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

of 23 April 2009

on port State control

(Recast)

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 100(2) thereof,

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Economic and Social Committee[1],

Having regard to the opinion of the Committee of the Regions[2],

Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) Directive 2009/16/EC of the European Parliament and of the Council[3] sets out rules on the system for port State control inspections, whereby eligible ships calling in Unionports are inspected to verify if the competency of the crew on board and the condition of the ship and its equipment comply with the requirements of international conventions on the safety of life at sea, ~~and~~ on the protection of marine environment and on-board living and working conditions of ships of all flags

(2) Directive 2009/16/EC is based on the pre-existing voluntary ~~ntergovernmental structure~~ agreement of the Paris Memorandum of Understanding on port State control (Paris MOU) and the notions of a shared inspection burden, risk-based targeting of ships for inspections, harmonised inspections and the sharing of inspection results.

(3) Since the Directive 2009/16/EC entered into force, there have been changes in the international regulatory environment (in particular in the Paris MOU and the International Maritime Organisation) and technological developments. Those changes as well as the experience gained from implementation of Directive 2009/16/EC should be taken into account.

(4) A number of international conventions have entered into force and been ratified by the Member States since 2011. These are the International Convention for the Control and Management of Ships' Ballast Water and Sediments (BWM Convention) and the Nairobi International Convention on the Removal of Wrecks (Nairobi Convention). Therefore, they should be included in the list of the Conventions covered by Directive 2009/16/EC, to allow them to be enforced as a part the port State control system.

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1 OJ C , , p. .

2 OJ C , , p. .

3 OJ L 131, 28.5.2009, p. 57

(5) To allow for an up to date and harmonised system of port State control it is necessary to have a swifter way to update the list of international conventions enforced by port State control without a need for amending the whole Directive. Therefore once an international Convention has entered into force – meaning that it has reached an agreed level of ratification - and following its adoption by the Members of the Paris MoU as a relevant instrument, the list of Conventions in the Directive should be updated by the Commission.

(6) Due to their small size, most fishing vessels in the EU operate in territorial waters, and are not susceptible to being inspected in foreign ports. This means that in general, only larger fishing vessels ~~above~~ of 24 meters length and above considering in length as defined in the Cape Town Agreement of 2012 (which are also the fishing vessels which are most subject to international conventions) are likely to engage in international waters and call at ports different than those in the country where they are registered and therefore be subject to PSC. As the majority of the international conventions applicable to larger fishing vessels are different to those which are currently enforced through port State control and to avoid undesirable spill over effects onto the current port state control system, a parallel system of port state control for fishing vessels is being proposed.

Comment Pcy. We cannot use LL66 since it is not applicable to FV nor tonnage because it is a different L. Improvement made to the text.

(7) However, due to the patterns of fishing not all EU Member States are visited by these larger fishing vessels. Therefore, a voluntary system for those EU Member States that wish to carry out these inspections and which is parallel and separate from the current port state control regime is being proposed to allow for flexibility and the way that standards are developed in port State control. This system of port State control of fishing vessel of ~~over~~ 24 metres in length and above can therefore be developed organically by Member States, the Paris MoU and the Commission without incorporating them in the current Paris MoU agreement.

(8) The fair share mechanism provides a distribution of the inspection burden among the Member States of the Paris MOU. Each Member State is allocated a certain number of inspections – its inspection commitment or 'fair share' - to be carried out each year. Eligibility for inspection is primarily determined by ~~the length of time~~ the ship risk profile (SRP) which stablishes the intervals between inspections and the scope of the ~~inspection~~ same ~~which has passed since the last inspection~~. Priority II ships may be inspected while Priority I vessels shall be inspected.

Comment Pcy. The ship risk profile determines the intervals and scope

(9) Member States are permitted to ~~to miss~~ not carry out a certain number of compulsory inspections and still comply with their inspection commitment. However, for some Member States the number of ship calls that actually occur during a given year can either exceed or be less than the allocated inspection commitment. An alternative method of compliance to the fair share obligation for these (over-burdened or under-burdened) Member States was found to be inflexible, therefore it is necessary to align the provisions concerned with the revised Paris MOU provisions.

(10) Member States are also allowed to postpone inspections of ships under certain circumstances, provided that the vessel is inspected in the next port of call or within 15 days and this possibility is modified so that it can availed of by all Member States. Certain categories of. vessels which are ~~perceived to present a higher risk and which are therefore~~ eligible for an expanded inspection are required to notify their estimated time of arrival to a port 72 hours in advance of their arrival. However after a number of years, it was concluded that this obligation was too burdensome on operators . Since there may be a need to plan and prepare the expanded inspections the need to notify is kept in limited cases ~~and added no value as the national authorities already have the information required more easily available in the THETIS database. On this basis the Paris MOU abolished this pre-arrival notification obligation therefore Directive 2009/16/EC should be aligned accordingly~~.

Comment Pcy. The current directive lintks ETA 72 when the ship is subjecy to an expanded inspection.

(10bis) In normal circummstances inspections of Priority II ships are not mandatory although Priority II vessels may be inspected. However for undeburdened states these Priority II ships have to be inspected to reach its annual inspection commitment. Since these inspections become, de facto, mandatory for underburden states, for these states these inspections of Priority II ships can be postponed. Member States and the Commission should make their best efforts, in the framework of the Paris Memorandum of Understanding, to propose the necessary measures and amendments to clarify and fulfil this objective, without prejudice to taking the technical measures to adjust the existing inspection database with regard to postponement.

Comment Pcy. To solve the issue of the agreements made at PSCC 47 and 50 and the incorporation of postponenments in PII ships.

(11) Over the last decade and despite increases in the number of vessels calling ~~to~~ EU ports including the short sea shipping transport of goods between main ports in the EU Member States and ports situated in geographical Europe or in non-European countries on the Mediterranean and the Black Sea, the safety profile of vessels calling ~~to~~ EU ports has improved ~~considerably~~. Port State control inspections are being increasingly used to enforce environmental legislation such as in relation to sulphur emissions or the safe and environmental scrapping of ships. ~~The "Fit for 55 package" aims to reduce the EU's total green-house gas emissions by 55% by 2030, paving the way to climate neutrality by 2050 and maritime transport is expected to contribute to this effort~~. However, the ship risk profile devised prior to 2009 had different priorities and is not fully adapted to focus the inspection effort on the least environmentally performing vessels. Once the IMO agrees on an indicator that measures ~~GHG~~ greenhouse gas emissions (GHG) (intensity in a consistent manner the Member States and the Commission could engage in discussions at the first place within Paris MoU to include such parameter in the ship risk profile

Comment Pcy. Deleted since no prevalence will be given to GHG related deficiencies, but added text looks forward to have a good indicator in the future.

(12) On this basis, the ship risk profile should be updated to reflect environmental issues by attaching more importance to the environmental performance~~, including the operational carbon intensity of the ships being inspected as well as to environmental related deficiencies and detentions.~~

Comment Pcy. Deleted since no prevalence will be given to GHG related deficiencies

(12bis) A new methodology has been adopted by the Paris MoU in 2019, establishing high, medium and low performance lists as an alternative for the white, grey and black list of flag States.~~as it would facilitate significant reduction of substandard ships.~~ Special care should be paid to the Implementing Regulation referred to in Article 10 on Ship risk profile which establish categorization of Flag States. This methodology should be implemented in this directive in order to ensure its fairness, in particular with respect to the way it treats flag States with small fleets.

Comment Pcy. New recital to take into account new categorization.

(12ter) Since Port state control officers need to have time to prepare and to carry out the inspections, it is important to ensure that sufficient time is available. This is particularly relevant in the case of expanded inspections and also for inspections in ro-ro passenger ships in regular service where the operation of the vessel may be considered.

Comment Pcy. New recital to consider the amendment to article 14a to be able to prepare the inspection of the ship.

(13) Digitalisation is an essential aspect of technological progress in the area of data collection and communication with a view to helping to bring down costs and making efficient use of human resources. The number of ships currently carrying electronic certificates is on the rise and expected to increase. Therefore the effectiveness of port State control should be enhanced by making more use of electronic certificates to allow for more ship focussed better prepared inspections. ~~The uptake and use of these electronic certificates should be incentivised by their inclusion in the ship risk profile.~~

Comment Pcy. Deletion since no impact on the SRP is included

(14) Port State control has been increasing in complexity as new inspection requirements are added, either by EU law or via the International Maritime Organization. There is therefore a need to ensure the upskilling and reskilling of the port State control officers and continuously develop their training.

(15) ~~Union Flag State administrations in line with Directive 2009/21/EC of the European Parliament and of the Council[4] are required to have a quality management system in order to help Member States to further improve their performance as flag States and to ensure a level playing field between administrations. A similar requirement for the port~~

[4] Directive 2009/21/EC of the European Parliament and of the Council of 23 April 2009 on compliance with flag State requirements (OJ L 131, 28.5.2009, p. 132).

~~state control activities should allow Member States to certify that their organisation, its policies, processes, resources and documentation are appropriate to achieve its objectives as well as identify system problems such as resource or personnel allocation issues before these become problematic.~~

Comment Pcy. Deleted as a consequiential request by MS to amend the article related to 30 . The Paris MoU organisational structure, its policies, processes, resources and documentation (manual, instructions, circulars) are appropriate to achieve the objectives as well as identify system problems such as resource or personnel (via yearly commitment figures) allocation issues before these become problematic. An oversight system is already in place.

(16) In order to allow for an up-to date application of the provisions of this Directive to allow Member States to fulfil their obligations under international law in compliance with the Directive, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of updating the Conventions within the scope of Directive 2009/16/EC and amending the list of procedures and guidelines relating to port State control adopted by the Paris MOU. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making[5]. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

(17) In order to ensure uniform conditions for the implementation of the provisions of Directive 2009/16/EC concerning the list of Conventions under its scope~~, the voluntary port state control regime for fishing vessels above 24 meters length overall, the conditions for the application of Annex VII on expanded inspection, the uniform set of safety and security guidelines and procedures, as well as~~ and the requirements for electronic certificates, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council[6].

~~**(18) In order to improve the quality of port state control inspections in marine areas close to the EU all eligible Member States are encouraged to join the Mediterranean MoU on port State control (Med MOU).**~~

Comment Pcy. Deleted as requested by some Mediterranean MS.

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5 OJ L 123, 12.5.2016, p. 1.

6 Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

(19) In view of the full monitoring cycle of visits to Member States by the European Maritime Safety Agency (EMSA) to monitor the implementation of Directive 2009/16/EC, the Commission should evaluate the implementation of Directive 2009/16/EC no later than [ten years after its date of application referred to in Article XX)] and report to the European Parliament and the Council thereon. Member States should cooperate with the Commission to gather all information necessary for this evaluation.

(20) Since the objectives of this Directive, cannot be sufficiently achieved by the Member States because of the international nature of maritime transport but can rather, by reason of the network effects of member States acting together, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.

(21) Directive 2009/16/EC should therefore be amended accordingly,

(22) Recital "force majeure"

Comment Pcy. To be drafted with Council Secretariat and CLS

(22bis) 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.[7]

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 harmonizing 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.

[7] Under scrutiny by the CLS

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:

Comment Pcy. "Up-to-date version" term will be adjusted with CLS

(a) the International Convention on Load Lines, 1966 (LL 66);

~~**(abis) the Protocol of 1988 relating to the International Convention on Load Lines, 1966**~~

(b) the International Convention for the Safety of Life at Sea, 1974 (SOLAS 74);

~~**(bbis) the Protocol of 1988 relating to the International Convention for the Safety of Life at Sea, 1974**~~

(c) the International Convention for the Prevention of Pollution from Ships, 1973, **and** the 1978 Protocol relating thereto (Marpol 73/78) ~~**and the 1997 Protocol;**~~

Comment Pcy Although Paris MoU also refers to them we delete them since they are included within the definition of conventions.

(d) the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW 78/95/10) ~~and the Manila amendments to the STCW Convention and Code;~~

Comment Pcy. To include Manila Amendments in a simplified manner

(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).

~~[~~**(n) The Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships 2009 (Hong Kong Convention)**~~]~~

Comment Pcy. HK will be an IMO mandatory instrument in June 2025. We incorporate it

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.

~~6bis "visit" means each time an inspector is on board a ship to carry out an inspection referred to this directive. An inspection is composed of one or several visits~~

Comment Pcy. This definition is not needed. Clarity is added with the new sentence in para in 2. 7bis

~~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~~. The activities carried by the inspector shall not lead to the issuance, endorsement or renewal of statutory certificates.~~

7bis "Inspection" means an overall verification of the condition of the ship, its equipment and its crew based on the applicable Conventions and carried out by an inspector. The inspection is not a survey for the issuing, endorsement or renewal of statutory certificates and the inspection report provided to the captain is not a certificate. An inspection is composed of one or several visits.

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~~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 an inspection ~~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 including the scope of an initial 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, including the scope of an initial 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.

Comment Pcy. "Up-to-date version" term will be adjusted with CLS

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 shipsand high-speed passenger craft carried out outside a port or away fromaan 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 **with a *"no more favourable treatment clause"*,** 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 less than ~~**below**~~ **24 meters** ~~**overall**~~ **in length** ~~**as defined referred to directive 97/70/EC** the Cape Town Agreement of 2012 for the purpose of this directive,~~ 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. For the purposes of this directive a fishing vessels length shall be defined in accordance with the Cape Town Agreement of 2012

Comment Pcy. Editorial correction

4a. Member States may carry out port state control inspections of fishing vessels of ~~**above from**~~ **24 metres length** and above ~~**as referred to in directive 97/70/EC overall.**~~ **The Commission, in cooperation with Paris MoU may** ~~**shall**~~ **adopt** ~~**implementing acts guidance**~~ **guidelines establishing the modalities of such a parallel specific port state control regime for these fishing vessels** ~~**above 24 meters length overall. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 31(2).**~~

Comment Pcy. The system will be parallel meaning that a separate Thetis database should be developed as informed by COM.

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.~~

Comment Pcy Repeated below and therefore deleted.

(a) inspect all Priority I ships, referred to in Article 12(a), calling at its ports and anchorages; and

(b) 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~~ of ships carried out by Member States ~~exceeding when~~ its annual inspection commitment ~~has been exceeded~~ by inspecting more than 20% ~~[150%][120%]~~ shall not be taken into account in the calculation of the annual inspection commitment of Member States parties to the Paris MOU.

Comment Pcy. We lower the fair share exceed to 120%. We will send the text to translators with the note to avoid a misinterpretation (220%) and indicate that 20% excess is the limit as indicated by two MS.

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 ~~sub~~paragraph**, 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 ~~sub~~paragraph**, 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.

Comment Pcy. Editorial to refer to paragraphs in this article

Article 7

Modalities allowing a balanced inspection share within the ~~Community~~ Union

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 %~~][40%] of the total number of Priority I ships calling at its ports and anchorages.

Comment Pcy. To fix the problem indicated by NL with regards to PI and PII ships and the uncertainty of what may happen and to avoid the cancellation of PII inspections and the need to do PI inspections which may not be achievable. NL proposed to delete "on priority I ships". Missed inspections are lost and therefore the % of miss inspections would need to be increased in order to fulfil the inspection commitment. If we want to include PII inspections that were carried out, we also need to consider the "missed inspections" by increasing the miss rate to 40%.

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), excluding justified misses, 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.

~~**2bis If an inspection is postponed in accordance with paragraph 1 and 2 and recorded in the inspection database, it shall not be counted for the Member State compliance with Articles 6 and 7**~~

Comment Pcy. Wrong placement. Moved to article 8. See New 8.4

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:

Comment Pcy. We have seen that this issue was agreed at PSCC 49 although PII ships are not required to be inspected. This issue is complex. Paris MOU should agree on this issue. We offer a new recital 10bis to explain the situation.

(a) if the inspection may be carried out at ~~the next~~ any subsequent 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 except any ports of the ship´s flag State, and the postponement is not more than 15 days from the actual time of departure; ~~or~~

Comment Pcy. To address the issue of ships calling its own country to be postponed. ATD added.

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

~~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.~~

~~Inspections which are postponed in this way and recorded in the information system are not considered as missed inspections.~~

Comment Pcy. This paragraph is kept in Paris MoU. See para 4 below, with that inclusion we may delete it this one. ATD added

(c) if the inspection for a ship, including ro-ro passenger ship or high-speed passenger craft operating on a regular service, may be carried out in the same port of call within 15 days from the actual time of departure

Comment Pcy: To give time to arrange for a proper survey and do not add missed inspections on a continuous basis on ships including ropax and HSC when ships will be inspected in the same port of call.

~~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:

Comment Pcy. We have seen that this issue was agreed at PSCC 49 although PII ships are not required to be inspected. See recital 10bis

(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~~9)).** In this case Member States shall take the measures necessary to ensure that ships which call regularly during night time are inspected as appropriate; **or**

Comment Pcy. COM to check reference to 2(10). Short duration added here

(c) additionally in the case of a ship calling ~~which in~~ a port ~~or calls at an anchorage within the jurisdiction of a port~~ and ~~the if its~~ duration of the call is too short for the inspection to be carried out satisfactorily~~; or~~

Comment Pcy. Adjustment proposed by SE, Anchorage dealt with in para 3

~~(d) in cases of force majeure and~~ pandemic ~~situations (as provided in article 8a); or~~

Comment Pcy. Art 8a and force majeure dealt with in para 4 of this article.

~~(e)the ship is towed due to the conditions imposed by the flag state, not in the condition to comply with the applicable Conventions or not manned with the minimum of manning as required by the flag State.~~

Comment Pcy. The case of towing has been tried to be clarified but it becomes complex to add conditions i.e. that the certificates need to record towing. This proposal (e) is therefore. (d) is deleted. The discussion should be held at Paris MoU

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.

~~d) in cases of force majeure and pandemic situations (as provided in article 8a); or~~

Comment Pcy. Art 8a and force majeure dealt with in para 4 of this article

4. If an inspection is not performed due to extraordinary and unforeseen circumstances, such as pandemic, it shall not be counted as a missed inspection and the reason for missing the

inspection shall be recorded in the inspection database. These circumstances shall be duly justified and reported to the Commission.

Comment Pcy. Art 8a "force majeure" deleted. We address the issue in combination with para 5 below.

~~5~~4. The ~~If an~~ inspections ~~is~~ postponed in accordance with paragraphs 1, 2, ~~or~~ 3 or 4 and recorded in the inspection database, ~~it~~ shall not be counted for the evaluation/assessment of the Member State compliance with inspection commitment referred in with Articles 6 and 7

Comment Pcy. Para moved from 7.2 and extended to cover the cases in 1,2 and 3. Deletion of paragraph below art 8.1 can be made.

~~***Article 8a***~~

~~**Force majeure and Crisis situations pandemics**~~

~~**Without prejudice to provisions concerning force majeure in the IMO Conventions,** **failure to carry out an inspection due force majeure including pandemics *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.**~~

Comment Pcy. Art 8a "force majeure" deleted. We address the issue in combination in para 8.4 in combination with para 5 above.

~~*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' notifi-cations.~~

Note Pcy. This article is deleted. 72-hour issue addressed in article 14.

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 and environmental risk parameters as follows:

Comment Pcy. As suggested by FI since a new category is introduced

(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 and being a ground for detention ~~seriousness~~ of deficiencies relating to MARPOL, AFS, BWM Convention, CLC 92, Bunkers Convention~~, and~~ Nairobi Conventions and Hong Kong Convention in accordance with Annex I, Part I.3 and Annex II.

Comment Pcy. Deficiency proposed is already within MARPOL. Paris MoU to revise deficiency codes and include from 1 June 2024 a "*Statement of Compliance – Fuel Oil Consumption Reporting and Operational Carbon Intensity rating rating*" as per MARPOL Annex VI, Appendix X is available on board (Applicable for vessels above 5000 GT),

3. Implementing powers shall be conferred on the Commission to implement a methodology for the consideration of generic risk parameters relating in particular to the flag State criteria and company performance criteria adopted by Paris MOU in 2019 establishing high, medium and low

performance lists. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 31(3).

Comment Pcy. To refer to the criteria adopted in 2019. CLS to check reference to Art 31 (3) non existing

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) is satisfied ~~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)~~

Comment Pcy. Deleted since it is in accordance with the deletions related to unexpected factors.

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, NLS or chemical tankers or bulk carriers, older than 12 years of age,

— ships with a high risk profile or passenger ships, oil tankers, gas, NLS or chemical tankers or bulk carriers, older than 12 years of age, in cases of overriding or unexpected factors,

— ships subject to the ~~re-~~inspection following a refusal of access order issued in accordance with Article 16 **and 21.4**

Comment Pcy Procedure should also apply to the ships banned in accordance with article 21.4. Inspection after banning needs to be expanded. An editorial has been made to delete "re" since reinspections will disappear

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].~~

3. The operator, agent or master of a ship which is eligible for an expanded inspection and bound for a port or anchorage of a Member State, shall notify the estimated time of arrival, at least 72 hours in advance or before leaving the previous port or anchorage if the voyage is expected to take fewer 72 hours. 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.

Comment Pcy. If Art 9 is deleted the inspection that currently appears in Thetis would disappear. We have checked this. We include 72 hours for expanded inspections.

4. **An expanded inspection shall be carried out, as far as possible, 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)**.

Comment Pcy. Text softened. It is not always possible to do carry out an expanded inspection with two inspectors.

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.

4bis The operator or master of the ship shall ensure that sufficient time is available within the operating schedule to allow the inspections provided for in 1.1 and 2.a) of Annex XVII to be carried out.

Comment Pcy. Text linked with recital (12ter)

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.

3. 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).

Comment Pcy. Editorial. Renumbered

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

Comment Pcy. There are consequential amendments to Annex XII and these need to be incorporated. If Annex XII is a copy of an Annex to the Paris MoU the annex in the directive could be deleted.

— 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~~ 6 of Annex VIII are met.

Comment Pcy. Relevant parts of Annex VIII, mentioning the conditions to lift the ban, are contained in paragraphs 3 to 6. To assess in Annex VIII is needed. If not a reference to the Paris MoU instructions can be made.

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** ~~-~~ in a port or anchorage of a Member State or of a State signatory of the Paris MoU 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:

Comment Pcy. To be consistent with paras 3 and 4 and not to exclude detentions within PMoU members out of the EU.

~~— 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,~~ **(NEW) (a) the ship flies the flag of a State whose detention rate falls neither into the low performance list nor the medium performance list referred to in paragraph 1,**

Comment Pcy. This point may have been deleted accidently. However, it should remain in the text of the Directive as it is part of the agreed Paris MoU text, Section 4.1.4. PSCC55. For lifting the third banning due to multiple detention, ship is requested to fly a flag of the high performance list.

— **~~(a)~~(b)** 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 Council[29] ~~of 23 April 2009 on common rules and standards for ship inspection and survey organisations (recast) (1)~~,

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

— ~~(c)~~(d) the conditions **listed** in paragraphs 3 to **6 ~~9~~** of Annex VIII are met.

Comment Pcy. To introduce the right references.

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~~** in a port or anchorage of a Member State or of a State signatory of the Paris MoU 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 visit 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 provided 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. (reformular con la conversación con RITA y la Comisión)~~

~~If at the time of the first ship/port interface visit 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.~~

~~Refusal of access periods for multiple detentions will be extended by 12 month when a refusal of access measure in accordance with article 21.4 applies.~~

5.

4a. A ship flying the flag of a State listed in the high performance list and which is detained in a port or anchorage of a Union at the time of its first inspection in Union after the third or any subsequent refusal of access [of this ship], shall:

a) be refused to access any Union port or anchorage for a period of 24 months, if the statutory and classification certificates of the ship are issued by an organisation or organisations recognised under Regulation (EC) No 391/2009;
b) be permanently refused access to any Union port or anchorage if the statutory or classification certificates of the ship are not issued by an organisation or organisations recognised under Regulation (EC) No 391/2009.

Refusal of access periods for multiple detentions will be extended by 12 months when a refusal of access measure in accordance with article 21.4 applies.

Comment PCY. This paragraph should be inserted within the Directive as it was decided within the Paris MoU and has to be reflected in the Directive accordingly***. The text has been redrafted because both the text in the directive and in Paris MoU were confusing.***

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.

Comment Pcy. To simplify the definitions following the modifications in the definitions

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 Administration.

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 ~~any decision resulting in~~ 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 and to detained ships referred in article 19.2:

Comment Pcy. We have made the necessary readjustments in para 5 to include:

- Detained ships willing to solve the deficiencies in the port where they were detained; and
- Detained ships that require to go to a shipyard for repairs.

We also feel that the new text covers the situation of a ship that has been detained, does not require to go to a shipyard but escapes

(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 and the conditions in paragraphs 3 to 6 of Annex VIII are met. 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.**~~

Comment Pcy. We are of the opinion that the procedure for lifting the ban should be consistently the same applied for the refusal of access measure issued in accordance with article 16 on « multiple detentions.

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.~~ inform the authority of the Member State that detained the ship whether the ship arrives or not. When the competent authority of the Member State where the ship was found defective is aware that ship didn't call at repair yard, it shall immediately alert the competent authorities of all the other Member States

In the circumstances referred to in paragraph 4(b) and if the repair yard is not in a Member State, when the competent authority of the Member State where the ship was found defective is aware that ship didn't call at repair yard, it shall immediately alert the competent authorities of all the other Member States.

Comment Pcy. We have slightly modified the text to give more clarity. If the she ship did not call and the state where the yard notifies, the country which issued the report with the deficiencies can, when notified, can ban.

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

Comment Pcy. There is a proposal to delete article 21.5 because ships can enter port in case of force majeure. We need IT to clarify their proposal before deletion.

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 **according to article 21.1**, 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.

Comment Pcy. The provision refers to the case where a banned ship is allowed to enter a port in case of danger. Reference to the case where the ship should enter a port "to have deficiencies rectified" is too generic and may create a non-harmonized approach. An addition is made to delimitate the cases.

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 period ically 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 based on ~~taking into account~~ the expertise and the experience gained at Member State level in the Union and under the Paris MoU**, the Commission **may ~~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.~~ guidance and recommendations to improve the Paris MoU Training Policy.**

Comment Pcy. Support a need of close cooperation with the Paris MoU and its (also NON-EU) Member States. Member States need flexibility to adjust their national training to the individual requirements. This is already recognized within the Presidencies' compromise proposal for amending the Flag State Directive with regard to the development of a training scheme by the Member States (Article 4c). This proposal reflects that training of inspectors and surveyors is within the prerogative of the Member States as was previously already underlined

In cooperation with the Member States and Paris MoU, the Commission shall on a continuous basis identify and provide new training needs as input to amend the agreed 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.

Comment Pcy. Support a need of close cooperation with the Paris MoU and its (also NON-EU) Member States. Text agreed added to clarify that the curricula is to be agreed at Paris MoU

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 frame~~ three hours from the arrival and the departure time respectively to the inspection database through the ~~Community~~ **Union** maritime information exchange system 'SafeSeaNet' referred to in Article 3 **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** 1.2 and 2(a) and (b) of Annex XIV to this Directive.

Comment Pcy. MS supported to keep 3 hours from the departure. ATA to be updated 3 hours after arriving and ATD to be updated 3 hours after departure. ATA and ATD must be transmitted with respect to arrival and departure

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~~/[should]~~ be validated, as far as possible, before its transfer to the database, by a port State control inspector who was not part of the team that carried out the inspection.**

Comment Pcy. There could be regional ports where only one inspector is assigned or the other inspector is not available for other reasons. CLS consulted, "shall" needs to remain

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

~~[~~1.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 and, validation tool of electronic versions of statutory certificates ~~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).~~]~~**

Comment Pcy. Further streamlined. Text aligned with Art 6.a.5bis of FS directive

2. The Member States in their function as flag states ~~may~~ opting to use the harmonised reporting interface, validation tool ~~and a central repository/database~~ for electronic versions of the ~~[~~statutory~~]~~ certificates ~~[listed in Annex IV and referred to in Article 13(1)]~~, may do so 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.**~~

Comment Pcy. No need to reflect e-certificates in SRP. Not linked to safety

~~**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.**~~

Comment Pcy. Consequential deletion.

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,~~

Comment Pcy. Text is kept deleted because Art 9 is deleted.

— (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 Council**[30], 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**,

Comment Pcy. There are proposals interlinked with the deletion of article 9. Once this sorted out the text may be adjusted.

— **(b)** information concerning ships which have proceeded to sea without having complied with Articles ~~or~~ 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** **may** ~~**shall**~~ **develop, implement and maintain 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.**~~]~~

Comment Pcy. Consequential amendments due to the lack of an overall benefit. Some MS requested deletion of this paragraph

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,** decisions **and guidelines** relating to port State control adopted by the Paris MOU ~~Organisation~~ **set out in that Annex**.

Comment Pcy. To include this element.

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 [the end of the transposition period] **[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.

Comment Pcy. Date to be adjusted at the end of the negotiation. To be adjusted by the Council Secretariat

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.~~

Comment Pcy. This may cause a discrepancy between IMO and EU law and may have very serious consequences for PSC onboard non-EU flag ships. It is proposed to delete it. To be adjusted by the Council Secretariat

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.

Comment Pcy. Implementing rules adjusted following deletions.

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.

Note Presidency: COUNCIL IS CHECKING THESE ARTICLES BELOW TO SEE HOW THEY MATCH IN THE TEXT OR WHETHER THEY NEED ANY AMENDMENT IN VIEW OF ARTICLES 1,2 AND 3 OF THE PROPOSED DIRECTIVE AMENDING 2009/16/EC

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**.

[(1) Annex I is amended in accordance with Annex I to this Directive.

(2) Annex II is replaced by the text in Annex II to this Directive.

(3) Annex III is deleted.

(4) Annex IV is replaced by the text in Annex III to this Directive.

(5) Annex V is replaced by the text in Annex IV to this Directive.

(6) Annex VIII is replaced by the text in Annex V to this Directive.

(7) Annex XXX (depends on annexes to be deleted)]

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]

Comment Pcy. Council Secretariat to check and amend text considering that the transposition would be 48 months after the entry into force of the directive.

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.

Article 37

Repeal

Directive ~~2009/16/CE~~ 95/21/EC, as amended by the Directives listed [in Annex XV, Part A], is hereby repealed, with effect from [1 January 2011] [48 months after publication], 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.

Comment Pcy. Council Secretariat to check considering that the transposition would be 48 months after the entry into force of the directive.

[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].

Comment Pcy. Council and CLS to check

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 39

Addressees

This Directive is addressed to the Member States.

Article 2

Transposition

1. Member States shall adopt and publish, by ~~*[OP: Please insert a date:*~~ ~~*one*~~ ***four*** *years from the date of entry into force of this amending Directive*~~*]*~~ the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.

Comment Pcy Proposes four years for transposition after entry into force**.**

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

3 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 transposition of this directive.

Comment Pcy CLS to check.

Article 3

Entry into force

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

Article 4

Addressees

This Directive is addressed to the Member States.

ANNEXES TO THE DIRECTIVE

Comment Pcy. In order to provide legal certainty and since we could not find the reasons why annexes were added Annexes other than AIII would not be deleted.

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**~~ **has ratified all of the mandatory IMO and ILO 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**~~.

Comment Pcy. The requirement for the Flag State to demonstrate compliance with III code (IMO audited) is an additional requirement beyond the ratification of all relevant

instruments; however, the IMO audit is no longer a “generic parameter” to calculate the SRP and therefore should be deleted

(iv) ~~Ships flying the flag of a State which has furnished electronic versions of the statutory certificates set out in points 1-X.X of Annex IV.~~

Comment Pcy. Deletion accordingly to the main text. The use of electronic certificates is not appropriate to be used as a parameter within the ship risk profile in terms of safety environmental protection,security or labour issues.

~~(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.

(iii) Ships with certificates issued by organisations recognised under the terms of Regulation (EC) No 391/2009.

~~(e)~~ Company performance

~~() 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.~~

(i) Ships of a company with a low or very low performance as determined by its ships' deficiency and detention rates within the Community and the Paris MOU region shall be considered as posing a higher risk.

~~() 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~~.

(ii)) Ships of a company with a high performance as determined by its ships' deficiency and detention rates within the Community and the Paris MOU region shall be considered as posing a lower risk

Comment Pcy.Not right here.Replaced by the right references

(iii) ~~Ships with certificates issued by organisations recognised under the terms of Regulation (EC) No 391/2009.~~

Comment Pcy. It is understood that this covered by item (d)

~~(f)~~ 2. **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)~~ **3. 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 more ~~less~~ than the number of deficiencies** and being a ground for detention r**elating to MARPOL, AFS, BWMC**, Nairobi and Hong Kong Convention **referred to in Annex II, shall be considered as posing a higher ~~lower~~ risk.**

Comment Pcy. CII not supported. Text modified to adjust to risk. Environmental deficiencies are link to HRS.

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-, or
  - **Previously banned ships (next inspection after lifting of the refusal of access order)**, or

Comment Pcy. insert the above mentioned as overriding factors, since it is already agreed within the Paris MoU

  - **have been involved in a severe incident, especially a major fire on board, engine breakdown and fatal accidents.**

Comment Pcy. insert the above mentioned as overriding factors, because these factors are missed within the daily work and the other listed factors do not fit for those situations.

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 and which may include information from Vessel Traffic Services about ships' navigation.
- 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** ~~–~~, **Directive (EU) 2019/883** ~~and if appropriate in Regulation (EC) No 725/2004~~.

Comment Pcy. Consequential deletion of Art Directives 2002/59/EC and regulation 725/20024 deleted

- 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.

Comment Pcy. Claims in 2B are not mandatory. Moving to 2A may bring consequences. Not all claims need to be solved at next port when agreed (could be after further port calls). Not moved to overriding factors (2.A) (complaints out of the Maritime Labour Convention to be rectified at next port)

- **Ships reported with an outstanding ISM deficiency (3 months after issuing of the deficiency.**

Comment Pcy Added because it is already at Paris MOU.

- 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**~~.

Comment Pcy. Deleted because it is not at Paris MOU.

- 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,

(b) 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. 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.
- **An expanded inspection shall be carried out on any ship in the first inspection following lifting of a refusal of access order**

Comment Pcy. Agreed at Paris MoU.

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

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(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 **NLS**	~~**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	Flag	**All IMO/ILO instruments listed in Article 2 ratified**		-	-		Yes
~~**3c**~~		~~**E-Certificate**~~					~~**Yes**~~
4a	Regcognised organisation	Performance	H	-	-		High
			M	-	-		-
			L	Low	1		-
			VL	Very Low			-
4b	Regcognised organisation	EU recognised		-	-		Yes
5	Company	Performance	H	-	-		High
			M	-	-		-

			L	Low	2		-
			VL	Very low			-
Historical parameters							
6	Number of deficiencies recorded in each insp. within previous 36 months		Deficiencies	>6 in one of the inspections,	~~1~~ Missing number		**≤ 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 and Hong Kong Conventions recorded in each inspection within previous 36 months**		**Deficiencies**	**>3 in one of the Inspections, being one of them ground for detention**	**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.

Comment Pcy. Consequential amendments to the text. We have examined the changes proposed by FI. Having consulted the pwp provided by COM and the support provided at the last meeting we would keep the text as shown.

~~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))

Comment Pcy. To check whether this annex is needed in view of the agreed annex at Paris MoU. We note that Part B contains a large number of documents and an additional section has been added.

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-2/15.2.3);
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, inac-curacies 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))

[All technical instructions and circulars issued by Paris MoU and in force]

Comment Pcy: A dynamic reference is included (PL)

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 Date 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)

~~**Instruction PSCC53-2020-06 Refusal of Access (Banning)**~~

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. **The document may be in the form of an official statement which has to be issued by the flag Administration and not a recognised organisation.**
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.

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.

7. 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.

8. 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.

Council of the European Union
General Secretariat

Brussels, 23 October 2023

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WORKING DOCUMENT

From:	Presidency
To:	Working Party on Shipping
N° prev. doc.:	13220/23
N° Cion doc.:	10126/23 + ADD 1-4
Subject:	Proposal for a Directive of the European Parliament and of the Council amending Directive 2009/16/EC on port State control - Consolidated version incorporating the third Presidency compromise

Delegations will find attached a consolidated version of Directive 2009/16/EC with the amendments in the Commision proposal, which incorporates the Presidency compromise proposals in document 13785/2/23 REV 2.

Compared to the previous consolidated text of the proposal (document WK 13220/23), modifications/ inclusions/deletions are shown on a green background.