

MEMORANDUM OF UNDERSTANDING ON PORT STATE CONTROL IN THE BLACK SEA REGION

The Maritime Authorities of
The Republic of Bulgaria
Georgia
Romania
The Russian Federation
The Republic of Turkey and
Ukraine

Hereinafter referred as to “The Authorities”

Recognizing the need to increase maritime safety and the protection of the marine environment and the importance of improving living and working conditions on board ships;

Recalling the Strategic Action Plan for the Rehabilitation and Protection of the Black Sea, in particular paragraph 38;

Noting with appreciation the progress achieved in these fields, in particular by the International Maritime Organization (IMO) and the International Labour Organisation (ILO);

Mindful that the principal responsibility for the effective application of the standards laid down in international instruments rests upon the authorities of the State whose flag a ship is entitled to fly;

Recognizing nevertheless that effective action by port States is required to prevent the operation of substandard ships;

Recognizing also the need to avoid distorting competition between ports;

Convinced of the necessity, for these purposes, of an improved and harmonized system of port State control and of strengthening co-operation and the exchange of information;

Have reached the following understanding:

Section 1 Commitments

- 1.1 Each Authority will give effect to the provisions of the present Memorandum and the Annexes thereto which constitute an integral part of the Memorandum, and take all necessary steps to ratify instruments relevant for the purposes of this Memorandum.
- 1.2 Each Authority will establish and maintain an effective system of port State control with a view to ensure that, without discrimination as to flag, foreign merchant ships calling at the ports of its State comply with the standards laid down in the relevant instruments defined in section 2.
- 1.3 Each Authority will achieve, within a period of 3 years from the coming into effect of the Memorandum an annual total of inspections corresponding to, at least, 15% of the number of individual foreign merchant ships, hereinafter referred to as “ships”, which entered the ports of its State during a recent representative period of 12 months. The Committee established pursuant to section 7.1 will monitor the overall inspection activity and its effectiveness throughout the region. The Committee will also adjust the target inspection rate based on experience gained and progress made in the implementation of the Memorandum of Understanding.

- 1.4 Each Authority will consult, co-operate and exchange information with the other authorities in order to further the aims of the Memorandum

Section 2 Relevant Instruments

- 2.1 For the purposes of the Memorandum “relevant instruments” are, together with the Protocols and amendments to these instruments and related codes of mandatory status in force, the following instruments:
- .1 The International Convention on Load Lines, 1966 (Load Lines 66);
 - .2 The International Convention for the Safety of Life at Sea, 1974 (SOLAS 74);
 - .3 The International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto (MARPOL 73/78);
 - .4 The International Convention on Standards of Training Certification and Watchkeeping for Seafarers, 1978 (STCW 78);
 - .5 The Convention on the International Regulations for Preventing Collisions at Sea, 1972 (COLREG 72);
 - .6 The International Convention on Tonnage Measurement of Ships, 1969 (TONNAGE 69);
 - .7 The Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147).
- 2.2 With respect to the Merchant Shipping (Minimum Standards), ILO Convention, 1976 (No. 147), each Authority will apply the instructions in Section B-1 of the Manual for the application of the ILO publication “Inspection of Labour Conditions on board Ship: Guidelines for procedure”.
- 2.3 Each Authority will apply those relevant instruments which are in force and to which its State is a Party. In case of amendments to a relevant instrument, each Authority will apply those amendments which are in force and which its State has accepted. An instrument so amended will then be deemed to be the “relevant instrument” for that Authority.
- 2.4 When inspecting a ship flying the flag of a State not party to a Convention or a “relevant instrument” as amended for the purposes of port State control, the Authorities which are party to such Convention or “relevant instrument” as amended shall ensure that the treatment given to such ship and its crew is not more favourable than that given to ships flying the flag of a State which is party to that Convention or “relevant instrument”.
- 2.5 In the case of ships below 500 gross tonnage, the Authorities will apply those requirements of the relevant instruments which are applicable and will to the extent that a relevant instrument does not apply take such action as may be necessary to ensure that those ships are not clearly hazardous to safety, health or the environment, having regard, in particular to Section 4.2 of the Port State Control Procedures in Section B-1 of the Manual.

Section 3 Inspection Procedures, Rectification and Detention

- 3.1.1 In implementing the Memorandum, the Authorities will carry out inspections which will consist of a visit on board a ship in order to check the validity of the certificates and other documents relevant for the purposes of the Memorandum as well as the condition of the ship, its equipment and crew, as well as the living and working conditions of the crew.
- 3.1.2 The Authority shall ensure that the Port State Control Officer (PSCO) shall, as a minimum, check the certificates and documents referred to in Section 3 of the Port State Control Procedures contained in Section B-1 of the Manual, to the extent applicable and satisfy himself on the overall condition of the ship including the engine room and the accommodation and the hygienic conditions.

- 3.2.1 Whenever there are clear grounds for believing that the condition of a ship or of its equipment or crew does not substantially meet the requirements of a relevant instrument a more detailed inspection shall be carried out, including further checking of compliance with on-board operational requirements.
- 3.2.2 Clear grounds exist when the PSCO finds evidence, which in his professional judgement warrants a more detailed inspection of the ship, its equipment or crew. The Authorities will regard as clear grounds, *inter alia*, those set out in Section 5 of the Port State Control Procedures contained in Section B-1 of the Manual.
- 3.2.3 Nothing in these procedures should be construed as restricting the powers of the Authorities to take measures within their jurisdiction in respect of any matter to which the relevant instruments relate.
- 3.2.4 The relevant procedures and guidelines for control of ships specified in the Port State Control Procedures contained in Section B-1 of the Manual shall also be applied.
- 3.3 In selecting ships for inspection, the Authorities shall give priority to the ships referred to Section 2 of the Port State Control Procedures contained in Section B-1 of the Manual.
- 3.4 The authorities will seek to avoid inspecting ships, which have been inspected by any of the other Authorities within the previous six months, unless they have clear grounds for inspection. This procedure is not applicable to ships listed under 3.3 which may be inspected whenever the Authority deems appropriate. The six-months period does not preclude an inspection to be carried out as often as the Authority considers.
- 3.5.1 Inspections will be carried out only by persons, duly authorized by the Authority to carry out port State inspections and responsible to that authority, who will fulfil the requirements of paragraph 3.5.3 and the qualification criteria specified in Annex 1.
- 3.5.2 The PSCO carrying out Port State control may be assisted by a person with the required expertise when such expertise cannot be provided by the Authority.
- 3.5.3 The PSCO carrying out port State control and the person assisting him shall have no commercial interest either in the port of inspection or in the ships inspected, nor shall PSCO be employed by or undertake work on behalf of non-governmental organizations which issue statutory and classification certificates or which carry out the surveys necessary for the issue of those certificates to ships.
- 3.5.4 Each PSCO shall carry a personal document in the form of an identity card issued by his Authority indicating that the inspector is authorized to carry out inspections.
- 3.6.1 On completion of an inspection the master of the ship shall be provided by the PSCO with a document in the form specified in the Black Sea Port State Control Manual (hereinafter referred to as the "Manual"), giving the results of the inspection and the details of any decision taken by the PSCO and of the corrective action to be taken by the master, owner or operator.
- 3.6.2 The Authority shall be satisfied that any deficiencies confirmed or revealed by the inspection are rectified.
- 3.6.3 In the case of deficiencies, which are clearly hazardous to safety, health or the environment the Authority will detain the ship or will stop the operation in the course of which the deficiencies have been revealed. The detention order or the stoppage of the operation shall not be lifted until the hazard is removed, except under the conditions provided for in 3.8.1 below.
- 3.6.4 When exercising his professional judgement as to whether or not a ship should be detained, the PSCO shall be guided by the criteria set out in the Port State Control Procedures contained in Section B-1 of the Manual..

- 3.7 In the event that a ship is detained the Authority will notify Flag State Administration¹ in writing, which includes report of inspection. Where relevant, the organization responsible for the issue of the certificates shall also be informed. The parties will also be notified in writing of release of detention.
- 3.8.1 Where deficiencies referred to in 3.6.3 cannot be rectified in the port of inspection, the Authority may allow the ship to proceed to another port, or the nearest repair yard subject to any appropriate conditions determined by that Authority with a view to ensuring that the ship can so proceed without risk to safety, health or the environment. In such circumstances the Authority will notify the competent Authority of the region State where the next port of call or the repair yard is situated, the parties mentioned in 3.7 and any other Authority as appropriate. Notification to Authorities shall include the final report of inspection and the estimated place and time of arrival. Additional notification will be made by means of the Black Sea Information System. The Authority receiving such notification will inform the notifying Authority of action taken.
- 3.8.2 The Authorities will take measures to ensure that ships referred to in 3.8.1, which either proceed to sea without complying with the conditions determined by the Authority which detained the ship, or which do not call into the agreed port or yard to undertake repairs, shall be refused access to any port within the region covered by this Memorandum until the owner or operator and the flag State has provided evidence to the satisfaction of the authority of the State where the ship was found sub-standard that the ship complies with all applicable requirements of the relevant instrument. In the latter case, the receiving authority will notify all other authorities of such compliance.
- 3.8.3 In the exceptional event of “force majeure”, access to a specific port may be permitted to minimize the risk of life or of pollution.
- 3.9 The provisions of section 3.7 and 3.8 are without prejudice to the requirements of relevant instruments or procedures established by international organizations concerning notification and reporting procedures related to port State control.
- 3.10 When exercising control under the Memorandum, the Authorities will make all possible efforts to avoid unduly detaining or delaying a ship. Nothing in the Memorandum affects right created by provisions of relevant instruments relating to compensation for undue detention or delay.
- 3.11 In case the master, owner or agent of the ship notifies the port State control authorities prior to or immediately upon arrival of the vessel at the port, of any damage, breakdown or deficiency to the ship, its machinery or equipment, which is intended to be repaired or rectified before the ship sails from that port, detention should be recorded only if deficiencies justifying detention are found after the master has given notification that the ship was ready for inspection. The same procedure applies when the port State control authorities are notified that the ship is scheduled to be surveyed at the port with respect to flag, statutory or class requirements.
- 3.12 The owner or the operator of a ship will have the right of appeal against a detention decision to higher administrative Authority or to the court of competent jurisdiction, according to the law in each country. However, an appeal shall not cause the detention to be suspended.
- 3.13 Should an inspection reveal deficiencies warranting detention of a ship all costs relating to follow up inspections shall be covered by the shipowner or the operator. The detention shall not be lifted until full payment has been made or a sufficient guarantee has been given for the reimbursement of the costs.

¹ Refer to MSC/Circ. 781 MEPC 6/Circ 2 “National contact points of Members for safety and pollution prevention” (Annex 1 and 2). When a valid contact point is not available the nearest diplomatic representative should be informed.

Section 4 Provision of Information

- 4.1 Each Authority will report on its inspections under the Memorandum and their results, in accordance with the procedures specified in the Manual.
- 4.2 The Authorities will supply the following information to the Memorandum Secretariat established pursuant to Section 7:
- (a) number of Port State Control Officers working on their behalf on port State inspections. Where PSCOs work on a part-time basis, the total is corrected into a number of full-time employed PSCOs.
 - (b) number of individual foreign ships entering their ports in a representative year prior to the entering into force of the Memorandum.
- This information will be updated at least every three years.
- 4.3 The Black Sea Information System (BSIS) is established in Novorossiysk, the Russian Federation for the purpose of exchanging information on port State inspections, in order to:
- .1 make available to Authorities information on inspection of ships in other regional ports to assist them in their selection of foreign flag ships to be inspected and in the exercise of port State control on selected ships; and
 - .2 provide effective information exchange facilities regarding port State control in the region.
- Each Authority will report on its inspections under the Memorandum and their results, in accordance with the procedures specified in the Manual.
- 4.4 The Black Sea Information System shall provide for information exchange with the information system of the other regional agreements.

Section 5 Operational Violations

The authorities will upon the request of another Authority endeavour to secure evidence to suspected violations of the requirements on operational matters of Rule 10 of the International Regulations for Preventing Collisions at Sea, 1972 and the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978, relating thereto. In case of suspected violations involving the discharge of harmful substances, an Authority will, upon the request of another Authority, visit in port the ships of such a violation in order to obtain information and, where appropriate, to take a sample of any alleged pollutant. Procedures for investigations into contravention of discharge provisions are listed in Section B-2 of the Manual. In cases referred to in this section the requesting Authority should state that the flag State of the ship has already been notified of the alleged violation.

Section 6 Training Programmes and Seminars

The Authorities will endeavour to establish appropriate training programmes and seminars.

Section 7 Organization

- 7.1 A Committee composed of a representative of each of the Authorities that are party to the Memorandum will be established. A representative of the International Maritime Organization and of the International Labour Organisation will be invited to participate without vote in the work of the Committee. Representatives of any other Organization or Authority, which the Committee may deem appropriate, may be accorded the status of observer without vote.
- 7.2 The Committee will meet once a year and at such other times as it may decide.

- 7.3 The Committee will:
- .1 carry out the specific tasks assigned to it under the Memorandum;
 - .2 promote by all means necessary, including seminars for surveyors, the harmonization of procedures and practices relating to the inspection, rectification, detention and the application of section 2.4;
 - .3 develop and review guidelines for carrying out inspections under the Memorandum;
 - .4 develop and review procedures, including those related to the exchange of information;
 - .5 keep under review other matters relating to the operation and the effectiveness of the Memorandum;
 - .6 promote by all means necessary the harmonization of the operation and effectiveness of this Memorandum with those of similar agreements for other Regions;
 - .7 adopt the budget and establish the contributions of every Party to the Memorandum in accordance with adopted procedure; and
 - .8 establish, if necessary, working groups.
- 7.4 The Committee will take its decisions acting on a two-thirds majority.
- 7.5 A Secretariat will be established in accordance with the following principles:
- .1 the Secretariat is a non-profit making body located in Istanbul, Turkey;
 - .2 the Secretariat will be totally independent from any maritime administration or organization;
 - .3 the Secretariat will be governed by and be accountable to the Committee;
 - .4 the Secretariat will have a bank account into which all dues and contributions are made;
 - .5 the Secretariat will operate from the established bank account in accordance with the budget determined by the Committee.
- 7.6 The Secretariat, acting under the guidance of the Committee in accordance with the terms of reference defined in Annex 2 and within the limits of the resources made available to it, will:
- .1 prepare meetings, circulate papers and provide such assistance as may be required to enable the Committee to carry out its functions;
 - .2 facilitate the exchange of information and prepare reports as may be necessary for the purposes of Memorandum;
 - .3 carry out such other work as may be necessary to ensure the effective operation of the Memorandum.

Section 8 Financial Mechanism

- 8.1 The costs for running the Secretariat and the BSIS are financed by: the financial contribution of every Party to the Memorandum; if possible, gifts and subventions by donor countries or organizations.
- 8.2 Financial contributions to the costs for running the Secretariat and the BSIS of Parties to the Memorandum are to be settled in conformity with the decisions and procedures adopted by the Committee.

Section 9 Amendments

- 9.1 Any Authority, which has accepted the Memorandum, may propose amendments to the Memorandum.

- 9.2 In the case of proposed amendments to sections of the Memorandum the following Procedure will apply: the proposed amendment will be submitted through the Secretariat for consideration by the Committee; amendments will be adopted by a two-thirds majority of the representatives of the Authorities present and voting in the Committee. If so adopted, an amendment will be communicated by the Secretariat to the Authorities for acceptance.
- 9.3 The amendments of section 2.1 are adopted by a two-thirds majority of the representatives of the Authorities present and voting, which are party to the new Convention proposed for inclusion as “relevant instrument”.
- 9.4 An amendment will be deemed to have been accepted either at the end of a period of six months after adoption by the representatives of the Authorities in the Committee or at the end of any different period determined unanimously by the representatives of the Authorities in the Committee at the time of adoption, unless within the relevant period an objection is communicated to the Secretariat by an Authority.
- 9.5 An amendment will take effect 60 days after it has been accepted or at the end of any different period determined unanimously by the representatives of the Authorities in the Committee.
- 9.6 In the case of proposed amendments to Annexes of the Memorandum the following procedure will apply: the proposed amendment will be submitted through the Secretariat for consideration by the Authorities; the amendment will be deemed to have been accepted at the end of a period of three months from the date, on which it has been communicated by the Secretariat unless an Authority requests in writing that the amendment should be considered by the Committee. In the latter case the procedure specified in 9.2 will apply; the amendment will take effect 60 days after it has been accepted or at the end of any different period determined unanimously by the Authorities.

Section 10 Administrative Provisions

- 10.1 The Memorandum is without prejudice to the rights and obligations under any international agreement.
- 10.2 The Memorandum remains open for signature at the Headquarters of the Secretariat located in Istanbul Turkey from April 7, 2000 till October 7, 2000. Authorities meeting the requirements specified in Annex 3 may become parties to the Memorandum by: signature without any reservations as to acceptance, or signature subject to acceptance, followed by acceptance.
- 10.3 Acceptance or accession will be effected by a written communication by the Authorities to the Secretariat.
- 10.4 This Memorandum will enter into force individually for each Authority on the date duly notified to the Secretariat. The Memorandum is deemed as having entered into force on the date of entry into force for the third individual Authority.
- 10.5 The Secretariat will inform the Authorities who have signed the Memorandum of any signature or written communication, or of accession and of the date, on which such event has taken place.
- 10.6 Any Maritime Authority or Organization wishing to participate as an observer will submit in writing an application to the Committee and will be accepted as an observer subject to the unanimous consent of the representatives of the Authorities present and voting at the Committee meeting.
- 10.7 Any Authority may withdraw from the Memorandum by providing the Committee with 60 days notice in writing.

The official and working language of the Memorandum is the English language.

Signed at Istanbul, this seventh day of April of the year two thousand, in one original in the English language.

ANNEX -1

QUALIFICATION CRITERIA FOR PORT STATE CONTROL OFFICERS

1. In pursuance of the provisions of section 3.5.1 of the Memorandum, the port State control officer must be properly qualified and authorized by the Authority to carry out port State control inspections.
2. A properly qualified port State control officer must have completed a minimum of one year's service as a flag State surveyor dealing with surveys and certification in accordance with the relevant instruments and be in possession of:
 - .1 a certificate of competency as master, enabling that person to take command of a seagoing ship of 3,000 tons gross tonnage or more (see STCW, Regulation II/2), or
 - .2 a certificate of competency as chief engineer, enabling that person to take up that task on board a seagoing ship whose main power plant has a power equal or superior to 3,000 kW (see STCW, Regulation III/2), or
 - .3 has passed an examination as a naval architect, mechanical engineer or an engineer related to the maritime field and work in that capacity for at least 5 years, or
 - .4 has equivalent qualifications as determined by the Administration.

The port State control officers mentioned under .1 and .2 above must have served for a period of not less than five years at sea as officer in the deck or engine department.

3. Alternatively, a port State control officer is deemed to be properly qualified if that person:
 - .1 holds a relevant university degree or an equivalent training, and
 - .2 has been trained and qualified at a school for ship safety inspectors, and
 - .3 has served at least 2 years as a flag State control surveyor dealing with surveys and certification in accordance with the relevant instruments.
4. A properly qualified port State control officer must be able to communicate orally and in writing with seafarers in the English language.
5. A properly qualified port State control officer must have appropriate knowledge of the provisions of the relevant instruments and of the relevant procedures on port State control.
6. Port State control officers not fulfilling the above criteria are also accepted if they are employed for port State control by the Authorities three years before the Memorandum enters into force for a particular Authority;

ANNEX-2

TERMS OF REFERENCE OF THE SECRETARIAT

On the basis of the tasks defined in Section 7.6 of the Memorandum, an indication is given below of the Services the Secretariat could provide for. The listed items only serve an illustrative purpose. Decisions on the tasks of the Secretariat will have to be taken by the Committee as meant in Section 7.3 of the Memorandum

1. prepare papers for the meetings of the Committee;
2. present any advice of the Committee to the Ministers responsible for maritime safety;
3. circulate papers among the members of the Committee, IMO and ILO and any other body or institution, as deemed necessary;
4. organize the meetings of the Committee;
5. present statistical information on deficiencies found, as well as analyses of the nature of the deficiencies;
6. present statistical information on the inspections by Authorities;
7. circulate information on developments on port State control in international bodies, such as IMO, ILO or any other body or institutions, as deemed necessary;
8. make proposals and execute decisions from the Committee in respect of further developments in the information system;
9. supply information on the Memorandum to other interested authorities, bodies or organizations;
10. deal administratively with requests of Authorities to accede to the Memorandum and to take actions for the formal procedures for accession as requested by the Committee;
11. provide each year a budget proposal for the work of the Secretariat;
12. each year render an account on the previous year, including suggestions for payment or additional payment;
13. advise on any other financial aspects of the Memorandum.

The Secretariat will comprise a Secretary and a Deputy Secretary and additional technical and administrative staff as judged necessary by the Committee. The Secretary will be a national of the host country. The Deputy Secretary shall be a national of any Black Sea country. Both the Secretary and the Deputy Secretary shall be appointed by the Committee upon proposal of their national Authority. The additional technical and administrative staff shall be appointed by the Secretary and presented by the Secretary to the Committee.

ANNEX-3

QUALITATIVE CRITERIA FOR ADHERENCE TO THE BLACK SEA MEMORANDUM

The Maritime Authority of the State may adhere as a full member, provided that all of the following qualitative criteria have been met:

- .1 Such Maritime Authority shall explicitly subscribe to the commitments under the Memorandum with a view to contributing to the common endeavour to eliminate the operation of substandard ships;
- .2 Such Maritime Authority shall take all necessary measures to encourage the ratification of all relevant instruments in force. Port State control shall not be applied by such Maritime Authority to those instruments not yet ratified by the State;
- .3 Such Maritime Authority shall have sufficient capacity, logistically and substantially to appropriately enforce compliance with international maritime standards, regarding maritime safety, pollution prevention and living and working conditions on board with regard to ships entitled to fly its flag, which should include the employment of properly qualified surveyors, acting under the responsibility of its Administration, to be demonstrated to the satisfaction of the Committee referred to in 7.1 of the Memorandum;
- .4 Such Maritime Authority shall have sufficient capacity, logistically and substantially, to comply in full with all provisions and activities specified in the Memorandum in order to enhance its commitments, which shall include employment of properly qualified port State control officers acting under the responsibility of its administration, to be demonstrated to the satisfaction of the Committee referred to in 7.1. of the Memorandum;
- .5 Such Maritime Authority shall, as of its effective date of membership, establish a connection to the Information System, referred to in Section 4.3 of the Memorandum;
- .6 Such Maritime Authority shall sign a financial agreement for paying its share of the operating costs of the Memorandum and shall, as of its effective date pay its financial contribution to the budget as approved by the Committee referred to in 7.1. of the Memorandum.

Assessment of compliance with the above conditions shall only be valid for each individual case and shall not create a precedent for any future cases, neither for the Authorities present under the Memorandum nor for the potential new signatories.