



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 conditions for the operation of regular ro-ro ferry and high speed passenger craft  
services in the Community**

**COMMUNICATION FROM THE COMMISSION  
TO THE EUROPEAN PARLIAMENT**

**Subject: Council common position on the amended proposal for a Council Directive on conditions for the operation of regular ro-ro ferry and high speed passenger craft services in the Community.**

**1. History of the file:**

Proposal transmitted to the Council on:	19.02.1998
Opinion of the European Parliament (first reading) delivered on:	07.10.1998
Amended proposal adopted by the Commission on:	09.11.1998
Common position adopted on:	22.12.1998
Opinion of the Economic and Social Committee delivered on:	09.09.1998

**2. Purpose of the Commission proposal:**

The purpose of the Commission proposal is to provide an enhanced level of safety in the operation of regular ro-ro ferry and high speed passenger craft services in the Community through the establishment of a regime of mandatory surveys by the host States. Through these surveys, Member States to and from whose ports the ferry or craft intends to operate on a regular service shall verify – prior to the start of operation and at regular intervals thereafter – compliance with all relevant safety requirements of international instruments and Community legislation on maritime safety.

Furthermore, the proposal provides for the right of Member States to conduct, participate or co-operate in the investigation into a marine casualty in which a ro-ro ferry or high speed passenger craft is involved. For the purpose of facilitating the investigation into such accidents, the proposal includes a carriage requirement of a Voyage Data Recorder (VDR) on board each ro-ro ferry and high speed passenger craft covered by this proposal.

Finally, the proposal provides for a number of accompanying measures, based upon international instruments and recommendations, aimed at enhancing the safety of navigation of ro-ro ferries and high speed passenger craft and to provide the necessary tools and procedures for monitoring the application of the Directive.

### 3. Comments on the common position:

#### 3.1 General observations on the common position:

In its first reading the European Parliament adopted sixteen amendments to the Commission's original proposal. The Commission accepted nine 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 or strengthening some of its provisions.

The Commission could not accept the other amendments since it considered that they would create the risk of incoherence with other, already adopted Directives and Regulations in the field of maritime safety or would affect the original objectives of its proposal. Other amendments could not be supported because they would duplicate or conflict with provisions which already exist in other Community legislation or international Conventions, or lead to confusion or unnecessary duplication within the Directive.

The Council adopted a common position on a text that contains the substance of the amendments incorporated in the Commission's amended proposal, as well as a number of additional provisions.

#### 3.2 Outcome of the amendments of the European Parliament:

The amendment to article 1:

- Both the Commission and the Council could accept this amendment to the extent that its wording provides for a better clarification of one of the main objectives of the proposal, being the setting up of a mandatory survey regime by the Host States. However, the Council and the Commission are of the opinion that this regime is not aimed at achieving a uniform level of safety, but rather seeks to provide - through the involvement of the host State - a greater assurance of the safe operation of regular ferry services in the Community. The common position provides for the modification of the title of the proposed Directive in order to reflect better its main objective as clarified by the amendment of European Parliament.

The amendments to article 2:

- Both the Commission and the Council could accept the amendment calling for the addition of a definition for "passenger", with the proviso that the same wording should be used as in Council Directives 98/18/EC. The principle of the amendment to the definition of "regular service", namely that also voyages by sea to and from the same port should be covered, has been accepted. For that purpose some wording to that effect has been incorporated in Article 2(f) of the common position and the amendment to the definition of "host State" included. Taking into account the wording introduced in article 2(f) of its common position, the Council considered that there was no longer a need for including a definition of "port area", as proposed by European Parliament and by the Commission in its amended proposal.

The amendments to article 5:

- Neither the Commission nor the Council could accept the amendment related to the reference to IMO Assembly Resolution A.746 (18), since the amended reference could prejudice the proceedings of the Committee when considering eventual amendments to the IMO Resolution referred to for the purpose of incorporating them in this Directive.
- Also the reference to Directive 94/57/EC could not be accepted for reasons of redundancy with the definition of "recognised organisation" in Article 2.
- The amendment on the VDR carriage requirement for existing ships, aimed at limiting the exemptions on performance and testing standards for a period of up to five years, could not be accepted. Both the Council and the Commission considered that the retro-active application of such standards to existing VDR's and to VDR's to be installed on board existing ferries would create insurmountable technical difficulties. Furthermore it would entail substantial modifications to the wiring and communication protocols of bridge and engine room equipment to the extent that it would render the further operation of the ferry or craft economically non-viable.

The amendment to article 6:

- Both the Commission and the Council could accept the principle of the amendment that the burden of securing the flag State's agreement to the company's commitment to comply with the Directive should not be put upon the company. Therefore paragraph 3 of article 6 of the Commission's original proposal was deleted, and the common position provides for a new paragraph 2 in its article 5 stipulating that the host State shall check the agreement of the flag State.

The amendments to article 8:

- Both the Commission and the Council could accept the principles of the three amendments adopted by the European Parliament. The requirement to set a time limit of not more than one month has been incorporated in paragraph 2 of article 6 of the common position. The need for communicating the findings of the specific surveys to the flag State if different from the host State, as incorporated in the Commission's amended proposal, has been taken over by the Council in article 8(2) of its common position. Finally, the amendment on charging the survey costs in case deficiencies warrant a prevention of operation has been incorporated in article 8(3) of the common position.

The amendment to article 11:

- Neither the Commission nor the Council could accept the request by the European Parliament that information on the ferries and craft should be made publicly available. Both the Commission and the Council are of the opinion that issues of confidentiality, reliability and possible commercial abuse should be carefully assessed before deciding which information could be made available and to whom. For this reason the Council incorporated in article 13(3) of its common position the principle of article 11(1) of the Commission's original proposal that the conditions of access to the database shall be decided through the procedures of the Committee established for the purpose of the Directive.

The amendment on a new article 15a:

- Both the Commission and the Council could accept the request that an assessment of the progress achieved in the field of maritime passenger transport should be made. However, they considered that within the article stipulating the details of the assessment no reference could be made to issues going beyond the scope of this Directive and, furthermore, that the timing envisaged by European Parliament for the assessment was not realistic. Article 20 of the common position therefore provides that three years after the application date the Commission shall assess the application of the Directive and that this assessment shall be based upon the information to be provided by the Member States in accordance with article 13. As to the request by the European Parliament for an overall assessment of the progress made on ro-ro ferry safety in the light of the 22 December 1994 Council Resolution, the Council and the Commission agreed upon a draft statement for the Council minutes that this issue will be covered by the assessment referred to in Article 20.

The amendments to Annex 4:

- Neither the Commission nor the Council could accept these amendments proposing to include information on passenger seating capacity and classification and on the number of crew based upon the extent of their engagement on board. This information is considered not to be relevant for the purpose of this Directive.

### 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 2:

- Editorial amendments to the definition of "certificates" (§ h) have been proposed by the Council clarifying the differences in certification between international and domestic voyages. The Commission welcomes this clarification which takes due account of the provisions on certification provided for in Council Directive 98/18/EC on safety rules and standards for passenger ships.

Article 3:

- The Council introduced some editorial changes clarifying the scope of application with regard to domestic voyages. The Commission welcomes this clarification as it is based upon the terminology of article 4 of Council Directive 98/18/EC. Furthermore the wording "as far as practicable" in § 2 was deleted, as this was considered redundant. The Commission could accept this clarification and simplification.

Article 4:

- The Council decided to restructure the order of the provisions in the Commission's original proposal aimed at providing a more logical and consistent structure. For that purpose the original article 4 was deleted and its provisions transferred into other articles.

- Furthermore, some new articles were inserted in the common position, necessitating the renumbering of all subsequent articles. As a result, the provisions of article 4 of the Commission proposal have been transferred into the common position as follows:

Commission proposal:

Council common position:

Article 4(1)

Articles 4(1) and 5

Article 4(2)

Article 9

Article 4(3)

Article 10.1

Article 4(4)

Article 10.3

Article 4(5)

Articles 11.2 and 14

The Commission could accept this restructuring since it does not affect negatively the main thrust of its original proposal.

- The Council regrouped in article 4 of its common position the provisions related to verifications in relation to ro-ro ferries and high speed passenger craft, based upon article 5 of the Commission proposal. The Commission could accept this approach as it provides more clarity without affecting the principles of its original proposal.
- As to the provisions of article 5 (3) of the Commission proposal, the Council introduced some additions in article 4(1)(e) of its common position, clarifying the scope and extent of these provisions on specific stability requirements and introducing references to relevant Community legislation and international instruments. Further, a new paragraph 2 was added to clarify that the specific stability requirements referred to in paragraph 1(e) should only apply to high speed passenger craft only where appropriate. The Commission could accept these additions as they are adding clarity to its original proposal.

**Article 5:**

- The Council regrouped in article 5 of its common position the provisions related to verifications in relation to companies and flag States, based upon article 5 of the Commission's original proposal and article 7(2) of the Commission's amended proposal. The wording referring to accident investigation has been amended in line with the terminology of the IMO Code for the investigation of marine casualties. The Commission could accept these changes as they provide more clarity without affecting the main principles of its original and amended proposal.

**Article 6:**

- The Council regrouped in article 6 of its common position the provisions related to initial specific surveys, based upon paragraphs 1 and 2 of article 7 of the Commission proposal and accommodating the amendment by European Parliament on article 8(3) of that proposal. The Commission could accept these changes as they provide a better and more coherent approach to the main principles of its original proposal without modifying their main thrust and scope.

Article 7:

- The Council has expanded the provisions of the second subparagraph in article 7(2) of the Commission proposal to take account of all possible situations in which a ferry or craft might be transferred for operation on another regular service in the Community, including emergency transfers necessary to ensure continuity of the service. The Commission could accept these additional provisions since they respect the principle that the involved host States have to verify that the safety level of the operation is guaranteed in all those cases.

Article 8:

- The Council regrouped in article 8 of its common position all provisions related to specific surveys other than the initial survey. It used for that purpose the provisions of article 7(3) and (4) of the Commission proposal, clarifying the frequency of such surveys and their relationship with the respective annexes to the Directive. It further expanded the provisions to allow a host State to take previous surveys into account to assess the necessity of subjecting a ferry or craft to a specific survey in case of change in management or flag, or transfer of class. The Commission could accept these additions as they provide for a better understanding on how the survey regime envisaged by the Commission proposal has to be established.

Article 9:

- The Council decided to incorporate the notification provisions of article 4(2) of the Commission proposal into a separate article 9. The Commission could accept this decision, as it does not change the substance of its proposal.

Article 10:

- The Council proposed to regroup the provisions on prevention of operation and the right of appeal in articles 4(3) and (4) and in article 8(6) of the Commission proposal.
- Furthermore, provisions were added establishing the procedures for ro-ro ferries or high speed passenger craft already operating on a regular service at the date the Directive will start to apply, including a time limit for rectifying deficiencies revealed during the specific surveys.
- The Council also specified that deficiencies which pose an immediate danger to life, the ferry or the craft, its crew and passengers should warrant a detention.
- The provisions on the right of appeal have been modified in line with the provisions of Council Directive 95/21/EC.
- Finally, the common position also stipulates a maximum time limit - one month after the initial specific survey - for a host State to decide to prevent a ferry or craft from starting to operate on a regular service.

The Commission welcomes these additional provisions, as they will ensure that all necessary remedial and preventive actions will be adequately and expeditiously taken, which will strengthen the main thrust of the Commission proposal.

Article 11:

- The Council grouped in article 11 of its common position all provisions on procedures related to specific surveys, by amalgamating those of articles 7(5) and 8 of the Commission proposal.
- The amendment by European Parliament on the need to inform third country flag States about the survey findings has been incorporated in § 2 of this article. In the same paragraph the Council added a provision to ensure that the involvement of a class surveyor in the specific surveys is based upon an assessment of such need by the host State.
- Further, § 3 provides for the right for a host State to carry out the specific surveys at the request of another involved host State.
- The Council decided to delete the time limit of one month within which concerned host States could inform the Commission about an eventual agreement between them before the Commission can start the proceedings for a decision by the Committee.

The Commission has accepted these additional provisions as they enhance and expedite the procedures for the survey regime envisaged by the Commission proposal.

Article 12:

- The Council incorporated the provisions on accident investigation of article 9 of the Commission proposal into article 12 of its common position and also included some additional provisions. These additional provisions ensure a genuine link with the terminology and main principles of the IMO Code for the investigation of marine casualties.
- In addition, the Council proposed that the accident investigation shall be launched by the Member State in whose waters the accident occurs or by the last Member State visited by the ferry or craft if the accident occurs outside the waters falling under the jurisdiction of the Member States.

The Commission welcomes these additional provisions since they will ensure that an accident investigation will be carried out in accordance with internationally agreed principles, and this will be done irrespective of the flag or the geographical position of the ferry or craft at the time of the accident.

Article 13:

- The Commission accepted the changes the Council proposed to paragraph 2 of article 10 of its original proposal, since it provides for a better coherence with the principles of IMO Assembly Resolution A.795 (19) on navigational guidance systems.
- The Council requested a simplification of the reporting procedures as proposed in article 10.4 of the Commission proposal, by limiting the information to be provided as listed in Annex 4 to a copy of the survey reports only. The Commission accepted this request in order to minimise the administrative burden for the Member States' administrations whilst taking due account of the fact that essential elements of the information listed in Annex 4 could be retrieved from other information sources if deemed necessary.



- For the same reasons the Commission could accept the Council proposal that the Commission may, subject to Committee procedure, decide on appropriate means for allocating an identification number to vessels not having an IMO identification number.
- The Council proposed to delete article 10(5) of the Commission proposal, since its provisions have been reflected in other articles of the common position.
- Further, the Council incorporated the provisions of article 11.1 of the Commission proposal on the survey database and the condition for accessing it into § 3 of article 13 of the common position.

The Commission accepted the Council's proposals, as they were considered to improve the coherence of the provisions of the Commission proposal without affecting the substance of its scope and objectives.

#### Article 14:

- The Council decided to incorporate the provisions of article 4(5) of the Commission proposal in a separate article 14 on the co-operation between host States. The Commission accepted this approach as it provides for more clarity without changing the substance.

#### Article 15:

- The only change introduced by the Council was the transfer of the provisions of article 11(1) of the Commission proposal to article 13(3) in the common position.

#### Article 16:

- The Council preferred to reproduce entirely the provisions of paragraph 2 and 3 of article 12 of Council Directive 93/75/EEC rather than just referring to them as in the Commission proposal. The Commission has no objection to this approach.

#### Article 17:

- The Council decided to reword entirely the amendment procedure as laid down in article 13 of the Commission proposal. Through this rewording the Council sought to clarify and identify accurately which parts of the Directive and its Annexes can be amended through Committee procedure, as well as to ensure that the Committee shall not widen the scope of Directive. The Commission could accept this reworded procedure as it indeed provides for clarification on the tasks delegated to the Committee.

#### Article 19:

- The Council requested that the proposed date of 1 January 2000 for the application of the Directive should be replaced by a date which would be 18 months after the date on entry into force of the Directive. The Council considers this period of 18 months necessary to allow the Member States to transpose the Directive in their national legislation. The Commission could accept this request, taking into account that the Council will include a statement for the minutes of the meeting at which the Directive will be adopted stating that Member States will endeavour to transpose the Directive well before the deadline of 18 months.

#### Article 20:

- The Council clarified the provisions of article 15<sup>bis</sup> of the Commission's amended proposal, by adding that the information to be provided by the Member States should be in accordance with article 13.

#### Annex I:

- The Council introduced the following changes to the provisions of annex I to the Directive. In § 1: instead of "participating", that the master "makes use" of the navigational guidance and information schemes set up by the Member States; and in § 3: that in the table with the shipboard working arrangements the maximum hours of work or the minimum hours of rest should be limited to those required for the watchkeepers.

The Commission could accept these changes as they bring these provisions of Annex I closer into line with the international instruments upon which they are based.

#### Annex II:

- The Council has changed the title of Annex II into a "list of Community measures referred to in article 10(1c)" and the reference to Council Directive 94/58/EC has been completed with the addition "where applicable". Furthermore, the full details of the Community measures referred to in Annex II have been added. The Commission has accepted these improvements to Annex II.

#### Annex III:

- The Council introduced a number of changes in § 1, which lists the issues to be included in the specific surveys. It expanded the list of statutory requirements referred to for the sake of consistency with the respective Chapters of the SOLAS Convention. Furthermore, the second last item listed in § 1 requiring "the checking of the inventory of all lifeboats and rescue boats" was modified to become "checking that all lifeboats and rescueboats correspond to the inventory". Finally the verification of compliance with classification standards was deleted, in view of the expanded list of statutory requirements which - in accordance with the SOLAS regulations - will include these class-related provisions.
- Furthermore the Council deleted in § 2 the references to safe manning and assessment of fatigue, and simplified the last subparagraph concerning the assessment of rostering patterns in relation to fatigue.
- In § 3 of Annex III of the Commission proposal, the Council replaced the reference to Council Directive 94/58/EC with the corresponding provisions of the 1995 STCW Convention. The Commission has accepted this change, since the provisions of Directive 94/58/EC are not applicable to ferries and high speed passenger craft flying the flag of a third state.
- The Council deleted Paragraph 4 of Annex III in the Commission proposal and changed the title of this Annex accordingly. The Commission could accept this deletion and modification, taking into account that the reference to Annex IV (previously Annex V in the Commission proposal) is now explicitly made in article 8(1) of the common position.

#### Annex IV:

- In view of the modifications introduced through article 13 of the common position, Annex IV of the Commission proposal was deleted and the subsequent annexes renumbered accordingly. The Commission could accept this deletion for the reasons mentioned in the paragraph commenting upon article 13 of the common position.
- The title of annex V of the Commission proposal, renumbered as annex IV in the common position, was modified to reflect that its guidelines are indicative and meant to be applied for the unscheduled specific surveys during a regular crossing as provided for in article 8(1) of the common position. The Commission could accept these changes for the same reasons as mentioned in the paragraph commenting upon article 8 of the common position.

#### Annex V:

- Annex VI of the Commission proposal, renumbered as annex V in the common position, was complemented with an additional paragraph 6, providing for the acceptance of inspectors not meeting the criteria of Annex V provided they were already employed by the Member States for statutory surveys or port State control at the date of adoption of Directive 95/21/EC. The Commission could accept this additional provision since it is in line with the criteria established in Annex VII, paragraph 5 of Directive 95/21/EC.

#### 3.4 Problems regarding committee procedures when adopting the common position:

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 proposal provided for a III (a) Committee procedure, which was supported by both the European Parliament and the Council.

#### 4. **Conclusions**

The Commission is of the opinion that the substance of the common position is acceptable, since it respects the basic principles of the original proposal and provides substantial added value by its clarifications and in particular by its additional provisions which enhance the envisaged mandatory survey regime, the accident investigation rights and the obligations of Member States. Furthermore the substance of the amendments adopted by the European Parliament and incorporated in the Commission amended proposal have been duly taken into account in this common position.