waters through priority inspection of vessels carrying certificates of organizations which do not fulfil the common criteria, thereby ensuring no more favourable treatment to vessels flying the flag of a third State;

Whereas the procedure by which the committee will decide should be Procedure III A of Article 2 of Council Decision 87/373/EEC of 13 July 1987 laying down the procedures for the exercise of implementing powers conferred on the Commission (1);

Whereas classification societies must update and enforce their technical standards in order to harmonize safety rules and ensure uniform implementation of international rules within the Community;

Whereas at present there are not uniform international standards to which all ships must conform at the building stage and during their entire life, as regards hull, machinery and electrical and control installations; whereas such standards may be fixed according to the rules of recognized classification societies or to equivalent standards to be decided by the national administrations in accordance with the procedure laid down in Council Directive 83/189/EEC of 28 March 1983 laying down a procedure for the provision of information in the field of technical standards and regulations (2),

(1) OJ No L 197, 18. 7. 1987, p. 33.

(2) OJ No L 109, 26. 4. 1983, p. 8. Directive as last amended by Directive 94/10/EC (OJ No L 100, 19. 4. 1994, p. 30).

HAS ADOPTED THIS DIRECTIVE:

### Article 1

This Directive establishes measures to be followed by the Member States and organizations concerned with the inspection, survey and certification of ships for compliance with the international conventions on safety at sea and prevention of marine pollution, while furthering the objective of freedom to provide services. This process includes the development and implementation of safety requirements for hull, machinery and electrical and control installations of ships falling under the scope of the international conventions.

### Article 2

For the purpose of this Directive:

- (a) 'ship' means a ship falling within the scope of the international conventions;
- (b) 'ship flying the flag of a Member State' means a ship registered in and flying the flag of a Member State in accordance with its legislation, including ships registered in Euros once that register is approved by the Council. Ships not corresponding to this definition are assimilated to ships flying the flag of a third country;
- (c) 'inspections and surveys' means inspections and surveys made mandatory by the international conventions;
- (d) 'international conventions' means the 1974 International Convention for the Safety of Life at Sea, the 1966 International Convention on Load Lines and the 1973/78 International Convention for the Prevention of Pollution from Ships, together with the protocols and amendments thereto, and related codes of mandatory status in all Member States, in force at the date of adoption of this Directive;
- (e) 'organization' means a classification society or other private body carrying out safety assessment work for an administration;
- (f) 'recognized organization' means an organization recognized in conformity with Article 4;
- (g) 'authorization' means an act whereby a Member State grants an authorization or delegates powers to a recognized organization;
- (h) 'certificate' means a certificate issued by or on behalf of a Member State in accordance with the international conventions;
- (i) 'class certificate' means a document issued by a classification society certifying the structural and mechanical fitness of a ship for a particular use or service in accordance with its rules and regulations;
- (j) 'cargo ship safety radio certificate' means the certificate introduced by the amended Solas 74/78 Radio Regulations, adopted by the IMO and includes, during a transitional period ending on 1 February 1999, the Cargo Ship Safety Radiotelegraphy Certificate and the Cargo Ship Safety Radiotelephony Certificate;
- (k) 'location' refers to the place of the registered office, central administration or principal place of business of an organization.

### Article 3

1. In assuming their responsibilities and obligations under the international conventions, Member States shall ensure that their competent administrations can assure an appropriate enforcement of the provisions of the international conventions, in particular with regard to the inspection and survey of ships and the issue of certificates and exemption certificates.

2. Where for the purpose of paragraph 1 a Member State decides with respect to ships flying its flag:

- (i) to authorize organizations to undertake fully or in part inspections and surveys related to certificates including those for the assessment of compliance with Article 14 and, where appropriate, to issue or renew the related certificates; or
- (ii) to rely upon organizations to undertake fully or in part the inspections and surveys referred to in subparagraph (i);

it shall entrust these duties only to recognized organizations.

The competent administration shall in all cases approve the first issue of the exemption certificates.

However for the cargo ship safety radio certificate these duties may be entrusted to a private body recognized by a competent administration and having sufficient expertise and qualified personnel to carry out specified safety assessment work on radio-communication on its behalf.

3. This Article does not concern the certification of specific items of marine equipment.

### Article 4

1. Member States may only recognize such organizations which fulfil the criteria set out in the Annex. The

organizations shall submit to the Member States from which recognition has been requested complete information concerning, and evidence of, compliance with these criteria. The Member States will notify the organizations in an appropriate manner of their recognition.

2. Each Member State shall notify to the Commission and the other Member States those organizations it has recognized.

3. Member States may submit to the Commission a request for a recognition of three years for organizations which meet all the criteria of the Annex other than those set out under paragraph 2 and 3 of the section 'General' of the Annex.

Such recognition shall be granted in accordance with the procedure laid down in Article 13. The effects of this recognition shall be limited to the Member States which have submitted a request for such recognition.

4. All the organizations which are granted recognition shall be closely monitored by the committee set up under Article 7, also in view of deciding about extension of the recognition of organizations referred to in paragraph 3. A decision on the extension of such recognition shall not take into account the criteria set out under paragraphs 2 and 3 of the section 'General' of the Annex. The limitation of the effects of the recognition provided for in paragraph 3 shall no longer apply.

5. The Commission shall draw up and update a list of the organizations notified by the Member States in compliance with paragraphs 1, 3 and 4. The list shall be published in the *Official Journal of the European Communities*.

#### Article 5

1. In applying Article 3 (2) (i), Member States shall in principle not refuse to authorize any of the recognized organizations located in the Community to undertake such functions, subject to the provisions of Articles 6 and 11. However, they may restrict the number of organizations they authorize in accordance with their needs provided there are transparent and objective grounds for so doing. At the request of a Member State, the Commission shall, in accordance with the procedure laid down in Article 13, adopt appropriate measures.

2. By way of derogation, Member States may be temporarily exempted by the Commission from the implementation of the provisions of paragraph 1 until 31 December 1997.

3. In order for a Member State to accept that an organization located in a third State is to carry out the duties mentioned in Article 3 or part of them it may request that the said third State grant a reciprocal recognition for those recognized organizations which are located in the Community.

#### Article 6

1. Member States which decide to act as described in Article 3 (2), shall set out a working relationship between their competent administration and the organizations acting on their behalf.

2. The working relationship shall be regulated by a formalized written and non-discriminatory agreement or equivalent legal arrangements setting out the specific duties and functions assumed by the organizations and including at least:

- the provisions set out in Appendix II of IMO Resolution A.739 (18) on guidelines for the authorization of organizations acting on behalf of the administration as it stands at the date of adoption of this Directive,
- provisions for a periodical audit by the administration or by an impartial external body appointed by the administration into the duties the organizations are undertaking on its behalf,
- the possibility for random and detailed inspections of ships,
- provisions for reporting essential information about their classed fleet, changes of class or declassing of vessels.

3. The agreement or equivalent legal arrangement may set the requirement that the recognized organization has a local representation on the territory of the Member State on behalf of which it performs the duties referred to in Article 3. A local representation of a legal nature ensuring legal personality under the law of the Member State and the competence of its national courts may satisfy such requirement.

4. Each Member State shall provide the Commission with precise information on the working relationship established in accordance with this Article. The Commission shall subsequently inform the other Member States.

#### Article 7

A committee composed of the representatives of the Member States and chaired by the representative of the Commission is hereby instituted to assist the Commission. This committee shall be called by the Commission at least once a year and whenever required in the case of suspension of authorization of an organization by a Member State under the provisions of Article 10.

The Committee shall draw up its rules of procedure.

#### Article 8

1. This Directive may be amended in accordance with the procedure laid down in Article 13, in order to:

- apply, for the purposes of this Directive, subsequent amendments to the international codes and resolution mentioned in Articles 2 (d) and 6 (2), which have entered into force,
- update the criteria in the Annex taking into account, in particular, the relevant decisions of the IMO.

2. Following the adoption of new instruments or protocols to the conventions referred to in Article 2 (d), the Council, acting on a proposal from the Commission, shall decide, taking into account the Member States parliamentary procedures as well as the relevant procedures within IMO, on the detailed arrangements for ratifying those new instruments or protocols, while ensuring that they are applied uniformly and simultaneously in the Member States.

#### Article 9

1. Each Member State may be requested, in accordance with the procedure laid down in Article 13, to withdraw the recognition of recognized organizations referred to in Article 4 which no longer fulfil the criteria set out in the Annex, where applicable.

2. In preparing drafts for a decision relating to the matters referred to in paragraph 1, the Commission shall take into account the reports and information mentioned in Articles 11 and 12. In preparing such draft measures, the Commission shall pay particular attention to the safety and pollution prevention performance records of the organizations. Draft decisions relating to the matters referred to in paragraph 1 shall also be submitted to the committee by the Commission upon its own initiative or at the request of a Member State.

#### Article 10

Notwithstanding the criteria specified in the Annex, where a Member State considers that a recognized organization can no longer be authorized to carry out on its behalf the tasks specified in Article 3 it may suspend such authorization.

In the above circumstances the following procedure shall apply:

- (a) the Member State shall inform the Commission and the other Member States of its decision without delay, giving substantiated reasons therefore;
- (b) the Commission shall examine whether the suspension is justified for reasons of serious danger to safety or environment;
- (c) acting in accordance with the procedure laid down in Article 13, the Commission shall inform the Member State whether or not its decision to suspend the authorization is justified for reasons of serious danger to safety or environment and, if it is not justified,

request the Member State to withdraw the suspension.

#### Article 11

1. Each Member State must satisfy itself that the recognized organizations acting on its behalf for the purpose of Article 3 (2), effectively carry out the functions referred to in that Article to the satisfaction of its competent administration and that such organizations fulfil the criteria specified in the Annex. It may do so by having the recognized organizations directly monitored by its competent administration or, in the case of organizations located in another Member State, by relying upon the corresponding monitoring of such organizations by the administration of another Member State.

2. Each Member State shall carry out this task on a biennial basis and shall provide the other Member States and the Commission with a report of the results of this monitoring at the latest by 31 March of each year following the years for which compliance has been assessed.

3. Where a Member State chooses, for the purpose of carrying out this task, to rely upon monitoring by another Member State, its report shall be provided at the latest by 30 June of each year following the year for which compliance has been assessed.

4. Member States shall forward to the Commission and the other Member States any information relevant to the assessment of the performance of organizations.

#### Article 12

1. In exercising their inspection rights and obligations as port states:

- (a) Member States shall ensure that ships flying a third State flag are not treated more favourably than ships entitled to fly the flag of a Member State. To this end the fact that the ship certificates and the class certificate are known to have been delivered by an organization which does not fulfil the criteria of the Annex, with the exception of organizations recognized in accordance with Article 4 (3) and (4), shall be taken as one of the primary criteria for selecting ships for inspection.
- (b) Member States shall take appropriate measures when ships do not meet the internationally agreed standards and shall report to the Commission and the Secretariat of the Memorandum of Understanding on Port State Control the discovery of any issue of valid certificates by organizations acting on behalf of a flag State to a ship which does not fulfil the relevant requirements of the international conventions, or any failure of a ship carrying a valid class certificate and relating to items covered by that certificate.

2. Each Member State shall establish a performance record of the organizations acting on behalf of flag States. This performance record shall be updated yearly and distributed to the other Member States and the Commission.

#### Article 13

The following procedure shall apply for matters covered by Article 4 (3) and (4), Article 5 (1) and Articles 8, 9, 10 and Article 14 (2):

- (a) The representative of the Commission shall submit to the committee referred to in Article 7 a draft of the measures to be taken.
- (b) 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. The opinion shall be delivered by the majority laid down in Article 148 (2) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States within the committee shall be weighted in the manner set out in that Article. The chairman shall not vote.
- (c) The Commission shall adopt the measures envisaged if they are in accordance with the opinion of the committee.
- (d) If the measures envisaged are not in accordance with the opinion of the committee, or if no opinion is delivered, the Commission shall, without delay, submit to the Council a proposal relating to the measure to be taken. The Council shall act by a qualified majority. If, within three months from the date of referral to it, the Council has not acted, the proposed measure shall be adopted by the Commission.

#### Article 14

1. Each Member State shall ensure that ships flying its flag shall be constructed and maintained in accordance with the hull, machinery and electrical and control installation requirements of a recognized organization.

2. A Member State may decide to use rules it considers equivalent to those of a recognized organization only on the proviso that it immediately notified them to the Commission in conformity with the procedure of Directive 83/189/EEC and to the other Member States and they are not objected to by another Member State or the Commission and found through the procedure of Article 13 not to be equivalent.

#### Article 15

1. The recognized organizations shall consult with each other periodically with a view to maintaining equivalence of their technical standards and the implementation thereof. They shall provide the Commission with periodic reports on fundamental progress in standards.

2. The recognized organizations shall demonstrate willingness to cooperate with port State control administrations when a ship of their class is concerned, in particular, in order to facilitate the rectification of reported deficiencies or other discrepancies.

3. The recognized organizations shall provide all relevant information to the administration about changes of class or declassing of vessels.

4. The recognized organizations shall not issue certificates to a ship declassified or changing class for safety reasons before consulting the competent administration of the flag State to determine whether a full inspection is necessary.

#### Article 16

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with the Directive no later than 31 December 1995.

2. When Member States adopt these provisions, 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 the Member States.

3. The Member States shall immediately communicate to the Commission the text of all the provisions of domestic law which they adopt in the field governed by this Directive. The Commission shall inform the other Member States thereof.

#### Article 17

This Directive is addressed to the Member States.

Done at Brussels, 22 November 1994.

*For the Council*

*The President*

M. WISSMANN

## ANNEX

## MINIMUM CRITERIA FOR ORGANIZATIONS REFERRED TO IN ARTICLE 3

## A. GENERAL

1. The recognized organization must be able to document extensive experience in assessing the design and construction of merchant ships.
2. The organization should have in its class a fleet of at least 1 000 ocean-going vessels (over 100 GRT) totalling no less than 5 million GRT.
3. The organization must employ a technical staff commensurate with the number of vessels classed. As a minimum, 100 exclusive surveyors would be needed to meet the requirements in paragraph 2.
4. The organization should have comprehensive rules and regulations for the design, construction and periodic survey of merchant ships, published and continually upgraded and improved through research and development programmes.
5. The organization should have its register of vessels published on an annual basis.
6. The organization should not be controlled by shipowners or shipbuilders, or by others engaged commercially in the manufacture, equipping, repair or operation of ships. The organization should not be substantially dependent on a single commercial enterprise for its revenue.

## B. SPECIFIC

1. The organization is established with:
  - (a) a significant technical, managerial, support and research staff commensurate to the tasks and to the vessels classed, catering also for capability — developing and upholding rules and regulations;
  - (b) world-wide coverage by its exclusive technical staff or through exclusive technical staff of other recognized organizations.
2. The organization is governed by a code of ethics.
3. The organization is managed and administered in such a way as to ensure the confidentiality of information required by the administration.
4. The organization is prepared to provide relevant information to the administration.
5. The organization's management has defined and documented its policy and objectives for, and commitment to, quality and has ensured that this policy is understood, implemented and maintained at all levels in the organization.
6. The organization has developed, implemented and maintains an effective internal quality system based on appropriate parts of internationally recognized quality standards and in compliance with EN 45004 (inspection bodies) and with EN 29001, as interpreted by the IACS Quality System Certification Scheme Requirements, and which, *inter alia*, ensures that:
  - (a) the organization's rules and regulations are established and maintained in a systematic manner;
  - (b) the organization's rules and regulations are complied with;
  - (c) the requirements of the statutory work for which the organization is authorized are satisfied;

- (d) the responsibilities, authorities and interrelation of personnel whose work affects the quality of the organization's services are defined and documented;
  - (e) all work is carried out under controlled conditions;
  - (f) a supervisory system is in place which monitors the actions and work carried out by surveyors and technical and administrative staff employed directly by the organization;
  - (g) the requirements of major statutory work for which the organization is authorized are only carried out or directly supervised by its exclusive surveyors or through exclusive surveyors of other recognized organizations;
  - (h) a system for qualification of surveyors and continuous updating of their knowledge is implemented;
  - (i) records are maintained, demonstrating achievement of the required standards in the items covered by the services performed, as well as the effective operation of the quality system; and
  - (j) a comprehensive system of planned and documented internal audits of the quality related activities in all locations.
7. The organization must demonstrate ability:
- (a) to develop and keep updated a full and adequate set of own rules and regulations on hull, machinery and electrical and control equipment having the quality of internationally recognized technical standards on the basis of which Solas Convention and Passenger Ship Safety Certificates (as regards adequacy of ship structure and essential shipboard machinery systems) and Load Line Certificates (as regards adequacy of ship strength) can be issued;
  - (b) to carry out all inspections and surveys required by the international conventions for the issue of certificates, including the means of assessing, through the use of qualified professional staff, the application and maintenance of the safety management system, both shore-based and on board ships, intended to be covered in the certification.
8. The organization is subject to certification of its quality system by an independent body of auditors recognized by the administration of the State in which it is located.
9. The organization should allow participation in the development of its rules and/or regulations by representatives of the administration and other parties concerned.
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