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WORKING DOCUMENT

From:	General Secretariat of the Council
To:	Working Party on Shipping
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Subject:	Proposal for a Directive of the European Parliament and of the Council amending Directive 2009/16/EC on port State control - Comments from Denmark

Delegations will find, in Annex, comments from **Denmark** on the above mentioned subject.

DIRECTIVE 2009/16/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 23 April 2009

on port State control

(Recast)

(Text with EEA relevance)

Article 1

Purpose

1. The purpose of this Directive is to improve maritime safety and the prevention of pollution by ships, and so reduce the risk of future marine casualties, by:

- (a) increasing compliance with international and relevant Community legislation on maritime safety, maritime security, protection of the marine environment and on-board living and working conditions of ships of all flags;
- (b) establishing common criteria for control of ships by the port State and harmonising procedures on inspection and detention, building upon the expertise and experience under the Paris MOU;
- (c) implementing within the Community a port State control system based on the inspections performed within the Community and the Paris MOU region, aiming at the inspection of all ships with a frequency depending on their risk profile, with ships posing a higher risk being subject to a more detailed inspection carried out at more frequent intervals.

Article 2

Definitions

1. 'Conventions' means the following Conventions, with the Protocols and amendments thereto, and related codes of mandatory status, in their up-to-date version:

- (a) the International Convention on Load Lines, 1966 (LL 66);
- (b) the International Convention for the Safety of Life at Sea, 1974 (SOLAS 74);
- (c) the International Convention for the Prevention of Pollution from Ships, (Marpol);
- (d) the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW 78/95);
- (e) the Convention on the International Regulations for Preventing Collisions at Sea, 1972 (Colreg 72);
- (f) the International Convention on Tonnage Measurement of Ships, 1969 (ITC 69);

- (h) the International Convention on Civil Liability for Oil Pollution Damage, 1992 (CLC 92);
- (i) the Maritime Labour Convention, 2006 (MLC 2006);
- (j) the International Convention on the Control of Harmful Anti-fouling Systems on Ships, 2001 (AFS 2001);
- (k) the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (Bunkers Convention, 2001).

(l) International Convention for the Control and Management of Ships' Ballast Water and Sediments (BWM Convention);

(m) Nairobi International Convention on the Removal of Wrecks (Nairobi Convention).

2. 'Paris MOU' means the Memorandum of Understanding on Port State Control, signed in Paris on 26 January 1982, in its up-to-date version.

~~3. 'Framework and procedures for the Voluntary IMO Member State Audit Scheme' means IMO Assembly Resolution A.974(24).~~

~~4.~~ 3. 'Paris MOU region' means the geographical area in which the signatories to the Paris MOU conduct inspections in the context of the Paris MOU.

~~5.~~ 4. 'Ship' means any seagoing vessel to which one or more of the Conventions apply, flying a flag other than that of the port State.

~~6.~~ 5. 'Ship/port interface' means the interactions that occur when a ship is directly and immediately affected by actions involving the movement of persons or goods or the provision of port services to or from the ship.

~~7.~~ 6. 'Ship at anchorage' means a ship in a port or another area within the jurisdiction of a port, but not at berth, carrying out a ship/port interface.

~~8.~~ 7. 'Inspector' means a public-sector employee or other person, duly authorised by the competent authority of a Member State to carry out port-State control inspections, and responsible to that competent authority.

~~9.~~ 8. 'Competent authority' means a maritime authority responsible for port State control in accordance with this Directive.

~~10.~~ 9. 'Night time' means any period of not less than seven hours, as defined by national law, and which must include, in any case, the period between midnight and 5.00.

~~11.~~ 10. 'Initial inspection' means a visit on board a ship by an inspector, in order to check compliance with the relevant Conventions and regulations and including at least the checks required by Article 13(1).

~~12.~~ 11. 'More detailed inspection' means an inspection where the ship, its equipment and crew as a whole or, as appropriate, parts thereof are subjected, in the circumstances specified in Article 13(3), to an in-depth examination covering the ship's construction, equipment, manning, living and working conditions and compliance with on-board operational procedures.

~~13-~~ **12.** 'Expanded inspection' means an inspection, which covers at least the items listed in Annex VII. An expanded inspection may include a more detailed inspection whenever there are clear grounds in accordance with Article 13(3).

~~14-~~ **13.** 'Complaint' means any information or report submitted by any person or organisation with a legitimate interest in the safety of the ship, including an interest in safety or health hazards to its crew, on-board living and working conditions and the prevention of pollution.

~~15-~~ **14.** 'Detention' means the formal prohibition for a ship to proceed to sea due to established deficiencies which, individually or together, make the ship unseaworthy.

~~16-~~ **15.** 'Refusal of access order' means a decision issued to the master of a ship, to the company responsible for the ship and to the flag State notifying them that the ship will be refused access to all ports and anchorages of the Community.

~~17-~~ **16.** 'Stoppage of an operation' means a formal prohibition for a ship to continue an operation due to established deficiencies which, individually or together, would render the continued operation hazardous.

~~18-~~ **17.** 'Company' means the owner of the ship or any other organisation or person such as the manager, or the bareboat charterer, who has assumed the responsibility for operation of the ship from the owner of the ship and who, on assuming such responsibility, has agreed to take over all the duties and responsibilities imposed by the International Safety Management (ISM) Code.

~~19-~~ **18.** 'Recognised Organisation' means a classification company or other private body, carrying out statutory tasks on behalf of a flag State administration.

~~20-~~ **19.** 'Statutory certificate' means a certificate issued by or on behalf of a flag State in accordance with **the applicable** Conventions.

~~21-~~ **20.** 'Classification certificate' means a document confirming compliance with SOLAS 74, Chapter II-1, Part A-1, Regulation 3-1.

~~22-~~ **21.** 'Inspection database' means the information system contributing to the implementation of the port State control system within the Community and concerning the data related to inspections carried out in the Community and the Paris MOU region.

~~23-~~ **22.** 'Maritime labour certificate' means the certificate referred to in Regulation 5.1.3 of MLC 2006.

~~24-~~ **23.** 'Declaration of maritime labour compliance' means the declaration referred to in Regulation 5.1.3 of MLC 2006.

~~25-~~ **24.** 'ro-ro passenger ship' means a ship with facilities to enable road or rail vehicles to roll on and roll off the vessel, and carrying more than 12 passengers.

~~26-~~ **25.** 'high-speed passenger craft' means a craft as defined in Regulation 1 of Chapter X of SOLAS 74, and carrying more than 12 passengers.

~~27-~~ **26.** 'regular service' means a series of ro-ro passenger ship or high-speed passenger craft crossings operated so as to serve traffic between the same two or more ports, or a series of voyages from and to the same port without intermediate calls, either:

- (i) according to a published timetable; or
- (ii) with crossings so regular or frequent that they constitute a recognisable systematic series.

All the references in this Directive to the Conventions, international codes and resolutions, including for certificates and other documents, shall be deemed to be references to those Conventions, international codes and resolutions in their up-to-date versions.

Article 3

Scope

For the purposes of this Directive:

1. This Directive shall apply to any ship and its crew calling at a port or anchorage of a Member State to engage in a ship/port interface.

France may decide that the ports and anchorages covered by this paragraph do not include ports and anchorages situated in the overseas departments referred to in Article 299(2) of the Treaty.

If a Member State performs an inspection of a ship in waters within its jurisdiction, other than at a port, it shall be considered as an inspection for the purposes of this Directive.

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

Member States which do not have seaports and which can verify that of the total number of individual vessels calling annually over a period of the three previous years at their river ports, less than 5 % are ships covered by this Directive, may derogate from the provisions of this Directive.

Member States which do not have seaports shall communicate to the Commission at the latest on the date of transposition of the Directive the total number of vessels and the number of ships calling at their ports during the three-year period referred to above and shall inform the Commission of any subsequent change to the abovementioned figures.

This Directive shall also apply to inspections of ro-ro passenger ships and high-speed passenger craft carried out outside a port or away from an anchorage during a regular service in accordance with Article 14a.

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

3. When inspecting a ship flying the flag of a State which is not a party to a Convention, Member States shall ensure that the treatment of that ship and its crew is not more favourable than that of a ship flying the flag of a State party to that Convention. Such ship shall be subject to a more detailed inspection in accordance with procedures established by the Paris MOU.

4. Fishing vessels **below 24 meters overall**, warships, naval auxiliaries, wooden ships of a primitive build, government ships used for non-commercial purposes and pleasure yachts not engaged in trade shall be excluded from the scope of this Directive.

4a. **Member States may carry out port state control inspections of fishing vessels of 24 metres length overall, and above. The Commission shall adopt implementing acts, based on a guideline developed by the Paris MoU, establishing the modalities of such a specific port state control regime for fishing vessels of 24 metres length overall and above. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 31(2).**

5. Measures adopted to give effect to this Directive shall not lead to a reduction in the general level of protection of seafarers under Union social law in the areas to which this Directive applies, as compared to the situation which already prevails in each Member State. In implementing those measures, if the competent authority of the port State becomes aware of a clear violation of Union law on board ships flying the flag of a Member State, it shall, in accordance with national law and practice, forthwith inform any other relevant competent authority in order for further action to be taken as appropriate.

Article 4

Inspection powers

1. Member States shall take all necessary measures, in order to be legally entitled to carry out the inspections referred to in this Directive on board foreign ships, in accordance with international law.
2. Member States shall maintain appropriate competent authorities, to which the requisite number of staff, in particular qualified inspectors, for the inspection of ships is assigned, for example, through recruitment, and shall take appropriate measures to ensure that inspectors perform their duties as laid down in this Directive and in particular that they are available for carrying out the inspections required in accordance with this Directive.

Article 5

Inspection system and annual inspection commitment

1. Member States shall carry out inspections in accordance with the selection scheme described in Article 12 and the provisions in Annex I.
2. In order to comply with its annual inspection commitment, each Member State shall:
 - (a) Inspections of Priority II ships carried out by Member States when its annual inspection commitment has been exceeded by more than 150% shall not be taken into account in the calculation of the annual inspection commitment of Member States parties to the Paris MOU.
 - (b) inspect all Priority I ships, referred to in Article 12(a), calling at its ports and anchorages; and
 - (c) carry out annually a total number of inspections of Priority I and Priority II ships, referred to in Article 12(a) and (b), corresponding at least to its share of the total number of inspections to be carried

out annually within the Community and the Paris MOU region. The inspection share of each Member State shall be based on the number of individual ships calling at ports of the Member State concerned in relation to the sum of the number of individual ships calling at ports of each State within the Community and the Paris MOU region.

2a. Inspections of Priority II ships carried out by Member States when its annual inspection commitment has been exceeded by more than 150% shall not be taken into account in the calculation of the annual inspection commitment of Member States parties to the Paris MOU.

3. With a view to calculating the share of the total number of inspections to be carried out annually within the Community and the Paris MOU region referred to in point (b) of paragraph 2, ships at anchorage shall not be counted unless otherwise specified by the Member State concerned.

Article 6

Modalities of compliance with the inspection commitment

A Member State which fails to carry out the inspections required in Article 5(2)(a), complies with its commitment in accordance with that provision if such missed inspections do not exceed:

~~(a) — 5 % of the total number of Priority I ships with a high risk profile calling at its ports and anchorages;~~

~~(b) — 10 % of the total number of Priority I ships other than those with a high risk profile calling at its ports and anchorages, irrespective of their risk profile.~~

Notwithstanding the percentages in ~~(a) and (b)~~ **of missed inspections referred to in the first subparagraph**, Member States shall prioritise inspection of ships, which, according to the information provided by the inspection database, call at ports within the ~~Community Union~~ infrequently.

Notwithstanding the percentages in ~~(a) and (b)~~ **of missed inspections referred to in the first subparagraph**, for Priority I ships calling at anchorages, Member States shall prioritise inspection of ships with a high risk profile, which, according to the information provided by the inspection database, call at ports within the ~~Community Union~~ infrequently.

Article 7

Modalities allowing a balanced inspection share within the Community

1. A Member State in which the total number of calls of Priority I ships exceeds its inspection share referred to in Article 5(2)(b), shall be regarded as complying with such commitment, if a number of inspections on Priority I ships carried out by that Member State corresponds at least to such inspection share and if that Member State does not miss more than 30 % of the total number of Priority I ships calling at its ports and anchorages.

2. A Member State, in which the total number of calls of Priority I and Priority II ships is less than **150% of the inspection share referred to in Article 5(2) point (b)**, shall be regarded as complying with ~~such~~ **its annual inspection** commitment, if that Member State carries out the inspections of **two thirds of**

Priority I ~~and II~~ ships ~~required under Article 5(2)(a) and inspections on at least 85 % of the total number of Priority I and II ships calling at its ports and anchorages.~~

3. The Commission shall, in its review referred to in Article 35, examine in particular the impact of this Article on the inspection commitment, taking into account the expertise and the experience gained in the Community and under the Paris MOU. The review shall take into account the objective of inspecting all ships calling at ports and anchorages within the Community. If appropriate, the Commission shall propose complementary measures with a view to improving the effectiveness of the inspection system applied in the Community, and, if necessary, a new review of the impact of this Article at a later stage.

Article 8

Postponement of inspections and exceptional circumstances

1. A Member State may decide to postpone the inspection of a Priority I **or Priority II** ship in the following circumstances:

(a) if the inspection may be carried out at the next call of the ship in the same Member State, provided that the ship does not call at any other port in the ~~Community Union~~ or the Paris MOU region in between and the postponement is not more than 15 days; or

(b) if the inspection may be carried out in another port of call within the Community or the Paris MOU region within 15 days, provided the State in which such port of call is located has agreed in advance to perform the inspection.

~~If an inspection is postponed in accordance with point (a) or (b) and recorded in the inspection database, a missed inspection shall not be counted as a missed inspection against the Member States which postponed the inspection.~~

~~Nevertheless, where an inspection of a Priority I ship is not performed, the relevant ship shall not be exempted from being inspected at the next port of call within the Community in accordance with this Directive.~~

2. Where an inspection is not performed on a Priority I **or Priority II** ships for operational reasons, it shall not be counted as a missed inspection, provided that the reason for missing the inspection is recorded in the inspection database and the following exceptional circumstances occur:

(a) in the judgement of the competent authority the conduct of the inspection would create a risk to the safety of inspectors, the ship, its crew or to the port, or to the marine environment; or

(b) the ship call takes place only during night time (**as provided for in Article 2(10)**). In this case Member States shall take the measures necessary to ensure that ships which call regularly during night time are inspected as appropriate.

3. If an inspection is not performed on a ship at anchorage, it shall not be counted as a missed inspection if:

(a) the ship is inspected in another port or anchorage within the Community or the Paris MOU region in accordance with Annex I within 15 days; or

- (b) the ship call takes place only during night time or its duration is too short for the inspection to be carried out satisfactorily, and the reason for missing the inspection is recorded in the inspection database; or
- (c) in the judgement of the competent authority the conduct of the inspection would create a risk to the safety of inspectors, the ship, its crew or to the port, or to the marine environment, and the reason for missing the inspection is recorded in the inspection database.

Article 8a

Force majeure

Failure to carry out an inspection for *force majeure* reasons shall not be counted as a missed inspection provided that the missed inspection and the reasons for not carrying it out are documented and recorded in the inspection database.'

Article 9

~~Notification of arrival of ships~~

~~The operator, agent or master of a ship which, in accordance with Article 14, is eligible for an expanded inspection and bound for a port or anchorage of a Member State, shall notify its arrival in accordance with the provisions laid down in Annex III.~~

~~2. On receipt of the notification referred to in paragraph 1 of this Article and in Article 4 of Directive 2002/59/EC of the European Parliament and of the Council of 27 June 2002 establishing a Community vessel traffic monitoring and information system (1), the port authority or body or the authority or body designated for that purpose shall forward such information to the competent authority.~~

~~3. Electronic means shall be used whenever possible for any communication provided for in this Article.~~

~~4. The procedures and formats developed by Member States for the purposes of Annex III to this Directive shall comply with the relevant provisions laid down in Directive 2002/59/EC regarding ships' notifications.~~

Article 10

Ship risk profile

1. All ships calling at a port or anchorage of a Member State shall, in the inspection database, be attributed a ship risk profile which determines their respective priority for inspection, the intervals between the inspections and the scope of inspections.
2. The risk profile of a ship shall be determined by a combination of generic and historical risk parameters as follows:
 - (a) Generic parameters

Generic parameters shall be based on the type, age, flag, recognised organisations involved and company performance in accordance with Annex I, Part I.1 and Annex II.

(b) Historical parameters

Historical parameters shall be based on the number of deficiencies and detentions during a given period in accordance with Annex I, Part I.2 and Annex II.

(c) Environmental parameters

Environmental parameters shall be based on the Carbon Intensity Indicator of the ship and the number of deficiencies relating to MARPOL, AFS, BWM Convention, CLC 92, Bunkers Convention and Nairobi Conventions in accordance with Annex I, Part I.3 and Annex II.

Article 11

Frequency of inspections

Ships calling at ports or anchorages within the Community shall be subject to periodic inspections or to additional inspections as follows:

(a) Ships shall be subject to periodic inspections at predetermined intervals depending on their risk profile in accordance with Annex I, Part I. The interval between periodic inspections of ships shall increase as the risk decreases. For high risk ships, this interval shall not exceed six months.

(b) Ships shall be subject to additional inspections regardless of the period since their last periodic inspection as follows:

— the competent authority shall ensure that ships to which over-riding factors listed in Annex I, Part II 2A, apply are inspected,

— ships to which unexpected factors listed in Annex I, Part II 2B, apply may be inspected. The decision to undertake such an additional inspection is left to the professional judgement of the competent authority.

Article 12

Selection of ships for inspection

The competent authority shall ensure that ships are selected for inspection on the basis of their risk profile as described in Annex I, Part I, and when overriding or unexpected factors arise in accordance with Annex I, Part II 2A and 2B.

With a view to the inspection of ships, the competent authority:

(a) shall select ships which are due for a mandatory inspection, referred to as 'Priority I' ships, in accordance with the selection scheme described in Annex I, Part II 3A;

- (b) may select ships which are eligible for inspection, referred to as 'Priority II' ships, in accordance with Annex I, Part II 3B.

Article 13

Initial and more detailed inspections

Member States shall ensure that ships which are selected for inspection in accordance with Article 12 or Article 14a are subject to an initial inspection or a more detailed inspection as follows:

1. On each initial inspection of a ship, the competent authority shall ensure that the inspector, as a minimum:
 - (a) checks the certificates and documents listed in Annex IV required to be kept on board in accordance with Community maritime legislation and Conventions relating to safety and security;
 - (b) verifies, where appropriate, whether outstanding deficiencies found during the previous inspection carried out by a Member State or by a State signatory to the Paris MOU have been rectified;
 - (c) satisfies himself of the overall condition of the ship, including the hygiene of the ship, including engine room and accommodation.
2. When, after an inspection referred to in point 1, deficiencies to be rectified at the next port of call have been recorded in the inspection database, the competent authority of such next port may decide not to carry out the verifications referred to in point 1(a) and (c).
3. A more detailed inspection shall be carried out, including further checking of compliance with on-board operational requirements, whenever there are clear grounds for believing, after the inspection referred to in point 1, that the condition of a ship or of its equipment or crew does not substantially meet the relevant requirements of a Convention.

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

Examples of 'clear grounds' are set out in Annex V.

Article 14

Expanded inspections

1. The following categories of ships are eligible to an expanded inspection in accordance with Annex I, Part II 3A and 3B:
 - ships with a high risk profile,
 - passenger ships, oil tankers, gas or chemical tankers or bulk carriers, older than 12 years of age,
 - ships with a high risk profile or passenger ships, oil tankers, gas or chemical tankers or bulk carriers, older than 12 years of age, in cases of overriding or unexpected factors,

— ships subject to a re-inspection following a refusal of access order issued in accordance with Article 16.

2. The operator or master of the ship shall ensure that sufficient time is available in the operating schedule to allow the expanded inspection to be carried out.

Without prejudice to control measures required for security purposes, the ship shall remain in the port until the inspection is completed.

3. On receipt of a pre-notification provided by a ship eligible for a periodic expanded inspection, the competent authority shall inform the ship if no expanded inspection will be carried out.

4. **An expanded inspection shall, as far possible, be carried out by no less than two port State control officers.** The scope of an expanded inspection, including the risk areas to be covered, is set out in Annex VII. The Commission ~~may~~ **shall** adopt **by means of implementing acts** detailed measures to ensure uniform conditions for the application of Annex VII. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article ~~31(3)~~ **31(2)**.

Article 14a

Inspection of ro-ro passenger ships and high speed passenger craft in regular service

1. Ro-ro passenger ships and high-speed passenger craft operating on a regular service are eligible for inspections in accordance with the time frame and other requirements set out in Annex XVII.

2. Member States shall, when planning inspections of a ro-ro passenger ship or high-speed passenger craft, take due account of the operational and maintenance schedule of the ro-ro passenger ship or high-speed passenger craft.

3. When a ro-ro passenger ship or high-speed passenger craft has been subject to an inspection in accordance with Annex XVII, such inspection shall be recorded in the inspection database, and shall be taken into account for the purposes of Articles 10, 11 and 12 and for calculating the fulfilment of the inspection commitment of each Member State. It shall be included in the total number of annual inspections carried out by each Member State, provided for in Article 5.

4. ~~Article 9(1),~~ Article 11 **point** (a) and Article 14 shall not apply to ro-ro passenger ships and high-speed passenger craft on a regular service inspected under this Article.

5. The competent authority shall ensure that the ro-ro passenger ships or high-speed passenger craft that are subject to an additional inspection in accordance with Article 11(b) are selected for inspection in accordance with Annex I, Part II 3A(c) and 3B(c). Inspections carried out under this paragraph shall not affect the inspection interval provided for in paragraph 2 of Annex XVII.

6. The inspector of the competent authority of the port State may agree to be accompanied, during an inspection of a ro-ro passenger ship or high-speed passenger craft, by a port State inspector of another Member State acting as an observer. Where the flag of the vessel is that of a Member State, the port State shall, upon request, invite a representative of the flag State to accompany the inspection as an observer.

Article 15

Safety and security guidelines and procedures

1. Member States shall ensure that their inspectors follow the procedures and guidelines specified in Annex VI.
2. As far as security checks are concerned, Member States shall apply the relevant procedures set out in Annex VI to this Directive to all ships referred to in Articles 3(1), 3(2) and 3(3) of Regulation (EC) No 725/2004 of the European Parliament and of the Council (1), calling at their ports and anchorages, unless they fly the flag of the port State of inspection.
4. The Commission may adopt detailed measures to ensure uniform application of the procedures referred to in paragraph 1 and of the security checks referred to in paragraph 2 of this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 31(3).

Article 16

Access refusal measures concerning certain ships

1. A Member State shall refuse access to its ports and anchorages to any ship which:
 - flies the flag of a State ~~whose detention rate~~ which falls into the **black low performance** list, adopted in accordance with the Paris MOU on the basis of information recorded in the inspection database and published annually by the Commission, and has been detained more than twice in the course of the preceding 36 months in a port or anchorage of a Member State or of a State signatory of the Paris MOU, or
 - flies the flag of a State ~~whose detention rate~~ **which** falls into the **grey high or medium performance** list, adopted in accordance with the Paris MOU on the basis of information recorded in the inspection database and published annually by the Commission, and has been detained more than twice in the course of the preceding 24 months in a port or anchorage of a Member State or of a State signatory of the Paris MOU.

The first subparagraph shall not apply to the situations described in Article 21(6).

The refusal of access shall be applicable as soon as the ship leaves the port or anchorage where it has been the subject of a third detention and where a refusal of access order has been issued.

2. The refusal of access order shall be lifted only after a period of three months has passed from the date of issue of the order and when the conditions in paragraphs 3 to 9 of Annex VIII are met.

If the ship is subject to a second refusal of access, the period shall be 12 months.

3. Any subsequent detention in a port or anchorage within the ~~Community~~ **Union** shall result in the ship being refused access to any port and anchorage within the ~~Community~~ **Union**. This third refusal of access order may be lifted after a period of 24 months has passed from the issue of the order and only if:

~~— the ship flies the flag of a State whose detention rate falls neither into the black list nor the grey list referred to in paragraph 1,~~

— **(a)** the statutory and classification certificates of the ship are issued by an organisation or organisations recognised under Regulation (EC) No 391/2009 of the European Parliament and of the Council²⁹ ~~of 23 April 2009 on common rules and standards for ship inspection and survey organisations (recast) (1),~~

— **(b)** the ship is managed by a company with a high performance according to Annex I, Part I.1, and

— the conditions **listed** in paragraphs 3 to 9 of Annex VIII are met.

Any ship not meeting the criteria specified in this paragraph, after a period of 24 months has passed from the issue of the order, shall be permanently refused access to any port and anchorage within the **Community Union**.

4. Any subsequent detention **of a vessel flying the flag of a State listed in the medium or low performance list, as published in the annual report of the Paris MOU**, in a port or anchorage within the **Community Union** after the third refusal of access shall result in the ship being permanently refused access to any port and anchorage within the **Community Union**.

4a. If a ship flying the flag of a State listed in the high performance list is detained in a port or anchorage after the third or any subsequent refusal of access and, at the time of the first subsequent ship/port interface in an EU port, the statutory and classification certificates of the ship are issued by an organisation or organisations recognised under Regulation (EC) No 391/2009 and evidence is provide that an on-board visit by the classification society has taken place prior to the issuance of such certificates, the ship shall be refused access to any port or anchorage for a period of 24 months.

If at the time of the first ship/port interface the statutory or classification certificates are not issued by an organisation or organisations recognised under Regulation (EC) No 391/2009 the ship shall be permanently refused access to any port and anchorage.

5. For the purpose of this Article, Member States shall comply with the procedures laid down in Annex VIII.

Article 17

Report of inspection to the master

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

Where, following a more detailed inspection, the living and working conditions on the ship are found not to conform to the requirements of MLC 2006, the inspector shall forthwith bring the deficiencies to the attention of the master of the ship, with required deadlines for their rectification.

In the event that the inspector considers such deficiencies to be significant, or if they relate to a possible complaint under point 19 of Part A of Annex V, the inspector shall also bring the deficiencies to the

attention of the appropriate seafarers' and shipowners' organisations in the Member State in which the inspection is carried out, and may:

- (a) notify a representative of the flag State;
- (b) provide the competent authorities of the next port of call with the relevant information.

In respect of matters concerning MLC 2006, the Member State in which the inspection is carried out shall have the right to transmit a copy of the inspector's report, to be accompanied by any reply received from the competent authorities of the flag State within the prescribed deadline, to the Director-General of the International Labour Office with a view to such action as may be considered appropriate and expedient in order to ensure that a record is kept of such information and that it is brought to the attention of parties who might be interested in availing themselves of relevant recourse procedures.

Article 18

Complaints

All complaints shall be subject to a rapid initial assessment by the competent authority. This assessment shall make it possible to determine whether a complaint is justified.

Should that be the case, the competent authority shall take the necessary action on the complaint, in particular, ensuring that anyone directly concerned by that complaint can make their views known.

Where the competent authority deems the complaint to be manifestly unfounded, it shall inform the complainant of its decision and of the reasons therefor.

The identity of the complainant shall not be revealed to the master or the shipowner of the ship concerned. The inspector shall take appropriate steps to safeguard the confidentiality of complaints made by seafarers, including ensuring confidentiality during any interviews of seafarers.

Member States shall inform the flag State administration, with a copy to the International Labour Organisation (ILO) if appropriate, of complaints not manifestly unfounded and of follow-up actions taken.

Article 18a

Onshore MLC 2006 complaint-handling procedures

1. A complaint by a seafarer alleging a breach of the requirements of MLC 2006 (including seafarers' rights) may be reported to an inspector in the port at which the seafarer's ship has called. In such cases, the inspector shall undertake an initial investigation.
2. Where appropriate, given the nature of the complaint, the initial investigation shall include consideration of whether the on-board complaint procedures provided for under Regulation 5.1.5 of MLC 2006 have been pursued. The inspector may also conduct a more detailed inspection in accordance with Article 13 of this Directive.

3. The inspector shall, where appropriate, seek to promote a resolution of the complaint at the ship-board level.
4. In the event that the investigation or the inspection reveals a non-conformity that falls within the scope of Article 19, that Article shall apply.
5. Where paragraph 4 does not apply and a complaint by a seafarer related to matters covered by MLC 2006 has not been resolved at the ship-board level, the inspector shall forthwith notify the flag State, seeking, within a prescribed deadline, advice and a corrective plan of action to be submitted by the flag State. A report of any inspection carried out shall be transmitted by electronic means to the inspection database referred to in Article 24.
6. Where the complaint has not been resolved following action taken in accordance with paragraph 5, the port State shall transmit a copy of the inspector's report to the Director-General of the International Labour Office. The report shall be accompanied by any reply received within the prescribed deadline from the competent authority of the flag State. The appropriate seafarers' and shipowners' organisations in the port State shall be similarly informed. In addition, statistics and information regarding complaints that have been resolved shall be regularly submitted by the port State to the Director-General of the International Labour Office.

Such submissions are provided in order that, on the basis of such action as may be considered appropriate and expedient, a record is kept of such information and brought to the attention of parties, including seafarers' and shipowners' organisations, which might be interested in availing themselves of relevant recourse procedures.
7. In order to ensure uniform conditions for the implementation of this Article, implementing powers shall be conferred on the Commission regarding the setting-up of a harmonised electronic format and procedure for the reporting of follow-up actions taken by Member States. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 31(3).
8. This Article shall be without prejudice to Article 18. The fourth paragraph of Article 18 shall also apply to complaints relating to matters covered by MLC 2006.

Article 19

Rectification and detention

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

2a. In the case of living and working conditions on board which are clearly hazardous to the safety, health or security of seafarers or deficiencies which constitute a serious or repeated breach of MLC 2006 requirements (including seafarers' rights), the competent authority of the port State where the ship is being inspected shall ensure that the ship is detained or that the operation in the course of which the deficiencies are revealed is stopped.

The detention order or stoppage of an operation shall not be lifted until those deficiencies have been rectified or if the competent authority has accepted a plan of action to rectify those deficiencies and it is satisfied that the plan will be implemented in an expeditious manner. Prior to accepting a plan of action, the inspector may consult the flag State.

3. When exercising his professional judgement as to whether or not a ship is to be detained, the inspector shall apply the criteria set out in Annex X.

4. If the inspection reveals that the ship is not equipped with a functioning voyage data recorder, when use of such recorder is compulsory in accordance with Directive 2002/59/EC, the competent authority shall ensure that the ship is detained.

If such deficiency cannot be readily rectified in the port of detention, the competent authority may either allow the ship to proceed to the appropriate repair yard nearest to the port of detention where it may be readily rectified or require the deficiency to be rectified within a maximum period of 30 days, as provided for in the guidelines developed by the Paris MOU. For these purposes, the procedures laid down in Article 21 shall apply.

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

6. In the event of detention, the competent authority shall immediately inform, in writing and including the report of inspection, the flag State administration or, when this is not possible, the Consul or, in his absence, the nearest diplomatic representative of that State, of all the circumstances in which intervention was deemed necessary. In addition, nominated surveyors or recognised organisations responsible for the issue of classification certificates or statutory certificates in accordance with Conventions shall also be notified where relevant. Moreover, if a ship is prevented from sailing due to serious or repeated breach of the requirements of MLC 2006 (including seafarers' rights) or due to the living and working conditions on board being clearly hazardous to the safety, health or security of seafarers, the competent authority shall forthwith notify the flag State accordingly and invite a representative of the flag State to be present, if possible, requesting the flag State to reply within a prescribed deadline. The competent authority shall also inform forthwith the appropriate seafarers' and shipowners' organisations in the port State in which the inspection was carried out.

7. This Directive shall be without prejudice to the additional requirements of the Conventions concerning notification and reporting procedures related to port State control.

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

9. In order to alleviate port congestion, a competent authority may allow a detained ship to be moved to another part of the port if it is safe to do so. However, the risk of port congestion shall not be a consideration when deciding on a detention or on a release from detention.

Port authorities or bodies shall cooperate with the competent authority with a view to facilitating the accommodation of detained ships.

10. The port authorities or bodies shall be informed at the earliest convenience when a detention order is issued.

Article 20

Right of appeal

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

2. Member States shall establish and maintain appropriate procedures for this purpose in accordance with their national legislation.

3. The competent authority shall properly inform the master of a ship referred to in paragraph 1 of the right of appeal and the practical arrangements relating thereto.

4. When, as a result of an appeal or of a request made by the owner or the operator of a ship or his representative, a detention order or a refusal of access order is revoked or amended:

- (a) Member States shall ensure that the inspection database is amended accordingly without delay;
- (b) the Member State where the detention order or refusal of access order is issued shall, within 24 hours of such a decision, ensure that the information published in accordance with Article 26 is rectified.

Article 21

Follow-up to inspections and detentions

1. Where deficiencies referred to in Article 19(2) cannot be rectified in the port of inspection, the competent authority of that Member State may allow the ship concerned to proceed without undue delay to the appropriate repair yard nearest to the port of detention, as chosen by the master and the authorities concerned, where follow-up action can be taken, provided that the conditions determined by the competent authority of the flag State and agreed by that Member State are complied with. Such conditions shall ensure that the ship can proceed without risk to the safety and health of passengers or crew, or risk to other ships, or without there being an unreasonable threat of harm to the marine environment.

2. Where the decision to send a ship to a repair yard is due to a lack of compliance with IMO Resolution A. 744(18), either with respect to a ship's documentation or with respect to a ship's structural failures and deficiencies, the competent authority may require that the necessary thickness measurements be carried out in the port of detention before the ship is allowed to sail.

3. In the circumstances referred to in paragraph 1, the competent authority of the Member State in the port of inspection shall notify the competent authority of the State where the repair yard is situated, the parties mentioned in Article 19(6) and any other authority as appropriate of all the conditions for the voyage.

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

4. Member States shall take measures to ensure that access to any port or anchorage within the **Community Union** is refused to ships referred to in paragraph 1 which proceed to sea:

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

(b) which ~~refuse to~~ **do not** comply with the applicable requirements of the Conventions by not calling into the indicated repair yard.

The refusal of access order shall be lifted after a period of 12 months has passed. The refusal of access order shall become applicable from the date of its issuing.

Such refusal shall be maintained until the owner or operator provides evidence to the satisfaction of the competent authority of the Member State where the ship was found defective, demonstrating that the ship fully complies with all applicable requirements of the Conventions.

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

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

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

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

Article 22

Professional profile of inspectors

1. Inspections shall be carried out only by inspectors who fulfil the qualification criteria specified in Annex XI and who are authorised to carry out port State control by the competent authority.
2. When the required professional expertise cannot be provided by the competent authority of the port State, the inspector of that competent authority may be assisted by any person with the required expertise.
3. The competent authority, the inspectors carrying out port State control and the persons assisting them shall have no commercial interest either in the port of inspection or in the ships inspected, nor shall the inspectors be employed by, or undertake work on behalf of, non-governmental organisations which issue statutory and classification certificates or which carry out the surveys necessary for the issue of those certificates to ships.
4. Each inspector shall carry a personal document in the form of an identity card issued by his competent authority in accordance with Commission Directive 96/40/EC of 25 June 1996 establishing a common model for an identity card for inspectors carrying out port State control (1).
5. Member States shall ensure that the competence of inspectors and their compliance with the minimum criteria referred to in Annex XI are verified, before authorising them to carry out inspections and periodically thereafter in the light of the training scheme referred to in paragraph 7.
6. Member States shall ensure that inspectors receive appropriate training in relation to changes to the port State control system applied in the Community as laid down in this Directive and amendments to the Conventions.
7. In cooperation with Member States **and taking into account the expertise and the experience gained in the Union and under the Paris MOU**, the Commission shall develop a **professional development** and ~~promote a harmonised Community scheme for the training programme and assessment of competences of~~ **for port State control inspectors by Member States. This training programme shall take account of the widened scope of port State control as well as improvements in the scope and forms of training.**

In cooperation with the Member States, the Commission shall on a continuous basis identify and provide new training needs as input to amend the Paris MoU curricula, syllabi and content of the professional development and training programme for inspectors, especially as regards new technologies and in relation to the additional obligations arising from the relevant instruments.

Article 23

Reports from pilots and port authorities

1. Member States shall take appropriate measures to ensure that their pilots engaged on the berthing or unberthing of ships or engaged on ships bound for a port or in transit within a Member State immediately inform the competent authority of the port State or the coastal State, as appropriate, whenever they learn in the course of their normal duties that there are apparent anomalies which may prejudice the safe navigation of the ship, or which may pose a threat of harm to the marine environment.

2. If port authorities or bodies, in the course of their normal duties, learn that a ship within their port has apparent anomalies which may prejudice the safety of the ship or poses an unreasonable threat of harm to the marine environment, such authority or body shall immediately inform the competent authority of the port State concerned.

3. Member States shall require pilots and port authorities or bodies to report at least the following information, in electronic format whenever possible:

- ship information (name, IMO identification number, call sign and flag),
- sailing information (last port of call, port of destination),
- description of apparent anomalies found on board.

4. Member States shall ensure that proper follow-up action is taken on apparent anomalies notified by pilots and port authorities or bodies and shall record the details of action taken.

5. Implementing powers shall be conferred on the Commission to adopt measures for the implementation of this Article, including harmonised procedures for the reporting of apparent anomalies by pilots and port authorities or bodies and of follow-up actions taken by Member States. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 31(3).

Article 24

Inspection database

1. The Commission shall develop, maintain and update the inspection database, building upon the expertise and experience under the Paris MOU.

The inspection database shall contain all the information required for the implementation of the inspection system set up under this Directive and shall include the functionalities set out in Annex XII.

2. Member States shall take the appropriate measures to ensure that the information on the actual time of arrival and the actual time of departure of any ship calling at their ports and anchorages, together with an identifier of the port concerned, is transferred within a reasonable time ~~three hours~~ **a reasonable time of the departure** to the inspection database through the ~~Community~~ **Union** maritime information exchange system 'SafeSeaNet' referred to in Article 3 ~~point~~ **point** (s) of Directive 2002/59/EC. Once they have transferred such information to the inspection database through SafeSeaNet, Member States are exempted from the provision of data in accordance with ~~paragraphs points~~ **points** 1.2 and 2(a) and (b) of Annex XIV to this Directive.

3. Member States shall ensure that the information related to inspections performed in accordance with this Directive is transferred to the inspection database as soon as the inspection report is completed or the detention lifted.

Within 72 hours, Member States shall ensure that the information transferred to the inspection database is validated for publication purposes. ~~The inspection report shall be validated before its transfer to the database by a port State control inspector who was not part of the team that carried out the inspection.~~

4. On the basis of the inspection data provided by Member States, the Commission shall be able to retrieve from the inspection database any relevant data concerning the implementation of this Directive, in particular on the risk profile of the ship, on ships' due for inspections, on ships' movement data and on the inspection commitments of each Member State.

Member States shall have access to all the information recorded in the inspection database which is relevant for implementing the inspection procedures of this Directive.

Member States and third signatories to the Paris MOU shall be granted access to any data they have recorded in the inspection database and to data on ships flying their flag.

Article 24a

Electronic certificates

The Commission shall, in close cooperation with the Member States, adopt implementing acts laying down the functional and technical specifications for a harmonised reporting interface, validation tool and central repository/database for electronic versions of the certificates listed in Annex IV and referred to in Article 13(1). Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 31(2).'

2. The Member States may use the harmonised reporting interface, validation tool and central repository/database for electronic versions of the certificates to facilitate the transition of their ship registers to electronic certificates.

3. Ships flying the flag of a State that issue such electronic certificates shall have this reflected in the ship risk profile (SRP) as set out in Annexes I and II.

4. The Member State shall be responsible for ensuring the submission of data elements in compliance with the applicable legal and technical requirements, The Member State shall remain responsible for the data and the validity of the information and the certificates, as well as for updating any information that has changed after the submission to the central database.

Article 25

Exchange of information and cooperation

Each Member State shall ensure that its port authorities or bodies and other relevant authorities or bodies provide the competent port State control authority with the following types of information in their possession:

— ~~information notified in accordance with Article 9 and Annex III,~~

— **(a) information concerning ships which have failed to notify any information according to the requirements of this Directive, and to Directive 2000/59/EC of the European Parliament and of the Council of 27 November 2000 on port reception facilities for ship-generated waste and cargo residues (1) and Directive 2002/59/EC and to Directive (EU) 2019/883 of the European Parliament and of the Council³⁰,**

as well as, if appropriate, with Regulation (EC) No 725/2004 **of the European Parliament and of the Council of 31 March 2004 on enhancing ship and port facility security**,

— **(b)** information concerning ships which have proceeded to sea without having complied with Articles 7 ~~or 10 of Directive 2000/59/EC~~ **of Directive (EU) 2019/883 on port reception facilities**,

— **(c)** information concerning ships which have been denied entry or expelled from port on security grounds, information on apparent anomalies in accordance with Article 23.

Article 26

Publication of information

The Commission shall make available and maintain on a public website the information on inspections, detentions and refusals of access in accordance with Annex XIII, building upon the expertise and experience under the Paris MOU.

Article 27

Publication of a list of companies with a low and very low performance

The Commission shall establish and publish regularly on a public website information relating to companies whose performance, in view of determining the ship risk profile referred to in Annex I Part I, has been considered as low and very low for a period of three months or more.

Implementing powers shall be conferred on the Commission to establish the detailed arrangements for publication of the information referred to in the first paragraph, the criteria for aggregating the relevant data and the frequency of updates. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 31(3).

Article 28

Reimbursement of costs

1. Should the inspections referred to in Articles 13 and 14 confirm or reveal deficiencies in relation to the requirements of a Convention warranting the detention of a ship, all costs relating to the inspections in any normal accounting period shall be covered by the shipowner or the operator or by his representative in the port State.

2. All costs relating to inspections carried out by the competent authority of a Member State under the provisions of Articles 16 and 21(4) shall be charged to the owner or operator of the ship.

3. In the case of detention of a ship, all costs relating to the detention in port shall be borne by the owner or operator of the ship.

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

Article 29

Data to monitor implementation

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

Article 30

Monitoring of compliance and performance of Member States

In order to ensure the effective implementation of this Directive and to monitor the overall functioning of the ~~Community's~~ **Union's** port State control regime in accordance with Article 2(b) **point** (i) of Regulation (EC) No 1406/2002, the Commission shall collect the necessary information and carry out visits to Member States.

Each Member State shall develop, implement, and maintain a quality management system for the operational parts of the port State-related activities of its administration. Such quality management system shall be certified in accordance with the applicable international quality standards.

Article 30a

Delegated acts

The Commission shall be empowered to adopt delegated acts in accordance with Article 30b, ~~concerning amendments to~~ **amend Article 2(1) to amend the list of Conventions set out in Article 2(1) once such Conventions have been adopted as a relevant instrument by the Paris MoU and to amend Annex VI,** in order to add to ~~and/or update the list set out in that Annex further instructions of procedures and guidelines~~ relating to port State control adopted by the Paris MOU ~~Organisation set out in that Annex.~~

Article 30b

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Article 30a shall be conferred on the Commission for a period of five years from

20 August 2013. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended

for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.

3. The delegation of power referred to in Article 30a may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

5. A delegated act adopted pursuant to Article 30a shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

Article 31

Committee

1. The Commission shall be assisted by the Committee on Safe Seas and the Prevention of Pollution from Ships (COSS) established by Article 3 of Regulation (EC) No 2099/2002 of the European Parliament and the Council (1). That Committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

Where the committee delivers no opinion on a draft implementing act to be adopted pursuant to Articles 10(3), 23(5) and the second paragraph of Article 27 respectively, the Commission shall not adopt the draft implementing act and the third subparagraph of Article 5(4) of Regulation (EU) No 182/2011 shall apply.

4. Amendments to the relevant instruments listed in Article 2 point 1 may be excluded from the scope of this Directive pursuant to Article 5 of Regulation (EC) No 2099/2002.

Article 33

Implementing rules

When establishing the implementing rules referred to in Articles **2(2) 3(4a)**, 10(3), **10(4)**, 14(4), ~~15(4)~~ **15(3)**, 18a(7), 23(5) **24a(6)** and **Article 27** in accordance with the procedures referred to in Article ~~31(3)~~ **31(2)**, the Commission shall take specific care that those rules take into account the expertise and experience gained with the inspection system in the Union and build upon the expertise of the Paris MOU.

Article 34

Penalties

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

Article 35

Review Implementation review

~~The Commission shall review the implementation of this Directive no later than 30 June 2012. The review will examine, inter alia, the fulfilment of the overall Community inspection commitment laid down in Article 5, the number of port State control inspectors in each Member State, the number of inspections carried out, and the compliance with the annual inspection commitment by each Member State and the implementation of Articles 6, 7 and 8.~~

The Commission shall communicate the findings of the review by ***[OP: Please insert a date: ten years from the date of entry into force of this amending Directive]*** submit a report to the European Parliament and the Council and shall determine on the basis of the review whether it is necessary to propose an amending Directive or further legislation in this area **on the implementation of, and compliance with, this Directive.**

Article 36

Implementation and notification

1. Member States shall adopt and publish, by 31 December 2010, the laws, regulations and administrative provisions necessary to comply with this Directive.

They shall apply those provisions from 1 January 2011.

2. When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. They shall also include a statement that references in existing laws, regulations and administrative provisions to the Directive 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. Member States shall communicate to the Commission the text of the main provisions of national law adopted in the field covered by this Directive.

4. In addition, the Commission shall inform the European Parliament and the Council on a regular basis of progress in the implementation of this Directive within the Member States, in particular with a view to a uniform application of the inspection system in the Community.

Article 37

Repeal

Directive 95/21/EC, as amended by the Directives listed in Annex XV, Part A, is hereby repealed, with effect from 1 January 2011, without prejudice to the obligations of Member States relating to the time limits for transposition into national law of the Directives set out in Annex XV, Part B.

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

Article 38

Entry into force

This Directive shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

Article 37

Addressees

This Directive is addressed to the Member States.

ANNEX I

ELEMENTS OF THE COMMUNITY PORT STATE INSPECTION SYSTEM

(referred to in Article 5)

The following elements shall be included in the Community Port State Inspection System:

I. Ship risk profile

The risk profile of a ship shall be determined by a combination of the following generic and historical parameters:

1. Generic parameters

(a) Type of ship

Passenger ships, oil and chemical tankers, gas carriers and bulk carriers shall be considered as posing a higher risk.

(b) Age of ship

Ships of more than 12 years old shall be considered as posing a higher risk.

(c) Flag State performance

- (i) Ships flying the flag of a State with a high detention rate within the Community and the Paris MOU region shall be considered as posing a higher risk.
- (ii) Ships flying the flag of a State with a low detention rate within the Community and the Paris MOU region shall be considered as posing a lower risk.
- (iii) ~~Ships flying the flag of a State for which an audit has been completed and, where relevant, a corrective action plan submitted, both in accordance with the Framework and procedures for the Voluntary IMO Member State Audit Scheme shall be considered as posing a lower risk.~~ **Ships flying the flag of a State which has ratified all of the mandatory IMO instruments listed in Article 2(1) shall be considered as posing a lower risk.** As soon as the measures referred to in Article 10(3) are adopted, the flag State of such a ship shall demonstrate compliance with the Code for the implementation of mandatory IMO instruments.
- (iv) **Ships flying the flag of a State which has furnished electronic versions of the statutory certificates set out in points 1-XX of Annex IV.**

(d) Recognised organisations

- (i) Ships which have been delivered certificates from recognised organisations having a low or very low performance level in relation with their detention rates within the Community and the Paris MOU region shall be considered as posing a higher risk.
- (ii) Ships which have been delivered certificates from recognised organisations having a high performance level in relation with their detention rates within the Community and the Paris MOU region shall be considered as posing a lower risk.

- (i) Ships with certificates issued by organisations recognised under the terms of Regulation (EC) No 391/2009.
- (e) **Company performance**
 - (iii) Ships which have been delivered certificates from recognised organisations having a low or very low performance level in relation with their detention rates within the Community and the Paris MOU region shall be considered as posing a higher risk.
 - (iv) Ships which have been delivered certificates from recognised organisations having a high performance level in relation with their detention rates within the Community and the Paris MOU region shall be considered as posing a lower risk.
 - (v) Ships with certificates issued by organisations recognised under the terms of Regulation (EC) No 391/2009.
- (f) **Historical parameters**
 - (i) Ships which have been detained more than once shall be considered as posing a higher risk.
 - (ii) Ships which, during inspection(s) carried out within the period referred to in Annex II have had less than the number of deficiencies referred to in Annex II, shall be considered as posing a lower risk.
 - (iii) Ships which have not been detained during the period referred to in Annex II, shall be considered as posing a lower risk.

The risk parameters shall be combined by using a weighting which reflects the relative influence of each parameter on the overall risk of the ship in order to determine the following ship risk profiles:

- high risk,
- standard risk,
- low risk.

In determining these risk profiles greater emphasis shall be given to the parameters for type of ship, flag State performance, recognised organisations and company performance.

(g) **Environmental parameters**

- (i) **The Carbon Intensity Indicator of the ship, ships which are category D-E shall be considered as posing a higher risk.**
- (ii) **Ships which, during inspection(s) carried out within the period referred to in Annex II have had less than the number of deficiencies relating to MARPOL, AFS, BWMC referred to in Annex II, shall be considered as posing a lower risk.**

II. Inspection of ships

1. Periodic inspections

Periodic inspections shall be carried out at predetermined intervals. Their frequency shall be determined by the ship risk profile. The interval between periodic inspections of high risk ships shall not exceed six months. The interval between periodic inspections of ships of other risk profiles shall increase as the risk decreases.

Member States shall carry out a periodic inspection on:

- Any ship with a high risk profile which has not been inspected in a port or anchorage within the Community or of the Paris MOU region during the last six months. High risk ships become eligible for inspection as from the fifth month.
- Any ship with a standard risk profile which has not been inspected in a port or anchorage within the Community or of the Paris MOU region during the last 12 months. Standard risk ships become eligible for inspection as from the 10th month.
- Any ship with a low risk profile which has not been inspected in a port or anchorage within the Community or of the Paris MOU region during the last 36 months. Low risk ships become eligible for inspection as from the 24th month.

2. Additional inspections

Ships, to which the following overriding or unexpected factors apply, are subject to an inspection regardless of the period since their last periodic inspection. However, the need to undertake an additional inspection on the basis of unexpected factors is left to the professional judgement of the inspector.

2A. Overriding factors

Ships to which the following overriding factors apply shall be inspected regardless of the period since their last periodic inspection:

- Ships which have been suspended or withdrawn from their class for safety reasons since the last inspection in the Community or in the Paris MOU region.
- Ships which have been the subject of a report or notification by another Member State.
- Ships which cannot be identified in the inspection database.
- Ships which:
 - have been involved in a collision, grounding or stranding on their way to the port,
 - have been accused of an alleged violation of the provisions on discharge of harmful substances or effluents, or
 - have manoeuvred in an erratic or unsafe manner whereby routing measures, adopted by the IMO, or safe navigation practices and procedures have not been followed.

2.B. Unexpected factors

Ships to which the following unexpected factors apply may be subject to inspection regardless of the period since their last periodic inspection. The decision to undertake such an additional inspection is left to the professional judgement of the competent authority:

- Ships which have not complied with the applicable version of IMO Recommendation on navigation through the entrances to the Baltic Sea.
- Ships carrying certificates issued by a formerly recognised organisation whose recognition has been withdrawn since the last inspection in the Community or in the Paris MOU region.

- Ships which have been reported by pilots or port authorities or bodies as having apparent anomalies which may prejudice their safe navigation or pose a threat of harm to the environment in accordance with Article 23 of this Directive.
- Ships which have failed to comply with the relevant notification requirements referred to in Article 9 of this Directive, in Directive 2000/59/EC, Directive 2002/59/EC and if appropriate in Regulation (EC) No 725/2004.
- Ships which have been the subject of a report or complaint, including an onshore complaint, by the master, a crew member, or any person or organisation with a legitimate interest in the safe operation of the ship, on-board living and working conditions or the prevention of pollution, unless the Member State concerned deems the report or complaint to be manifestly unfounded.
- Ships which have been previously detained more than three months ago.
- Ships which have been reported with outstanding deficiencies, except those for which deficiencies had to be rectified within 14 days after departure, and for deficiencies which had to be rectified before departure.
- Ships which have been reported with problems concerning their cargo, in particular noxious and dangerous cargoes.
- Ships which have been operated in a manner posing a danger to persons, property or the environment.
- Ships where information from a reliable source became known, to the effect that their risk parameters differ from those recorded and the risk level is thereby increased.
- Ships for which a plan of action to rectify deficiencies as referred to in Article 19(2a) has been agreed but in respect of which the implementation of that plan has not been checked by an inspector.

3. Selection scheme

3A. Priority I ships shall be inspected as follows:

- (a) An expanded inspection shall be carried out on:
 - any ship with a high risk profile not inspected in the last six months,
 - any passenger ship, oil tanker, gas or chemical tanker or bulk carrier, older than 12 years of age, with a standard risk profile not inspected in the last 12 months.
- (b) An initial or a more detailed inspection, as appropriate, shall be carried out on:
 - any ship other than a passenger ship, an oil tanker, a gas or chemical tanker or a bulk carrier, older than 12 years of age, with a standard risk profile not inspected in the last 12 months. (c) In case of an overriding factor.
 - A more detailed or an expanded inspection, according to the professional judgement of the inspector, shall be carried out on any ship with a high risk profile and on any passenger ship, oil tanker, gas or chemical tanker or bulk carrier, older than 12 years of age.
 - A more detailed inspection shall be carried out on any ship other than a passenger ship, an oil tanker, a gas or chemical tanker or a bulk carrier, older than 12 years of age.

3B. Where the competent authority decides to inspect a Priority II ship, the following shall apply:

(a) An expanded inspection shall be carried out on:

- any ship with a high risk profile not inspected in the last five months,
- any passenger ship, oil tanker, gas or chemical tanker or bulk carrier, older than 12 years of age, with a standard risk profile not inspected in the last 10 months, or
- any passenger ship, oil tanker, gas or chemical tanker or bulk carrier, older than 12 years of age, with a low risk profile not inspected in the last 24 months.

(b) An initial or a more detailed inspection, as appropriate, shall be carried out on:

- any ship other than a passenger ship, an oil tanker, a gas or chemical tanker or a bulk carrier, older than 12 years of age, with a standard risk profile not inspected in the last 10 months, or
- any ship other than a passenger ship, an oil tanker, a gas or chemical tanker or a bulk carrier, older than 12 years of age, with a low risk profile not inspected in the last 24 months.

(c) In case of an unexpected factor:

- a more detailed or an expanded inspection according to the professional judgement of the inspector, shall be carried out on any ship with a high risk profile or any passenger ship, oil tanker, gas or chemical tanker or bulk carrier, older than 12 years of age,
- a more detailed inspection shall be carried out on any ship other than a passenger ship, an oil tanker, a gas or chemical tanker or a bulk carrier, older than 12 years of age.

ANNEX II

DESIGN OF SHIP RISK PROFILE

(referred to in Article 10(2))

				Profile			
				High Risk Ship (HRS)		Standard Risk Ship (SRS)	Low Risk Ship (LRS)
Generic parameters				Criteria	Weighting points	Criteria	Criteria
1	Type of ship			Chemical tankship Gas carrier Oil tankship Bulk carrier Passenger ship	2 1	Neither a high risk nor low risk ship	All types
2	Age of ship			all types > 12 y	1		All ages
3a	Flag	Low performance			2		White
3b		All IMO instruments listed in Article 2 ratified		-	-		Yes
3c		E-Certificate					Yes
4a	Recognised organisation	Performance	H	-	-		High
			M	-	-		-
			L	Low	1		-
			VL	Very Low			-
4b	EU recognised		-	-	-		Yes
5	Company	Performance	H	-	-	High	
			M	-	-	-	
			L	Low	2	-	
			VL	Very low		-	
Historical parameters							

Neither a high risk nor low risk ship

6	Number of deficiencies recorded in each insp. within previous 36 months	Deficiencies	>6 in one of the inspections	-	≤ 5 in every individual inspection and at least one inspection carried out in previous 36 months)
7	Number of detentions within previous 36 months	Detentions	≥ 2 detentions	1	No detention
Environmental parameters					
8	Carbon Intensity Indicator (CII)	Rating	D-E	1	
9	Number of deficiencies related to MARPOL, AFS, BWM, CLC 92, Bunkers and Nairobi Conventions recorded in each inspection within previous 36 months	Deficiencies	>3 in one of the inspections	1	

HRS are ships which meet criteria to a total value of 5 or more weighting points.

LRS are ships which meet all the criteria of the Low Risk Parameters.

SRS are ships which are neither HRS nor LRS.

ANNEX III

NOTIFICATION

(referred to in Article 9(1))

Information to be provided in accordance with Article 9(1):

The information listed below shall be submitted to the port authority or body or to the authority or body designated for that purpose at least three days before the expected time of arrival in the port or anchorage or before leaving the previous port or anchorage if the voyage is expected to take fewer than three days:

- (a) ship identification (name, call sign, IMO identification number or MMSI number);
- (b) planned duration of the call;
- (c) for tankers:
 - (i) configuration: single hull, single hull with SBT, double hull;
 - (ii) condition of the cargo and ballast tanks: full, empty, inerted;
 - (iii) volume and nature of the cargo;
- (d) planned operations at the port or anchorage of destination (loading, unloading, other);
- (e) planned statutory survey inspections and substantial maintenance and repair work to be carried out whilst in the port of destination;
- (f) date of last expanded inspection in the Paris MOU region.

ANNEX IV

LIST OF CERTIFICATES AND DOCUMENTS

(referred to in Article 13(1))

Part A List of certificates and documents which to the extent applicable should be checked as a minimum during the inspection referred to in paragraph 2.2.3 (as appropriate):

1. International Tonnage Certificate;
2. Reports of previous port State control inspections;
3. Passenger Ship Safety Certificate (SOLAS 1974, regulation I/12);
4. Cargo Ship Safety Construction Certificate (SOLAS 1974, regulation I/12);
5. Cargo Ship Safety Equipment Certificate (SOLAS 1974, regulation I/12);
6. Cargo Ship Safety Radio Certificate (SOLAS 1974, regulation I/12);
7. Cargo Ship Safety Certificate (SOLAS 1974, regulation I/12);
8. Exemption Certificate (SOLAS 1974, regulation I/12);
9. Minimum Safe Manning Document (SOLAS 1974, regulation V/14.2);
10. International Load Line Certificate (1966) (LLC 66/88, article 16.1);
11. International Load Line Exemption Certificate (LLC 66/88, article 16.2);
12. International Oil Pollution Prevention Certificate (MARPOL Annex I, regulation 7.1);
13. International Pollution Prevention Certificate for the Carriage of Noxious Liquid Substances in Bulk (NLS) (MARPOL, Annex II, regulation 9.1);
14. International Sewage Pollution Prevention Certificate (ISPPC) (MARPOL, Annex IV, regulation 5.1, MEPC.1/Circ.408);
15. International Air Pollution Prevention Certificate (IAPPC) (MARPOL, Annex VI, regulation 6.1);
16. International Energy Efficiency Certificate (MARPOL, Annex VI regulation 6);
17. International Ballast Water Management Certificate (IBWMC) (BWMC Art 9.1(a) and regulation E-2);
18. International Anti-Fouling System Certificate (IAFS Certificate) (AFS 2001 Annex 4 regulation 2);
19. Declaration on AFS (AFS 2001 Annex 4 regulation 5);
20. International Ship Security Certificate (ISSC) or Interim International Ship Security Certificate (ISPS Code part A/19 and appendices);
21. Certificates for masters, officers or ratings issued in accordance with STCW Convention (STCW art. VI, regulation I/2 and STCW Code section A-I/2);
22. Copy of Document of Compliance or a copy of the Interim Document of Compliance issued in accordance with the International Management Code for the Safe Operation of Ships and for Pollution Prevention (DoC) ISM Code (SOLAS regulation IX/4.2, ISM Code, paragraph 13 and 14);
23. Safety Management Certificate or an Interim Safety Management Certificate issued in accordance with the International Management Code for the Safe Operation of Ships and for Pollution Prevention (SMC) (SOLAS 1974, regulation IX/4.3, ISM Code, paragraph 13 and 14);
24. International Certificate of Fitness for the Carriage of Liquefied Gases in Bulk, or the Certificate of Fitness for the Carriage of Liquefied Gases in Bulk, whichever is appropriate (IGC Code regulation 1.5.4 or GC Code regulation 1.6);

25. International Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk, or the Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk, whichever is appropriate (IBC Code regulation 1.45.4 and BCH Code regulation 1.6.3);
26. INF (International Code for the Safe Carriage of Packaged Irradiated Nuclear Fuel, Plutonium and High-Level Radioactive Wastes on Board Ships) Certificate of Fitness (SOLAS regulation VII/16 and INF Code reg .1.3); Plutonium and High-Level Radioactive Wastes on Board Ships) Certificate of Fitness (SOLAS regulation VII/16 and INF Code reg .1.3);
27. Certificate of insurance or any other financial security in respect of civil liability for oil pollution damage (CLC 69/92 art. VII.2);
28. Certificate of insurance or any other financial security in respect of civil liability for Bunker oil pollution damage (BUNKERS 2001 art. 7.2);
29. Certificate of Insurance or other Financial Security in respect of Liability for the Removal of Wrecks (Removal of Wreck Article 12);
30. High-Speed Craft Safety Certificate and Permit to Operate High-Speed Craft (SOLAS 1974, regulation X/3.2 and HSC Code 94/00 regulations 1.8.1 and 1.9);
31. Document of compliance with the special requirements for ships carrying dangerous goods (SOLAS 1974, regulation II-2/19.4);
32. Document of authorization for the carriage of grain and grain loading manual (SOLAS 1974, regulation VI/9; International Code for the Safe Carriage of Grain in Bulk, section 3);
33. Condition Assessment Scheme (CAS) Statement of Compliance, CAS Final Report and Review Record (MARPOL Annex I, regulations 20 and 21; resolution MEPC.94(46), as amended by resolutions MEPC.99(48), MEPC.112(50), MEPC.131(53), resolution MEPC.155(55), and MEPC.236(65);
34. Continuous Synopsis Record (SOLAS 1974, regulation XI-1/5);
35. Oil Record Book, parts I and II (MARPOL, Annex I, regulations 17 and 36);
36. Cargo Record Book (MARPOL, Annex II, regulation 15);
37. Garbage Record Book, parts I and II (MARPOL, Annex V, regulation 10.3); (MARPOL, Annex V, regulation 10);
38. Garbage Management Plan (MARPOL, Annex V, regulation 10; resolution MEPC.220(63));
39. Logbook and the recordings of the tier and on/off status of marine diesel engines (MARPOL, Annex VI, regulation 13.5.3);
40. Logbook for fuel oil changeover (MARPOL Annex VI, regulation 14.6);
41. Ozone-depleting Substances Record Book (MARPOL, Annex VI, regulation 12.6);
42. Ballast Water Record Book (BWRB) (BWMC Art 9.1 (b) and regulation B-2);
43. Fixed gas fire-extinguishing systems – cargo spaces Exemption Certificate and any list of cargoes (SOLAS 1974, regulation II-2/10.7.1.4);
44. Dangerous goods manifest or stowage plan (SOLAS 1974, regulations VII/4 and VII/7-2; MARPOL, Annex III, regulation 54);
45. For oil tankers, the record of oil discharge monitoring and control system for the last ballast voyage (MARPOL, Annex I, regulation 31.2);
46. Search and Rescue cooperation plan for passenger ships trading on fixed routes (SOLAS 1974, regulation V/7.3);
47. For passenger ships, List of operational limitations (SOLAS 1974, regulation V/30.2);
48. Nautical charts and nautical publications (SOLAS 1974, regulations V/19.2.1.4 and V/27);
49. Records of hours of rest and table of shipboard working arrangements (STCW Code section A-VIII/1.5 and 1.7, ILO Convention No.180 art. 5.7, art. 8.1 and MLC, 2006 Standard A.2.3.10 and A.2.3.12);
50. Unattended machinery spaces (UMS) evidence (SOLAS 1974, regulation II-I/46.3);

51. Certificates required under Directive 2009/20/EC of the European Parliament and of the Council of 23 April 2009 on the insurance of shipowners for maritime claims;
52. Certificate required under Regulation (EC) No 392/2009 of the European Parliament and of the Council of 23 April 2009 on the liability of carriers of passengers by sea in the event of accidents;
53. A certificate on the inventory of hazardous materials or a statement of compliance as applicable pursuant to Regulation (EU) No 1257/2013 of the European Parliament and of the Council; and
54. Document of Compliance issued under Regulation (EU) 2015/757 of the European Parliament and of the Council of 29 April 2015 on the monitoring, reporting and verification of carbon dioxide emissions from maritime transport, and amending Directive 2009/16/EC.

Part B List of other certificates and documents which to the extent applicable are required to be on board (as appropriate):

1. Construction drawings (SOLAS reg. II-1/3-7);
2. Ship Construction File (SOLAS reg. II-1/3-10);
3. Manoeuvring Booklet and information (SOLAS reg. II-1/28);
4. Stability information (SOLAS regs. II-1/5 and II-1/5-1 and LLC 66/88 reg. 10);
5. Subdivision and stability information (MARPOL Annex I reg. 28);
6. Damage control plans and booklets (SOLAS reg. II-1/19; MSC.1/Circ.1245)
7. Ship Structure Access Manual (SOLAS reg. II-1/3-6);
8. Enhanced Survey Report Files (in case of bulk carriers or oil tankers) (SOLAS reg. XI-1/2 and 2011 ESP Code paragraphs 6.2 and 6.3 of annex A, part A and part B, and annex B, part A and part B);
9. Cargo Securing Manual (SOLAS reg. VI/5.6 and VII/5; MSC.1/Circ.1353/Rev.1);
10. Bulk Carrier Booklet (SOLAS reg. VI/7.2 and XII/8, BLU Code);
11. Loading/Unloading Plan for bulk cargoes (SOLAS reg. VI/7.3);
12. Cargo Information (SOLAS reg. VI/2 and XII/10, MSC/Circ.663);
13. Fire control plan/booklet (SOLAS reg. II-2/15.2.4 and II-2/15.3.2);
14. Fire safety operational booklet (SOLAS reg. II-2/16.2);
15. Fire safety training manual (SOLAS reg. II-2/1 5.2.3);
16. Training manual (SOLAS reg. III/35);
17. Onboard training, drills and maintenance records (SOLAS reg. II-2/15.2.2.5 and reg. III/19.3 and III/19.5 and III/20.6 and III/20.7);
18. Ship-specific Plans and Procedures for Recovery of Persons from the Water (SOLAS reg. III/17-1; MSC.346(91); MSC.1/Circ.1447);
19. Decision support system for masters (Passenger ships) (SOLAS reg. III/29);
20. International Code of Signals and a copy of Volume III of IAMSAR Manual (SOLAS reg. V/21);
21. Records of navigational activities (SOLAS reg. V/26 and V/28.1);
22. Ship Security Plan and associated records (SOLAS reg. XI-2/9 and ISPS Code part A/9 and 10);
23. Engine International Air Pollution Prevention Certificate (EIAPPC) (NOX Technical Code 2008 reg. 2.1.1.1);
24. EEDI Technical File (MARPOL Annex VI, reg. 20);
25. Technical files (NOX Technical Code 2008 reg. 2.3.4);
26. Record book of engine parameters (NOX Technical Code reg. 2.3.7);
27. Type approval certificate of incinerator (MARPOL Annex VI reg. 16.6);
28. Manufacturer's Operating Manual for Incinerators (MARPOL Annex VI reg. 16.7);
29. Fuel oil Changeover Procedure for fuel oil changeover (MARPOL Annex VI reg. 14.6);

30. Bunker delivery notes and Representative Sample (MARPOL Annex VI reg. 18.6 and 18.8.1);
31. Shipboard Oil Pollution Emergency Plan (MARPOL Annex I reg. 37.1; resolution MEPC.54(32), as amended by resolution MEPC.86(44));
32. Shipboard Marine Pollution Emergency Plan for Noxious Liquid Substances (MARPOL Annex II reg. 17);
33. Ship Energy Efficiency Management Plan (MARPOL Annex VI reg. 22, MEPC.1/Circ795);
34. STS Operation Plan and Records of STS Operations (MARPOL Annex I reg. 41);
35. Procedures and Arrangements Manual (chemical tankers) (MARPOL Annex II reg.14.1; resolution MEPC.18(22), as amended by resolution MEPC.62(35));
36. VOC Management Plan (MARPOL Annex VI reg. 15.6);
37. Ballast Water Management Plan (BWMP) (BWMC reg. B-1, resolution MEPC.127(53))
38. LRIT Conformance Test Report (SOLAS reg. V/19-1.6; MSC.1/Circ.1307);
39. Copy of the Certificate of compliance issued by the testing facility, stating the date of compliance and the applicable performance standards of VDR (voyage data recorder) (SOLAS reg. V/18.8);
40. AIS test report (SOLAS reg. V/18.9, MSC.1/Circ.1252);
41. Noise Survey Report (SOLAS reg. II-1/3-12);
42. Oil Discharge Monitoring and Control (ODMC) Operational Manual (MARPOL Annex I reg. 31; resolution A.496(XII); resolution A.586(14), as amended by resolution MEPC.24(22); resolution MEPC.108(49), as amended by resolution MEPC.240(65));
43. Crude Oil Washing Operation and Equipment Manual (MARPOL Annex I reg. 35, resolution MEPC.81(43));
44. Material Safety Data Sheets (MSDS) (SOLAS reg. VI/5-1, MSC.286(86));
45. Record of AFS (AFS 2001 Annex 4 reg. 2);
46. Coating Technical File (SOLAS reg. II-1/3-2); and
47. Maintenance plans (SOLAS reg. II-2/14.2.2, II-2/14.3 and II-2/14.4).

For reference:

1. Certificate of Registry or other document of nationality (UNCLOS art. 9.1.2);
2. Certificates as to the ship's hull strength and machinery installations issued by the classification society in question (only to be required if the ship maintains its class with a classification society);
3. Cargo Gear Record Book (ILO Convention No.32 art. 9.2(4) and ILO Convention No.152 art. 25);
4. Certificates loading and unloading equipment (ILO Convention No.134 art. 4.3(e) and ILO Convention No.32 art. 9(4));
5. Medical certificates (ILO Convention No.73 or MLC, 2006 Standard A1.2);
6. Records of hours of work or rest of seafarers (ILO Convention No.180 part II art. 8.1 or MLC, 2006, Standard A.2.3.12);
7. Maritime Labour Certificate (MLC, 2006, Regulation 5.1.3);
8. Declaration of Maritime Labour Certificate (MLC, 2006, Regulation 5.1.3);
9. Declaration of Maritime Labour compliance (DMLC) on board (parts I and II) (MLC, 2006, Regulation 5.1.3);
10. Seafarer's employment agreements (MLC, 2006, Standard A 2.1);
11. Certificate of Insurance or Financial Security for Repatriation of Seafarers (MLC, 2006, Regulation 2.5); and
12. Certificate of Insurance or Financial Security for Shipowners liability (MLC, 2006, Regulation 4.2)

ANNEX V

EXAMPLES OF 'CLEAR GROUNDS'

(referred to in Article 13(3))

A. Examples of clear grounds for a more detailed inspection

1. Ships identified in Annex I, Part II 2A and 2B.
2. The oil record book has not been properly kept.
3. During examination of the certificates and other documentation, inaccuracies have been revealed.
4. Indications that the crew members are unable to comply with the requirements related to on-board communication set out in Article 18 of Directive 2008/106/EC of the European Parliament and of the Council of 19 November 2008 on the minimum level of training of seafarers .
5. A certificate has been fraudulently obtained or the holder of a certificate is not the person to whom that certificate was originally issued.
6. The ship has a master, officer or rating holding a certificate issued by a country which has not ratified the STCW 78/95.
7. Evidence of cargo and other operations not being conducted safely, or in accordance with IMO guidelines, e.g. the content of oxygen in the inert- gas main supply to the cargo tanks is above the prescribed maximum level.
8. Failure of the master on an oil tanker to produce the record of the oil discharge monitoring and control system for the last ballast voyage.
9. Absence of an up-to-date muster list, or crew members not aware of their duties in the event of fire or an order to abandon the ship.
10. The emission of false distress alerts not followed by proper cancellation procedures.
11. The absence of principal equipment or arrangements required by the Conventions.
12. Excessively unsanitary conditions on board the ship.
13. Evidence from the inspector's general impression and observations that serious hull or structural deterioration or deficiencies exist that may place at risk the structural, watertight or weathertight integrity of the ship.
14. Information or evidence that the master or crew is not familiar with essential shipboard operations relating to the safety of ships or the prevention of pollution, or that such operations have not been carried out.
15. The absence of a table of shipboard working arrangements or of records of hours of work or rest of seafarers.
16. The documents required under MLC 2006 are not produced or maintained or are falsely maintained or the documents produced do not contain the information required by MLC 2006 or are otherwise invalid.
17. The living and working conditions on the ship do not conform to the requirements of MLC 2006.

18. There are reasonable grounds to believe that the ship has changed flag for the purpose of avoiding compliance with MLC 2006.
19. There is a complaint alleging that specific living and working conditions on the ship do not conform to the requirements of MLC 2006.

B. Examples of clear grounds for the control of ships on security aspects

1. The inspector may establish clear grounds for further control measures on security during the initial PSC inspection as follows:
 - 1.1. ISSC is not valid or it has expired.
 - 1.2. The ship is at a lower security level than the port.
 - 1.3. Drills related to the security of the ship have not been carried out.
 - 1.4. Records for the last 10 ship/port or ship/ship interfaces are incomplete.
 - 1.5. Evidence or observation that key members of the ship's personnel cannot communicate with each other.
 - 1.6. Evidence from observations that serious deficiencies exist in security arrangements.
 - 1.7. Information from third parties such as a report or a complaint concerning security-related information.
 - 1.8. The ship holds a subsequent, consecutively issued Interim International Ship Security Certificate (ISSC) and in the professional judgement of the inspector one of the purposes of the ship or company in requesting such a certificate is to avoid full compliance with SOLAS 74 Chapter XI-2 and Part A of the ISPS Code, beyond the period of the initial Interim Certificate. ISPS Code Part A specify the circumstances when an Interim Certificate may be issued.
2. If clear grounds as described above are established, the inspector shall immediately inform the competent security authority (unless the inspector is also an Officer Duly Authorised for Security). The competent security authority shall then decide on what further control measures are necessary taking into account the security level in accordance with Regulation 9 of SOLAS 74, Chapter XI.
3. Clear grounds other than those above are a matter for the Officer Duly Authorised for Security.

ANNEX VI

PROCEDURES FOR THE CONTROL OF SHIPS

(referred to in Article 15(1))

Annex I, 'Port State Control Procedures', to the Paris MOU and the following instructions from the Paris MOU, in their up-to-date version:

PSCC Technical instructions

- PSCC41-2008-07 Code of Good Practice
- PSCC53-2020-08 Definitions and Abbreviations

General Paris MoU

- PSCC54-2021-03 Type of inspection
- PSCC55-2022-10 Detention and Action Taken
- PSCC55-2022-08 Model forms
- PSCC52-2019-05 Operational control
- PSS43-2010-11 Flag State Exemptions
- PSCC48-2015-09 RO responsibility
- PSCC51 Stopping an operation
- PSCC49-2016-11 Black-out test
- PSCC53-2020-06 Refusal of Access (Banning)
- PSCC50-2017-12 Structure bulk carriers/oil tankers
- PSCC43-2010-06 Dry Docking
- PSCC53-2020-11 Allowing for a single voyage to a repair yard for "accidental damage" deficiencies

SOLAS Convention

- PSCC55-2022-09 ISM Code
- PSCC54-2021-02 ISPS Code
- PSCC51-2018-12 ECDIS
- PSCC43-2010-32 VDR (Voyage Data Recorders)
- PSCC43-2010-09 Material Safety Data Sheets
- PSCC43-2010-21 GMDSS
- PSCC44-2011-16 Lifeboat on-load release hooks
- PSCC45-2012-10 Damage stability on tankers
- PSCC55-2022-05 LRIT
- PSCC43-2010-28 Thickness measurements ESP/CAS
- PSCC43-2010-29 Thickness measurement
- PSCC51-2018-11 Polar Code
- PSCC55-2022-02 IGF Code

MARPOL Convention

- PSCC46-2013-18 MARPOL Annex I OWS
- PSCC43-2010-39 MARPOL Annex II Stripping
- PSCC47-2014-08 MARPOL Annex III IMDG
- PSCC55-2022-07 MARPOL Annex IV Sewage

- PSCC52-2019-07 MARPOL Annex V Garbage
- PSCC55-2022-11 MARPOL Annex VI Air Pollution
- PSCC43-2010-38 Crude oil washing
- PSCC44-2011-20 MARPOL Investigation

International Load Line Convention

- PSCC54-2021-06 International Load Line Convention

AFS Convention

- PSCC47-2014-13 Anti Fouling Systems

Bunkers Convention

- PSCC43-2010-08 Bunker Convention

Certification of Seafarers and Manning

- –SCC54-2021-04 Certification of Seafarers and Manning (STCW, MLC and SOLAS)

Ballast Water Management Convention

- PSCC51-2018-09 Ballast Water Management Convention

ILO Conventions

- PSCC52-2019-10 Maritime Labour Convention 2006 (MLC)
- PSCC53-2020-14 Hours of Work or Rest and fitness for duty.



ANNEX VII

EXPANDED INSPECTIONS OF SHIPS

(referred to in Article 14)

An expanded inspection concerns in particular the overall condition of the following risk areas:

- Documentation.
- Structural condition.
- Weathertight condition.
- Emergency systems.
- Radio communication.
- Cargo operations.
- Fire safety.
- Alarms.
- Living and working conditions.
- Navigation equipment.
- Life saving appliances.
- Dangerous goods.
- Propulsion and auxiliary machinery.
- Pollution prevention.

In addition, subject to their practical feasibility or any constraints relating to the safety of persons, the ship or the port, an expanded inspection shall include the verification of specific items of risk areas depending on the type of vessel inspected, as established in accordance with Article 14(3).

ANNEX VIII

PROVISIONS CONCERNING REFUSAL OF ACCESS TO PORTS AND ANCHORAGES WITHIN THE COMMUNITY

(referred to in Article 16)

1. If the conditions described in Article 16(1) are met, the competent authority of the port in which the ship is detained for the third time shall inform the master of the ship in writing that a refusal of access order will be issued which will become applicable immediately after the ship has left the port. The refusal of access order shall become applicable immediately after the ship has left the port after the deficiencies leading to the detention have been remedied.
2. The competent authority shall send a copy of the refusal of access order to the flag State administration, the recognised organisation concerned, the other Member States, and the other signatories to the Paris MOU, the Commission and the Paris MOU Secretariat. The competent authority shall also update the inspection database with information on the refusal of access without delay.
3. In order to have the refusal of access order lifted, the owner or the operator must address a formal request to the competent authority of the Member State that imposed the refusal of access order. This request must be accompanied by a document from the flag State administration issued following an on-board visit by a surveyor duly authorised by the flag State administration, showing that the ship fully conforms to the applicable provisions of the Conventions. The flag State administration shall provide evidence to the competent authority that a visit on board has taken place.
4. The request for the lifting of the refusal of access order must also be accompanied, where appropriate, by a document from the classification society which has the ship in class following an on-board visit by a surveyor from the classification society, showing that the ship conforms to the class standards stipulated by that society. The classification society shall provide evidence to the competent authority that a visit on board has taken place.
5. The refusal of access order may be lifted only after the period referred to Article 16 of this Directive has elapsed and **following a re-inspection of the ship at an agreed port the company must address a formal request to the port State authority of the Member State that imposed the ban and provide the documents requested in paragraphs 3 and 4.**

~~If the agreed port is located in a Member State, the competent authority of that State may, at the request of the competent authority which issued the refusal of access order, authorise the ship to enter the agreed port in order to carry out the re-inspection. In such cases, no cargo operations shall take place at the port until the refusal of access order has been lifted.~~

- ~~6. If the detention which led to the issue of a refusal of access order included deficiencies in the ship's structure, the competent authority which issued the refusal of access order may require that certain spaces, including cargo spaces and tanks, are made available for examination during the re-inspection.~~
- ~~7. The re-inspection shall be carried out by the competent authority of the Member State that imposed the refusal of access order, or by the competent authority of the port of destination with the agreement of the competent authority of the Member State that imposed the refusal of access order. The competent authority may require up to 14 days' notice for the re-inspection.~~

~~Evidence shall be provided to the satisfaction of this Member State that the ship fully complies with the applicable requirements of the Conventions.~~

- ~~8. The re inspection shall consist of an expanded inspection that must cover at least the relevant items of Annex VII.~~
- ~~9. All costs of this expanded inspection will be borne by the owner or the operator.~~
- ~~10. If the results of the expanded inspection satisfy the Member State in accordance with Annex VII, the refusal of access order must be lifted and the company of the ship informed thereof in writing.~~
- 6. Such a request including the required documents must be submitted to the banning State at least one month before the end of the ban period. If this deadline is not met, then a delay may occur of up to one month after the banning State received the request**
- 7. The information system will add an overriding factor to the ship and the ship will be indicated liable for the inspection type "Expanded inspection" at next call at port/anchorage in the region.**
8. The competent authority shall also notify its decision in writing to the flag State administration, the classification society concerned, the other Member States, the other signatories to the Paris MOU, the Commission and the Paris MOU Secretariat. The competent authority must also update the inspection database with information on the removal of the access without delay.
9. Information relating to ships that have been refused access to ports within the Community must be made available in the inspection database and published in conformity with the provisions of Article 26 and of Annex XIII.