



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 23.11.2005
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2005/0237 (COD)

Proposal for a

**DIRECTIVE .../.../EC OF THE EUROPEAN PARLIAMENT AND OF THE
COUNCIL**

of [...]

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

(recast)
(presented by the Commission)

{SEC(2005) 1498}

EXPLANATORY MEMORANDUM

1) CONTEXT OF THE PROPOSAL

• Grounds for and objectives of the proposal

The Community legislator has long been convinced of the need for appropriate action to deal with the organisations, generally known as “classification societies”, which inspect ships and issue ships’ certificates.

In its Erika I Communication, the Commission seriously asked whether the classification system as a whole made sufficient effort to attain the standards required. The existing system no longer suffices and must be further improved in order to separate the good operators from the bad, to remedy the shortcomings in a proportionate but effective manner, and to exclude from the system those who do not comply with it.

- Thus the Council, in its conclusions of 13 December 2002, stressed the Commission's role in the procedures for authorising and monitoring classification societies.
- In turn, the European Parliament, in its Resolution on improving safety at sea [2003/2235(INI)], asked the Commission to carry out effective monitoring and an audit of classification societies, their subsidiaries and participating undertakings and to introduce penalties for failure to comply with their obligations. In the Resolution it adopted following the sinking of the Prestige [2003/2066 (INI)], Parliament moreover reiterated the need to establish, at international and Community level, exhaustive technical inspection mechanisms which provide reliable information about the real state of ships.

As a response to these concerns, this proposal is intended to reform the present system for the recognition of classification societies by the Community established by Directive 94/57/EC (OJ L 319, 12.12.1994, p. 20), and more especially to:

- (1) strengthen the control systems of recognized organizations,
- (2) harmonise the current dual system of ordinary and limited recognition,
- (3) simplify and improve the structure of the Community recognition criteria,
- (4) reform the system of penalties,
- (5) clarify the scope and facilitate the application of certain provisions of the Directive.

It is essential to make use of the recasting technique during this fourth updating of the Directive in the interests of the transparency and legibility of Community legislation. Furthermore, apart from the substantive amendments proposed, recasting allows the recitals to the Directive to be updated.

- **General context**

Technical safety standards are in practice developed partly by the International Maritime Organisation (IMO) through international conventions (“statutory” requirements) and partly by the classification societies through their technical rules and regulations (“class rules”). What these requirements and rules cover varies according to the convention, the subject matter and the type of ship.

The class rules cover the structural aspects of the ship (such as strength or stability and buoyancy); machinery (engines, steering gear, etc); equipment to be fitted on board; certain operational aspects (e.g. life-saving equipment, equipment for special cargoes such as on oil tankers and chemical tankers). Increasing convergence can be seen between the technical regulations of the main classification societies, but this does not necessarily translate into mutual recognition (especially as regards equipment).

In order to apply the international conventions, the flag State must carry out the inspections required and issue the relevant certificates, but either the former or both of these tasks may be delegated to a recognised classification society.

For the main international certificates to be issued, the ship must be built and maintained in accordance with the technical rules of a classification society. The classification societies therefore approve the plans and oversee the construction process. The classification societies are in full control of both the rules of substance and the inspection methods which they apply to certify that a newly built ship conforms to the said rules. If, as very frequently occurs, the classification societies act on behalf of the flag State, they will subsequently issue certificates of conformity with the international conventions. Throughout the ship’s life, the classification society will continue to issue the two types of certificate.

- The lack of cross checks in the system makes it unlikely that the quality of class certificates will ever be questioned when international certificates are issued. Errors made will inevitably have consequences downstream, including on the statutory certificates. They may affect a large number of ships before being detected.
- In practice, the choice of classification society depends on the relative strengths of the ship-owners and shipyards. While the major ship-owners generally manage to impose the societies they prefer, others have to accept the choice of the shipyard. Classification societies complain even publicly that they are subjected to pressure from major shipyards which can influence the market and the implementation of technical regulations because of their large volume of production. Once a classification society has been chosen for a newly built ship, it is that society which determines the equipment to be fitted on board since it is in a position of strength vis-à-vis the equipment suppliers, which are generally excluded from negotiations between the ship-owner, the shipyard and the society itself. Once the ship has been delivered to its owner and throughout its life, the classification society bills the ship-owner for both class work and statutory tasks. The ship-owner therefore becomes the sole client.

Performing these tasks demands total independence, adherence to a strict code of conduct, a particularly high level of competence, very specialised and continually evolving technical knowledge and particularly strict quality management.

- **Provisions in force in the area covered by the proposal**

Since the Community cannot introduce a regime that differs fundamentally from the international regime, it must make up for the shortcomings of this regime while ensuring the free provision of safety inspection and certification services for ships flying the flag of a Member State in the internal market.

Therefore, without essentially changing the status quo as described above, Directive 94/57/EC was careful to lay down strict criteria regarding independence and professional capability as a condition for the granting of Community recognition.

This mechanism then acts in two ways: firstly, the Member States must ensure that ships flying their flags are designed, built and maintained in accordance with the rules and regulations of a recognized organization or, in exceptional cases, on the basis of equivalent national regulations; secondly, tasks arising from international conventions may only be delegated to recognized organizations.

- **Coherence with other policies and objectives of the Union**

Improving the inspection of ships will have a direct impact on the environment as it will reduce the risk of accidents and the resulting pollution.

This reduced accident and pollution risk will also have a positive economic impact. These changes should also create a competitive and fairer environment for maritime transport operators by reducing unfair competition from substandard ships. These will be subject to stricter penalties, enabling operators of high-quality ships to benefit from lighter controls.

2) CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

- **Consultation of stakeholders**

Consultation methods, main sectors targeted and general profile of respondents

In February 2005, the Commission consulted the representatives of the Member States and the shipping industry on the basis of staff working papers containing a detailed list of questions on the various options to be considered. These concerned (a) separating statutory from classification tasks, (b) reforming limited recognition, (c) reforming the system of penalties, (d) reforming the recognition criteria, and (e) certain aspects regarding the application of the Directive.

The Commission also called on the groups consulted to send in detailed comments in writing and thereafter established bilateral contacts with representatives of industry and the recognised organisations.

The European Maritime Safety Agency has carried out a study which has cast light on the problem of the accumulation of tasks and provided the basic data required for a detailed impact assessment.

Summary of responses and how they have been taken into account

There has been fierce resistance to the possible separation of tasks, with the recognised organisations themselves and most of the Member States preferring to see greater use made of vertical audits. The views received expressed clear support for a reform of limited recognition to eliminate the unwieldy nature of the system and the negative impact on the performance of the organisations concerned. The reform of the recognition criteria was also welcomed, together with reform of the system of penalties, especially by the recognised organisations themselves which expressed particular concern about its proportionality. All of these elements, which were broadly covered in the Commission's impact analysis, have been taken into account in the proposal.

• **Collection and use of expertise**

No recourse to external expertise was needed.

• **Impact assessment**

The data gathered and the detailed conclusions of the impact assessment are given in the attached document SEC/. , which is summarised below:

(a) Strengthening the control systems of recognised organisations

Community recognition has hitherto revolved around the question of professional standards without considering the risks inherent in the accumulation of tasks by the recognised organisations. Two types of solution have been examined:

- the introduction of cross checks during inspections and when issuing certificates, which means separating statutory tasks from classification tasks. The Commission's analysis has shown the advantages of this arrangement, but it has one basic drawback: it can only apply to ships flying the flag of a Member State,
- strengthening the existing control mechanisms within an appropriate framework. Analysis shows this could improve the quality of the service and the effectiveness of inspections for all recognised organisations, regardless of the flag flown, and at a negligible price to these organisations. During the consultations and bilateral exchanges conducted by the Commission, the recognised organisations themselves advocated strengthening the vertical audits.

(b) Reform of limited recognition

Reforming limited recognition by extending it to cover all Community territory and replacing the present quantitative criteria by qualitative criteria is not expected to have any economic impact. The market situation will stay the same since the present system of limited recognition of an organisation can be extended at any time to other Member States if they so request.

(c) The recognition criteria

Simplifying and updating the recognition criteria, which does not impose any new obligations on recognised organisations, has no appreciable economic impact (except as regards

prohibiting the use of non-exclusive surveyors, the impact of which would be small and would extend across the entire fleet classed by the recognised organisations).

(d) Reform of the system of penalties: introduction of financial penalties.

As this would be a purely legal change, reform of the system of penalties is not expected to have any economic impact.

(e) Other parts of the reform

As the changes would be purely of a legal nature, chiefly to clarify other provisions and/or ensure their proper application, new provisions regarding the legal structure of the recognised organisations, the Commission's inspection powers and the exclusion of "security" aspects from the scope of the Directive are not expected to have any economic impact.

The Commission has carried out an impact assessment as provided for in its Legislative and Work Programme. The report can be found at

http://europa.eu.int/comm/secretariat_general/impact/index_en.htm.

3) LEGAL ELEMENTS OF THE PROPOSAL

• Summary of the proposed action

(a) Improving the systems for the monitoring of recognised organisations (Article 21)

The recognised organisations should establish a joint body for quality system assessment and certification. The joint body must be independent, have all the necessary resources to enable work to be carried out in-depth and on a continuous basis, and be in a position to propose both individual and collective measures in order to improve the quality of the recognised organisations' work. For this system to operate properly, it is also proposed that cooperation between the recognised organisations should be extended to ensure that their technical regulations are compatible and that these regulations and international conventions are interpreted and applied in a uniform manner. This will provide a common basis for evaluation and instruments which will enable the corrective measures referred to above to be taken with a view to achieving a uniform level of safety in the Community. Compatibility between the technical regulations should logically lead to the genuine mutual recognition of class certificates, for marine equipment as well, which would reduce the costs borne by suppliers and shipyards since it would no longer be necessary for certification to be carried out by several different societies. It is also necessary to create incentives for the Member States to play a more active role in the development of rules and regulations (currently optional) and in technical cooperation (compatibility between regulations, interpretation of international conventions).

(b) Reform of limited recognition

The present system which limits recognition according to the size of the organisation concerned makes it more difficult for an organisation to renew its fleet and hampers its performance and ability to evolve and improve. This is a totally undesirable situation. Furthermore, the system may be rendered meaningless if limited recognition is extended to several Member States, especially if this concerns large fleets.

The proposed reform is intended to eliminate these problems. Community recognition will no longer depend on size, but solely on quality and performance in terms of safety and environmental protection. In addition, it will be possible to prevent a recognised organisation, whatever its size, from acting on behalf of Member States in specialised areas for which it does not have the necessary capability (for example, specialised ships such as chemical tankers, gas tankers or large passenger ships).

(c) Reform of the recognition criteria

During successive reforms, the criteria for granting recognition have been developed and updated, and new obligations regarding transparency and cooperation have been imposed on the recognised organisations.

However, these reforms have resulted in a set of criteria that are somewhat disorderly, with sometimes unclear expressions and redundant provisions. The proposed reform is intended to simplify these criteria and make them more legible, to amend those which are difficult to apply and to fill certain gaps:

- clear confirmation of the need to have a number of inspectors in proportion to the fleet being classed, but without specifying a predetermined threshold for the granting of recognition,
- ending the use of non-dedicated inspectors by recognised organisations, a practice still allowed by the Directive for classification tasks. The unstable employment situation of these inspectors means that the independence and quality of their work is not sufficiently guaranteed despite the basic and further training given by the recognised organisations. While the use of dedicated inspectors from other recognised organisations is sometimes essential to ensure worldwide cover in all circumstances, it must remain the exception,
- requirement of legal personality and certification of the accounts of recognised organisations. Certification of accounts is essential to check the financial independence of the recognised organisations and for the reform of the system of penalties referred to below.

(d) Reform of the system of penalties

The Directive can only be applied effectively with cooperation and partnership between the recognised organisations, the Member States' authorities and the Commission. Nonetheless, a policy to protect maritime safety and the environment must be backed up by a system of penalties to ensure public control over the activity of recognised organisations which do not fulfil their obligations.

The Commission believes it is essential that the principle of rectifying mistakes at source is upheld and strengthened, in particular in order to identify risks caused by infringements of the provisions of the Directive and to repair any possible consequences. In the most serious cases where there is an unacceptable risk to safety or the environment, it is also equally essential to withdraw recognition from the organisation in question.

The Commission therefore considers it necessary to simplify the present system of penalties and to make it more flexible and effective. This involves two-fold action:

- recasting of the present dual system and the creation of a single list of infringements and penalties applicable to both failure to comply with the recognition criteria and other obligations of the recognised organisations and to inadequate performance,
- replacing the suspension of recognition by the application of financial penalties. These are gradual and therefore fairer than suspension (which may be as disastrous for the organisation concerned as the withdrawal of recognition, depending on the size of the European component of its registered fleet). Financial penalties are also compatible with the demand for corrective action, which a system of periodic penalty payments would strengthen.

The financial penalties must above all be proportionate to the severity of the infringement and the economic capability of the organisation concerned. Two options can be considered: either a percentage of turnover or an amount per gross ton of the organisation's registered fleet, both graduated according to the circumstances of the case. While the first method is rather direct, the second option takes better account of the normal revenue structure of recognised organisations. However, the use of this option must be preceded by detailed analysis in order to ensure that penalties are dissuasive but fair. The Commission therefore considers it is sufficient for the legislator to determine the principles of the system and to establish a maximum amount of fine that can be imposed on a recognised organisation committing an infringement. Detailed implementing rules can then be adopted by the Commission with a committee procedure following a more detailed study carried out together with the Member States and with consultation of the recognised organisations.

(e) Commission's powers of inspection

The Community must be able to ensure that recognised organisations apply the same strict standards to ships flying the flag of a third country as to ships flying the flags of the Member States since both sail in Community waters. The recognition criteria therefore make no distinction according to flag and are intended to ensure a uniform standard among the recognised organisations.

The right of access of Community assessors to ships and to information for the purpose of evaluating recognised organisations is already an implicit requirement of the Directive. It is therefore necessary to lay down the specific arrangements, in particular as regards:

- not allowing a confidentiality clause in an agreement to be invoked to restrict the Community inspectors' access to the information necessary for the assessment of a recognised organisation (access to files),
- including relevant provisions in contracts between recognised organisations and shipyards and ship-owners for the issuance of statutory and class certificates, so that such issuance is subject to good cooperation of these parties (access to ships).

(f) Taking account of the legal structure of recognised organisations

Since the first recognitions were granted by the Member States, the recognised organisations have further developed and sometimes significantly changed their legal structure, generally making it more complex. A large number of legal forms currently exist, including foundations and limited liability companies as well as exclusive forms under certain non-Community legal systems.

In response to concerns expressed by the European Parliament, the Commission proposes to introduce a broad organisational concept which takes account of any foreseeable relationship of dependence between legal entities conducting, under the same umbrella, activities which fall within the scope of the Directive. This is to ensure that recognition (and therefore the applicability of the criteria and obligations under the Directive) applies at the highest level which corresponds to that concept. Both horizontal and vertical company groupings will then be sufficiently covered and will be either fully inside or outside of the Community system.

(g) Exclusion of security aspects

As it presently stands, the scope of the Directive is defined by reference to international conventions, including the Convention for the Safety of Life At Sea (SOLAS). Since its amendment on 12 December 2002, this Convention contains a section on security which has been transposed into the Community legal order by Regulation (EC) No 725/2004 of the European Parliament and of the Council of 31 March 2004 (OJ L 129 of 29.4.2004, p. 6). In accordance with the abovementioned new provisions of the SOLAS Convention, this Regulation provides for the concept of an “approved security organisation” based on criteria and arrangements which are incompatible with the spirit and scheme of Directive 94/57/EC. It is therefore necessary to exclude the “security” aspects from the scope of Directive 94/57/EC.

- **Legal basis**

The legal basis of the proposal is Article 80(2) of the Treaty.

- **Principle of subsidiarity**

The principle of subsidiarity applies as the proposal does not concern an area in which the Community has exclusive competence.

The objectives of the proposal cannot be sufficiently achieved by action on the part of the Member States for the following reasons:

Isolated action on the part of the Member States is incompatible with the aim of ensuring the free provision of services for the inspection and survey of ships flying the flags of Member States while guaranteeing a high and uniform level of protection of safety throughout the Community, which requires particularly strict standards of professional competence and independence of the recognised organisations and monitoring of those standards.

The objectives of the proposal may be better achieved through Community action for the following reasons:

Monitoring of the obligations of recognised organisations and the imposition of penalties for non-compliance can only be performed effectively with the benefits of the swiftness and unity of action which the Community provides. This process can only be fair if all organisations concerned are evaluated in a consistent manner.

While it improves the *modus operandi* of the present Community system, this proposal does not in any way alter its substance. Thus its objectives can be better achieved by the Community.

The proposal is intended to strengthen the provisions of the existing Directive without changing its objectives or extending its scope.

The proposal therefore complies with the principle of subsidiarity.

- **Principle of proportionality**

The proposal complies with the principle of proportionality for the following reasons.

The proposed action does not represent an increase in Community intervention. On the contrary, it standardises and provides a framework for the self-regulatory mechanisms of the recognised organisations (control mechanisms), eliminates cumbersome procedures (limited recognition), updates the existing provisions (recognition criteria) and aims to make their application more flexible and efficient (reform of the penalties system).

No financial burden arises from this proposal either for the Member States or the Community budget. It provides added value in terms of safety and protection of the citizen, while the options chosen represent a negligible cost to economic operators.

- **Choice of instruments**

Proposed instrument(s): Directive.

Other instruments would not be adequate for the following reasons:

Replacing the present Directive by a Regulation would not fit in well with the system under which Member States are able to delegate their powers to inspect ships and issue certificates under the relevant international conventions.

4) **BUDGETARY IMPLICATION**

The proposal has no implications for the Community budget.

5) **ADDITIONAL INFORMATION**

- **Simulation, pilot phase and transition period**

The proposal has been, or will be, the subject of a transitional period.

- **Recasting**

The proposal involves recasting of the legal provisions in force and is part of the Community programme updating and simplifying the Community acquis.

- **Correlation table**

The Member States are required to transmit to the Commission the text of national provisions transposing the Directive as well as a correlation table between those provisions and this Directive.

- **European Economic Area**

This draft instrument concerns an area covered by the EEA Agreement and must therefore be extended to cover the European Economic Area.

↓ 94/57/EC (adapted)

Proposal for a

DIRECTIVE .../.../EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of [...]

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

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article ~~84~~ 80 (2) thereof,

Having regard to the proposal from the Commission¹,

Having regard to the opinion of the European Economic and Social Committee²,

Having regard to the opinion of the Committee of the Regions³,

Acting in accordance with the procedure laid down in Article ~~189e~~ 251 of the Treaty⁴,

Whereas:

↓ new

(1) 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 administrations⁵ has been substantially amended several times. Since further amendments are to be made, it should be recast in the interests of clarity.

¹ OJ C [...], [...], p. [...].

² OJ C [...], [...], p. [...].

³ OJ C [...], [...], p. [...].

⁴ OJ C [...], [...], p. [...].

⁵ OJ L 319, 12.12.1994, p. 20. Directive as last amended by Directive 2002/84/EC (OJ L 324, 29.11.2002, p. 53).

↓ 94/57/EC Recital 1 (adapted)

- (2) 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~~ gave priority to Community action to secure the effective and uniform implementation of international rules by elaborating common standards for classification societies⁶.

↓ 94/57/EC Recital 2

- (3) 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.

↓ 94/57/EC Recital 3

- (4) 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.

↓ 94/57/ EC Recital 4 (adapted)

- (5) Member States are responsible for the issuing of international certificates for safety and pollution provided for under conventions such as ~~Solas~~ SOLAS 74, Load Lines 66 and Marpol 73/78, and for the implementation of the provisions thereof.

↓ 94/57/CE Recital 5 (adapted)

⇒ new

- (6) In compliance with such conventions all Member States may authorize to a varying various extent ~~technical organizations~~ ship inspection and survey organisations, generally known as classification societies, for the certification of such compliance and may delegate the issue of the relevant safety certificates.

↓ 94/57/EC Recital 6

- (7) 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.

⁶ OJ C 271, 7.10. 1993, p. 1.

↓ 94/57/EC Recital 7

~~1. 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.~~

↓ new

(8) Furthermore, these organizations are given the duty of producing and implementing rules for the design, construction, maintenance and inspection of ships and to meet the requirements of the international conventions for the issue of the relevant certificates. To enable them to carry out that duty in a satisfactory manner they need to have strict independence, highly specialised technical competence and rigorous quality management.

(9) Ship inspection and survey organizations should be able to offer their services throughout the Community and compete with each other while providing an equal level of protection of safety and of the environment. The necessary professional standards for their activity should therefore be uniformly established and applied across the Community.

↓ 94/57/EC Recital 8 (adapted)

(10) ~~The appropriate way to act is by means of a Council directive laying down minimum criteria for recognition of organizations which should be laid down, while leaving recognition itself, the means of enforcement, and the implementation of the Directive to the Member States;~~

↓ 94/57/EC Recital 9

~~2. 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;~~

↓ 94/57/EC Recital 10 (adapted)

(11) The ~~issuance~~ issue of the Cargo Ship Safety Radio Certificate may be entrusted to private bodies having sufficient expertise and qualified personnel.

↓ 94/57/EC Recital 11

~~3. 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;~~

↓ 2001/105/EC Recital 11
⇒ new

- (12) In order to grant the initial recognition to the organisations wishing to be authorised to work on behalf of the Member States, compliance with the ⇒ minimum criteria referred to above ⇐ ~~provisions of Directive 94/57/EC~~ can be assessed more effectively in a harmonised and centralised manner by the Commission together with the Member States requesting the recognition.
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↓ 94/57/CE Recital 12

~~4. 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;~~

↓ new

- (13) Recognition should be granted only on the basis of the quality and safety performance of the organization. It should be ensured that the extent of the recognition is at all times in keeping with the actual capacity of the organization concerned. Recognition should furthermore take into account the differences in legal status and corporate structure of recognized organizations while continuing to ensure uniform application of the above mentioned minimum criteria and the effectiveness of the Community controls.
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↓ 94/57/EC Recital 13 (adapted)

- (14) ~~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. Such a 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 in accordance with a committee procedure. through the comitology procedures;~~

↓ 94/57/EC Recital 14

~~5. Whereas the implementation of the principle of freedom to provide ship inspection and survey services could be gradual, but not beyond prescribed time limits;~~

↓ 2001/105/EC Recital 15
(adapted)

(15) Since this Directive ~~Directive 94/57/EC~~ ensures freedom to provide services in the Community, the Community should be entitled to negotiate, with those third countries where some of the recognised organisations are located, equal treatment for the recognised organisations located in the Community.

↓ 94/57/EC Recital 15 (adapted)

(16) 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. 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.

↓ 94/57/EC Recital 16

~~6. 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;~~

↓ 94/57/EC Recital 17

~~7. 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;~~

↓ 94/57/EC Recital 18

~~8. 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;~~

↓ 2001/105/EC Recital 16
(adapted)
⇒ new

(17) ~~The~~ Divergence in the financial liability regimes of the organisations working on behalf of the Member States ~~represented a difficulty in~~ ⇒ would impede ⇐ the proper implementation of ⊗ this Directive ⊗ ~~Directive 94/57/EC~~. In order to contribute to solving this problem it is appropriate to bring about a degree of harmonisation at Community level of the liability arising out of any incident caused by a recognised organisation, as decided by a court of law, including settlement of a dispute through arbitration procedures.

↓ 2001/105/EC Recital 17
(adapted)

(18) The measures necessary for the implementation of ⊗ this ⊗ Directive ~~94/57/EC~~ should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission.⁷

↓ new

(19) The provisions of this Directive, and in particular the minimum criteria and the obligations to be fulfilled by the recognised organisations, should be kept up-to-date, taking due account of progress in international fora, in accordance with the committee procedure.

(20) It is of the utmost importance that failure by a recognised organisation to fulfil its obligations can be addressed in a prompt, effective and proportionate manner. The primary objective should be to correct any deficiencies with a view to removing any potential threat to safety or the environment at an early stage. The Commission should therefore be given the necessary powers to require that the organisation undertakes the necessary preventive and remedial action, and to impose fines and periodic penalty payments as coercive measures.

↓ 2001/105/EC Recital 14
⇒ new

(21) In accordance with the Community-wide approach, the decision to withdraw the recognition of an organisation which fails to fulfil the provisions set out in the Directive ⇒ if the above measures prove ineffective or the organization otherwise presents an unacceptable threat to safety or the environment, ⇐ ~~including cases where safety and pollution prevention performance becomes unsatisfactory,~~ has to be taken at

⁷ OJ L 184, 17.7.1999, p. 23.

Community level, and therefore by the Commission, on the basis of the committee procedure.

↓ 94/57/EC Recital 19 (adapted)

- (22) Member States ~~must~~ ☒ should ☒ nevertheless be left the possibility of suspending their authorization to ~~an~~ ☒ a recognised ☒ organization for reasons of serious danger to safety or environment. The Commission ~~must~~ ☒ should ☒ rapidly decide in accordance with the procedure referred to above whether it is necessary to overrule such national measure.
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↓ 94/57/EC Recital 20

- (23) 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.
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↓ 2001/105/EC Recital 12
(adapted)

- (24) The continuous a posteriori monitoring of the recognised organisations to assess their compliance with the provisions of ☒ this Directive ☒ ~~Directive 94/57/EC~~ can be carried out more effectively in a harmonised and centralised manner. Therefore it is appropriate that the Commission, together with the Member State requesting the recognition, be entrusted with this task on behalf of the whole Community.
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↓ new

- (25) It is crucial that Community inspectors have access to ships and ship files regardless of the ship's flag in order to ascertain that the recognised organisations comply with the minimum criteria in respect of all ships in their respective class.
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↓ 94/57/EC Recital 21 (adapted)

- (26) Member States, as port authorities, are required to enhance safety and prevention of pollution in Community waters through priority inspection of ~~vessels~~ ☒ ships ☒ carrying certificates of organizations which do not fulfil the common criteria, thereby ensuring ~~no more favourable treatment to vessels~~ ☒ that ships ☒ flying the flag of a third State ☒ do not receive more favourable treatment ☒ .

↓ 94/57/EC Recital 22

~~9. 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 Commission⁸;~~

↓ 94/57/EC Recital 24 (adapted)

(27) At present there are no 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. 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~~ Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations ⁹ .

↓ new

(28) The ability of recognized organizations rapidly to identify and correct weaknesses in their rules, processes and internal controls is critical for the safety of the ships they inspect and certify. That ability should be enhanced by means of an independent joint body which can propose common action for the sustained improvement of all recognized organizations and ensure productive interaction with the Commission.

↓ 94/57/EC Recital 23 (adapted)

⇒ new

(29) Recognised organisations classification societies ~~must~~ should be obliged to update ~~and enforce~~ their technical standards and enforce them consistently in order to harmonize safety rules and ensure uniform implementation of international rules within the Community. Where the technical standards of recognised organisations are identical or very similar, mutual recognition of class certificates should be considered.

↓ 2001/105/EC Recital 18

(30) Since transparency and exchange of information between interested parties, as well as public right of access to information, are fundamental tools for preventing accidents at sea, the recognised organisations should provide all relevant statutory information concerning the conditions of the ships in their class to the port State control authorities and make it available to the general public.

⁸ ~~OJ No L 197, 18. 7. 1987, p. 33.~~

⁹ OJ L 204, 21.7.1998, p. 37 .

↓ 2001/105/EC Recital 19
(adapted)
⇒ new

- (31) In ~~an attempt~~ ☒ order ☒ to prevent ships from changing class ~~in order~~ to avoid carrying out necessary repairs, the recognised organisations should exchange all relevant information among themselves concerning the conditions of ships changing class ⇒ and involve the flag State when necessary ⇐ .

↓ new

- (32) The European Maritime Safety Agency (EMSA) established by Regulation (EC) No 1406/2002 of the European Parliament and of the Council¹⁰ should provide the necessary support to ensure the implementation of this Directive.

- (33) Since the objective of the action to be taken, namely the adoption of common rules and standards for ship inspection and survey organizations operating in the Community and for the relevant activities of maritime administrations, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale of the action, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.

- (34) The obligation to transpose this Directive into national law should be confined to those provisions which represent a substantive change as compared with the earlier Directive. The obligation to transpose the provisions which are unchanged arises under the earlier Directive.

- (35) This Directive should be without prejudice to the obligations of the Member States relating to the time-limits for transposition into national law of the Directives set out in Annex II, Part B,

↓ 94/57/EC (adapted)

HAVE 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

¹⁰ OJ L 208 5.8.2002, p. 1. Regulation as last amended by Regulation (EC) No. 724/2004, (OJ L 129, 29.4.2004, p. 1.)

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 ☒ the following definitions shall apply ☒ :

(a) “ship”	means a ship falling within the scope of the international conventions;
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↓ 2001/105/EC Art. 1.1
 →₁ 2002/84/EC Art. 3.1
 ⇒ new

(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. Ships not corresponding to this definition are assimilated to ships flying the flag of a third country;
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(c) “inspections and surveys”	means inspections and surveys that it is mandatory to carry out under the international conventions;
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(d) “international conventions”	means the 1974 International Convention for the Safety of Life at Sea (SOLAS) ⇒ with the exception of chapter XI-2 of the Annex and the International Ship and Port Facility Security Code ⇐ , the 1966 International Convention on Load Lines and the 1973/1978 International Convention for the Prevention of Pollution from Ships, together with the protocols and amendments thereto, and <u>the</u> related codes of mandatory status in all Member States, → ₁ in their up-to-date version ←;
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↓ 94/57/EC (adapted)

⇒ new

(e) “organization”	means ⇒ a legal entity, its subsidiaries and any other entities under its control, which jointly or separately carry out tasks falling under the scope of this Directive ⇐ a classification society or other private body carrying out safety assessment work for an administration;
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⇒ (f) “control” ⇐	⇒ means, for the purpose of point (e), rights, contracts or any other means, in law or in fact, which, either separately or in combination confer the possibility of exercising decisive influence on a legal entity or enable such entity to carry out tasks falling under the scope of this Directive; ⇐
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(g) “recognized organization”	means an organization recognized in conformity with Article 4; <input checked="" type="checkbox"/> accordance with this Directive; <input checked="" type="checkbox"/>
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(h) “authorization”	means an act whereby a Member State grants an authorization or delegates powers to a recognized organization;
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(i) “⇒ statutory ⇐ certificate”	means a certificate issued by or on behalf of a ⇒ flag ⇐ Member State in accordance with the international conventions;
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⇒ (j) “rules and regulations” ⇐	⇒ means a recognized organization’s requirements for the design, construction, equipment, maintenance and survey of ships; ⇐
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↓ 2001/105/EC Art. 1.1 (adapted)

(k) “class certificate”	means a document issued by a <input checked="" type="checkbox"/> recognised organisation <input checked="" type="checkbox"/> classification society certifying the structural and mechanical fitness of a ship for a particular use or service in accordance with the rules and regulations laid down and made public by that society <input checked="" type="checkbox"/> recognised organisation <input checked="" type="checkbox"/> ;
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(l) “cargo ship safety radio certificate”	means the certificate introduced by the amended SOLAS 1974/1978 Radio Regulations, adopted by the IMO;
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↓ 94/57/EC (adapted)
 →₁ 2001/105/EC Art. 1.2
 ⇨ new

(m) “location”	refers to the place of the registered office, central administration or principal place of business of an organization.
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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 ⇨ statutory ⇨ certificates and exemption certificates ⇨ as provided for by the international conventions ⇨ . →₁ Member States shall act in accordance with the relevant provisions of the Annex and the Appendix to IMO Resolution A.847(20) on guidelines to assist flag States in the implementation of IMO instruments. ←
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 ⇨ statutory ⇨ certificates including those for the assessment of compliance with ☒ the rules referred to in ☒ Article 14 ☒ 19(2) ☒ 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 ☒ point ☒ (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.

↓ 2001/105/EC Art. 1.3 (adapted)
⇒ new

Article 4

~~4~~ Member States which wish to grant an authorisation to any organisation which is not yet recognised, shall submit a request for recognition to the Commission together with complete information on, and evidence of, compliance with the criteria set out in ~~the Annex~~ ~~Annex I~~ and on the requirement and undertaking that it will comply with the provisions of Articles ~~15(2), (4) and (5)~~ ~~⇒ 20 and 21~~ .

The Commission, together with the respective Member States submitting the request, shall carry out assessments of the organisations for which the request for recognition was received in order to verify that the organisations meet and undertake to comply with the above mentioned requirements. ~~A decision on recognition shall take into account the safety and pollution prevention performance records of the organisation, referred to Article 9.~~

↓ new

Article 5

The Commission shall refuse to recognize organizations which fail to meet the requirements mentioned in the first paragraph of Article 4 or whose performance is considered an unacceptable threat to safety or the environment on the basis of the criteria laid down in accordance with Article 14.

↓ 2001/105/EC Art. 1.3 (adapted)

Article 6

1. Recognition shall be granted by the Commission in accordance with the procedure referred to in Article ~~7~~ ~~9~~ (2).

↓ new

2. Recognition shall be granted to the parent entity, if any, within the organisation and shall apply to all entities within that organization.

3. Recognition may at any time be limited or extended as regards certain types of ships, ships of a certain size, certain trades, or a combination thereof, in accordance with the proven capacity of the organisation concerned, by the Commission, acting in accordance with the procedure referred to in Article 9(2).

↓ 2001/105/EC Art. 1.3 (adapted)
⇒ new

~~2. Member States may submit to the Commission special requests for a limited recognition of three years for organisations which meet all the criteria of the Annex other than those set out under paragraphs 2 and 3 of section A. The same procedure as that referred to in paragraph 1 will apply to these special requests with the exception that the criteria of the Annex for which compliance has to be assessed during the assessment carried out by the Commission, together with the Member State, shall be all the criteria other than those set out under paragraphs 2 and 3 of section A. The effects of these limited recognitions shall be limited exclusively to the Member State or States which have submitted a request for such recognition.~~

~~3. All the organisations which are granted recognition shall be closely monitored by the committee set up under Article 7, particularly those referred to in paragraph 2 above, with a view to possible decisions concerning whether or not to extend the limited recognition. With regard to these latter organisations, a decision on the extension of such recognition shall not take into account the criteria set out under paragraphs 2 and 3 of section A of the Annex but shall take into account the safety and pollution prevention performance records of the organisation, referred to in Article 9(2). Any decision on the extension of the limited recognition shall specify under which conditions, if any, such extension is granted.~~

4. The Commission shall draw up and ⇒ regularly ⇐ update a list of the organisations recognised in compliance with ⊗ this Article ⊗ paragraphs 1, 2 and 3. The list shall be published in the *Official Journal of the European ⊗ Union ⊗ Communities*.

~~5. The organisations which on 22 January 2002 are already recognised on the basis of this Directive shall continue to be recognised. Nevertheless, those organisations shall be required to comply with the new provisions laid down in this Directive and their compliance shall be assessed during the first assessments referred to in Article 11.~~

↓ 94/57/EC

Article ~~7~~₅

↓ 2001/105/EC Art. 1.4(a)
(adapted)

1. In applying Article 3(2), Member States shall in principle not refuse to authorise any of the recognised organisations to undertake such functions, subject to the provisions of paragraph ⊗ 2 of this Article ⊗ 3 and Articles ⊗ 8 and 16 ⊗ ~~6 and 11~~. However, they may restrict the number of organisations they authorise 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 ⊗ referred to ⊗ ~~laid down~~ in Article ~~7~~ ⊗ 9(2) ⊗ , adopt appropriate measures.

↓ 2001/105/EC Art. 1.4(c)

2. In order for a Member State to accept that a recognised organisation located in a third State is to carry out the duties mentioned in Article 3 or part of them it may request the third State in question to grant reciprocal treatment for those recognised organisations which are located in the Community.

In addition, the Community may request the third State where a recognised organisation is located to grant reciprocal treatment for those recognised organisations which are located in the Community.

↓ 94/57/EC

Article ~~86~~

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.

↓ 2001/105/EC Art. 1.5(a)
(adapted)

2. The working relationship shall be regulated by a formalised written and non-discriminatory agreement or equivalent legal arrangements setting out the specific duties and functions assumed by the organisations and including at least:
- (a) the provisions set out in Appendix II of IMO Resolution A.739(18) on guidelines for the authorisation of organisations acting on behalf of the administration, while drawing inspiration from the Annex, Appendices ~~xxx~~ and Attachment to IMO MSC/Circular 710 and MEPC/Circular 307 on ~~⊗~~ a ~~⊗~~ model agreement for the authorisation of recognised organisations acting on behalf of the administration;
 - (b) the following provisions concerning financial liability:
 - (i) if liability arising out of any incident is finally and definitely imposed on the administration by a court of law or as part of the settlement of a dispute through arbitration procedures, together with a requirement to compensate the injured parties for loss or damage to property or personal injury or death, which is proved in that court of law to have been caused by a wilful act or omission or gross negligence of the recognised organisation, its bodies, employees, agents or others who act on behalf of the recognised organisation, the administration shall be entitled to financial compensation from the recognised organisation to the extent that the said loss, damage, injury or death is, as decided by that court, caused by the recognised organisation;

- (ii) if liability arising out of any incident is finally and definitely imposed on the administration by a court of law or as part of the settlement of a dispute through arbitration procedures, together with a requirement to compensate the injured parties for personal injury or death, which is proved in that court of law to have been caused by any negligent or reckless act or omission of the recognised organisation, its employees, agents or others who act on behalf of the recognised organisation, the administration shall be entitled to financial compensation from the recognised organisation to the extent that the said personal injury or death is, as decided by that court, caused by the recognised organisation; the Member States may limit the maximum amount payable by the recognised organisation, which must, however, be at least equal to EUR 4 million;
 - (iii) if liability arising out of any incident is finally and definitely imposed on the administration by a court of law or as part of the settlement of a dispute through arbitration procedures, together with a requirement to compensate the injured parties for loss or damage to property, which is proved in that court of law to have been caused by any negligent or reckless act or omission of the recognised organisation, its employees, agents or others who act on behalf of the recognised organisation, the administration shall be entitled to financial compensation from the recognised organisation, to the extent that the said loss or damage is, as decided by that court, caused by the recognised organisation; the Member States may limit the maximum amount payable by the recognised organisation, which must, however, be at least equal to EUR 2 million;
- (c) provisions for a periodical audit by the administration or by an impartial external body appointed by the administration into the duties the organisations are undertaking on its behalf, as referred to in Article ~~11~~ 16 (1);
 - (d) the possibility for random and detailed inspections of ships;
 - (e) provisions for reporting essential information about their classed fleet, changes, suspensions and withdrawals of class, as referred to in Article ~~15~~ 20 (3).

↓ 94/57/EC (adapted)

3. The agreement or equivalent legal arrangement may ~~set the requirement that~~ the recognised organisation ~~has~~ to have 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 a 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.

↓ 2001/105/EC Art. 1.5(b)
(adapted)

5. The Commission shall, no later than 22 July 2006, submit a report to the European Parliament and to the Council evaluating the economic impact of the liability regime provided for in this Article on the parties concerned and, more particularly, its consequences for the financial equilibrium of recognised organisations.

This report shall be drawn up in cooperation with the competent authorities of the Member States and the parties concerned, in particular recognised organisations/~~classification societies~~. The Commission shall, if necessary in the light of this evaluation, submit a proposal amending this Directive with more specific reference to the principle of liability and the maximum liabilities.

↓ 2001/105/EC Art. 1.6

Article ~~97~~

↓ 2002/84/EC Art. 3.2 (adapted)

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)~~¹¹.

↓ 2001/105/EC Art. 1.6

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.

¹¹ OJ L 324, 29.11.2002, p. 1.

↓ 94/57/EC

Article 10~~8~~

↓ 2001/105/EC Art. 1.7 (adapted)

1. This Directive may, without broadening its scope, be amended in accordance with the procedure referred to ~~in~~ ~~the Annex~~ ~~in Article 7~~ 9 (2), in order to:
 - (a) apply, for the purposes of this Directive, subsequent amendments to the international conventions, protocols, codes and resolutions related thereto mentioned in Articles 2(d), 3(1) and ~~6~~ 8 (2), which have entered into force,
 - (b) update the criteria in ~~the Annex~~ Annex I taking into account, in particular, the relevant decisions of the IMO,
 - (c) alter the amounts specified in points (ii) and (iii) of Article ~~6~~ 8 (2)(b).
-

↓ 94/57/EC

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.
-

↓ 2002/84/EC Art. 3.3 (adapted)

The amendments to the international instruments referred to in Article 2(d) and Article ~~6~~ 8 may be excluded from the scope of this Directive, pursuant to Article 5 of Regulation (EC) No 2099/2002.

↓ new

Article 11

Where the Commission considers that a recognised organisation has failed to fulfil the criteria set out in Annex I or its obligations under this Directive, or that the safety and pollution prevention performance of a recognised organisation has worsened significantly, without it constituting, however, an unacceptable threat to safety or the environment, it shall require the organisation concerned to undertake the necessary preventive and remedial action to ensure full compliance with the said criteria and obligations and, in particular, remove any potential

threat to safety or the environment, or to otherwise address the causes of the worsening performance

The preventive and remedial action may include interim protective measures when the potential threat to safety or the environment is immediate.

Article 12

1. In addition to the measures taken under Article 11, the Commission may impose fines on a recognised organisation:
 - (a) whose failure to fulfil the criteria set out in Annex I or its obligations under this Directive or whose worsening performance reveals grave shortcomings in its structure, systems, procedures or internal controls; or
 - (b) which has provided incorrect, incomplete or misleading information to the Commission in the course of its assessment under Article 16(3) or otherwise obstructed that assessment.
2. Without prejudice to paragraph 1, where an organisation fails to implement the preventive and remedial action required by the Commission, or incurs unjustified delays, the Commission may impose periodic penalty payments on the said organisation until the required action is fully implemented.
3. The fines and periodic penalty payments referred to in paragraphs 1 and 2 shall be dissuasive and proportionate to both the gravity of the case and the economic capacity of the organisation concerned, taking particularly into account the extent to which safety has been compromised.

They shall be imposed only after the organisation concerned has been given the opportunity to submit its observations.

The aggregate amount of the fines and periodic penalty payments shall not exceed 10% of the total turnover of the recognized organisation in the preceding business year for the activities falling under the scope of this Directive.

Article 13

1. The Commission shall withdraw the recognition of organisations:
 - (a) whose failure to fulfil the criteria set out in Annex I or their obligations under this Directive is such that it constitutes an unacceptable threat to safety or the environment;
 - (b) whose safety and pollution prevention performance is such that it constitutes an unacceptable threat to safety and the environment;
 - (c) which prevent or repeatedly obstruct their assessment by the Commission, or

(d) which fail to honour the fines and/or periodic penalty payments referred to in Article 12(1) and (2).

2. For the purpose of points (a) and (b) of paragraph 1, the Commission shall decide on the basis of all the available information, including:

(a) the results of its own assessment of the organization concerned in accordance with Article 16(3);

(b) reports submitted by Member States in accordance with Article 18;

(c) analyses of casualties involving ships classed by the recognised organisations;

(d) any recurrence of the shortcomings referred to in Article 12(1), point (a);

(e) the extent to which the fleet in the organization's class is affected, and

(f) the ineffectiveness of the measures referred to in Article 12(2).

3. Withdrawal of recognition shall be decided by the Commission, upon its own initiative or at the request of a Member State, in accordance with the procedure referred to in Article 9(2) and after the organisation concerned has been given the opportunity to submit its observations.

Article 14

The Commission, acting in accordance with the procedure referred to in Article 9(2), shall adopt:

(a) criteria to measure the safety and pollution prevention performance of recognised organisations, having particular regard to the data produced by the Paris Memorandum of Understanding on Port State Control and/or by other similar schemes;

(b) criteria to determine when such performance is to be considered an unacceptable threat to safety or the environment, which may take into account specific circumstances affecting smaller-sized or highly specialised organizations, and

(c) detailed rules for the implementation of Article 12 and, if appropriate, Article 13.

↓ 2001/105/EC Art. 1.8

~~1. The recognition of organisations referred to in Article 4 which no longer fulfil the criteria set out in the Annex or which fail to meet the safety and pollution prevention performance records mentioned in paragraph 2 shall be withdrawn. The withdrawal of recognition shall be decided by the Commission in accordance with the procedure referred to in Article 7(2), after the organisation concerned has been given the opportunity to submit its observations.~~

~~2. In preparing drafts for a decision relating to the withdrawal of recognition as referred to in paragraph 1, the Commission shall take into account the outcome of the assessments of the~~

~~recognised organisations referred to in Article 11 as well as the safety and pollution prevention performance records of the organisations, measured for all the ships they have in class irrespective of the flag the ships fly.~~

~~The safety and pollution prevention performance records of the organisations shall be derived from the data produced by the Paris Memorandum of Understanding on Port State Control and/or by similar schemes. Other indications may be derived from an analysis of the casualties involving ships classed by the recognised organisations.~~

~~Reports produced by Member States on the basis of Article 12 shall also be taken into consideration to assess the safety and pollution prevention performance records of the organisations.~~

~~The Committee set up under Article 7 shall determine the criteria to be followed in order to decide, on the basis of the information referred to in this paragraph, when the performance of an organisation acting on behalf of a flag State can be considered an unacceptable threat to safety and the environment.~~

~~Draft decisions relating to the withdrawal of recognition as referred to in paragraph 1 shall be submitted to the Committee by the Commission upon its own initiative or at the request of a Member State.~~

↓ 2001/105/EC Art. 1.9 (adapted)

Article ~~15~~¹⁰

~~1~~ Notwithstanding the criteria specified in ~~the Annex~~ Annex I , where a Member State considers that a recognised organisation can no longer be authorised to carry out on its behalf the tasks specified in Article 3 it may suspend such authorisation on the basis of the following procedure:

- (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 the environment;
- (c) acting in accordance with the procedure referred to ~~laid down~~ in Article ~~7~~ 9 (2), the Commission shall inform the Member State whether or not its decision to suspend the authorisation is justified for reasons of serious danger to safety or the environment and, if it is not justified, request the Member State to withdraw the suspension.

~~2. Whenever the Commission considers that the safety and pollution prevention performance records of a recognised organisation worsen, without however justifying the withdrawal of its recognition on the basis of the criteria referred to in Article 9(2), it may decide to inform the recognised organisation accordingly and request it to take appropriate measures to improve its safety and pollution prevention performance records, and inform the Member States thereof. Should the recognised organisation fail to provide the Commission with an appropriate~~

~~answer or should the Commission consider that the measures taken by the recognised organisation have failed to improve its safety and pollution prevention performance records, the Commission may decide to suspend recognition of the organisation for a period of one year in accordance with the procedure referred to in Article 7(2) after the organisation concerned has been given the opportunity to submit its observations. During that period, the recognised organisation will not be allowed to issue or renew any certificate to ships flying the flag of the Member States while the certificates issued or renewed in the past by the organisation remain valid.~~

~~3. The procedure referred to in paragraph 2 shall also apply where the Commission has evidence that a recognised organisation has failed to comply with the provisions of Article 15(3), (4) or (5).~~

~~4. One year after the adoption of the decision of the Commission to suspend recognition of an organisation, the Commission shall assess whether the shortcomings referred to in paragraphs 2 and 3 which led to the suspension have been removed. Where such shortcomings are still present, recognition shall be withdrawn in accordance with the procedure referred to in Article 7(2).~~

↓ 2001/105/EC Art. 1.10
(adapted)
⇒ new

Article ~~16~~¹¹

1. Each Member State must satisfy itself that the recognised organisations 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.
2. Each Member State shall carry out this task at least on a biennial basis and shall provide the other Member States and the Commission with a report ~~on~~ ^{of} the results of this monitoring at the latest by 31 March of ~~the~~ ^{each} year following the years for which compliance has been assessed.
3. All the recognised organisations shall be assessed by the Commission, together with the Member State which submitted the relevant request for recognition, on a regular basis and at least every two years to verify that they ~~meet their obligations under this Directive and fulfil the criteria of the Annex~~ ^{⇒ meet their obligations under this Directive and ⇐ fulfil the criteria of Annex I}.

In selecting the organisations for assessment, the Commission shall pay particular attention to the safety and pollution prevention performance ~~records~~ of the organisation, to the casualty records and to the reports produced by Member States in accordance with Article ~~12~~ ¹⁸.

The assessment may include a visit to regional branches of the organisation as well as random inspection of ships ~~⇒~~ [⇐], both in service and under construction, ~~⇐~~ [⇒] for the purpose of auditing the organisation's performance. In this case the Commission shall, where appropriate, inform the Member States ~~where~~ ^{in which} the

regional branch is located. The Commission shall provide the Member States with a report on ~~of~~ the results of the assessment.

4. Each recognised organisation shall make available the results of its quality system management review to the Committee set up under Article ~~7~~ ~~9~~ (1) ~~9~~ , on an annual basis.

↓ new

Article 17

1. No clauses in a contract of a recognised organisation with a third party or in an authorisation agreement with a flag State may be invoked to restrict the access of the Commission to the information necessary for the purposes of the assessment referred to in Article 16(3).
2. Recognised organisations shall ensure in their contracts with third parties for the issue of statutory certificates or class certificates to a ship that such issue shall be made conditional on the said parties not opposing the access of the Community inspectors on board that ship for the purposes of Article 16(3).

↓ 2001/105/EC Art. 1.11
(adapted)
⇒ new

Article ~~18~~ ~~12~~

In exercising their inspection rights and obligations as port States, Member States shall report to the Commission and to other Member States, and inform the flag State concerned, ~~if~~ if they find that ~~the discovery of the issue of~~ valid ~~statutory~~ certificates ~~have been issued~~ by organisations acting on behalf of a flag State to a ship which does not fulfil the relevant requirements of the international conventions, or ~~in the event~~ of any failure of a ship carrying a valid class certificate and relating to items covered by that certificate. Only cases of ships representing a serious threat to safety and the environment or showing evidence of particularly negligent behaviour of the organisations shall be reported for the purposes of this Article. The recognised organisation concerned shall be advised of the case at the time of the initial inspection so that it can take appropriate follow-up action immediately.

↓ 94/57/EC (adapted)
→₁ 2001/105/EC Art. 1.13
⇒ new

Article ~~1914~~

1. Each Member State shall ensure that ships flying its flag ~~⊗~~ are ~~⊗~~ ~~shall be~~ ⇒ designed, ⇐ constructed ⇒, equipped ⇐ and maintained in accordance with the ⇒ rules and regulations relating to ⇐ hull, machinery and electrical and control installation requirements of a recognised organisation.
2. A Member State may decide to use rules it considers equivalent to those of a recognised organisation only on the proviso that it immediately notifies ~~⊗~~ them to the Commission in conformity with the procedure ~~of~~ under Directive ~~83/189/EEC~~ ⊗ 98/34/EC ⊗ and to the other Member States and they are not objected to by another Member State or the Commission and found through the procedure ⊗ referred to in ⊗ ~~of~~ →₁ Article ~~7~~ ⊗ 9 ⊗ (2) ← ⊗ of this Directive ⊗ not to be equivalent.

↓ new

3. Member States shall cooperate with the recognised organisations they authorise in the development of the rules and/or regulations of those organisations. They shall confer with the recognised organisations with a view to achieving a consistent interpretation of international conventions in accordance with Article 20(1).

↓ 94/57/EC

Article ~~2015~~

↓ 2001/105/EC Art. 1.14(a)
⇒ new

1. The recognised organisations shall consult with each other periodically with a view to maintaining equivalence of their ~~technical standards~~ ⇒ rules and regulations ⇐ and the implementation thereof. ⇒ They shall cooperate with each other with a view to achieving consistent interpretation of the international conventions, without prejudice to the powers of the flag States. Recognised organisations shall agree on the conditions under which they will mutually recognize their respective class certificates based on equivalent standards, taking particularly into account marine equipment bearing the wheelmark in accordance with Directive 96/98/EC¹². ⇐ ~~in~~

¹² OJ L 46, 17.2.1997, p. 25. Directive as last amended by Directive 2002/84/EC (OJ L 324, 29.11.2002, p. 53).

~~line with the provisions of IMO Resolution A.847(20) on guidelines to assist flag States in the implementation of IMO instruments.~~

They shall provide the Commission with periodic reports on fundamental progress in standards ⇒ and mutual recognition ⇐ .

↓ 94/57/EC (adapted)

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

↓ 2001/105/EC Art. 1.14(b)
(adapted)
⇒ new

3. The recognised organisations shall provide to all Member States' administrations which have granted any of the authorisations provided for in Article 3 and to the Commission all relevant information about their classed fleet, transfers, changes, suspensions and withdrawals of class, irrespective of the flag the ⊗ ships ⊗ ~~vessels~~ fly.

Information on transfers, changes, suspensions, and withdrawals of class, including information on all overdue surveys, overdue recommendations, conditions of class, operating conditions or operating restrictions issued against their classed ⊗ ships ⊗ ~~vessels~~ — irrespective of the flag the ⊗ ships ⊗ ~~vessels~~ fly — shall also be communicated ⇒ electronically ⇐ to the ~~Sirenae information system for port State control inspections and~~ ⇒ common inspection database used by the Member States for the implementation of Directive [...]/EC of the European Parliament and the Council¹³ at the same time as it is recorded within the organization's own systems and in any case no later than 72 hours after the event that gave rise to the obligation to communicate the information. That information, with the exception of recommendations and conditions of class which are not overdue, ⇐ shall be published on the website, ~~if any,~~ of these recognised organisations.

4. The recognised organisations shall not issue ⇒ statutory ⇐ certificates to a ship, irrespective of its flag, which has been declassified or is changing class for safety reasons, before giving the opportunity to the competent administration of the flag State to give its opinion within a reasonable time in order to determine whether a full inspection is necessary.

¹³ OJ L [...], [...], p. [...].

↓ 2001/105/EC Art. 1.14(c)
(adapted)

5. In cases of transfer of class from one recognised organisation to another, the losing organisation shall inform the gaining organisation of:
- (a) any ~~all~~ overdue surveys;
 - (b) any overdue recommendations and conditions of class;
 - (c) operating conditions issued against the ship, and
 - (d) ~~or~~ operating restrictions issued against the ship ~~vessel~~.

On transfer, the losing organisation shall provide the gaining organisation with the complete history file of the ship ~~vessel~~. The certificates of the ship can be issued by the gaining organisation only after all overdue surveys have been satisfactorily completed and all overdue recommendations or conditions of class previously issued against the ship ~~vessel~~ have been completed as specified by the losing organisation.

Prior to the issue ~~issuance~~ of the certificates, the gaining organisation must advise the losing organisation of the date of issue of the certificates and confirm the date, place ~~location~~ and action taken to satisfy each overdue survey, overdue recommendation and overdue condition of class.

↓ new

The recognised organisations shall establish and implement appropriate common requirements concerning cases of transfer of class where special precautions are necessary. Those cases shall as a minimum include the transfer of class of ships of fifteen years of age or over and the transfer from a non-recognised organisation to a recognised organisation.

↓ 2001/105/EC Art. 1.14(c)

The recognised organisations shall cooperate with each other in properly implementing the provisions of this paragraph.

↓ new

Article 21

1. Recognised organisations shall set up by at the latest and maintain a joint body to undertake the following tasks:

- (a) continuous quality management system assessment;
- (b) quality system certification;
- (c) issue of binding interpretations of internationally recognized quality standards, in particular to take account of the specific features of the nature and obligations of recognised organisations, and
- (d) adoption of individual and collective recommendations for the improvement of recognized organizations' rules, processes and internal control mechanisms.

The joint body shall be independent of the recognised organisations and shall have the necessary means to carry out its duties effectively and to the highest professional standards.

It shall adopt an annual work plan.

It shall provide the Commission and the authorising Member States with full information on its annual work plan as well as on its findings and recommendations, particularly with regard to situations where safety might have been compromised.

2. The joint body referred to in paragraph 1 shall be periodically assessed by the Commission, which may require recognised organisations to take the measures the Commission deems necessary to ensure full compliance with paragraph 1.

The Commission shall report to the Member States on the results and follow-up of its assessment.

Article 22

1. The organisations which at the entry into force of this Directive had been granted recognition in accordance with Directive 94/57/EC shall retain their recognition, subject to the provisions of paragraphs 2 and 3.
2. Recognized organisations shall comply with the new provisions laid down in this Directive from the entry into force of this Directive.
3. Without prejudice to Articles 11 and 13, the Commission shall re-examine all limited recognitions granted under Directive 94/57/EC in light of Article 6(3) of this Directive by [twelve months following the entry into force of the recast directive], with a view to deciding, in accordance with the procedure referred to in Article 9(2), whether the limitations should be replaced by others or removed. The limitations shall continue to apply until the Commission has acted.

Article 23

In the course of the assessment pursuant to Article 16(3), the Commission shall verify that the holder of the recognition is the parent entity within the organisation. If that is not the case, the Commission shall amend the recognition accordingly by decision.

Where the Commission amends the recognition, the Member States shall adapt their agreements with the organisation to take account of the amendment.

Article 24

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

↓ 94/57/EC (adapted)

Article ~~25~~16

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with ~~the Directive~~ Articles [...] and points [...] of Annex I [*articles, or subdivisions thereof and points of Annex I which have been changed as to their substance by comparison with the earlier Directive*] not later than ~~31 December 1995~~ eighteen months after the date fixed in Article 27. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.
2. When Member States adopt ~~these~~ those provisions, they shall contain a reference to this Directive or ~~shall~~ be accompanied by such a reference on the occasion of their official publication. ~~The methods of making such a reference shall be laid down by the Member States.~~ They shall also include a statement that references in existing laws, regulations and administrative provisions to the directives repealed by this Directive shall be construed as references to this Directive. Member States shall determine how such reference is to be made and how that statement is to be formulated.
3. ~~The Member States shall immediately~~ communicate to the Commission the text of ~~all~~ the main provisions of ~~domestic~~ national law which they adopt in the field covered ~~governed~~ by this Directive. ~~The Commission shall inform the other Member States thereof.~~

↓ 2001/105/EC Art. 1.15

~~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.~~

↓

Article 26

Directive 94/57/EC, as amended by the Directives listed in Annex II, Part A, is repealed with effect from [date of entry into force of the recast directive], without prejudice to the

obligations of the Member States relating to the time-limits for transposition into national law of the Directives set out in Annex II, Part B.

References to the repealed Directives shall be construed as references to this Directive and shall be read in accordance with the correlation table in Annex III.

Article 27

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

Articles [...] and points [...] of Annex I [*Articles, or subdivisions thereof, and points of Annex I which are unchanged by comparison with the earlier Directive*] shall apply from [date of entry into force of the recast directive].

↓ 94/57/EC

Article ~~28~~¹⁷

This Directive is addressed to the Member States.

Done at Brussels, [...]

For the European Parliament
The President
[...]

For the Council
The President
[...]

ANNEX I

MINIMUM CRITERIA FOR ORGANIZATIONS REFERRED TO IN ARTICLE 3

↓ 2001/105/EC Art. 1.16(a)

A. GENERAL MINIMUM CRITERIA

↓ new

1. A recognized organisation must have legal personality in the State of its location. Its accounts shall be certified by independent auditors.

↓ 2001/105/EC Art. 1.16(a)
(adapted)

~~1.~~ 2. The recognised organisation must be able to document extensive experience in assessing the design and construction of merchant ships.

~~2. The organisation must have in its class a fleet of at least 1000 ocean-going vessels (over 100 GRT) totalling no less than 5 million GRT.~~

~~3. The organisation must employ a technical staff commensurate with the number of vessels classed. As a minimum, 100 exclusive surveyors are needed to meet the requirements in paragraph 2.~~

↓ new

3. The organisation must be established with significant managerial, technical, support and research staff commensurate with the size of the fleet in its class, its composition and the organization's involvement in the construction and transformation of ships. The organization must be capable of assigning to every place of work, when and as needed, means and staff commensurate with the tasks to be carried out in accordance with general minimum criteria 6 and 7 and with the specific minimum criteria.

↓ 2001/105/EC Art. 1.16(a)
(adapted)
⇒ new

4. The organisation must have ⇒ and applies ⇐ comprehensive rules and regulations for the design, construction and periodic survey of merchant ships, ⇒ having the quality of internationally recognized standards. They are ⇐ published and continually upgraded and improved through research and development programmes.

5. The organisation must have its register of ~~vessels~~ ☒ ships ☒ published on an annual basis or maintained in an electronic base accessible to the public.

6. The organisation must not be controlled by shipowners or shipbuilders, or by others engaged commercially in the manufacture, equipping, repair or operation of ships. The organisation ☒ is not ☒ ~~must not be~~ substantially dependent on a single commercial enterprise for its revenue. The recognised organisation ~~must~~ ☒ does ☒ not carry out ⇒ class or ⇐ statutory work if it is identical with or has business, personal or family links to the shipowner or operator. This incompatibility shall also apply to surveyors employed by the recognised organisation.

7. The organisation must operate in accordance with the provisions set out in the Annex to IMO Resolution A.789(19) on specifications on the survey and certification functions of recognised organisations acting on behalf of the administration, in so far as they cover matters falling within the scope of this Directive.

↓ 2001/105/EC Art. 1.16(b)

B. SPECIFIC MINIMUM CRITERIA

↓ new

1. The organisation provides world-wide coverage by its exclusive technical staff or, in exceptional and duly justified cases, through exclusive technical staff of other recognized organizations.

↓ 94/57/EC

~~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 the development of its capabilities 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.

↓ 2001/105/EC Art. 1.16(b)
(adapted)
⇒ new

4. The organisation ~~is prepared to provide~~ ⇒ provides ⇐ relevant information to the administration, to the Commission and to the interested parties.

5. The organisation'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 organisation. The organisation's policy ~~must refer~~ ⊗ refers ⊗ to safety and pollution prevention performance targets and indicators.

6. The organisation ~~has developed, implemented and maintains an effective internal quality system based on appropriate parts of internationally recognised 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 organisation's~~ ⊗ its ⊗ rules and regulations are established and maintained in a systematic manner;
- (b) ~~the organisation's~~ ⊗ its ⊗ rules and regulations are complied with and an internal system to measure the quality of service in relation to these rules and regulations is put in place;
- (c) the requirements of the statutory work for which the organisation is authorised are satisfied and an internal system to measure the quality of service in relation to ~~the~~ compliance with the international conventions is put in place;
- (d) the responsibilities, authorities and interrelation of personnel whose work affects the quality of the organisation'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 organisation;
- (g) ~~the requirements of the statutory work for which the organisation is authorised are only carried out by its exclusive surveyors or by exclusive surveyors of other recognised organisations; in all cases, the exclusive surveyors must have an extensive knowledge of the particular type of ship on which they carry out the statutory~~ ⇒ their ⇐ work as relevant to the particular survey to be carried out and of the relevant applicable requirements;
- (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;

- (j) a comprehensive system of planned and documented internal audits of the quality related activities is maintained in all locations;
- (k) the statutory surveys and inspections required by the Harmonised System of Survey and Certification for which the organisation is authorised are carried out in accordance with the provision set out in the Annex and Appendix to IMO Resolution ~~A.746(18)~~ A948(23) on Survey Guidelines under the Harmonised System of Survey and Certification;
- (l) clear and direct lines of responsibility and control are established between the central and the regional offices of the society and between the recognised organisations and their surveyors.

~~7. The organisation 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 recognised 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 necessary means of assessing — through the use of qualified professional staff and in accordance with the provisions set out in the Annex to IMO Resolution A.788(19) on guidelines on implementation of the International Safety Management (ISM) Code by administrations — the application and maintenance of the safety management system, both shore-based and on board ships, intended to be covered in the certification.~~

↓ new

7. The organization has developed, implemented and maintains an effective internal quality system based on appropriate parts of internationally recognised quality standards and in compliance with EN ISO/IEC 17020:2004 (inspection bodies) and with EN ISO 9001:2000, as interpreted and certified by the joint body referred to in Article 21(1).

8. The rules and regulations of the organisation are implemented in such a way that the organisation remains in a position to derive from its own direct knowledge and judgement a reliable and objective declaration on the safety of the ships concerned by means of class certificates on the basis of which statutory certificates can be issued.

9. The organisation has the necessary means of assessing — through the use of qualified professional staff and in accordance with the provisions set out in the Annex to IMO Resolution A.913 (22) on guidelines on implementation of the International Safety Management (ISM) Code by administrations — the application and maintenance of the safety management system, both shore-based and on board ships, intended to be covered in the certification.

↓ 94/57/EC

~~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.~~

↓ 2001/105/EC Art. 1.16(b)
(adapted)

9. 10. The organisation must allow participation in the development of its rules and/or regulations by representatives of the administration and other parties concerned.



ANNEX II

Part A

Repealed Directive with its successive amendments
(referred to in Article 26)

Council Directive 94/57/EC	OJ L 319, 12.12.1994, p. 20
Commission Directive 97/58/EC	OJ L 274, 7.10.1997, p. 8
Directive 2001/105/EC of the European Parliament and of the Council	OJ L 19, 22.1.2002, p. 9
Directive 2002/84/EC of the European Parliament and of the Council	OJ L 324, 29.11.2002, p. 53

Part B

List of time-limits for transposition into national law
(referred to in Article 26)

Directive	Time-limit for transposition
94/57/EC	31 December 1995
97/58/EC	30 September 1998
2001/105/EC	22 July 2003
2002/84/EC	23 November 2003



ANNEX III

CORRELATION TABLE

Directive 94/57/EC	This Directive
Article 1	Article 1
Article 2, introductory words	Article 2, introductory words
Article 2, first indent	Article 2, point (a)
Article 2, second indent	Article 2, point (b)
Article 2, third indent	Article 2, point (c)
Article 2, fourth indent	Article 2, point (d)
Article 2, fifth indent	Article 2, point (e)
—	Article 2, point (f)
Article 2, sixth indent	Article 2, point (g)
Article 2, seventh indent	Article 2, point (h)
Article 2, eighth indent	Article 2, point (i)
—	Article 2 point (j)
Article 2, ninth indent	Article 2, point (k)
Article 2, tenth indent	Article 2, point (l)
Article 2, eleventh indent	Article 2, point (m)
Article 3	Article 3
Article 4(1), first and second sentences	Article 4(1)
Article 4(1), last sentence	Article 6(1)
Article 4(2) and (3)	—
—	Articles 5 and 6(2) and (3)
Article 4(4)	Article 6(4)

Article 4(5)	—
Articles 5, 6, 7 and 8	Articles 7, 8, 9 and 10
Article 9	—
—	Articles 11 to 14
Article 10(1)	Article 15
Article 10(2), (3) and (4)	—
Article 11	Article 16
—	Article 17
Article 12	Article 18
Article 14	Article 19 (1) and (2)
—	Article 19(3)
Article 15	Article 20
—	Article 21 to 24
Article 16	Article 25
—	Article 26
—	Article 27
Article 17	Article 28
Annex	Annex I
—	Annex II
—	Annex III

LEGISLATIVE FINANCIAL STATEMENT

1. NAME OF THE PROPOSAL:

Proposal for a European Parliament and Council Directive on common rules and standards for ship inspection and survey organisations and for the relevant activities of maritime administrations.

2. ABM/ABB FRAMEWORK

Policy area: Energy and Transport

Activities: Maritime and river transport, intermodality

3. BUDGET LINES

3.1 Budget lines (operational lines and related technical and administrative assistance lines (ex-BA lines)) including headings: Not applicable

3.2 Duration of the action and of the financial impact: Not applicable

3.3 Budgetary characteristics (add rows if necessary): Not applicable

Budget line	Type of expenditure		New	EFTA contribution	Contributions from applicant countries	Heading in financial perspective
	Comp/Non-comp	Diff ¹ /non-diff ²	YES/ NO	YES/ NO	YES/ NO	No [...]
	Comp/Non-comp	Diff/Non-diff	YES/ NO	YES/ NO	YES/ NO	No [...]

¹ Differentiated appropriations.

² Non-differentiated appropriations.

4. SUMMARY OF RESOURCES

4.1 Financial Resources

4.1.1 Summary of commitment appropriations (CA) and payment appropriations (PA)

EUR million (to 3 decimal places)

Expenditure type	Section no.		Year n	n +1	n +2	n +3	n +4	n + 5 and later	Total
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Operational expenditure³

Commitment Appropriations (CA)	8.1	a	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	None
Payment Appropriations (PA)		b	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	None

Administrative expenditure within reference amount⁴

Technical & administrative assistance (NDA)	8.2.4	c	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	None
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TOTAL REFERENCE AMOUNT

<u>Commitment appropriations</u>		<u>a+c</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	Not applicable :
<u>Payment appropriations</u>		<u>b+c</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	Not applicable :

Administrative expenditure not included in reference amount⁵

Human resources and associated expenditure (NDA)	8.2.5	d	<u>0.054</u>	<u>0.054</u>	<u>0.054</u>	<u>0.054</u>	<u>0.054</u>	<u>0.054</u>	<u>0.324</u>
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³ Expenditure that does not fall under Chapter xx 01 of the Title xx concerned.

⁴ Expenditure within article xx 01 04 of Title xx.

⁵ Expenditure within Chapter xx 01 other than articles xx 01 04 or xx 01 05.

<u>Administrative costs, other than human resources and associated costs, not included in reference amount (NDA)</u>	<u>8.2.6</u>	<u>e</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
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Total indicative financial cost of intervention

TOTAL CA including cost of human resources		<u>a+c</u> <u>+d+</u> <u>e</u>	<u>0.054</u>	<u>0.054</u>	<u>0.054</u>	<u>0.054</u>	<u>0.054</u>	<u>0.054</u>	<u>0.324</u>
TOTAL PA including cost of human resources		<u>b+c</u> <u>+d+</u> <u>e</u>	<u>0.054</u>	<u>0.054</u>	<u>0.054</u>	<u>0.054</u>	<u>0.054</u>	<u>0.054</u>	<u>0.324</u>

Co-financing details

The legislative proposal does not involve co-financing by Member States

EUR million (to 3 decimal places)

Co-financing body		Year <u>n</u>	<u>n + 1</u>	<u>n + 2</u>	<u>n + 3</u>	<u>n + 4</u>	<u>n+5</u> <u>and</u> <u>later</u>	Total
.....	<u>f</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
TOTAL CA including co-financing	<u>a+c+</u> <u>d+e+f</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>

4.1.2 Compatibility with Financial Programming

- Proposal is compatible with existing financial programming.
- Proposal will entail reprogramming of the relevant heading in the financial perspective.
- Proposal may require application of the provisions of the Interinstitutional Agreement⁶ (i.e. flexibility instrument or revision of the financial perspective).

4.1.3 Financial impact on revenue

- Proposal has no financial implications on revenue
- Proposal has financial impact – the effect on revenue is as follows:

Note: All details and observations relating to the method of calculating the effect on revenue should be shown in a separate annex.

⁶ See points 19 and 24 of the Interinstitutional Agreement.

EUR million (to 3 decimal places)

<u>Budget line</u>	<u>Revenue</u>	<u>Prior to action [Year n-1]</u>	<u>Situation following action</u>					
			<u>[Year n]</u>	<u>[n+1]</u>	<u>[n+2]</u>	<u>[n+3]</u>	<u>[n+4]</u>	<u>[n+5]⁷</u>
	<i>a) Revenue in absolute terms</i>		<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
	<i>b) Change in revenue</i>	<u>Δ</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>

- 4.2 Human resources FTE (including officials, temporary and external staff) – see details under point 8.2.1.

(Management by existing staff).

<u>Annual requirements</u>	<u>Year n (2007*)</u>	<u>n + 1</u>	<u>n + 2</u>	<u>n + 3</u>	<u>n + 4</u>	<u>n+5 and later</u>
<u>Total number of human resources</u>	<u>0.5</u>	<u>0.5</u>	<u>0.5</u>	<u>0.5</u>	<u>0.5</u>	<u>0.5</u>

5. CHARACTERISTICS AND OBJECTIVES

- 5.1 Need to be met in the short or long term

The assessment of the current system of Directive 94/57/EC, also taking account of the outcome of the evaluation of the organisations recognised by the Community, shows that there are major weaknesses in the Community fleet’s safety inspection and certification process.

The solution to this problem is to strengthen the control mechanisms protecting the inspection and certification process so that the alarm can be sound if a mistake is made and at the same time can easily integrate both classification and statutory tasks.

The terminology in the Directive should also be standardised on the basis of more precise and better defined concepts, such as a clear distinction between “statutory certificates” and “class certificates”.

This makes it necessary to amend the current legislative framework.

- 5.2 Value-added of Community involvement and coherence of the proposal with other financial instruments and possible synergy

The international system for the certification of ships is complex. Historically, the public (“statutory”) system was built on, but did not replace, the pre-existing private structure

⁷ Additional columns should be added if necessary, i.e. if the duration of the action exceeds 6 years.

made up of classification societies. This gave rise to a variable spread of tasks between these players.

Technical standards are in practice developed partly by the IMO, partly by classification societies. What each covers varies according to the convention, the subject matter and the type of ship.

Community legislation will increase the reliability of the inspection and certification process and will consequently introduce cross-checks which can sound the alarm if a mistake is made. This will improve the ability to correct these errors at source and will help to overcome obstacles to long-term safety.

5.3 Objectives, expected results and related indicators of the proposal in the context of the ABM framework

The main objective is to improve the reliability of the safety inspection and certification process for ships flying the flag of a Member State.

The interim objectives are:

- Interim objective No. 1: to enhance the control systems of recognised organisations.
- Interim objective No. 2: to reform limited recognition.
- Interim objective No. 3: to update the recognition criteria.

5.4 Method of implementation (indicative)

Show below the method(s)⁸ chosen for the implementation of the action.

Centralised management

Directly by the Commission

Indirectly by delegation to:

Executive Agencies

Bodies set up by the Communities, as referred to in Article 185 of the Financial Regulation

National public-sector bodies/bodies with a public-service mission

Shared or decentralised management

With Member States

With third countries

⁸ If a number of methods are indicated, please provide details in the “Comments” section.

Joint management with international organisations (please specify)

Relevant comments:

Not applicable.

6. MONITORING AND EVALUATION

The draft Directive contains a provision requiring the Member States to notify any national implementing measures (NIM) to be adopted with a view to transposing the Directives into national law.

In the event of failure to notify these national implementing measures (or in the event of incomplete notification), the infringement procedures will automatically be launched in accordance with Article 226 of the Treaty.

The European Maritime Safety Agency will help monitor the way in which the Member States implement the Directive.

6.1 Evaluation:

6.1.1 *Ex ante* evaluation

The advantages and disadvantages identified in the impact analysis are as follows:

Advantage: Whereas the other available options for achieving the desired objectives (in particular in terms of improving the inspection and certification process for ship safety) would affect only ships flying the flag of a Member State, this action would help improve safety throughout the fleet classed by the approved authorities irrespective of their flag, i.e. most of the world fleet. This is a key factor in protecting Community waters. In addition, the marginal and non-discriminatory cost for European shipowners must be seen in the context of the high level of effectiveness which can be expected. Furthermore, it will only require a short and relatively straightforward transition phase.

Disadvantage: As this option will only have effect downstream from the main problem and necessitates a high level of cooperation from approved bodies, it will require particularly close checks to be carried out by the Commission, possibly allowing for the imposition of sanctions, to ensure that it includes all the elements needed for smooth operation.

6.1.2 Measures taken following an intermediate/*ex post* evaluation (lessons learned from similar experiences in the past)

Not applicable.

6.1.3 Terms and frequency of future evaluations

Not applicable.

7. ANTI-FRAUD MEASURES

Not applicable.

8. DETAILS OF RESOURCES

8.1 Objectives of the proposal in terms of their financial cost: **Not applicable**

Commitment appropriations in EUR million (to 3 decimal places)

(Headings of Objectives, actions and outputs should be provided)	Type of output	Av. cost	Year n		Year n+1		Year n+2		Year n+3		Year n+4		Year n+5 and later		TOTAL	
			No. outputs	Total cost	No. outputs	Total cost	No. outputs	Total cost	No. outputs	Total cost	No. outputs	Total cost	No. outputs	Total cost	No. outputs	Total cost
OPERATIONAL OBJECTIVE No. 1 ⁹																
Action 1.....																
- Output 1																
- Output 2																
Action 2.....																
- Output 1																
Sub-total Objective 1																
OPERATIONAL OBJECTIVE No 2.....																
Action 1.....																
- Output 1																
Sub-total Objective 2																
OPERATIONAL OBJECTIVE No n																

⁹ As described under Section 5.3.

Sub-total objective n																
TOTAL COST																

8.2 Administrative expenditure

8.2.1 Number and type of human resources

Types of post		Staff to be assigned to management of the action using existing and/or additional resources (number of posts/FTEs)					
		Year n	Year n+1	Year n+2	Year n+3	Year n+4	Year n+5
Officials and temporary staff ¹⁰ (06 01 01)	A*/AD	0.5	0.5	0.5	0.5	0.5	0.5
	B*, C*/AST	0	0	0	0	0	0
Staff financed ¹¹ by Art. XX 01 02		0	0	0	0	0	0
Other staff financed ¹² by Art. XX 01 04/05		0	0	0	0	0	0
TOTAL		0.5	0.5	0.5	0.5	0.5	0.5

8.2.2 Description of tasks deriving from the action: tasks

The Directive on classification societies extends Community competence in the field of maritime safety. Additional human resources, estimated at ½ an A grade official, is necessary to ensure the Directive is correctly implemented.

8.2.3 Sources of human resources (statutory)

- Posts currently allocated to the management of the programme to be replaced or extended
- Posts pre-allocated within the APS/PDB exercise for year n
- Posts to be requested in the next APS/PDB procedure
- Posts to be redeployed using existing resources within the managing service (internal redeployment)
- Posts required for year n although not foreseen in the APS/PDB exercise of the year in question

¹⁰ Cost of which is NOT covered by the reference amount.

¹¹ Cost of which is NOT covered by the reference amount.

¹² Cost of which is included within the reference amount.

8.2.4 Other administrative expenditure included in reference amount (XX 01 04/05 – Expenditure on administrative management)

EUR million (to 3 decimal places)

Budget line (Number and heading)	Year n	Year n+1	Year n+2	Year n+3	Year n+4	Year n+5 and later	TOTAL
1. Technical and administrative assistance (including related staff costs)							0
Executive Agencies ¹³							0
Other technical and administrative assistance							0
- <i>intra muros</i>							0
- <i>extra muros</i>							0
Total technical and administrative assistance							0

8.2.5 Financial cost of human resources and associated costs not included in the reference amount

EUR million (to 3 decimal places)

Type of human resources	Year n	Year n+1	Year n+2	Year n+3	Year n+4	Year n+5 and later
Officials and temporary staff (06 01 01)	0.054	0.054	0.054	0.054	0.054	0.324
Staff financed by Art. XX 01 02 (auxiliary, END, contract staff, etc.) (specify budget line)	0	0	0	0	0	0
Total cost of Human Resources and associated costs (NOT in reference amount)	0.054	0.054	0.054	0.054	0.054	0.324

Calculation – *Officials and Temporary agents*

(€ 108 000 * 0.5 = €54 000)

Calculation– *Staff financed under Art. XX 01 02*

Not applicable

¹³ Reference should be made to the specific legislative financial statement for the Executive Agency(ies) concerned.

8.2.6 Other administrative expenditure not included in reference amount

EUR million (to 3 decimal places)

	Year n	Year n+1	Year n+2	Year n+3	Year n+4	Year n+5 and later	TOTAL
XX 01 02 11 01 – Missions	0	0	0	0	0	0	0*
XX 01 02 11 02 – Meetings and Conferences	0	0	0	0	0	0	0
XX 01 02 11 03 – Committees ¹⁴	0	0	0	0	0	0	0
XX 01 02 11 04 - Studies and consultations	0	0	0	0	0	0	0
XX 01 02 11 05 - Information systems	0	0	0	0	0	0	0
2. Total other management expenditure (XX 01 02 11)	0	0	0	0	0	0	0
3. Other expenditure of an administrative nature (specify including reference to budget line)	0	0	0	0	0	0	0
Total administrative expenditure, other than human resources and associated costs (NOT included in reference amount)	0	0	0	0	0	0	0

* No impact on the current budget for missions.

Calculation - *Other administrative expenditure not included in reference amount*

Not applicable

¹⁴ Specify the type of committee and the group to which it belongs.