



COMMISSION OF THE EUROPEAN COMMUNITIES

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COMMUNICATION FROM THE COMMISSION
TO THE EUROPEAN PARLIAMENT

pursuant to the first subparagraph of Article 189 c (b) of the EC-Treaty

**Council common position on the amended proposal for a Council Directive
on safety rules and standards for passenger ships**

1. History of the file :

Proposal transmitted to the Council on :	29.02.1996
Opinion of the European Parliament (first reading) delivered on :	04.09.1996
Amended proposal adopted by the Commission on :	05.11.1996
Common position adopted on :	17.06.1997
Opinion of the Economic and Social Committee delivered on :	29.05.1996

2. Purpose of the Commission proposal :

The purpose of the Commission proposal is to enhance safety at sea and to harmonise conditions of competition by the establishment of common safety rules and standards for passenger ships engaged on domestic voyages, which by virtue of the specific exemptions of the international Convention for the Safety Of Life At Sea (SOLAS) and the international Convention on Load Lines are not subject to the international safety standards contained in these conventions. The proposal further aims, by means of negotiations within the International Maritime organisation (IMO), to harmonise the SOLAS rules for passenger ships engaged on international voyages, to ensure that an equivalent level of safety will be imposed on all passenger ships and high speed passenger craft operating in EU waters, irrespective whether they are engaged on domestic or on international voyages.

The Commission proposal :

- determines common safety requirements for new and existing passenger ships and high speed passenger craft, irrespective of their flag, when engaged on domestic voyages. These common safety requirements are primarily related to construction, subdivision and stability, machinery and electrical installations, fire protection and life-saving appliances. Due account is given to the particularities of the voyages on which the ships concerned are engaged, by dividing them by class, according to their area of operation, in terms of distance from the coast and sea state conditions.
In the requirements distinction is made between new and existing ships by providing for the latter a phasing-in scheme, similar to the provisions contained in the international SOLAS Convention.
- establishes procedures for certification of conformity by recognised organisations, to ensure that the envisaged level of safety and level playing field will be achieved.
- foresees the harmonisation of the safety rules for passenger ships engaged on international voyages through negotiations within IMO.

3. Comments on the common position :

3.1 General observations on the common position :

In its first reading the European Parliament adopted twenty amendments to the Commission's original proposal. The Commission accepted eight of these amendments, some of them partly, others on their main principles or subject to redrafting, and modified its original proposal accordingly. The amendments - or at least their basic principles - accepted by the Commission are consistent with the aim of the original proposal and provide an added value by clarifying some of its provisions.

The Commission could not accept the other amendments since it considered that they would weaken the original proposal or be in contrast to the evident aim of the proposal to harmonise safety standards at the highest possible level. Other amendments could not be supported because they would duplicate provisions which already exist in other Community legislation or international Conventions, or lead to confusion or unnecessary duplication within the Directive.

The Council of Ministers adopted a common position on a text which contains the substance of some of the amendments proposed by the European Parliament as well as a number of additional provisions.

3.2 Outcome of the amendments of the European Parliament :

The amendment 1 to recital 6, and the insertion of the wording "at least" into the text of article 3, paragraph 1, 2nd section and article 5, paragraph 1 (amendment 6):

- the Commission could not accept these amendments since the implementation of existing national higher safety standards or changing the proposal into a minimum-standard Directive would be contrary to the main objective of the Commission proposal, i.e. to establish a harmonised safety standard, at the highest possible level and applicable in the entire Community. Only additional safety measures which are justified by local conditions (e.g. unfavourable climatic conditions) can be adopted subject to the procedures set out in article 7.1 of the proposal.

Amendment 2 to recital 8 :

- the Commission could not accept this amendment since recital 8 has been deleted for reasons of redundancy following the re-arrangement of the recitals in accordance with the text of the common position.

Amendment 3 to recital 16 :

- the Commission could not accept this amendment since all rules to which high speed passenger craft have to comply are fully specified in the proposal so that there are none left to be applied in addition to this Directive.

Amendments 4 and 9 to recital 17 and on article 5 (4a) (new) :

- the Commission could not accept these amendments since they refer to existing Community legislation on training of seafarers, which is not a subject this proposal envisages to cover.

Amendment 5 to article 1, requesting the replacement of the reference to "protection of property" by "protection of the environment" as one of the objectives of the proposal:

- the Commission could not accept this amendment since protection of the environment is covered by the international MARPOL Convention and therefore must not be referred to as one of the objectives of the proposal.

Amendment 7 to article 4, paragraph 1, changing the definition of sea areas :

- the Commission could not accept this amendment since the proposed replacement by "nearest safe landing point" is too vague and could lead to misinterpretations.

Amendment 8 to article 5, paragraph 1, introducing the principle that ships have to comply, in addition to the requirements of the Directive, with national safety requirements based upon specific local conditions :

- the Commission accepted the substance of this principle proposed by the European Parliament through this amendment, but have considered it more appropriate to include this principle by amending article 5, paragraph 2.

Amendment 10 to article 6, paragraph 2 a) (ii), proposing the addition "where appropriate, according to their class" :

- the Commission could not accept this addition since it is redundant taking into account that the Commission's proposal precisely establishes to which classes of ships the different provisions of the proposal apply.

First section of the amendment 11 to article 6, paragraph 3 c) referring to national rules of the flag State with which existing class C and D ships should have to comply :

- the Commission could not accept this part of the amendment, since changing the provisions for existing class C and D ships by allowing them to comply with the national rules of the flag State only would be conflicting with the proposal's main objective to harmonise safety requirements in the Community at the highest possible level.

Second section of the amendment 11 to article 6, paragraph 3, litera (c) and the amendment 12 to article 6, paragraph 3, litera (d) :

- the Commission accepted, subject to some editorial redrafting, these amendments since they will enhance the effectiveness of the proposal by ensuring a more active involvement of the Host Member State in case existing Class C and D ships flying the flag of another Member State are to be engaged on domestic voyages in the Host State's territory.

Amendment 13 to article 10, paragraph 4 :

- the Commission could not accept this amendment, since the monitoring of the conduct of classification societies is not the subject of or related to neither IMO Resolution A.746(18) nor this proposal.

Amendments 14, 15 and 20 to article 11, paragraphs 1 and 2, and to annex II, changing the name of the certificate from "declaration of compliance" into "passenger ship safety certificate":

- the Commission accepted these amendments since this change of the title of the certificate will avoid confusion with the title of the certificate required under the ISM Regulation. For reasons of consistency, the Commission considered it necessary to introduce similar changes in article 5, paragraph 2, in article 11, paragraph 4 as well as in technical annex I, Chapter II-1, PART B, Regulation 11, paragraphs 2 and 4.

The part of the amendment 16 to annex I, Chapter II-1, Part B, Regulation 1, requesting the exclusion of Class C and D ships from the application of this Regulation :

- the Commission could not accept such an exclusion from this essential safety requirement on stability, since it cannot be justified by technical or safety reasons.

Amendment 16 to annex I, Chapter II-1, Part B, Regulation 1, in so far it clarifies the scope of application for this regulation by adding a reference to the length limit of 24 metres :

- the Commission accepted this addition for clarification purposes.

Amendment 17 to annex I, Chapter II-2, Part B, Regulation 16, proposing to postpone the date for application of the requirements in paragraph 1 of this regulation from 1 October 1997 to 1 October 2000 :

- the Commission accepted this amendment since the proposed postponement will allow to take account of the implementation date of the Directive and the time necessary for the industry to prepare and execute the major conversions to existing ships required in paragraph 1 of this regulation.

Amendment 18 to the 1st subparagraph of Regulation 2 of Chapter III of Annex I, introducing a provision to take account of difficulties which might arise from applying the technical requirements of Annex I to existing small vessels :

- the Commission accepted the substance of the concern raised by the European Parliament on the application of technical requirements to existing small vessels, but considered it more appropriate to accommodate this concern in article 3, paragraph 1, by limiting the scope of application of this proposal to existing ships with a length of 24 metres and above.

Amendment 19 to Annex I, Chapter III, regulation 2 a) (new), requiring the mandatory carriage of survival clothing for all passengers and crew on board of ships operating in areas where the water temperature is below 15 °C :

- the Commission could not accept this amendment, since it is a type of specific safety measure which might be justified by local (climatic) conditions and for which the procedures of article 7.1 have to be applied.

3.3 New provisions introduced by the Council and position of the Commission thereto :

Recitals :

- The Council modified and re-arranged the recitals in accordance with the text of the common position and in order to rationalise them. The Commission agreed with this re-arrangement for reasons of consistency and clarity.

Article 1 :

- An editorial improvement of the text relating to the negotiation within IMO has been proposed by the Council for a better consistency with the amendments to article 12 on this subject and has been accepted by the Commission.

Article 2 :

- Editorial amendments to the definitions of "a new ship" (§.g) and "an existing ship" (§.h), have been proposed by the Council, consisting of the deletion of all references to high speed passenger craft. These deletions are necessary to take into account the proposed amendments by the Council to the provisions for high speed passenger craft in article 6, paragraph 4, for which - unlike for conventional passenger ships - no distinction is made between new and existing craft by using the date of implementation established in article 13.
- Further, the Council proposed to amend the definition of "international voyage" by adding the wording "by sea" to the notion "voyage" and by replacing the wording "such State" by "that State" for clarification purposes.
- The Council proposed to amend the definition of "port area" (§.p) to include, for reasons of clarification, extensions "to the limits defined by natural geographical features protecting an estuary or similar sheltered area".
- Finally the Council proposed to include the full name of the Council Directive 94/57/EC in the definition of "recognised organisation" (§.t).

The Commission could accept all these amendments proposed by the Council since they are ensuring consistency and are providing clarification to these definitions.

Article 3:

- The Council has proposed to exclude small existing passenger vessels with a length of less than 24 metres from the scope of application, taking into account that application of the technical requirements of the Directive to such vessels might create insurmountable technical problems or would even be physically impossible. The Commission could accept this proposed amendment to paragraph 1 of article 3, since it is based on sound technical arguments and also meets a similar concern expressed by the European Parliament in its opinion.
- The Council also proposed to exclude from the scope of application of this Directive vessels which are constructed in other materials than steel or equivalent and provided they are not covered by the Codes for High Speed Craft (HSC) or Dynamically Supported Craft (DSC). The proposed exclusion is based upon the fact that the regulations of the SOLAS Convention, on which the technical requirements of this Directive have been based, do not take into account other construction materials than steel or equivalent. For this reason the Commission could accept the amendment to article 3 paragraph 2 a) proposed by the Council.

Article 4:

- The Council proposed editorial amendments to paragraph 2 of article 4 for clarification purposes. The Commission could accept the proposed amendments since they do not change the substance of the provisions contained in this paragraph.

Article 5:

- In paragraph 2, the Council proposed an amendment, referring - in addition to the requirements of this Directive - to any additional requirements imposed by a Member State in accordance with the provisions of Article 7.1. Since this amendment proposed by the Council was responding to a similar request by the European Parliament with regard to article 5 and is providing clarification by its reference to article 7.1, the Commission agreed on its insertion in paragraph 2.
- The Commission accepted the editorial improvements the Council proposed to paragraphs 3 and 4, including the full names of the Council Directives referred to.
- The Council proposed to delete the second section of paragraph 3, which provided that for a domestic passenger ship or craft, its nature as a passenger ship should not be regarded as clear grounds for a more expanded port state control inspection. By this deletion, the provisions for expanded inspections laid down in the Port State Control Directive will become fully applicable to domestic passenger ships and craft. The Commission could accept this deletion proposed by the Council, since it strengthens the provisions of this Directive and will ensure a better enforcement through the full application of the Port State Control procedures on expanded inspections.

Article 6:

- The Commission accepted the editorial amendments proposed by the Council concerning the references to other Community legislation in sub-paragraphs 1.a), 1.c) and 4.c), as well as the editorial improvements to the text of paragraph 2.b), since they add to the clarity and do not change the substance of the Directive.
- Since existing passenger ships of less than 24 metres are excluded from the scope of application of this Directive by virtue of the proposed amendment to article 3, the Council proposed to delete all provisions in paragraph 3.b) referring to this category of ships. The Commission agreed to this proposed deletion, to ensure consistency with the agreed amendment to article 3.
- The Council proposed to replace the time limits for application of the requirements to existing passenger ships referred to in paragraph 3.b) by a more detailed time table, to ensure that older ships would have to comply earlier with the provisions of the Directive than more recent ships, the latter category being considered as intrinsically safer. Further, this timetable would ensure that major conversion works could be spread over the time with obvious advantages with regard to planning and financing of these projects. Therefore the Commission could accept the deletion of the provisions on time limits in paragraph 3.b) and their replacement by the time table proposed by the Council in the new paragraph 3.f).
- Taking into account the importance of the domestic passenger fleet in Greece, not only in number of ships involved and their age distribution but also its role as means of public transport, the Council proposed, by way of derogation, to exclude existing class A and B passenger ships engaged on domestic voyages between ports situated in Greece from some of the technical requirements of the Directive, provided a set of clearly established conditions are respected.
The Commission could accept the proposed amendments in paragraph 3.f) on this derogation, since imposing these technical requirements would involve an

insurmountable burden and a too heavy disturbance on the Greek maritime public transport system. Further the Commission is reassured by the conditions imposed for granting such a derogation ensuring full transparency and avoiding abuses, and by the temporary nature of the derogation possibilities.

- Finally the Council proposed an alternative approach with regard to the provisions of paragraph 4 on high speed passenger craft. This approach has been based upon the latest developments at international level, and in particular the fact that the High Speed Craft Code (HSC Code) which changed from a non-mandatory code into a mandatory chapter X of the SOLAS Convention, with entry into force on 1 January 1996. In line with this recent development applicable to high speed craft engaged on international voyages, the Council proposed a set of amendments to ensure that also domestically operated high speed craft constructed or subjected to repairs, alterations or modifications of a major character on or after 1 January 1996 shall comply with the HSC Code and that all other HSC built before that date shall at least comply with the Code of Safety for Dynamically Supported Craft (DSC). The Commission accepted the amendments to paragraph 4 as proposed by the Council, since they ensure on the one hand a closer coherence with the international provisions applicable to high speed craft engaged on international voyages, and on the other a minimum level of safety for high speed craft built before 1 January 1996 by making the provisions of the DSC Code compulsory.

Article 7:

- The Commission accepted the amendment to paragraph 1 proposed by the Council rendering it possible for a group of Member States to adopt additional safety measures justified by specific local conditions and subject to the procedure of article 7.4. , since such a joint adoption by a number of Member States will provide added value to the adopted measures by widening their area of application.
- The Council proposed to insert a number of additional examples of local conditions in paragraph 3 which could justify the application of exemptions. Since these additional examples are providing fundamental clarification the Commission accepted the proposed amendments.
- The editorial improvements to paragraph 4 proposed by the Council to bring the text in line with similar provisions in other Community legislation could be accepted by the Commission.
- The Council tabled a proposal for a new paragraph 5 in article 7, establishing provisions under which safeguard measures can be taken by Member States. The Commission considers that these provisions, which establish a framework enabling Member States to respond to urgent situations where a risk of serious danger might arise from a passenger ship or craft, notwithstanding the fact that it complies with the provisions of the Directive, are providing for a substantial added value to the safety level envisaged by this Directive.

Article 8:

- The Council proposed a number of editorial amendments to the provisions of article 8 on the procedure for adaptations and amendments of the Directive. In particular, the amendment to paragraph 1.a).(1) aims to define, for clarification purposes, which definitions of article 2 may be adapted to take account of developments at international level, whilst the amendment to paragraph 1.b) calls for the deletion of the proviso "without prejudice to the procedures for amending the said Conventions", since this is considered redundant. The Commission could accept these amendments because they add to the clarity of the text.

Article 10:

- The Council proposed an amendment to paragraph 4 on procedures and guidelines for surveys, allowing that, as an alternative to the procedures of IMO Resolution A.746 (18), other procedures may be followed provided that they are designed to achieve the same goal as IMO Resolution A.746 (18). The Commission could accept this amendment, since the equivalent to the procedures of IMO Resolution A.746 (18) has to ensure that the same goal is achieved.
- The Council proposed to add to the parties which can act on behalf of the Administration of the flag State to carry out surveys, the Administration of a Member State if that has been authorised by the flag State to do so. The Commission agreed with this amendment to paragraph 5, since surveys carried out by the Administration of a Member State on behalf of a flag State are believed to ensure the same or in some cases even a higher level of quality than surveys which would be carried out by the Administration of the flag State.

Article 11 :

- Taking into account the proposed amendments to article 6, paragraph 4 on the provisions for high speed passenger craft, the Council proposed and the Commission accepted, for reasons of consistency, an editorial amendment to the first section of paragraph 3 of article 11.
- The amendments proposed by the Council to the second section of paragraph 3 aim to provide for a more active role of the Host State in case high speed passenger craft are to be engaged on domestic voyages in such a Host State. Since the principle of a more active role of the Host State has already been incorporated in the common position for existing passenger ships of classes C and D, following an amendment proposed by the European Parliament, the Commission is of the opinion that extending this valuable principle to high speed passenger craft would constitute an improvement to the Directive and accepted therefore the amendment proposed by the Council.

Article 12 :

- The Commission could accept the amendment to paragraph 1 proposed by the Council since it provides for an editorial improvement of the text.
- The Council proposed that the request to IMO to harmonise the rules applicable to passenger ships engaged on international voyages, should be jointly be made by the Presidency of the Council and the Commission.
The Commission accepted this amendment to paragraph 2, since it is convinced that IMO will attach more weight to a request jointly made by 15 Member States and the Commission, than when it would be made by the Commission only.
- The Council requested the deletion of paragraph 3, arguing that amendments to the safety regulations governing passenger ships engaged on international voyages should be agreed upon within the framework of IMO and that for this purpose the provisions of paragraphs 1 and 2 suffice. The Commission accepted the Council's request since it is fully coherent with the principles of international rulesetting for ships engaged on international voyages.

Article 13 :

- The Commission accepted the amendment the Council proposed to paragraph 1 since it provides more flexibility for the Member States in timing the transposition of the provisions of the Directive into their national legislation, without prejudicing the principles of the internal market.
- The Council requested to have the provisions of paragraph 3 on penalties included in a separate article, which the Commission accepted for clearness' sake.

Annex I :

- A number of amendments to the technical annex I of the Directive have been proposed by the Council, following a detailed examination by technical experts of the Member States. The objectives of these amendments are multiple: some aim at improving the text by editorial corrections or clarifications, whilst others are bringing the content of the technical requirements closer in line with the provisions and latest amendments of the SOLAS Convention. A substantial number of amendments are proposing to include additional safety requirements, with the aim to enhance the overall safety level of the original proposal. Another category of amendments provide for the necessary adaptations to the scope of application of the technical requirements, to take account of the difficulties their application might create for ships of limited size. The Commission could accept these amendments since they prove to constitute a well balanced package, enhancing the coherence and the overall safety level of the original set of technical requirements.
- Since the task of examining and improving the Annex I is a purely technical matter, the Council and the Commission will make a statement that the Committee referred to in the Directive should start this task immediately after the entry into force of the Directive.

3.4 Problems regarding committee procedures when adopting the common position :

For the purpose of conferring implementing powers on the Commission the initial proposal provided for a procedure I Committee, which was supported by the European Parliament. However, the Council requested, a III(a) Committee procedure. Having regard to the importance of the safety aspects of the present proposal and the precedents set by other Council Directives in the field of maritime safety, the Commission has accepted this request.

4. **Conclusions**

The Commission is of the opinion that the text of the common position is acceptable, since it respects the basic principles of the original proposal and provides added value by its clarifications and in particular by its provisions which are enhancing the overall safety level and/or including the substance of a number of amendments adopted by the European Parliament in its first reading.