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⁽¹⁾ Text with EEA relevance

I

(Acts whose publication is obligatory)

COMMISSION REGULATION (EC) No 107/2002
of 21 January 2002
establishing the standard import values for determining the entry price of certain fruit and vegetables

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Commission Regulation (EC) No 3223/94 of 21 December 1994 on detailed rules for the application of the import arrangements for fruit and vegetables ⁽¹⁾, as last amended by Regulation (EC) No 1498/98 ⁽²⁾, and in particular Article 4(1) thereof,

Whereas:

- (1) Regulation (EC) No 3223/94 lays down, pursuant to the outcome of the Uruguay Round multilateral trade negotiations, the criteria whereby the Commission fixes the standard values for imports from third countries, in respect of the products and periods stipulated in the Annex thereto.

- (2) In compliance with the above criteria, the standard import values must be fixed at the levels set out in the Annex to this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

The standard import values referred to in Article 4 of Regulation (EC) No 3223/94 shall be fixed as indicated in the Annex hereto.

Article 2

This Regulation shall enter into force on 22 January 2002.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 21 January 2002.

For the Commission
Franz FISCHLER
Member of the Commission

⁽¹⁾ OJ L 337, 24.12.1994, p. 66.

⁽²⁾ OJ L 198, 15.7.1998, p. 4.

ANNEX

to the Commission Regulation of 21 January 2002 establishing the standard import values for determining the entry price of certain fruit and vegetables

(EUR/100 kg)

CN code	Third country code ⁽¹⁾	Standard import value
0702 00 00	052	121,9
	204	102,1
	212	121,5
	624	242,6
	999	147,0
0707 00 05	052	190,2
	628	191,7
	999	190,9
0709 90 70	052	185,4
	204	348,6
	999	267,0
0805 10 10, 0805 10 30, 0805 10 50	052	56,2
	204	59,0
	212	45,4
	220	52,1
	508	13,4
	999	45,2
0805 20 10	204	94,3
	999	94,3
0805 20 30, 0805 20 50, 0805 20 70, 0805 20 90	052	60,6
	464	94,0
	624	81,5
	999	78,7
0805 50 10	052	55,8
	600	48,8
	999	52,3
0808 10 20, 0808 10 50, 0808 10 90	060	38,2
	400	109,1
	404	95,8
	720	113,6
	728	105,5
	999	92,4
0808 20 50	400	111,4
	512	64,6
	720	88,1
	999	88,0

⁽¹⁾ Country nomenclature as fixed by Commission Regulation (EC) No 2020/2001 (OJ L 273, 16.10.2001, p. 6). Code '999' stands for 'of other origin'.

COMMISSION REGULATION (EC) No 108/2002
of 21 January 2002
amending representative prices and additional duties for the import of certain products in the
sugar sector

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1260/2001 of 19 June 2001 on the common organisation of the markets in the sugar sector ⁽¹⁾,

Having regard to Commission Regulation (EC) No 1423/95 of 23 June 1995 laying down detailed implementing rules for the import of products in the sugar sector other than molasses ⁽²⁾, as last amended by Regulation (EC) No 624/98 ⁽³⁾, and in particular the second subparagraph of Article 1(2), and Article 3(1) thereof,

Whereas:

- (1) The amounts of the representative prices and additional duties applicable to the import of white sugar, raw sugar and certain syrups are fixed by Commission Regulation

(EC) No 1309/2001 ⁽⁴⁾, as last amended by Regulation (EC) No 104/2002 ⁽⁵⁾.

- (2) It follows from applying the general and detailed fixing rules contained in Regulation (EC) No 1423/95 to the information known to the Commission that the representative prices and additional duties at present in force should be altered to the amounts set out in the Annex hereto,

HAS ADOPTED THIS REGULATION:

Article 1

The representative prices and additional duties on imports of the products referred to in Article 1 of Regulation (EC) No 1423/95 shall be as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 22 January 2002.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 21 January 2002.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 178, 30.6.2001, p. 1.

⁽²⁾ OJ L 141, 24.6.1995, p. 16.

⁽³⁾ OJ L 85, 20.3.1998, p. 5.

⁽⁴⁾ OJ L 177, 30.6.2001, p. 21.

⁽⁵⁾ OJ L 17, 19.1.2002, p. 50.

ANNEX

to the Commission Regulation of 21 January 2002 amending representative prices and the amounts of additional duties applicable to imports of white sugar, raw sugar and products covered by CN code 1702 90 99

(EUR)

CN code	Amount of representative prices per 100 kg net of product concerned	Amount of additional duty per 100 kg net of product concerned
1701 11 10 ⁽¹⁾	21,61	5,50
1701 11 90 ⁽¹⁾	21,61	10,82
1701 12 10 ⁽¹⁾	21,61	5,31
1701 12 90 ⁽¹⁾	21,61	10,30
1701 91 00 ⁽²⁾	29,85	10,31
1701 99 10 ⁽²⁾	29,85	5,79
1701 99 90 ⁽²⁾	29,85	5,79
1702 90 99 ⁽³⁾	0,30	0,35

⁽¹⁾ For the standard quality as defined in Article 1 of amended Council Regulation (EEC) No 431/68 (OJ L 89, 10.4.1968, p. 3).

⁽²⁾ For the standard quality as defined in Article 1 of Council Regulation (EEC) No 793/72 (OJ L 94, 21.4.1972, p. 1).

⁽³⁾ By 1 % sucrose content.

COMMISSION REGULATION (EC) No 109/2002**of 21 January 2002****fixing Community producer and import prices for carnations and roses with a view to the application of the arrangements governing imports of certain floricultural products originating in Cyprus, Israel, Jordan, Morocco and the West Bank and the Gaza Strip**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 4088/87 of 21 December 1987 fixing conditions for the application of preferential customs duties on imports of certain flowers originating in Cyprus, Israel, Jordan, Morocco and the West Bank and the Gaza Strip ⁽¹⁾, as last amended by Regulation (EC) No 1300/97 ⁽²⁾, and in particular Article 5(2)(a) thereof,

Whereas:

Pursuant to Article 2(2) and Article 3 of abovementioned Regulation (EEC) No 4088/87, Community import and producer prices are fixed each fortnight for uniflorous (bloom) carnations, multiflorous (spray) carnations, large-flowered roses and small-flowered roses and apply for two-weekly periods. Pursuant to Article 1b of Commission Regulation (EEC) No 700/88 of 17 March 1988 laying down detailed rules for the application of the arrangements for the import into the Community of certain floricultural products originating in Cyprus, Israel, Jordan, Morocco and the West Bank and the

Gaza Strip ⁽³⁾, as last amended by Regulation (EC) No 2062/97 ⁽⁴⁾, those prices are determined for fortnightly periods on the basis of weighted prices provided by the Member States. Those prices should be fixed immediately so the customs duties applicable can be determined. To that end, provision should be made for this Regulation to enter into force immediately,

HAS ADOPTED THIS REGULATION:

Article 1

The Community producer and import prices for uniflorous (bloom) carnations, multiflorous (spray) carnations, large-flowered roses and small-flowered roses as referred to in Article 1b of Regulation (EEC) No 700/88 for a fortnightly period shall be as set out in the Annex.

Article 2

This Regulation shall enter into force on 22 January 2002.

It shall apply from 23 January to 5 February 2002.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 21 January 2002.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 382, 31.12.1987, p. 22.

⁽²⁾ OJ L 177, 5.7.1997, p. 1.

⁽³⁾ OJ L 72, 18.3.1988, p. 16.

⁽⁴⁾ OJ L 289, 22.10.1997, p. 1.

ANNEX

to the Commission Regulation of 21 January 2002 fixing Community producer and import prices for carnations and roses with a view to the application of the arrangements governing imports of certain floricultural products originating in Cyprus, Israel, Jordan, Morocco and the West Bank and the Gaza Strip

(EUR/100 pieces)

Period: from 23 January to 5 February 2002

Community producer price	Uniflorous (bloom) carnations	Multiflorous (spray) carnations	Large-flowered roses	Small-flowered roses
	18,84	12,61	43,14	17,04
Community import prices	Uniflorous (bloom) carnations	Multiflorous (spray) carnations	Large-flowered roses	Small-flowered roses
Israel	14,66	—	18,31	14,62
Morocco	18,24	16,65	—	—
Cyprus	—	—	—	8,70
Jordan	—	—	—	—
West Bank and Gaza Strip	16,26	—	—	—

COMMISSION REGULATION (EC) No 110/2002**of 21 January 2002****re-establishing the preferential customs duty on imports of uniflorous (bloom) carnations originating in the West Bank and the Gaza Strip**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 4088/87 of 21 December 1987 fixing conditions for the application of preferential customs duties on imports of certain flowers originating in Cyprus, Israel, Jordan and Morocco and the West Bank and the Gaza Strip ⁽¹⁾, as last amended by Regulation (EC) No 1300/97 ⁽²⁾, and in particular Article 5(2)(b) thereof,

Whereas:

(1) Regulation (EEC) No 4088/87 fixes conditions for the application of a preferential customs duty on large-flowered roses, small-flowered roses, uniflorous (bloom) carnations and multiflorous (spray) carnations within the limit of tariff quotas opened annually for imports of fresh cut flowers into the Community.

(2) Council Regulation (EC) No 747/2001 ⁽³⁾ opens and provides for the administration of Community tariff quotas for certain products originating in Cyprus, Egypt, Israel, Malta, Morocco, the West Bank and the Gaza Strip, Tunisia and Turkey, and providing detailed rules for extending and adapting these tariff quotas.

(3) Commission Regulation (EC) No 109/2002 ⁽⁴⁾ fixed Community producer and import prices for carnations and roses for application of the arrangements for importation from the countries in question.

(4) Commission Regulation (EEC) No 700/88 ⁽⁵⁾, as last amended by Regulation (EC) No 2062/97 ⁽⁶⁾, laid down detailed rules for the application of these arrangements.

(5) The preferential customs duty fixed for uniflorous (bloom) carnations originating in Israel by Regulation (EC) No 747/2001 was suspended by Commission Regulation (EC) No 19/2002 ⁽⁷⁾.

(6) On the basis of price recordings made as specified in Regulations (EEC) No 4088/87 and (EEC) No 700/88 it must be concluded that the requirement for reintroduction of the preferential customs duty laid down in Article 2(4) of Regulation (EEC) No 4088/87 is met for uniflorous (bloom) carnations originating in the West Bank and the Gaza Strip. The preferential customs duty should be reintroduced.

(7) In between meetings of the Management Committee for Live Plants and Floriculture Products, the Commission must adopt such measures,

HAS ADOPTED THIS REGULATION:

Article 1

1. For imports of uniflorous (bloom) carnations (CN code ex 0603 10 20) originating in the West Bank and the Gaza Strip the preferential customs duty set by Regulation (EC) No 747/2001 is reintroduced.

2. Regulation (EC) No 19/2002 is hereby repealed.

Article 2

This Regulation shall enter into force on 23 January 2002.

⁽¹⁾ OJ L 382, 31.12.1987, p. 22.

⁽²⁾ OJ L 177, 5.7.1997, p. 1.

⁽³⁾ OJ L 109, 19.4.2001, p. 2.

⁽⁴⁾ See page 5 of this Official Journal.

⁽⁵⁾ OJ L 72, 18.3.1988, p. 16.

⁽⁶⁾ OJ L 289, 22.10.1997, p. 1.

⁽⁷⁾ OJ L 4, 8.1.2002, p. 10.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 21 January 2002.

For the Commission
Franz FISCHLER
Member of the Commission

**DIRECTIVE 2001/105/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 19 December 2001**

**amending Council Directive 94/57/EC on common rules and standards for ship inspection and
survey organisations and for the relevant activities of maritime administrations**

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE
EUROPEAN UNION,

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

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

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

Having regard to the opinion of the Committee of the
Regions ⁽³⁾,

Acting in accordance with the procedure laid down in Article
251 of the Treaty ⁽⁴⁾, in the light of the joint text approved by
the Conciliation Committee on 13 November 2001,

Whereas:

- (1) Safety and pollution prevention at sea may be enhanced
by a proper and compulsory implementation by flag
States of the existing relevant conventions in force at
international level.
- (2) Council Directive 94/57/EC ⁽⁵⁾ established a system of
Community-wide recognition of organisations that, in
compliance with the international conventions, may be
authorised to a various extent to inspect ships and issue
the relevant safety certificates on behalf of the Member
States.
- (3) The practical implementation of that Directive showed
that some adjustments to the Community-wide recogni-
tion of organisations might have contributed greatly
towards the strengthening of such a system while simpli-
fying the monitoring and reporting obligations imposed
on Member States.
- (4) Since the adoption of Directive 94/57/EC some develop-
ments have occurred in the relevant legislation at
Community and international level requiring that further
adjustments to Directive 94/57/EC be made.

- (5) In particular, for the purposes of Directive 94/57/EC, it
is appropriate to apply the amendments to the inter-
national conventions together with the protocols and
related codes of mandatory status, referred to in Article
2(d) of Directive 94/57/EC, which entered into force
after the adoption of the Directive as well as the relevant
International Maritime Organisation (IMO) Resolutions.
- (6) With a view to promoting the effective implementation
of the obligations of the flag States laid down in the
international conventions, the IMO Assembly adopted
on 27 November 1997 Resolution A.847(20) on guide-
lines to assist flag States in the implementation of IMO
instruments.
- (7) IMO adopted the International Safety Management (ISM)
Code through Assembly Resolution A.741(18) of 4
November 1993 which was made mandatory through
the new Chapter IX of the International Convention for
the Safety of Life at Sea (SOLAS) Convention.
- (8) With a view to ensuring a uniform implementation of
the ISM Code, guidelines on the implementation of the
ISM Code by maritime administrations were adopted on
23 November 1995 by IMO through Resolution
A.788(19).
- (9) With a view to harmonising the statutory surveys and
inspections to be carried out by the flag administrations
pursuant to the international conventions, IMO adopted
Resolution A.746(18) of 4 November 1993 on Survey
Guidelines under the Harmonised System of Survey and
Certification.
- (10) A good record of safety and pollution prevention
performance — measured in respect of all ships classed
by an organisation, irrespective of the flag they fly — is
an important indication of the performance of an organ-
isation and is therefore essential for granting the initial
recognition and maintaining it.
- (11) In order to grant the initial recognition to the organ-
isations wishing to be authorised to work on behalf of
the Member States, compliance with the provisions of
Directive 94/57/EC can be assessed more effectively in a
harmonised and centralised manner by the Commission
together with the Member States requesting the recogni-
tion.

⁽¹⁾ OJ C 212 E, 25.7.2000, p. 114 and OJ C 154 E, 29.5.2001, p. 51.

⁽²⁾ OJ C 14, 16.1.2001, p. 22.

⁽³⁾ OJ C 22, 24.1.2001, p. 19.

⁽⁴⁾ Opinion of the European Parliament of 30 November 2000 (OJ C 228, 13.8.2001, p. 150), Council Common Position of 26 February 2001 (OJ C 101, 30.3.2001, p. 1), and Decision of the European Parliament of 16 May 2001 (not yet published in the Official Journal). Decision of the European Parliament of 24 October 2001 and Decision of the Council of 6 December 2001.

⁽⁵⁾ OJ L 319, 12.12.1994, p. 20. Directive as amended by Commission Directive 97/58/EC (OJ L 274, 7.10.1997, p. 8).

- (12) Similarly, the continuous a posteriori monitoring of the recognised organisations to assess their compliance with the provisions of Directive 94/57/EC can be carried out more effectively in a harmonised and centralised manner. Therefore it is appropriate that the Commission, together with the Member State requesting the recognition, be entrusted with this task on behalf of the whole Community.
- (13) In addition to the authority of Member States to suspend the authorisation of an organisation working on their behalf, a similar authority should apply at Community level, the Commission being allowed, on the basis of the Committee procedure, to suspend the recognition of an organisation for a limited period of time where the safety and pollution prevention performance of the organisation is worsening and it fails to take the appropriate corrective measures.
- (14) In accordance with the Community-wide approach, the decision to withdraw the recognition of an organisation which fails to fulfil the provisions set out in the Directive, including cases where safety and pollution prevention performance becomes unsatisfactory, has to be taken at Community level, and therefore by the Commission, on the basis of the Committee procedure.
- (15) Since Directive 94/57/EC ensures freedom to provide services in the Community, the Community should be entitled to negotiate with those third countries where some of the recognised organisations are located equal treatment for the recognised organisations located in the Community.
- (16) The divergence in the financial liability regimes of the organisations working on behalf of the Member States represented a difficulty in the proper implementation of Directive 94/57/EC. In order to contribute to solving this problem it is appropriate to bring about a degree of harmonisation at Community level of the liability arising out of any incident caused by a recognised organisation, as decided by a court of law, including settlement of a dispute through arbitration procedures.
- (17) The measures necessary for the implementation of Directive 94/57/EC should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ⁽¹⁾.
- (18) Since transparency and exchange of information between interested parties, as well as public right of access to information, are fundamental tools for preventing accidents at sea, the recognised organisations should provide all relevant statutory information concerning the conditions of the ships in their class to the port State control authorities and make it available to the general public.
- (19) In an attempt to prevent ships from changing class in order to avoid carrying out necessary repairs, the recognised organisations should exchange all relevant information among themselves concerning the conditions of ships changing class.
- (20) An organisation should not be controlled by shipowners or shipbuilders, or by others engaged commercially in the manufacture, equipping, repair or operation of ships. An organisation should not be substantially dependent on a single commercial enterprise for its revenue. When submitting their request for recognition, classification societies and their surveyors should give an undertaking in writing on an individual basis not to accept statutory work where there is a likelihood of a conflict of interests, i.e. where there is identity with the owner or operator of the ship to be inspected or there are business, personal or family links to the owner or operator of the ship.
- (21) The qualitative criteria to be met by the technical organisations in order to be recognised at Community level and to maintain such recognition should include provisions to ensure that only exclusive surveyors can carry out the inspections and surveys required by international conventions, i.e. statutory tasks related to the issue of relevant safety certificates. Those organisations must have tight control over all their personnel and offices, including all branches and offices within and outside the Community, and they must establish their own safety and pollution prevention performance targets and indicators. Those organisations must put in place a system to measure the quality of their services.
- (22) Directive 94/57/EC should be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Directive 94/57/EC is hereby amended as follows:

1. in Article 2, points (b), (c), (d), (i) and (j) shall be replaced by the following:
 - (b) "ship flying the flag of a Member State" means a ship registered in and flying the flag of a Member State in accordance with its legislation. Ships not corresponding to this definition are assimilated to ships flying the flag of a third country;
 - (c) "inspections and surveys" means inspections and surveys that it is mandatory to carry out under the international conventions;

⁽¹⁾ OJ L 184, 17.7.1999, p. 23.

(d) "international conventions" means the 1974 International Convention for the Safety of Life at Sea (SOLAS), the 1966 International Convention on Load Lines and the 1973/1978 International Convention for the Prevention of Pollution from Ships, together with the protocols and amendments thereto, and related codes of mandatory status in all Member States, in force on 19 December 2001;

(i) "class certificate" means a document issued by a classification society certifying the structural and mechanical fitness of a ship for a particular use or service in accordance with the rules and regulations laid down and made public by that society;

(j) "cargo ship safety radio certificate" means the certificate introduced by the amended SOLAS 1974/1978 Radio Regulations, adopted by the IMO;

2. in Article 3, the following sentence shall be added at the end of paragraph 1:

'Member States shall act in accordance with the relevant provisions of the Annex and the Appendix to IMO Resolution A.847(20) on guidelines to assist flag States in the implementation of IMO instruments.';

3. Article 4 shall be replaced by the following:

'Article 4

1. Member States which wish to grant an authorisation to any organisation which is not yet recognised, shall submit a request for recognition to the Commission together with complete information on, and evidence of, compliance with the criteria set out in the Annex and on the requirement and undertaking that it will comply with the provisions of Article 15(2), (4) and (5). The Commission, together with the respective Member States submitting the request, shall carry out assessments of the organisations for which the request for recognition was received in order to verify that the organisations meet and undertake to comply with the above mentioned requirements. A decision on recognition shall take into account the safety and pollution prevention performance records of the organisation, referred to in Article 9. Recognition shall be granted by the Commission in accordance with the procedure referred to in Article 7(2).

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

recognitions shall be limited exclusively to the Member State or States which have submitted a request for such recognition.

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

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

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

4. Article 5 shall be amended as follows:

(a) paragraph 1 shall be replaced by the following:

'1. In applying Article 3(2), Member States shall in principle not refuse to authorise any of the recognised organisations to undertake such functions, subject to the provisions of paragraph 3 and Articles 6 and 11. However, they may restrict the number of organisations they authorise in accordance with their needs provided there are transparent and objective grounds for so doing. At the request of a Member State, the Commission shall, in accordance with the procedure laid down in Article 7, adopt appropriate measures.';

(b) paragraph 2 shall be deleted;

(c) paragraph 3 shall be replaced by the following:

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

5. Article 6 shall be amended as follows:

(a) paragraph 2 shall be replaced by the following:

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

(a) the provisions set out in Appendix II of IMO Resolution A.739(18) on guidelines for the authorisation of organisations acting on behalf of the administration, while drawing inspiration from the Annex, Appendixes and Attachment to IMO MSC/Circular 710 and MEPC/Circular 307 on model agreement for the authorisation of recognised organisations acting on behalf of the administration;

(b) the following provisions concerning financial liability:

(i) if liability arising out of any incident is finally and definitely imposed on the administration by a court of law or as part of the settlement of a dispute through arbitration procedures, together with a requirement to compensate the injured parties for loss or damage to property or personal injury or death, which is proved in that court of law to have been caused by a wilful act or omission or gross negligence of the recognised organisation, its bodies, employees, agents or others who act on behalf of the recognised organisation, the administration shall be entitled to financial compensation from the recognised organisation to the extent that the said loss, damage, injury or death is, as decided by that court, caused by the recognised organisation;

(ii) if liability arising out of any incident is finally and definitely imposed on the administration by a court of law or as part of the settlement of a dispute through arbitration procedures, together with a requirement to compensate the injured parties for personal injury or death, which is proved in that court of law to have been caused by any negligent or reckless act or omission of the recognised organisation, its employees, agents or others who act on behalf of the recognised organisation, the administration shall be entitled to financial compensation from the recognised organisation to the extent that the said personal injury or death is, as decided by that court, caused by the recognised organisation; the Member States may limit the maximum amount payable by the recognised organisation, which must, however, be at least equal to EUR 4 million;

(iii) if liability arising out of any incident is finally and definitely imposed on the administration by a court of law or as part of the settlement of a dispute through arbitration procedures,

together with a requirement to compensate the injured parties for loss or damage to property, which is proved in that court of law to have been caused by any negligent or reckless act or omission of the recognised organisation, its employees, agents or others who act on behalf of the recognised organisation, the administration shall be entitled to financial compensation from the recognised organisation, to the extent that the said loss or damage is, as decided by that court, caused by the recognised organisation; the Member States may limit the maximum amount payable by the recognised organisation, which must, however, be at least equal to EUR 2 million;

(c) provisions for a periodical audit by the administration or by an impartial external body appointed by the administration into the duties the organisations are undertaking on its behalf, as referred to in Article 11(1);

(d) the possibility for random and detailed inspections of ships;

(e) provisions for reporting essential information about their classed fleet, changes, suspensions and withdrawals of class, as referred to in Article 15(3).;

(b) the following paragraph shall be added:

'5. The Commission shall, not later than 22 July 2006, submit a report to the European Parliament and to the Council evaluating the economic impact of the liability regime provided for in this Article on the parties concerned and, more particularly, its consequences for the financial equilibrium of recognised organisations.

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

6. Article 7 shall be replaced by the following:

'Article 7

1. The Commission shall be assisted by a committee.

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

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

3. The Committee shall adopt its rules of procedure.;

7. Article 8(1) shall be replaced by the following:

'1. This Directive may, without broadening its scope, be amended in accordance with the procedure laid down in Article 7(2), in order to:

- apply, for the purposes of this Directive, subsequent amendments to the international conventions, protocols, codes and resolutions related thereto mentioned in Articles 2(d), 3(1) and 6(2), which have entered into force,
- update the criteria in the Annex taking into account, in particular, the relevant decisions of the IMO,
- alter the amounts specified in points (ii) and (iii) of Article 6(2)(b).';

8. Article 9 shall be replaced by the following:

'Article 9

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

2. In preparing drafts for a decision relating to the withdrawal of recognition as referred to in paragraph 1, the Commission shall take into account the outcome of the assessments of the recognised organisations referred to in Article 11 as well as the safety and pollution prevention performance records of the organisations, measured for all the ships they have in class irrespective of the flag the ships fly.

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

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

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

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

9. Article 10 shall be replaced by the following:

'Article 10

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

- (a) the Member State shall inform the Commission and the other Member States of its decision without delay, giving substantiated reasons therefor;
- (b) the Commission shall examine whether the suspension is justified for reasons of serious danger to safety or the environment;
- (c) acting in accordance with the procedure laid down in Article 7(2), the Commission shall inform the Member State whether or not its decision to suspend the authorisation is justified for reasons of serious danger to safety or the environment and, if it is not justified, request the Member State to withdraw the suspension.

2. Whenever the Commission considers that the safety and pollution prevention performance records of a recognised organisation worsen, without however justifying the withdrawal of its recognition on the basis of the criteria referred to in Article 9(2), it may decide to inform the recognised organisation accordingly and request it to take appropriate measures to improve its safety and pollution prevention performance records, and inform the Member States thereof. Should the recognised organisation fail to provide the Commission with an appropriate answer or should the Commission consider that the measures taken by the recognised organisation have failed to improve its safety and pollution prevention performance records, the Commission may decide to suspend recognition of the organisation for a period of one year in accordance with the procedure referred to in Article 7(2) after the organisation concerned has been given the opportunity to submit its observations. During that period, the recognised organisation will not be allowed to issue or renew any certificate to ships flying the flag of the Member States while the certificates issued or renewed in the past by the organisation remain valid.

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

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

10. Article 11 shall be replaced by the following:

'Article 11

1. Each Member State must satisfy itself that the recognised organisations acting on its behalf for the purpose of Article 3(2) effectively carry out the functions referred to in that Article to the satisfaction of its competent administration.

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

3. All the recognised organisations shall be assessed by the Commission, together with the Member State which submitted the relevant request for recognition, on a regular basis and at least every two years to verify that they fulfil the criteria of the Annex. In selecting the organisations for assessment, the Commission shall pay particular attention to the safety and pollution prevention performance records of the organisation, to the casualty records and to the reports produced by Member States in accordance with Article 12. The assessment may include a visit to regional branches of the organisation as well as random inspection of ships for the purpose of auditing the organisation's performance. In this case the Commission shall, where appropriate, inform the Member States where the regional branch is located. The Commission shall provide the Member States with a report of the results of the assessment.

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

11. Article 12 shall be replaced by the following:

'Article 12

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

12. Article 13 shall be deleted;

13. at the end of Article 14(2) the reference to Article 13 shall be replaced by Article 7(2);

14. Article 15 shall be amended as follows:

(a) paragraph 1 shall be replaced by the following:

'1. The recognised organisations shall consult with each other periodically with a view to maintaining equivalence of their technical standards and the implementation thereof in line with the provisions of IMO Resolution A.847(20) on guidelines to assist flag States in the implementation of IMO instruments. They shall provide the Commission with periodic reports on fundamental progress in standards.;

(b) paragraphs 3 and 4 shall be replaced by the following:

'3. The recognised organisations shall provide to all Member States administrations which have granted any of the authorisations provided for in Article 3 and to the Commission all relevant information about their classed fleet, transfers, changes, suspensions and withdrawals of class, irrespective of the flag the vessels fly. Information on transfers, changes, suspensions, and withdrawals of class, including information on all overdue surveys, overdue recommendations, conditions of class, operating conditions or operating restrictions issued against their classed vessels — irrespective of the flag the vessels fly — shall also be communicated to the Sirenac information system for port State control inspections and shall be published on the website, if any, of these recognised organisations.

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

(c) the following paragraph shall be added:

'5. In cases of transfer of class from one recognised organisation to another, the losing organisation shall inform the gaining organisation of all overdue surveys, overdue recommendations, conditions of class, operating conditions or operating restrictions issued against the vessel. On transfer, the losing organisation shall provide the gaining organisation with the complete history file of the vessel. The certificates of the ship can be issued by the gaining organisation only after all overdue surveys have been satisfactorily completed and all overdue recommendations or conditions of class previously issued against the vessel have been completed as specified by the losing organisation. Prior to the issuance of the certificates, the gaining organisation must advise the losing organisation of the date

of issue of the certificates and confirm the date, location and action taken to satisfy each overdue survey, overdue recommendation and overdue condition of class. The recognised organisations shall cooperate with each other in properly implementing the provisions of this paragraph.;

15. in Article 16, the following paragraph shall be added:

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

16. the Annex to the Directive shall be amended as follows:

(a) section A shall be replaced by the following:

'A. GENERAL MINIMUM CRITERIA

1. The recognised organisation must be able to document extensive experience in assessing the design and construction of merchant ships.
2. The organisation must have in its class a fleet of at least 1 000 ocean-going vessels (over 100 GRT) totalling no less than 5 million GRT.
3. The organisation must employ a technical staff commensurate with the number of vessels classed. As a minimum, 100 exclusive surveyors are needed to meet the requirements in paragraph 2.
4. The organisation must have comprehensive rules and regulations for the design, construction and periodic survey of merchant ships, published and continually upgraded and improved through research and development programmes.
5. The organisation must have its register of vessels published on an annual basis or maintained in an electronic base accessible to the public.
6. The organisation must not be controlled by shipowners or shipbuilders, or by others engaged commercially in the manufacture, equipping, repair or operation of ships. The organisation must not be substantially dependent on a single commercial enterprise for its revenue. The recognised organisation must not carry out statutory work if it is identical with or has business, personal or family links to the shipowner or operator. This incompatibility shall also apply to surveyors employed by the recognised organisation.
7. The organisation must operate in accordance with the provisions set out in the Annex to IMO Resolution A.789(19) on specifications on the survey and certification functions of recognised organisations acting on behalf of the administration, in so far as they cover matters falling within the scope of this Directive.'

(b) in section B:

(i) the title shall be replaced by the following:

'B. SPECIFIC MINIMUM CRITERIA';

(ii) paragraphs 4, 5, 6, 7 and 9 shall be replaced by the following:

'4. The organisation is prepared to provide relevant information to the administration, to the Commission and to the interested parties.

5. The organisation's management has defined and documented its policy and objectives for, and commitment to, quality and has ensured that this policy is understood, implemented and maintained at all levels in the organisation. The organisation's policy must refer to safety and pollution prevention performance targets and indicators.

6. The organisation has developed, implemented and maintains an effective internal quality system based on appropriate parts of internationally recognised quality standards and in compliance with EN 45004 (inspection bodies) and with EN 29001, as interpreted by the IACS Quality System Certification Scheme Requirements, and which, *inter alia*, ensures that:

- (a) the organisation's rules and regulations are established and maintained in a systematic manner;
- (b) the organisation's rules and regulations are complied with and an internal system to measure the quality of service in relation to these rules and regulations is put in place;
- (c) the requirements of the statutory work for which the organisation is authorised are satisfied and an internal system to measure the quality of service in relation to the compliance with the international conventions is put in place;
- (d) the responsibilities, authorities and interrelation of personnel whose work affects the quality of the organisation's services are defined and documented;
- (e) all work is carried out under controlled conditions;
- (f) a supervisory system is in place which monitors the actions and work carried out by surveyors and technical and administrative staff employed directly by the organisation;
- (g) the requirements of the statutory work for which the organisation is authorised are only carried out by its exclusive surveyors or by exclusive surveyors of other recognised organisations; in all cases, the exclusive surveyors must have an extensive knowledge of the particular type of ship on which they carry out the statutory work as relevant to the particular survey to be carried out and of the relevant applicable requirements;

- (h) a system for qualification of surveyors and continuous updating of their knowledge is implemented;
 - (i) records are maintained, demonstrating achievement of the required standards in the items covered by the services performed, as well as the effective operation of the quality system;
 - (j) a comprehensive system of planned and documented internal audits of the quality related activities is maintained in all locations;
 - (k) the statutory surveys and inspections required by the Harmonised System of Survey and Certification for which the organisation is authorised are carried out in accordance with the provision set out in the Annex and Appendix to IMO Resolution A.746(18) on Survey Guidelines under the Harmonised System of Survey and Certification;
 - (l) clear and direct lines of responsibility and control are established between the central and the regional offices of the society and between the recognised organisations and their surveyors.
7. The organisation must demonstrate ability:
- (a) to develop and keep updated a full and adequate set of own rules and regulations on hull, machinery and electrical and control equipment having the quality of internationally recognised technical standards on the basis of which SOLAS Convention and Passenger Ship Safety Certificates (as regards adequacy of ship structure and essential shipboard machinery systems) and Load Line Certificates (as regards adequacy of ship strength) can be issued;
 - (b) to carry out all inspections and surveys required by the international conventions for the issue of certificates, including the necessary means of assessing — through the use of qualified professional staff and in

accordance with the provisions set out in the Annex to IMO Resolution A.788(19) on guidelines on implementation of the International Safety Management (ISM) Code by administrations — the application and maintenance of the safety management system, both shore-based and on board ships, intended to be covered in the certification.’;

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

Article 2

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than 22 July 2003. They shall forthwith inform the Commission thereof.

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

3. Member States shall communicate to the Commission the text of the provisions of national law which they have adopted in the field covered by this Directive.

Article 3

This Directive shall enter into force on the day of its publication in the *Official Journal of the European Communities*.

Article 4

This Directive is addressed to the Member States.

Done at Brussels, 19 December 2001.

For the European Parliament

The President

N. FONTAINE

For the Council

The President

A. NEYTS-UYTTEBROECK

**DIRECTIVE 2001/106/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 19 December 2001**

amending Council Directive 95/21/EC concerning the enforcement, in respect of shipping using Community ports and sailing in the waters under the jurisdiction of the Member States, of international standards for ship safety, pollution prevention and shipboard living and working conditions (port State control)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

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

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

Having regard to the opinion of the Committee of the Regions ⁽³⁾,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁽⁴⁾, in the light of the joint text approved by the Conciliation Committee on 13 November 2001,

Whereas:

- (1) Council Directive 95/21/EC ⁽⁵⁾ establishes a system of port State control of shipping in the European Community based on uniform inspection and detention procedures.
- (2) It is necessary to take account of the changes that have been made to the International Maritime Organisation (IMO) conventions, protocols, codes and resolutions and of developments in the framework of the Paris Memorandum of Understanding (MOU).
- (3) It is understood that nothing in this Directive has the effect of transferring to port States the responsibilities of flag States including those of the recognised organisations acting on behalf of the flag States.
- (4) Some ships pose a manifest risk to maritime safety and the marine environment because of their poor condition, flag and history; among which in particular, ships flying the flag of a State described as 'very high risk' or 'high risk' in the black list as published in the annual report of the MOU. They should therefore be refused access to Community ports, unless it can be demonstrated that

they can be operated safely in Community waters. Guidelines must be established setting out the procedures applicable in the event of the imposition of such an access ban and of the lifting of the ban. In the interests of transparency, the list of ships refused access to Community ports should be made public.

- (5) Ships with a high target factor present a particularly serious accident or pollution risk, justifying the need to inspect them frequently at Community ports of call.
- (6) The categories of ships listed in Annex V to Directive 95/21/EC also present a major accident or pollution hazard when they reach a certain age. The broad discretionary power of the inspection authority as to whether to select such ships for expanded inspection prevents the achievement of uniform practices within the Community. It is therefore necessary to make inspection of these ships mandatory. In particular, given the risks of major pollution caused by oil tankers and in view of the fact that the great majority of deficiencies leading to detention concern ships older than 15 years, the expanded inspection regime should be applied to oil tankers from the age of 15 years.
- (7) The content of the expanded inspections for which guidelines have been laid down may vary considerably at the discretion of the inspection authority. In order to achieve uniform practices within the Community, these guidelines should therefore be made mandatory. However, there should be provision for making an exception when the conduct of an inspection of such ships, in particular in view of the state of the ship's cargo tanks or of operational constraints relating to loading or unloading activities, is impossible or would involve excessive risks for the safety of the ship, its crew, the inspector or the safety of the port area.
- (8) Member States should be entitled to organise the mandatory inspections efficiently so as to achieve the highest value added from a strengthened inspection regime, taking into account the various operational conditions and making use of cooperation between ports and Member States, while adhering to the overall quantitative inspection targets.

⁽¹⁾ OJ C 212 E, 25.7.2000, p. 102 and OJ C 154, 29.4.2001, p. 67.

⁽²⁾ OJ C 14, 16.1.2001, p. 22.

⁽³⁾ OJ C 22, 24.1.2001, p. 19.

⁽⁴⁾ Opinion of the European Parliament of 30 November 2000, (OJ C 228, 13.8.2001, p. 133), Council Common Position of 26 February 2001 (OJ C 101, 30.3.2001, p. 15) and Decision of the European Parliament of 16 May 2001 (not yet published in the Official Journal). Decision of the European Parliament of 24 October 2001 and Decision of the Council of 6 December 2001.

⁽⁵⁾ OJ L 157, 7.7.1995, p. 1. Directive as last amended by Commission Directive 1999/97/EC (OJ L 331, 23.12.1999, p. 67).

- (9) As the recruitment and training of qualified inspectors requires some time, the Member States should be allowed to build up their inspection service gradually; given the characteristics of the port of Rotterdam, particularly the volume of traffic calling there, provision should be made for the possibility of extending slightly the period for recruiting and training inspectors for this port.
- (10) Structural defects in a ship are likely to increase the risk of an accident at sea. In the case of a ship carrying a bulk cargo of oil, such accidents can have disastrous consequences for the environment. The inspection authority should carry out a visual examination of the accessible parts of the ship in order to detect any serious corrosion and take whatever follow-up action may be necessary, in particular vis-à-vis the classification societies responsible for the structural quality of ships.
- (11) Expanded inspection based on mandatory verification of certain aspects of the ship takes a considerable amount of time and organisation. The task of preparing the inspection should be facilitated, which in turn will improve its effectiveness. To this end, the master or operator of any ship entering a Community port should notify certain information of an operational nature.
- (12) The growing importance of port State control in the battle against sub-standard practices is resulting in an overall increase in inspectors' tasks. A particular effort should therefore be made to avoid redundant inspections and to improve the information available to inspectors on the content of inspections performed in previous ports. Consequently, the inspection report produced by the inspector on completion of an inspection, a more detailed inspection or an expanded inspection should state which parts of the ship have already been inspected; the inspector at the following port of call will thus be able, where appropriate, to decide to refrain from inspecting a part of the ship if no deficiency was detected during the previous inspection.
- (13) Essential technological progress has been made in the field of on-board equipment, which enables voyage data to be recorded (by means of voyage data recorder (VDR system) or 'black boxes') in order to facilitate post-accident investigations. In view of the importance of such equipment for maritime safety and in parallel with the efforts being made on this subject within the IMO, it should be made mandatory after a period of up to five years after the entry into force of this Directive for cargo ships built before 1 July 2002 calling at Community ports and, when compulsory, its absence or failure should warrant detention.
- (14) The administration of the flag State of a ship inspected or the classification society concerned should be informed of the result of inspection in order to ensure more effective monitoring of the development and, where appropriate, the deterioration in the state of the ship in order to take the necessary remedial action while there is still time.
- (15) Accidental pollution by oil is likely to cause considerable damage to the environment and the economy of the region concerned. It is therefore necessary to verify whether oil tankers calling at European Community ports have appropriate cover for such risks.
- (16) The transparency of information relating to ships inspected and detained is a key element of any policy designed to deter the use of ships that fall short of the safety standards. It is necessary in this context to include the identity of the ship's charterer in the list of information published. The public should also be given fuller and clearer information on the inspections and detentions carried out in Community ports. This concerns in particular information on the more extensive inspections performed on-board ships, both by the port State authorities and by the classification societies, and an explanation of the measures taken by the port State authorities or the classification societies concerned following a detention order under the Directive.
- (17) It is essential to monitor the application of the Directive in order to avoid the risk of varying levels of safety and distortion of competition between ports and regions of the European Community. The Commission should therefore have more detailed information, particularly on the movements of ships in ports, in order to be able to carry out a detailed examination of the conditions under which the Directive is being applied. Such information should be provided to the Commission sufficiently frequently to enable it to intervene more rapidly whenever anomalies are found in the application of the Directive.
- (18) The measures necessary for the implementation of Directive 95/21/EC should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ⁽¹⁾,
- HAVE ADOPTED THIS DIRECTIVE:
- Article 1*
- Directive 95/21/EC is hereby amended as follows:
1. the title shall be replaced by the following:
- 'Directive 95/21/EC of the Council of 19 June 1995 on port State control of shipping;'
- ⁽¹⁾ OJ L 184, 17.7.1999, p. 23.

2. Article 2(1) and (2) shall be replaced by the following:

‘1. “Conventions” means:

- the International Convention on Load Lines, 1966 (LL 66),
- the International Convention for the Safety of Life at Sea, 1974 (SOLAS 74),
- the International Convention for the Prevention of Pollution from Ships, 1973, and the 1978 Protocol relating thereto (Marpol 73/78),
- the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW 78),
- the Convention on the International Regulations for Preventing Collisions at Sea, 1972 (Colreg 72),
- the International Convention on Tonnage Measurement of Ships, 1969 (ITC 69),
- the Merchant Shipping (Minimum Standards) Convention, 1976 (ILO No 147),
- the International Convention on Civil Liability for Oil Pollution Damage, 1992 (CLC 92),

together with the Protocols and amendments to these Conventions and related codes of mandatory status, in force on 19 December 2001.

2. “MOU” means the Memorandum of Understanding on Port State Control, signed in Paris on 26 January 1982, as it stands on 19 December 2001;’

3. Article 4 shall be replaced by the following:

‘Article 4

Inspection body

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

4. Article 5(1), (2) and (3) shall be replaced by the following:

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

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

month has elapsed since the last inspection carried out in a port in the MOU region.

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

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

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

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

5. Article 7 shall be replaced by the following:

‘Article 7

Mandatory expanded inspection of certain ships

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

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

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

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

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

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

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

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

6. the following Article 7a shall be inserted:

'Article 7a

Procedure in case certain ships cannot be inspected

1. In cases where, for operational reasons, a Member State is unable to carry out an inspection of a ship with a target factor of more than 50 as referred to in Article 5(2)(a) or a mandatory expanded inspection as referred to in Article 7(4), the Member State shall, without delay, inform the Sirenac system that such inspection did not take place.

2. Such cases shall be notified, at intervals of six months, to the Commission together with the reasons for not inspecting the ships concerned.

3. During any calendar year, such non-inspections shall not exceed 5 % of the average annual number of individual ships eligible for the inspections referred to in paragraph 1 calling at the ports of the Member State, calculated on the basis of the three most recent calendar years for which statistics are available.

4. Ships referred to in paragraph 1 shall be subject to an inspection, as provided for in Article 5(2)(a) or a mandatory expanded inspection as referred to in Article 7(4), as appropriate, in the next port of call in the Community.

5. By 22 July 2008 the figure of 5 % referred to in paragraph 3 shall be amended on the basis of an assessment by the Commission, if it is considered appropriate, in accordance with the procedure laid down in Article 19.;

7. the following Article 7b shall be inserted:

'Article 7b

Access refusal measures concerning certain ships

1. A Member State shall ensure that a ship in one of the categories of Annex XI, section A, is refused access to its

ports, except in the situations described in Article 11(6), if the ship:

either

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

or

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

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

2. For the purposes of paragraph 1, Member States shall comply with the procedures laid down in Annex XI, section B.

3. The Commission shall publish every six months the information relating to ships that have been refused access to Community ports in application of this Article.;

8. Article 8 shall be replaced by the following:

'Article 8

Report of inspection to the master

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

9. in Article 9:

(a) paragraph 1 shall be replaced by the following:

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

(b) paragraph 3 shall be replaced by the following:

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

(c) paragraph 5 shall be replaced as follows:

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

10. Article 10(1) shall be replaced by the following:

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

11. Article 14(2) shall be replaced by the following:

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

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

12. Article 15(2) shall be replaced by the following:

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

13. in Article 15 the following paragraph shall be added:

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

14. in Article 16 the following paragraph shall be inserted:

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

15. Articles 17 and 18 shall be replaced by the following:

'Article 17

Data to monitor implementation

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

Article 18

Regulatory Committee

1. The Commission shall be assisted by the Committee set up pursuant to Article 12 of Directive 93/75/EEC.

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

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

3. The Committee shall adopt its rules of procedure.';

16. in Article 19, the introductory phrase and subparagraph (a) shall be replaced by the following:

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

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

17. the following Article 19a shall be inserted:

'Article 19a

Penalties

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

18. the following paragraph shall be added to Article 20:

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

19. Annex I, Part II shall be replaced by the text in Annex I to this Directive;

20. in Annex II:

(a) item 10 shall be replaced by the following items:

'10. Minimum Safe Manning Document;

10a Certificates issued in accordance with the STCW Convention.';

- (b) the following item 35 shall be added:
- ‘35. Certificate of insurance or any other financial security in respect of civil liability for oil pollution damage (International Convention on Civil Liability for Oil Pollution Damage, 1992).’;
21. in Annex III, item 1, the words ‘II-8 and II-11’ shall be replaced by the words ‘and II-8’;
22. Annex V shall be replaced by the text in Annex II to this Directive;
23. Annex VI shall be amended as follows:
- (a) the following shall be added to item 2 (‘Application of main criteria’):
- ‘14. provide the maximum of information in case of accident.’;
- (b) in item 3.1 the words ‘The lack of valid certificates’ are replaced by the words ‘The lack of valid certificates and documents’;
- (c) the following shall be added to item 3.2:
- ‘15. Failure to carry out the enhanced survey programme in accordance with SOLAS 74, Chapter XI, Regulation 2.
16. Absence or failure of a VDR, when its use is compulsory.’;
- (d) the following point shall be added to item 3.6:
- ‘5. Survey report file missing or not in conformity with Regulation 13G(3)(b) of the Marpol Convention.’;
24. Annex VIII shall be replaced by the text in Annex III to this Directive;
25. Annexes IX, X, XI and XII shall be added, the text of which is in Annex IV to this Directive.

Article 2

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this

Directive not later than 22 July 2003. They shall forthwith inform the Commission thereof.

2. When Member States adopt those provisions, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such a reference shall be laid down by the Member States.

3. Member States shall communicate to the Commission the text of the provisions of national law which they have adopted in the field governed by this Directive.

Article 3

The Commission shall review the implementation of this Directive no later than 22 July 2006. The review will examine, *inter alia*, the number of port State control inspectors in each Member State and the number of inspections carried out, including mandatory expanded inspections. The Commission shall communicate the findings of the review 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.

Article 4

This Directive shall enter into force on the day of its publication in the *Official Journal of the European Communities*.

Article 5

This Directive is addressed to the Member States.

Done at Brussels, 19 December 2001.

For the European Parliament

The President

N. FONTAINE

For the Council

The President

A. NEYTS-UYTTEBROECK

ANNEX I

II. Overall targeting factor

The following ships shall be considered as priority for inspection.

1. Ships visiting a port of a Member State for the first time or after an absence of 12 months or more. In applying these criteria Member States shall also take into account those inspections which have been carried out by members of the MOU. In the absence of appropriate data for this purpose, Member States shall rely upon the available Sirenac data and inspect those ships which have not been registered in the Sirenac following the entry into force of that database on 1 January 1993.
2. Ships not inspected by any Member State within the previous six months.
3. Ships whose statutory certificates on the ship's construction and equipment, issued in accordance with the conventions, and the classification certificates, have been issued by organisations which are not recognised under the terms of Council Directive 94/57/EC.
4. Ships flying the flag of a State appearing in the black list as published in the annual report of the MOU.
5. Ships which have been permitted to leave the port of a Member State on certain conditions, such as:
 - (a) deficiencies to be rectified before departure;
 - (b) deficiencies to be rectified at the next port of call;
 - (c) deficiencies to be rectified within 14 days;
 - (d) deficiencies for which other conditions have been specified.

If ship-related action has been taken and all deficiencies have been rectified, this is taken into account.

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

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

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

ANNEX II

'ANNEX V

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

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

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

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

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

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

1. SHIPS IN GENERAL (categories in section A)

- Black-out and start of emergency generator,
- inspection of emergency lighting,
- operation of emergency fire-pump with two fire hoses connected to the fire main-line,

⁽¹⁾ OJ L 138, 1.6.1999, p. 1.

- operation of bilge pumps,
- closing of watertight doors,
- lowering of one lifeboat to the water,
- test of remote emergency stop for, e.g., boilers, ventilation and fuel pumps,
- testing of steering gear including auxiliary steering gear,
- inspection of emergency source of power to radio installations,
- inspection and, to the extent possible, test of engine room separator.

2. GAS AND CHEMICAL TANKERS

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

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

3. BULK CARRIERS

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

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

4. OIL TANKERS

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

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

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

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

- testing of fire detection and alarm system,
- testing of proper closing of fire doors,
- test of public address system,
- fire drill where, as a minimum, all sets of firemen's outfits must be demonstrated and part of the catering crew take part,
- demonstration that key crew members are acquainted with the damage control plan.

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

ANNEX III

Annex VIII is replaced by the following:

‘ANNEX VIII

Publication of information related to detentions and inspections in ports of Member States (as referred to in Article 15)

I. Information published in accordance with Article 15(1) must include the following:

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

II. Information concerning ships inspected made public in accordance with Article 15(2) must include the following:

- name of the ship,
- IMO number,
- type of ship,
- tonnage (gt),
- year of construction,
- name and address of shipowner or operator of the ship,
- in the case of ships carrying liquid or solid cargoes in bulk, the name and address of the charterer responsible for the selection of the vessel and the type of charter,

- flag State,
 - the classification society or classification societies, where relevant, which has/have issued to this ship the class certificates, if any,
 - the classification society or classification societies and/or any other party which has/have issued to this ship certificates in accordance with the applicable conventions on behalf of the flag State, stating the certificates delivered,
 - country, port and date of inspection,
 - number and nature of deficiencies.'
- _____

ANNEX IV

The following Annexes IX, X, XI and XII shall be added:

*'ANNEX IX***Inspection report drawn up in accordance with Article 8**

The inspection report must contain at least the following items.

I. General

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

II. Information relating to inspection

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

III. Additional information in the event of detention

1. Date of detention order
2. Date of lifting the detention order
3. Nature of the deficiencies warranting the detention order (references to Conventions, if relevant)
4. Information on the last intermediate or annual survey

5. Indication, where relevant, of whether the classification society or any other private body that carried out the survey has a responsibility in relation to the deficiencies which, alone or in combination, led to detention
6. Measures taken.

ANNEX X

Data provided in the context of monitoring implementation in application of Article 17

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

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

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

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

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

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

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

2. Member States must either:

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

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

ANNEX XI

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

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

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

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

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

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

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

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

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

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

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

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

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

ANNEX XII

International and Community requirements concerning voyage data recorder systems

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

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

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

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

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION

of 6 December 2001

on the conclusion of the Agreement in the form of an Exchange of Letters concerning the provisional application of the Protocol establishing the fishing opportunities and the compensation provided for in the Agreement between the European Economic Community and the Government of the Republic of Guinea-Bissau on fishing off the coast of Guinea-Bissau for the period 16 June 2001 to 15 June 2006

(2002/40/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 300(2) thereof,

Having regard to the proposal from the Commission,

Whereas:

- (1) In accordance with the Agreement between the European Economic Community and the Government of the Republic of Guinea-Bissau on fishing off the coast of Guinea Bissau ⁽¹⁾, the Community and the Republic of Guinea-Bissau have conducted negotiations to determine any amendments or additions to be made to the Agreement at the end of the period of application of the Protocol annexed thereto.
- (2) As a result of those negotiations, a new Protocol establishing the fishing opportunities and the compensation provided for in the Agreement was initialled on 30 May 2001.
- (3) Under this Protocol, Community fishermen enjoy fishing opportunities in the waters falling within the sovereignty or jurisdiction of the Republic of Guinea-Bissau for the period from 16 June 2001 to 15 June 2006.
- (4) In order to ensure uninterrupted fishing activities by Community vessels, it is essential that the new Protocol be applied as quickly as possible. For this reason, the two parties have initialled an Agreement in the form of an Exchange of Letters providing for the provisional application of the initialled Protocol from 16 June 2001.
- (5) The Agreement in the form of an Exchange of Letters should be approved, pending a definitive decision under Article 37 of the Treaty.

- (6) The method of allocating the fishing opportunities among the Member States should be defined on the basis of the traditional allocation of fishing opportunities under the Fisheries Agreement,

HAS DECIDED AS FOLLOWS:

Article 1

The Agreement in the form of an Exchange of Letters concerning the provisional application of the Protocol establishing the fishing opportunities and the financial contribution provided for in the Agreement between the European Economic Community and the Government of the Republic of Guinea-Bissau on fishing off the coast of Guinea-Bissau for the period 16 June 2001 to 15 June 2006 is hereby approved on behalf of the Community.

The texts of the Agreement in the form of an Exchange of Letters and of the Protocol are attached to this Decision.

Article 2

The fishing opportunities provided for in the Protocol shall be allocated among the Member States as follows:

- (a) shrimps:

— Italy	3 900 GRT
— Spain	2 400 GRT
— Portugal	3 050 GRT
— Greece	250 GRT
- (b) fin-fish/cephalopods:

— Spain	1 870 GRT
— Italy	500 GRT
— Greece	430 GRT

⁽¹⁾ OJ L 226, 29.8.1980, p. 34.

- (c) tuna seiners:
- | | |
|----------|------------|
| — Spain | 20 vessels |
| — France | 19 vessels |
| — Italy | 1 vessel |
- (d) surface longliners and pole-and-line vessels:
- | | |
|------------|------------|
| — Spain | 25 vessels |
| — France | 6 vessels |
| — Portugal | 5 vessels. |

If licence applications from these Member States do not cover all the fishing opportunities fixed by the Protocol, the Commission may consider licence applications from any other Member State.

Article 3

The Member States whose vessels are fishing under this Protocol are obliged to notify the Commission of the quantities of each stock taken in Guinea-Bissau's fishing zone in accord-

ance with the arrangements laid down in Commission Regulation (EC) No 500/2001 of 14 March 2001 laying down detailed rules for the application of Council Regulation (EEC) No 2847/93 on the monitoring of catches taken by Community fishing vessels in third country waters and on the high seas ⁽¹⁾.

Article 4

The President of the Council is hereby authorised to designate the persons empowered to sign the Agreement in order to bind the Community.

Done at Brussels, 6 December 2001.

For the Council

The President

I. DURANT

⁽¹⁾ OJ L 73, 15.3.2001, p. 8.

AGREEMENT IN THE FORM OF AN EXCHANGE OF LETTERS
concerning the provisional application of the Protocol establishing the fishing opportunities and the compensation provided for in the Agreement between the European Economic Community and the Government of the Republic of Guinea-Bissau on fishing off the coast of Guinea-Bissau for the period 16 June 2001 to 15 June 2006

A. Letter from the Government of the Republic of Guinea-Bissau

Sir,

With reference to the Protocol initialled on 30 May 2001 establishing the fishing opportunities and the compensation for the period 16 June 2001 to 15 June 2006, I have the honour to inform you that the Government of the Republic of Guinea-Bissau is ready to apply the Protocol on a provisional basis, with effect from 16 June 2001, pending its entry into force in accordance with Article 9 of the Protocol, provided that the Community is prepared to do the same.

This is on the understanding that the first annual instalment of the financial compensation specified in Article 2 of the Protocol is to be paid before 15 January 2002.

I should be obliged if you would confirm the Community's agreement to such provisional application.

Please accept, Sir, the assurance of my highest consideration.

For the Government of the Republic of Guinea-Bissau

B. Letter from the Community

Sir,

I have the honour to acknowledge receipt of your letter of today's date, which reads as follows:

'With reference to the Protocol initialled on 30 May 2001 establishing the fishing opportunities and the compensation for the period 16 June 2001 to 15 June 2006, I have the honour to inform you that the Government of the Republic of Guinea-Bissau is ready to apply the Protocol on a provisional basis, with effect from 16 June 2001, pending its entry into force in accordance with Article 9 of the Protocol, provided that the Community is prepared to do the same.

This is on the understanding that the first annual instalment of the financial compensation specified in Article 2 of the Protocol is to be paid before 15 January 2002.

I should be obliged if you would confirm the Community's agreement to such provisional application.'

I have the honour to confirm the Community's agreement to such provisional application.

Please accept, Sir, the assurance of my highest consideration.

On behalf of the Council of the European Union

PROTOCOL

establishing the fishing opportunities and the compensation provided for in the Agreement between the European Economic Community and the Government of the Republic of Guinea-Bissau on fishing off the coast of Guinea-Bissau for the period 16 June 2001 to 15 June 2006

Article 1

For a period of five years from 16 June 2001, the fishing opportunities granted pursuant to Article 4 of the Agreement shall be as follows:

1. (a) freezer shrimp trawlers: 9 600 gross registered tonnes (GRT) per year;
(b) freezer fin-fish and cephalopod trawlers: 2 800 gross registered tonnes per year;
2. freezer tuna seiners: 40 vessels;
3. pole-and-line tuna vessels and surface longliners: 36 vessels.

Article 2

1. For the first three years of application of the Protocol, the compensation provided for in Article 9 of the Agreement shall be fixed at EUR 10 000 000 annually (EUR 9 000 000 of financial compensation, payable no later than 15 January 2002 for the first year and after the anniversary date of the Protocol in the following years, and EUR 1 000 000 for the measures provided for in Article 4 of this Protocol).

2. For the final two years of application of the Protocol, the compensation provided for in Article 9 of the Agreement shall be fixed at EUR 10 500 000 annually (EUR 9 500 000 of financial compensation and EUR 1 000 000 for the measures provided for in Article 4 of this Protocol).

3. The Government of the Republic of Guinea-Bissau shall have full discretion regarding the use to which the financial compensation is put.

4. The financial compensation shall be paid into an account specified by the Government of the Republic of Guinea-Bissau and opened with the Public Treasury.

Article 3

The two parties undertake to promote responsible fishing in Guinea-Bissau waters based on the principle of non-discrimination between the different fleets fishing in these waters.

During the period covered by this Protocol, the Community and the Guinea-Bissau authorities shall follow the evolution of resources in Guinea-Bissau's fishing zone. A joint scientific meeting shall be held annually in Brussels or Bissau to that end.

Based on the conclusions of the annual scientific meeting and the best available scientific advice, the two parties shall consult each other within the Joint Committee provided for in Article

11 of the Agreement and, where necessary and by common agreement, take measures to ensure the sustainable management of fisheries resources.

Should the above measures involve a reduction in the fishing opportunities granted under this Protocol, the compensation shall be adjusted.

At the request of the Community, the fishing opportunities granted under this Protocol may be increased by successive instalments of 1 000 GRT per year, if resources permit. In such cases, the compensation referred to in Article 2 shall be increased proportionately, pro rata temporis.

Article 4

The measures set out below shall be financed from the compensation provided for in Article 2(1), as follows:

- (a) financing of a Guinea-Bissau scientific or technical programme to improve information on fisheries resources and the monitoring of the evolution of resources in Guinea-Bissau's fishing zone and the functioning of the fisheries research laboratory, in particular as regards the improvement of health and hygiene conditions in the fisheries sector: EUR 200 000 per year;
- (b) awards for study and practical training in the various scientific, technical and economic disciplines relating to fisheries. The awards may also be used in any State linked with the Community by a cooperation agreement. The total cost of the awards may not exceed EUR 150 000 per year. At the request of the Guinea-Bissau authorities, part of that sum may be used to cover the costs of participation in international meetings or training courses concerning fisheries or the organisation of seminars on fishing in Guinea-Bissau. This sum shall be paid into the account specified by the competent national authorities, who shall administer all the study awards and other activities financed in this way;
- (c) support for investments in the small-scale fishing sector: EUR 250 000 per year;
- (d) fisheries surveillance, including setting up a satellite vessel monitoring system (VMS): EUR 300 000 per year;
- (e) institutional support for the Ministry of Fisheries: EUR 60 000 per year;
- (f) technical assistance to set up and monitor the above measures, the content and arrangements for which shall be defined by common agreement between the two parties: EUR 40 000 per year.

The measures shall be decided on by the competent national authorities on the basis of an action programme, which shall be sent to the Commission of the European Communities for information before the first payment.

Article 5

The amounts referred to in Article 4(a), (c), (d), (e), and (f) shall be made available to the competent Guinea-Bissau authorities and bodies no later than 15 January 2002 for the first year and after the anniversary date of the Protocol for the following years, and shall be paid into the bank accounts of the competent Guinea-Bissau authorities according to the schedule for their use.

The amounts referred to in Article 4(b) shall be payable as they are used.

The competent national authorities shall transmit an annual report on the implementation of these measures and the results achieved, and on any difficulties encountered, to the Delegation of the European Commission in Guinea-Bissau, not later than three months after the anniversary date of the Protocol. This report shall include information on the implementation of training measures financed by the payments from shipowners provided for in point 5.3 of the Technical Annex.

The European Community reserves the right to ask the competent national authorities for any additional information on the results and, where applicable, to reconsider the payments concerned should the measures not be implemented.

Article 6

Should the Community fail to make the payments provided for in Articles 2 and 4, Guinea-Bissau reserves the right to suspend the application of this Protocol.

Article 7

Where severe circumstances not attributable to natural phenomena prevent fishing activities in Guinea-Bissau's exclusive economic zone, the European Community may suspend payment of the compensation during the period when fishing is prevented following prior consultations, where possible, between the two parties.

Payment of the compensation shall recommence once the situation returns to normal and following consultation between the two parties confirming that the situation is likely to allow a return to normal fishing activities.

Article 8

The Annex to the Agreement between the European Economic Community and the Government of the Republic of Guinea-Bissau on fishing off the coast of Guinea-Bissau is hereby repealed and replaced by the Annex hereto.

Article 9

This Protocol with its Annexes shall enter into force on the date on which the parties notify each other of the completion of the procedures necessary for that purpose.

It shall apply from 16 June 2001.

ANNEX

CONDITIONS GOVERNING THE PURSUIT OF FISHING ACTIVITIES BY COMMUNITY VESSELS IN GUINEA-BISSAU'S FISHING ZONE**1. Licence application and issuing formalities**

- 1.1. The competent European Community authorities shall present to the Ministry of Fisheries of the Republic of Guinea-Bissau, via the Delegation of the European Commission in Guinea-Bissau, an application for each vessel wishing to fish under the Agreement, at least 20 days before the date of commencement of the requested term of validity.

Applications shall be made on the forms provided for that purpose by the Government of the Republic of Guinea-Bissau, a specimen of which is attached (Appendix 1).

- 1.2. Licence applications shall be accompanied by proof of payment of the fee for the licence's term of validity, the amount laid down in 6.2 and, in the case of freezer trawlers, a copy of the document drawn up by the Member State certifying the vessel's tonnage in GRT. The fee shall be paid into the account specified by the Guinea-Bissau authorities. The original of the licence shall be issued to the master of the vessel or to his representative.

Should a licence application be made in respect of a vessel which has already had a licence under this Protocol and the technical characteristics of which remain unchanged, this application shall be presented to the Ministry of Fisheries via the Delegation of the European Commission in Bissau, accompanied only by the proof of payment of the fee for the periods in question. The Ministry of Fisheries shall authorise the new licence, entering details of the first licence application submitted under the Protocol in force.

- 1.3. The Delegation of the European Commission in Bissau shall be notified of each licence issued.

- 1.4. The fees shall include all national and local charges except for port charges.

- 1.5. The following 12-month periods shall be used for determining the validity of the licences:

first period: 16 June 2001 to 31 December 2001

second period: 1 January to 31 December 2002

third period: 1 January to 31 December 2003

fourth period: 1 January to 31 December 2004

fifth period: 1 January to 31 December 2005

sixth period: 1 January to 15 June 2006

No licence may begin during a 12-month period and end during the following 12-month period.

- 1.6. Licences shall be issued for specific vessels and shall not be transferable. However, at the request of the European Community and where *force majeure* is proven, a vessel's licence shall be replaced by a new licence for another vessel whose features are similar to those of the first vessel. If the gross registered tonnage (GRT) of the replacement vessel is above that of the vessel to be replaced, the difference in fee must be paid pro rata temporis.

The new licence shall take effect on the day that the vessel's owner returns the cancelled licence to the Ministry of Fisheries of the Republic of Guinea-Bissau. The Delegation of the European Commission in Bissau shall be informed of the licence transfer.

1.7. *Provisions applicable to freezer trawlers*

- 1.7.1. Licences must be kept on board at all times.

- 1.7.2. Before licences are issued, vessels must put into the port of Bissau once in each 12-month period so that the inspection required under the regulations can be carried out. This inspection shall be carried out exclusively by duly authorised persons and must be effected within 48 working hours of arrival of the vessel in port if arrival has been announced at least 72 hours in advance. If the licence is not issued within the 48-hour limit for reasons ascribable to the Ministry of Fisheries, any costs arising shall be borne by the latter. If the vessel remains in port after the licence is issued, the shipowner shall bear the relevant costs and charges.

Should a new licence be allocated in that same 12-month period, vessels whose technical characteristics remain unchanged shall not be required to undergo inspection or to put into the port. However, any costs arising from the issuing of the licence shall be borne by the shipowner.

1.7.3. Article 4(3) of the Agreement notwithstanding, licences shall be issued for three, six or twelve months and shall be renewable. Utilisation of the fishing opportunities granted under Article 1 of the Protocol shall be calculated with regard to the term of validity of licences. In the first and last 12-month periods, licences shall be payable in proportion to their term of validity.

1.7.4. The fees payable by shipowners shall be as follows in EUR per GRT:

- for annual licences:
 - 197 for fin-fish trawlers,
 - 219 for cephalopod trawlers,
 - 279 for shrimp trawlers;
- for six-month licences:
 - 102 for fin-fish trawlers,
 - 113 for cephalopod trawlers,
 - 144 for shrimp trawlers;
- for three-month licences:
 - 52 for fin-fish trawlers,
 - 58 for cephalopod trawlers,
 - 73 for shrimp trawlers.

These fees shall be increased by 5 % as from the fourth 12-month period of application of the Protocol.

1.7.5. As an alternative to the compulsory landing at market prices provided for under point 4, the supplementary fees for shipowners opting not to land fish shall be as follows:

- EUR 7/GRT for three-month licences,
- EUR 14/GRT for six-month licences,
- EUR 23/GRT for annual licences.

1.8. *Provisions applicable to licences for tuna vessels and surface longliners*

1.8.1. Licences must be held on board at all times; however, once the Commission of the European Communities has informed the Guinea-Bissau authorities that the advance payment has been made, the latter shall enter the vessel in question in the register of vessels authorised to fish that is sent to the Guinea-Bissau surveillance authorities. Pending receipt of the original of the licence, a copy of the licence that has been drawn up may be issued by fax to be held on board the vessel.

1.8.2. Licences shall cover 12-month periods. The fees shall be EUR 25 per tonne caught within Guinea-Bissau's fishing zone.

1.8.3. Licences shall be issued following payment to the competent national authorities of a lump sum of EUR 2 250 per year for each tuna seiner, EUR 375 per year for each pole-and-line tuna vessel and EUR 625 per year for each surface longliner, covering the fees for:

- 90 tonnes of tuna caught per year in the case of seiners,
- 15 tonnes caught per year in the case of pole-and-line tuna vessels,
- 25 tonnes caught per year in the case of surface longliners.

1.8.4. The final statement of the fees due for the fishing year shall be drawn up by the Commission of the European Communities at the end of each calendar year on the basis of the catch declarations made by each shipowner and confirmed by the scientific institutes responsible for verifying catch data (ORSTOM and IEO). The statement shall be forwarded to the Ministry of Fisheries and to the shipowners at the same time. Any additional payments shall be made by the shipowners to the competent Guinea-Bissau authorities by 31 May of the following year at the latest, into the account referred to in 1.2. However, if the final statement is lower than the abovementioned advance, the resulting balance shall not be reimbursed.

2. **Catch declarations**

All Community vessels authorised under the Agreement to fish in Guinea-Bissau's fishing zone are required to forward a declaration of their catches to the Ministry of Fisheries, with a copy to the Delegation of the European Commission in Guinea-Bissau, in accordance with the following:

- for trawlers a declaration shall be made out according to the specimen annexed hereto (Appendix 2). The declarations shall be drawn up each month and presented at least once each quarter;

- for tuna seiners, pole-and-line tuna vessels and surface longliners, a fishing log shall be kept, in accordance with Appendix 3, for the fishing periods spent in Guinea-Bissau's fishing zone. The form must be sent every six months to the Ministry of Fisheries via the Delegation of the European Commission in Guinea-Bissau. Where no fishing operations are carried out in Guinea-Bissau's fishing zone, shipowners are nevertheless required to forward a declaration to the effect that no catch has been made;
- forms must be completed legibly, giving in particular the monthly totals per species, and must be signed by the master of the vessel.

Should these provisions not be adhered to, the Government of Guinea-Bissau reserves the right to suspend and, in the event of a second offence, not to renew the licence of the offending vessel until the formality has been complied with.

3. By-catches

- 3.1. Fin-fish trawlers may not hold on board crustaceans or cephalopods accounting, in each case, for more than 9 % of their total catch in Guinea-Bissau's fishing zone.

Cephalopod trawlers may not hold on board crustaceans accounting for more than 9 % of their total catch in Guinea-Bissau's fishing zone.

Shrimp trawlers may not hold on board cephalopods and fin-fish accounting for more than 50 % of their total catch in Guinea-Bissau's fishing zone.

- 3.2. Pole-and-line tuna vessels shall be authorised to fish for live bait with a view to carrying out their fishing activities in Guinea-Bissau's fishing zone.

4. Fish landings

With a view to security of fish supplies for the local market, trawlers shall undertake to land fish at the market price.

Community shipowners may choose between landing the catch or an alternative flat-rate payment.

- 4.1. Should the shipowner opt to land the catch, the following quantities must be landed at the market price:
- fin-fish trawlers: 50 kg of fish per GRT and per quarter,
 - cephalopod trawlers: 30 kg of fish per GRT and per quarter,
 - shrimp trawlers: 10 kg of fish per GRT and per quarter,

These landings may be made individually or collectively.

Shipowners shall inform the Guinea-Bissau Ministry of Fisheries of the landing as quickly as possible and at least 48 hours before their estimated time of arrival in port, indicating the estimated total quantity to be landed.

Landing operations should take no longer than 24 hours following the arrival of the vessel in port. If this deadline is not met, the vessel is authorised to leave the port and considered to have met its obligation to land the quantity declared by the shipowner. Where this 24 hour deadline is not met, a number of fishing days proportional to the period of landing shall be deducted from the subsequent licence for that vessel or for another vessel designated by the shipowner with the same technical characteristics. Moreover, all port charges and costs shall be borne by Guinea-Bissau.

The above time limits shall not include Saturdays, Sundays and public holidays.

A certificate indicating the quantity and value of the catches landed shall be issued to the captain of the vessel at the end of the landing operations.

Any failure to comply with the requirement to land catches shall incur a fine of EUR 1 000 for each tonne not landed.

- 4.2. Should the shipowner opt to pay the flat-rate payment, the provisions of point 1.7.5 shall apply.

5. Signing-on of seamen

Owners who have been issued fishing licences under the Agreement shall contribute to the practical vocational training of Guinea-Bissau nationals and to an improvement of the labour market, subject to the conditions and limits set out below.

- 5.1. Each trawler owner shall undertake to employ:
- three seamen/fishermen on vessels of less than 250 GRT,
 - four seamen/fishermen on vessels of 250 to 400 GRT,
 - five seamen/fishermen on vessels of 400 to 650 GRT,
 - six seamen/fishermen on vessels of more than 650 GRT.

However, Community shipowners shall strive to increase the complement of Guinea-Bissau seamen signed on to 33 % of the non-officer crew engaged in fishing activities.

Such seamen shall be selected by shipowners. However, depending on training and employment needs, Guinea-Bissau may designate a maximum of one seaman per trawler.

- 5.2. Owners of tuna vessels and surface longliners shall undertake to employ Guinea-Bissau nationals, subject to the conditions and limits set out below:
- for the fleet of tuna seiners, seven Guinea-Bissau seamen shall be signed on during the fishing season in Guinea-Bissau's fishing zone,
 - for the fleet of pole-and-line tuna vessels and surface longliners, 17 Guinea-Bissau seamen shall be signed on for the tuna fishing season in Guinea-Bissau's fishing zone, all of them to be assigned to different vessels.
- 5.3. The wages of these seamen/fishermen shall be fixed, before licences are issued, by common agreement between the shipowners or their representatives and the Ministry of Fisheries; wages shall be paid by the shipowners and must include the social contributions to which seamen are subject (including life assurance and accident and sickness insurance).

Should the seamen not be signed on, the owners of tuna seiners, pole-and-line tuna vessels and surface longliners shall be obliged to pay as soon as possible a lump sum equivalent to the wages of seamen not signed on for the fishing season.

That sum shall be used for the training of seamen/fishermen in Guinea-Bissau and shall be paid into an account specified by the Guinea-Bissau authorities.

6. Observers on board

- 6.1. Each trawler shall take on board an observer appointed by the Ministry of Fisheries.

Observers shall not normally remain on board for more than two consecutive trips. The embarkation and debarkation of observers may not interrupt trips or fishing operations.

- 6.2. Observers shall be treated as officers. They shall:
- observe the fishing activities of the vessels,
 - perform biological sampling in the context of scientific programmes,
 - note the fishing gear used,
 - verify the catch data for Guinea-Bissau's zone recorded in the logbook,
 - report fishing data by radio at least once a week.

While on board, observers shall:

- take all appropriate steps to ensure that the conditions under which they are taken on board and their presence on board do not interrupt or hamper fishing activities,
- respect the material and equipment on board and the confidentiality of all documents belonging to the vessel,
- draft an activity report to be transmitted to the competent Guinea-Bissau authorities. Those authorities shall send a copy of the report, after processing and within one week, to the Delegation of the European Commission in Bissau.

The terms of observers' embarkation are to be agreed between the shipowner or his agent and the Guinea-Bissau authorities. Their wages and social insurance contributions are to be paid by the Ministry of Fisheries.

As a contribution to the costs arising from the presence of the observer on board, together with the licence fee the shipowner shall pay the Guinea-Bissau authorities the sum of EUR 10 per GRT per year pro rata temporis for each vessel fishing in Guinea-Bissau waters.

Should the observer be taken on board in a foreign port, his travelling costs shall be borne by the shipowner. Should a vessel with an observer from Guinea-Bissau on board leave the Guinea-Bissau fishing zone, all measures must be taken to ensure the observer's return to Bissau as soon as possible at the expense of the shipowner.

If the observer is not present at the time and place agreed and during the 12 hours following the time agreed, the shipowner shall be automatically absolved of his obligation to take the observer on board.

- 6.3. Tuna seiners and surface longliners shall take an observer on board at the request of the Ministry of Fisheries.
In such cases, the port of embarkation shall be determined by common agreement between the Ministry of Fisheries and the shipowners or their representatives.

7. **Inspection and monitoring**

Community vessels fishing in Guinea-Bissau's fishing zone shall permit and assist any Guinea-Bissau official responsible for inspection and monitoring to board the vessel and carry out his duties on board. The official must not remain on board any longer than is necessary to verify catches by random checks and to conduct any other inspection relating to fishing activities.

8. **Fishing zones**

Freezer trawlers as referred to in Article 1 of the Protocol shall be authorised to fish in waters beyond 12 nautical miles from the base lines.

9. **Authorised mesh size**

The minimum mesh size authorised for the trawl body (mesh fully extended) shall be:

- (a) 70 mm for fin-fish vessels,
- (b) 70 mm for cephalopod vessels,
- (c) 40 mm for shrimp vessels,
- (d) 16 mm for fishing for live bait.

Outrigger fishing shall be authorised.

10. **Entering and leaving the zone**

Community vessels fishing under the Agreement in Guinea-Bissau's fishing zone shall report the date and time and their position to the radio station of the Ministry of Fisheries on entering and leaving Guinea-Bissau's fishing zone.

When licences are issued, the Ministry of Fisheries shall inform the shipowners of the call sign, frequency and working hours of the station.

Where they cannot communicate information by radio, vessels may use alternative means, such as telex, telegram or fax (numbers 20.11.57, 20.19.57 and 20.16.84).

11. **Procedure for boarding and application of penalties**

- 11.1. The Delegation of the European Commission in Guinea-Bissau shall be notified within 48 hours of any boarding of or application of penalties to a fishing vessel flying the flag of a Member State of the Community and operating under this Agreement in Guinea-Bissau's waters and shall at the same time receive a summary report of the circumstances surrounding the boarding or application of penalties and the reasons leading to it.

Where boarding takes place, before any judicial proceedings are initiated, an attempt shall be made to settle the alleged infringement through an administrative procedure. This procedure shall end no later than three working days after the boarding.

- 11.2. If the case cannot be settled by administrative procedure and has to be brought before a competent judicial body, the competent authority shall set a bank security within 48 hours of completion of the administrative procedure, pending the judicial decision. The security shall not exceed the maximum fine provided for under national legislation in respect of the alleged infringement.

The bank security shall be released by the competent authority once the master of the vessel is acquitted by judicial decision.

The vessel and its crew shall be released:

- either on fulfilment of the obligations arising from the administrative procedure, or
- once the bank security has been lodged.

12. **Provisioning zones**

Community vessels wishing to carry out refuelling within 12 nautical miles of the coast must comply with national legislation in this respect.

Appendix 1

Application form for a fishing licence

For official use only	Remarks
Nationality:	
Licence No:	
Date of signing:	
Date of issue:	

APPLICANT

Name of firm:

Trade register No:

First name and surname of applicant:

Date and place of birth:

Occupation:

Address:

.....

No of employees:

Name and address of agent:

.....

VESSEL

Type of vessel: Registration No:

New name: Former name:

Date and place of construction:

Original nationality:

Length: Beam: Depth:

Gross tonnage: Net tonnage:

Type of building materials:

Make of main engine: Type: Horsepower:

Propeller: Fixed: ☐ Variable: ☐ Ducted: ☐

Transit speed:

Call sign: Call frequency:

List of sounding, navigating and transmission instruments:

Radar: ☐

Sonar: ☐

Net sounder: ☐

VHF: ☐

SSB: ☐

Satellite navigation: ☐

Other:

No of seamen:

CONSERVATION

Packed in ice: ☐

Ice and refrigeration: ☐

Freezing; In brine: ☐

Dry: ☐

Refrigerated sea water: ☐

Total refrigerating power:

Freezing capacity in tonnes/24 hours:

Hold capacity:

TYPE OF FISHING

A. Demersal

Inshore demersal: ☐

Deep-sea demersal: ☐

Type of trawl:

Cephalopods: ☐

Shrimps: ☐

Fish: ☐

Length of trawl:

Length of headline:

Mesh size in the body:

Mesh size in the wings:

Speed of trawling:

B. Deep-sea pelagic (tuna)

Pole and line: ☐

No of poles and lines: ☐

Seine: ☐

Length of net:

Depth of net:

No of tanks:

Capacity in tonnes:

C. Longlines and pots

Surface: ☐

Bottom: ☐

Length of lines:

No of hooks:

No of lines:

No of pots:

SHORE INSTALLATIONS

Address and permit No:

Name of firm:

Activities:

Domestic wholesale fish trade: ☐ Export: ☐

Type and No of wholesale trader's card:

Description of processing and conservation plant:

.....

.....

.....

.....

.....

.....

No of employees:

N.B.: Indicate affirmative answers by a tick in the appropriate box.

Technical remarks

Authorisation of the State ministry

COMMISSION

COMMISSION DECISION

of 21 January 2002

concerning certain further detailed conditions for the granting of authorisation for the removal of pigs from holdings located within the protection and surveillance zones established in Spain in relation to classical swine fever

(notified under document number C(2002) 105)

(Text with EEA relevance)

(2002/41/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 2001/89/EC of 23 October 2001 on Community measures for the control of classical swine fever ⁽¹⁾, and in particular Article 11(1)(f), Article 25(3) and Article 29(4) thereof,

Whereas:

- (1) Outbreaks of classical swine fever have occurred in the comarca of Osona in the Province of Barcelona in Cataluña in Spain.
- (2) Spain is adopting the measures to control the disease within the framework of Directive 2001/89/EC.
- (3) In relation to these outbreaks of disease, the Commission adopted: (i) Decision 2001/925/EC of 20 December 2001 concerning certain protection measures relating to classical swine fever in Spain and repealing Decision 2001/863/EC ⁽²⁾, as last amended by Decision 2002/31/EC ⁽³⁾; (ii) Decision 2002/33/EC of 14 January 2002 on the use of two slaughterhouses, in accordance with Article 10(1)(b) of Council Directive 2001/89/EC, by Spain ⁽⁴⁾; (iii) Decision 2002/32/EC of 14 January 2002 on marking and use of pigmeat in application of Article 11 of Council Directive 2001/89/EC concerning Spain ⁽⁵⁾.
- (4) Articles 10 and 11 of Directive 2001/89/EC establish the measures to be applied in the protection and surveillance zones established around the outbreak sites, which

include a ban to the movement of pigs from the holdings located in these zones and the conditions to grant derogation to this ban. Due to the occurrence of several disease outbreaks after early December 2001 and the consequent prolonged standstill of pigs, welfare problems have arisen in holdings situated in the established zones, which could be solved by allowing the animals removal from the holdings. Movement of pigs may, however, present a risk of further disease spreading, which may lead to particularly serious consequences given the high density of pigs in the concerned area.

- (5) The provisions of Directive 2001/89/EC shall be applied in the Member States from 1 November 2002. Pending the application of this Directive, further transitional provisions on the control of classical swine fever may be adopted in accordance with the Regulatory Committee Procedures.
- (6) It is therefore appropriate to establish further detailed conditions for the granting of authorisation by the competent Spanish authorities for the removal of pigs from the holdings located within the established zones, to be moved to slaughterhouses, within the framework of Directive 2001/89/EC. The fresh meat from these pigs shall be then either processed or stamped and treated in accordance with Article 10(3)(f) of the said Directive.
- (7) For the sake of clarity, it is appropriate to repeal Decision 2002/32/EC, that cannot be successfully enforced due to the occurrence of recent disease outbreaks.
- (8) The measures provided for in this Decision are in accordance with the opinion of the Standing Veterinary Committee,

⁽¹⁾ OJ L 316, 1.12.2001, p. 5.

⁽²⁾ OJ L 339, 21.12.2001, p. 56.

⁽³⁾ OJ L 13, 16.1.2002, p. 31.

⁽⁴⁾ OJ L 13, 16.1.2002, p. 35.

⁽⁵⁾ OJ L 13, 16.1.2002, p. 32.

HAS ADOPTED THIS DECISION:

Article 1

Spain may grant authorisation for the removal of pigs from holdings located in the protection and surveillance zones established before 15 January 2002 in the comarca of Osona in the Province of Barcelona in Cataluña, to be moved to slaughterhouses in accordance with Article 10(2) and Article 11(2) of Directive 2001/89/EC, provided that, in addition to the measures laid down in Article 10(3) of the said Directive, the following conditions are fulfilled:

- (a) the pigs shall be moved only from holdings which:
 - do not contain any pigs suspected to be infected with classical swine fever virus, or
 - have not been recognised as contact holding in accordance with Article 7(1) of Directive 2001/89/EC;
- (b) the pigs shall be moved to one of the slaughterhouses referred to in Decision 2002/33/EC;
- (c) before authorisation is given to move the pigs, the clinical examination to be carried out by an official veterinarian shall be carried out within the 24-hour period prior to moving the pigs and in accordance with the procedures laid down in part I of the Annex;

- (d) samples for serological or virological tests from the pigs shall be taken at slaughter in accordance with the procedures laid down in part II of the Annex.

Article 2

Spain shall ensure that abattoirs designated to receive the pigs referred to in Article 1 do not, on the same day, accept pigs for slaughter other than the pigs in question.

Article 3

Decision 2002/32/EC is hereby repealed.

Article 4

This Decision is applicable until 28 February 2002.

Article 5

This Decision is addressed to the Member States.

Done at Brussels, 21 January 2002.

For the Commission

David BYRNE

Member of the Commission

ANNEX

PART I

PROCEDURES FOR THE CLINICAL EXAMINATION OF PIGS

The clinical examination must be in accordance with the following procedures:

- (a) a check of the production and health records of the holding must be carried out, if these records are available;
- (b) an inspection in all premises of the holding must be carried out;
- (c) the clinical examination must be carried out on all premises in which the pigs to be moved are kept;
- (d) it must include the taking of body temperature. The minimum number of the pigs to be checked must allow for the detection of fever if it occurs at a prevalence of 20 % with 95 % confidence on the premise where the pigs to be moved are kept. However, in case of breeding sows or boars, the minimum number of pigs to be checked must allow for the detection of fever if it occurs at a prevalence of 5 % with 95 % confidence on the premise where the pigs to be moved are kept. The checking of temperature must primarily concern the following pigs or group of pigs:
 - sick or anorexic pigs,
 - pigs recently recovered from disease,
 - pigs recently introduced in the holding or for which any contact with a potential source of classical swine fever virus has been identified,
 - pigs already sampled and serologically tested for classical swine fever, in case the results of these tests do not allow to rule out classical swine fever.

PART II

PROCEDURES FOR THE SAMPLING AND TESTING OF PIGS AT SLAUGHTER

Blood samples for serological tests or blood or tonsils samples for virological tests must be taken from the pigs proceeding from each premise of the holding from which they have been moved.

The minimum number of samples to be taken must allow for the detection of 10 % seroprevalence of virus prevalence with 95 % confidence on each premise.

The type of samples to be taken and the test to be used will be in accordance with the instructions of the competent authority, which will take into account the range of tests that can be performed, the sensitivity of these tests and the epidemiological situation.

In case clinical signs or post-mortem lesions suggesting classical swine fever are detected when the pigs are slaughtered or killed, the competent authority shall ensure that further appropriate sampling and virological testing are immediately carried out.
