



COMMISSION OF THE EUROPEAN COMMUNITIES

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COMMUNICATION

on a common policy on manning of regular passenger and
ferry services operating in and between Member States

**Proposal for a
COUNCIL REGULATION (EC)**

amending Council Regulation (EEC) No 3577/92 applying the principle of
freedom to provide services to maritime transport within Member States
(maritime cabotage)

**Proposal for a
COUNCIL DIRECTIVE**

on manning conditions for regular passenger and ferry services
operating between Member States

(presented by the Commission)

COMMUNICATION

on a common policy on manning of regular passenger and ferry services operating in and between Member States

1. 1. INTRODUCTION

1. The objectives of the common maritime policy cover a variety of issues which are interrelated. These are: to ensure the consumers of shipping services a wide choice of competitive services, to enhance the quality and safety of shipping, to foster the economic development of Community shipping and of the related cluster of maritime industries, to promote the employment of well-trained Community seafarers and, more generally, to foster the further development of maritime know-how in the Community. Reference should also be made to Article 2 of the Treaty, which explicitly mentions the promotion of a high level of employment and of social protection as being a task of the Community.

On several of these points good progress has been made. For example, the continuous striving for freedom of access to shipping markets across the world and ongoing efforts to raise quality standards in the appropriate international fora, has ensured the availability of a wide range of highly competitive shipping services. However, the situation is less satisfactory as regards the employment of Community seafarers. Over the last decades the employment trend has gone down continuously, as a result of flagging out, replacement of Community crew by cheaper labour from third countries, and technical labour-saving rationalization measures.

2. In December 1996 under the auspices of the Commission an international conference was organized in Dublin to discuss the theme: "The European seafarer, an endangered species?". As the conference showed, there is indeed reason for serious concern. Not only has the number of Community seafarers sharply decreased, but the average age of Community seafarers is now well over 40 and the inflow of young cadets is not sufficient to replace those leaving the trade. To illustrate the point: between 1985 and 1995 the number of Community nationals employed on Community flagged vessels went down from 206 000 to 129 000 (-37%), while the number of non-Community nationals went up from 29 000 to 33 000 (+14%)¹. It was further found that 51% of the employment loss was caused by flagging out. Until now the cargo-ships sector has been the sector mainly affected by the abovementioned trend. However, the trend could spread to the passenger-ferry sector if no countermeasures were taken (see further points 4, 16, 17 and 18).

¹ Source: TECNECON, August 1996, "Study on maritime professions in the European Union".

3. The Commission's Maritime Strategy Paper of 1996² identified the need to put greater emphasis on the promotion of the employment of Community seafarers in connection with the improvement of the competitiveness of Community flags. The comments received on the paper were generally positive and subsequently the Commission undertook to revise the State aid guidelines for maritime shipping³ as a first concrete measure underpinning this policy. The creation of a level playing field was seen as the best way to stop flagging out. This means that Member States should be allowed to offer shipowners under their flag fiscal and labour conditions which are (as far as possible) comparable to those that can be obtained elsewhere. Now, nine months after the publication of the revised guidelines, a process of convergence in Member States' policies can be observed. Most Member States have introduced or proposed measures going in this direction and the first positive effects on the competitive position of Community registers and Community seafarers have been reported, in particular as regards ocean-going shipping.
4. As a next step the "home market" of the Community seafarers and more in particular the market of regular passenger services within and between Member States, requires special attention. The abovementioned study on maritime professions in the Community, of August 1996, indicated that almost 50% of all Member States' seafaring personnel (cabin crew and catering staff included) is employed on such passenger vessels. Regular passenger services are an important source of employment both in Southern and Northern Europe. In both cases the market is served by operators established in the Community. However, there are differences in market structure. In Southern Europe, the centre of gravity lies within island passenger cabotage services (cabotage means carriage of passengers or goods by sea between two ports situated within one and the same Member State). Regular passenger services between Member States are restricted to a few lines of which Greece-Italy and Corsica-Italy are the most important. In Northern Europe, domestic passenger services are important in Denmark and the UK in particular, but the bulk of regular passenger transport is in traffic between Member States.
5. The market for regular passenger services within and between Member States is in a number of respects different from other sectors of the maritime transport market (see points 9, 10 and 20 hereinafter). This market is served by operators established in Member States using mainly ships under Member States' flags and predominantly crewed by Member States' nationals. However, there are some developments which cause concern amongst seafarers as regards their future employment situation. The forthcoming liberalization of island cabotage by 1 January 1999 is perceived as a threat by many seafarers in Southern Europe. In other market segments, ferry operators observe or anticipate a reduction in their revenues due to certain external developments putting increased pressure on them to reduce operating costs. Partial replacement of the existing work force by cheaper labour from third countries is an option in this context.

² COM(96) 81 final "Towards a new maritime strategy", 13.3.1996.

³ OJ C 205, 5.7.1997, p. 5.

The main purpose of this communication is to examine the labour situation in the entire market for regular passenger services between Member States' ports and to propose a way forward by means of the two legislative proposals attached hereto bearing in mind that these proposals should be in line with the international obligations of the Community.

2. CABOTAGE

6. Council Regulation (EEC) No 3577/92 of 7 December 1992⁴ provides that the principle of freedom to provide services in maritime cabotage shall apply to Community shipowners (as defined in Article 2(2) thereof) who have their ships registered in, and flying the flag of a Member State, provided that these ships comply with all conditions for carrying out cabotage in that Member State. The Regulation provides for a step-by-step liberalization of different segments of the cabotage market. Island cabotage in Southern Europe - as defined in Article 6(2) - shall be liberalized as from 1 January 1999. On manning of vessels carrying out island cabotage, the Regulation in essence provides for the following:

- Article 3(2): all matters relating to manning shall be the responsibility of the host State;
- Article 3(3): however, for cargo vessels over 650 gt carrying out island cabotage consecutive to an international journey, all matters relating to manning shall be the responsibility of the flag State (as from 1 January 1999);
- Article 3(4): the Commission shall submit a report to the Council on the economic and social impact of the liberalization of island cabotage (by 1 January 1997) and shall submit a proposal to the Council which may include adjustments to the manning nationality provisions laid down in paragraphs 2 and 3 so that the definitive system shall be approved by the Council in due time and before 1 January 1999.

The aforementioned report was submitted to the Council⁵ on 17 June 1997. The proposal referred to in Article 3(4) is attached to this Communication.

7. Following the presentation of the aforementioned report, certain Member States have suggested that the provisions of Article 3(2) and (3) as mentioned above, should remain unchanged for an indefinite period. The Commission cannot share this view for the reasons set out below. In analysing the situation a distinction is made between island-cargo trades (see point 8) and island-passenger services (points 9 to 11).

⁴ OJ L 364, 12.12.1992, p. 7.

⁵ COM(97) 296. Report from the Commission to the Council on the implementation of Council Regulation (EEC) No 3577/92 applying the principle of freedom to provide services to maritime cabotage (1995-1996) and on the economic and social impact of the liberalization of island cabotage.

8. As regards cargo cabotage a certain simplification of the present rules is called for. It should be recalled that Article 3(1) of Regulation (EEC) No 3577/92 provides that all matters relating to manning for vessels carrying out mainland cabotage shall be the responsibility of the State in which the vessel is registered (flag State), except for ships smaller than 650 gt⁶ where host State conditions may be applied.

According to Article 3(3), flag-State conditions also apply to cargo vessels over 650 gt when engaged in consecutive⁷ island-cargo cabotage as from 1 January 1999. Hence, the only remaining question is: should island-cargo cabotage voyages with vessels over 650 gt, which do not follow or precede an international journey (and which are presently subject to host-State conditions), continue to be exempted from the normal flag-State rule?

The Commission believes that there is no economic justification for a lasting exemption from the flag-State rules, for the reasons set out in its report of 17 June 1997 referred to above. Cargo cabotage services are often carried out by vessels which participate for alternating periods in international and domestic trades. The manning conditions for this type of cabotage should therefore not deviate from the accepted practice in international trades, which is that the flag State issues the safe manning certificate (in accordance with the provisions of the relevant international conventions) and determines all other matters relating to manning. Any other approach would have for effect that the composition and/or the labour conditions of the crew of a vessel operating under a Member States flag would have to be changed in order to obtain access to island-cargo cabotage. This is considered an unacceptable and unnecessary hindrance to the implementation of the principle of freedom to provide services. It is therefore proposed to remove this obstacle by applying the flag-State rule as already agreed for consecutive island-cargo and mainland cabotage, to all cargo cabotage (with vessels over 650 gt).

9. The market for regular passenger services in island cabotage is in a number of respects very different from the cargo-cabotage market. First of all, there is no economic relationship with the international market in a way that is comparable to the cargo market. It is common that passenger ferries designed to serve a particular island route remain on the same route for many years at a time and not uncommonly for their entire service lifetime. The crews serving on these ships effectively reside in the area concerned and are often locally recruited. All Member States in Southern Europe require (in accordance with Community law) that 100% of the crew on such services must consist of Community nationals. In addition, Member States may require, in accordance with Council Directive 94/58/EC⁸ that a certain percentage of the crew members and in particular those nominated on muster lists to assist passengers in emergency situations, must have communication skills that are sufficient for that purpose and which may consist, *inter alia*, in speaking the language or languages appropriate to the principal nationalities of passengers carried on a particular route. The fact that a

⁶ Operations with vessels below 650 gt are considered to be of local importance only and may therefore continue to be subject to host State manning rules as provided for in Regulation (EEC) No 3577/92.

⁷ That means, when the voyage concerned follows or precedes a voyage to or from another State.

⁸ OJ L 319, 12.12.1994, p. 28.

substantial part of the crew must be able to speak the local language(s) adds to the argument that regular passenger services differ from cargo shipping.

10. Secondly, regular passenger services are in general far more labour intensive than cargo services. Therefore, passenger services are an important source of employment for local seafarers. In the Commission's report COM(97) 296 of 17 June 1997, it was stated that 70% of all employment in island cabotage is related to passenger services. The labour intensive character of the trade also implies that competition conditions between operators using vessels under flags of different Member States would be more strongly influenced by differences in manning rules. In particular, it would be perceived as unfair if local passenger ferry operators being subject to the requirement that 100% of the crew must consist of Community nationals, would have to compete with operators from other Member States making use of cheap third-country labour as allowed by the manning rules of their flag State.
11. In view of the particular characteristics of the market for regular passenger services in island cabotage, the Commission is of the opinion that certain measures are needed to ensure a level playing field for operators from different Member States using vessels under different flags. In particular, it is proposed to allow host Member States to require that all personnel employed on the aforementioned passenger vessels operating within their territory shall consist of Community nationals, provided (of course) that this rule equally applies to vessels operating under their own national flag.

The proposed approach is based on the principle that third-country seafarers employed in regular passenger services should receive equal treatment with Community residents. The application of this principle should also have a positive effect on maritime safety, considering the paramount importance of the human element in safety matters.

Particular considerations in respect of the attached proposal for a Council Regulation on cabotage

12. The application of a 100% Community nationality requirement (see Article 1(2)), as is common practice in all Southern Member States, will offer conditions under which the principle of freedom to provide services can be fully implemented in the relevant market. In addition, it is recalled that the provisions of Directive 94/58/EC allow host Member States to require that a sufficient number of the crew shall be able to speak the local language(s). Any further divergence from the usual flag-State manning principle would constitute an undue hindrance to the implementation of the principle of freedom to provide services. Therefore, other matters relating to manning such as the responsibility for issuing the safe manning certificate on the required crew composition in function of the technical characteristics of the ship and in accordance with the relevant international conventions, shall remain the competence of the flag State.
13. The terms and conditions of employment (e.g. rates of pay, overtime rates, working time, annual holidays, etc.) of Community seafarers working on board ships under Member States flags are normally laid down by collective bargaining agreements and/or legal provisions of the flag State. It could be construed to be contrary to the

principle of freedom to provide services to require that the terms and conditions of employment of the crew would have to be changed and brought in line with the corresponding provisions applying in the host State if a vessel under a Member States' flag were used for a certain period for the provision of regular passenger-cabotage services in another Member State (host State). However, in order to avoid any risk of social dumping the proposed revised text of Article 3(3) (see attached proposal for a Council Regulation) of Regulation (EEC) No 3577/92 provides that, where host States allow third-country nationals to be employed on vessels providing regular passenger services, the host State shall require that such seafarers shall be treated for the purpose of terms and conditions of employment as residents of the Member State in which the vessel is registered. In this context, it is recalled that Article 1 of Regulation (EEC) No 3577/92 guarantees freedom to provide services to Community shipowners who have their ships registered in, and fly the flag of a Member State.

14. The main differences between cargo and passenger services, which justify a special treatment for the latter are, as set out before, (a) the fact that there is hardly any relationship with the international market in domestic regular passenger services and (b) that passenger services are more labour intensive and therefore the competition conditions are more strongly influenced by differences in labour conditions. To a very large extent these characteristics also apply to the so-called scheduled cabotage cruise services (i.e. cruise vessels which operate for the whole season according to a fixed pattern between ports of one and the same Member State). The attached cabotage proposal therefore includes these services in the same category as regular passenger and ferry services.

3. REGULAR PASSENGER AND FERRY SERVICES BETWEEN MEMBER STATES

15. Unlike cabotage, there is no flag requirement for the provision of maritime transport services between Member States. Council Regulation (EEC) No 4055/86⁹ of 22 December 1986 provides that all Community established carriers¹⁰ may provide such services irrespective of whether they operate under Community or third-country flags. As regards the particular market for regular passenger services between Member States, the situation is, however, that these services are mainly carried out by ships under Member States' flags and are predominantly crewed by residents of those States. As stated before, these services are a major source of employment for Community seafarers.
16. Over recent years, a few cases have occurred where operators began regular passenger-ferry services using third-country labour in direct competition with Community-crewed ferries. These attempts resulted in strong trade union action. Similar situations could, however, arise again in the future.

⁹ OJL 368, 31.12.1986, p. 1.

¹⁰ Including nationals/shipping companies established outside the Community controlled by nationals of a Member State, if their vessels are registered in that Member State in accordance with its legislation.

17. Other cases have been reported of Community carriers who have partly replaced Community crew by third-country nationals over the last years. According to the information at the disposal of the Commission, some 600 to 700 third-country nationals ($\pm 3\%$ of the relevant work force) are presently employed as crew members on regular passenger ferry services operating between Member States. The vessels concerned are operating under flags of four different Member States. The terms and conditions of employment of these crew members are diverse. For example, it appears that one of these four Member States requires that third-country nationals employed on its intra-Community ferries shall be offered the same labour conditions as its own nationals. For the other three Member States, it has been confirmed that third-country crew are employed on conditions less favourable than those applicable to their own nationals.

There is currently no Community rule in force which could bring about a certain degree of harmonization in cases such as those described above.

18. As stated before, the competition conditions in the labour-intensive market for regular maritime-passenger services is strongly influenced by the crews' labour conditions. There are external factors (e.g. abolition of duty free, completion of certain fixed links) which give reason to believe that the pressure on operators in this market to reduce costs may increase in the years to come. If certain operators can reduce their costs by replacing Community crew by third-country crew employed at less favourable conditions, their competitors will probably have to follow. There is a danger of a negative spiral of erosion of working conditions for all crew, resulting in considerable loss of employment for Community seafarers. Such an evolution would be contrary to the objectives of the common maritime policy. In this light, the Commission considers that certain rules should be introduced to ensure the proper functioning of the internal market and to avoid disruption through social dumping.
19. The proposal for a Council Directive attached to this Communication addresses the labour conditions of third-country nationals employed on ships used for the provision of regular passenger and ferry services between Member States and establishes the principle that such workers should benefit from terms and conditions of employment which are comparable to those applicable to Community citizens working in that trade by defining a certain minimum level.

An important consideration is that seafaring personnel employed on board ships providing regular passenger services between two ports in the Community are effectively residing in the Community, since they stay within the boundaries of the single market for their entire contract period. In most cases seafaring personnel on such passenger ferries sleep on board during the weeks that they are on duty only; during off-duty periods they reside on shore in one of the host Member States. It is therefore not surprising that at present at least one of the Member States applies the rule that non-Community nationals shall be treated as a resident of the State when being employed on its intra-Community ferries. It is common practice that Member States' rules on liability to income tax, social contributions, minimum rates of pay, minimum paid holidays, etc. are applicable to all residents of the State. The rule proposed in Article 2 of the attached proposal for a Council Directive is closely aligned to this principle.

In this context, reference is also made to Directive 96/71/EC¹¹ of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services. The checking of the compatibility of the proposal with the international obligations of the Community or its Member States and in particular with the UN Convention on the Law of the Sea, with OECD and WTO, has been carried out with special attention.

The establishment of a level of labour conditions based on European standards for all crew members should also have a positive effect on maritime safety as mentioned in point 11.

20. The question can be asked whether the scope of the proposal for a Council Directive should be extended to also cover other maritime services, such as regular cargo services between Community ports and cruises. The answer to this question must be negative since the situation is not comparable. Cargo services are not particularly labour intensive and cargo services between Community ports (e.g. container feeder services) are much more interlinked with the global maritime services network than regular passenger-ferry services. The latter point is also applicable to international cruises. Vessels used for international cruise services normally move with seasons to different parts of the world. Crews of such vessels cannot be considered as effectively residing in the Community.
21. **Particular considerations in respect of the attached proposal for a Council Directive**

Explanatory comments by Article:

Article 1

Paragraph 2 covers the so-called Greek particularity, i.e. shipowners established outside the State who nevertheless have their vessels registered in the State and fly its flag. The proposed wording is similar to the one used in Council Regulation (EEC) No 4055/86 (see Article 1(2) thereof).

Paragraph 3 specifies that the labour conditions of Member States' seafarers shall not be affected.

Article 2

Third-country nationals employed on board ships under Member States' flags shall be treated in a similar way as residents of Member States employed on board these ships (flag-State conditions). In the case of ferries under third-country flags, the labour conditions of such crew members shall be in line with those applicable to residents of Member States in the Member State with which the service is most closely connected (host State)¹². The way the operator of a regular passenger service between two Member States has set up his business shall normally settle the question of to which of these host States his business is most closely linked.

¹¹ OJ L 18, 21.1.1997, p. 1.

¹² See Rome Convention of 1980, OJ C 27, 26.1.1998.

Important factors to be taken into account are: the place from which the operation is effectively managed and the place where non-Community crew members stay during off-duty periods.

Article 3

Paragraph 1 allows for a derogation from the principle established in Article 2 for third-country workers who stay for an insignificant short period in the Community. Paragraph 2 allows for flexibility in case for example of a ferry with crew that has to be chartered in to compensate for an acute shortage of capacity due to unforeseen circumstances. Such a situation may for instance occur where a ferry has been involved in a serious accident. The Member States concerned shall ensure a normalization of the situation within a reasonable period.

Article 4

Active cooperation between the competent authorities of the Member States and with the Commission will be required to ensure a proper application of the provisions of this Directive.

22. **Justification for a Council Directive**

14(a) What are the objectives of the envisaged action proposal in relation to the obligations of the Community and what is the Community dimension of the problem (for instance how many Member States are involved and which is the solution so far)?

The objectives of the Community are to ensure fair competition conditions/level playing field for all providers of regular passenger-ferry services between Member States and to protect the employment of Community seafarers by guaranteeing that the terms and conditions of employment of all seafaring personnel in this trade will be in line with the level of the standards generally applicable in the Community. The proposal is based on Article 84(2) of the Treaty.

The great majority of Member States (13 out of 15) have maritime ports and are connected with other Member States by means of regular passenger-ferry services.

Member States' rules on the working conditions of third-country nationals employed on ferries operating between Member States are diverse. A common solution applicable to all operators on the relevant market can only be brought about by Community action.

15(b) Is the envisaged action solely the responsibility of the Community or a responsibility shared with the Member States?

The envisaged action does not relate to an exclusive competence of the Community.

16(c) What is the most efficient solution taking into account the resources of the Community and of the Member States ?

In view of the internal market dimension of maritime passenger transport, the most efficient solution is to enact common requirements at Community level for the treatment of third-country crews on board vessels carrying out regular passenger and ferry services between Member States.

17(d) What is the concrete added value of the action envisaged by the Commission and what would be the cost of inaction?

Inaction would allow ferry operators providing regular passenger services between Member States to replace Community seafarers by cheap third-country labour. This would result in a distortion of competition conditions between operators in the relevant market. It would also lead to a constant erosion of labour conditions of the seafarers in general and considerable loss of employment for Community seafarers in the long run.

To counteract and prevent this negative evolution is the added value of the proposed common action.

18(e) What forms of action are available to the Community? (recommendation, financial assistance, regulation, mutual recognition)

Legislative action is the only form of action available to the Community which can bring about the envisaged effect.

19(f) Is uniform legislation necessary or does a Directive setting the general objectives and leaving the execution to the Member States suffice?

In accordance with the proportionality principle, a Directive will be sufficient as it will establish common requirements for all operators on the relevant market while leaving the choice of practical and technical procedures for their implementation to each Member State.

**Proposal for a
COUNCIL REGULATION (EC)**

amending Council Regulation (EEC) No 3577/92 applying the principle of
freedom to provide services to maritime transport within Member States
(maritime cabotage)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community and in particular Article 84(2) thereof,

Having regard to the proposal from the Commission¹³,

Having regard to the opinion of the Economic and Social Committee¹⁴,

Acting in accordance with the procedure laid down in Article 189c of the Treaty in cooperation with the European Parliament¹⁵,

Whereas Council Regulation (EEC) No 3577/92¹⁶ lays down the principle that the implementation of the freedom to provide services is not necessarily to be applied in a uniform way for all services concerned, regard being had to the nature of certain specific services;

Whereas Article 3 of that Regulation, therefore, establishes different manning rules for mainland and island cabotage and imposes the obligation on the Commission to submit a proposal to the Council, on the basis of a report on the economic and social impact of the liberalization of island cabotage, which may include adjustments to the manning nationality provisions laid down in that Article, so that the definitive system may be approved by the Council before 1 January 1999;

Whereas the abovementioned report was submitted by the Commission to the Council on 17 June 1997; whereas it follows from the research carried out that the present rule which provides, in respect of island cabotage, that all matters related to manning are to be the responsibility of the host State, constitutes an unnecessary hindrance to the proper functioning of the single market;

Whereas the cargo-cabotage sector is closely interlinked with the international market for maritime shipping; whereas no compelling economic arguments have been found to justify a permanent departure from the usual flag-State conditions, except in the case of services of merely local importance;

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16 OJ L 364, 12.12.1992, p. 7.

Whereas the promotion of employment within the Community is one of the objectives of the Treaty;

Whereas the particular characteristics of the sector for regular passenger and ferry services would justify certain special provisions to counteract any possible disruption of competitive conditions through the use of third-country crews paid at the wage-level of their country of origin; whereas the same arguments are applicable to the sector of scheduled cabotage-cruise services;

Whereas it is appropriate to require that third-country nationals employed within the abovementioned sectors shall not be treated less favourably than Community residents;

Whereas Regulation (EC) No 3577/92 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Article 3 of Regulation (EEC) No 3577/92 is hereby replaced by the following:

“Article 3

1. For vessels carrying out cabotage services other than those referred to in paragraph 2, all matters relating to manning shall be the responsibility of the State in which the vessel is registered (flag State), except for ships smaller than 650 gt, where the conditions in force in the State in which the vessel is performing its services (host State) may be applied.
2. For vessels carrying out regular passenger and ferry services, including mixed passenger/cargo services and scheduled cruise services, the rules concerning the required proportion of Community nationals in the crew (namely all staff employed on board) as in force in the host State shall apply. All other matters relating to manning shall be the responsibility of the flag State.
3. Where host States allow third-country nationals to be employed on board ships carrying out cabotage services as referred to in paragraph 2, they shall require that those crew members shall be treated in the terms and conditions of their employment as residents of the Member State being the flag State. The host State shall apply its own terms and conditions of employment to third-country seafarers on board its national vessels carrying out such services.
4. Member States' measures implementing the provisions of this Article shall be notified to the Commission in accordance with Article 9.”

Article 2

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

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

Done at Brussels,

For the Council
The President

**Proposal for a
COUNCIL DIRECTIVE**

**on manning conditions for regular passenger and ferry services
operating between Member States**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 84(2) thereof,

Having regard to the proposal from the Commission¹⁷,

Having regard to the opinion of the Economic and Social Committee¹⁸,

Acting in accordance with the procedure laid down in Article 189c of the Treaty, in cooperation with the European Parliament¹⁹,

Whereas Council Regulation (EEC) No 4055/86 of 22 December 1986 applying the principle of freedom to provide services to maritime transport between Member States and between Member States and third countries²⁰, as amended by Regulation (EEC) No 3573/90²¹, has rendered all the Treaty rules governing the freedom to provide services applicable to the sphere of maritime transport between Member States;

Whereas manning conditions for the provision of services in regular passenger and ferry services between Member States are normally the responsibility of the State of registration of the vessel (the "flag State"); whereas the Rome Convention on the law applicable to contractual obligations²² allows for other arrangements; whereas Community interests and the interests of Member States between whose territories such services are provided also have to be taken into account;

Whereas the principle that shipping companies established outside the Community should not receive more favourable treatment than shipping companies established in the territory of a Member State should be upheld;

Whereas the special characteristics of the market for regular passenger and ferry services between Member States call for measures to ensure the proper functioning of the single market by guaranteeing that the terms and conditions of employment of seafaring

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20 OJ L 378, 31.12.1986, p. 1.

21 OJ L 353, 17.12.1990, p. 16.

22 OJ L 266, 9.10.1980, p. 1; consolidated version: OJ C 27, 26.1.1998, p. 34.

personnel will be in line with the level of social standards generally applicable in the Community;

Whereas, in accordance with the principles of subsidiarity and proportionality as set out in Article 3b of the Treaty, the objectives of the proposed measures, namely to lay down rules on the working conditions of third-country nationals employed on ferries operating between Member States, cannot be sufficiently achieved by the Member States and can therefore, by reason of scale and effects of the provisions required, be better achieved by the Community; whereas this Directive confines itself to the minimum required in order to achieve those objectives and does not go beyond what is necessary for that purpose;

Whereas it is appropriate to require that third-country nationals employed within the abovementioned sectors shall not be treated less favourably than Community residents;

Whereas it is appropriate that Member States may provide for a derogation from the obligation to treat third-country seafarers as Community residents on regular passenger and ferry services between Member States for labour contracts of an extremely short duration or in the event of an acute shortage of ferry capacity due to unforeseen circumstances;

Whereas competent bodies in different Member States should cooperate with each other in the application of this Directive;

Whereas each Member State should determine the penalties to be imposed in the event of a breach of the provisions adopted for the implementation of this Directive,

HAS ADOPTED THIS DIRECTIVE:

Article 1

1. This Directive shall apply to nationals of Member States and to shipping companies established in a Member State which provide regular passenger and ferry services, including mixed passenger/cargo services, between ports situated in different Member States.
2. The provisions of this Directive shall also apply to nationals of a Member State established outside the Community and to shipping companies established outside the Community and controlled by nationals of a Member State, providing the services referred to in paragraph 1, if their vessels are registered, and fly its flag, in that Member State in accordance with its legislation;
3. This Directive shall apply to the extent that the nationals and shipping companies referred to in paragraphs 1 and 2 employ third-country nationals on board the vessels used for the services referred to under paragraph 1.
4. Shipping companies established outside the Community, other than those referred to in paragraph 2, shall not be given more favourable treatment than the nationals and shipping companies referred to in paragraphs 1 and 2.

Article 2

1. Member States shall ensure that, whatever the law applicable to the employment relationship, the nationals and shipping companies referred to in Article 1(1) and (2), operating regular passenger and ferry services between Member States shall guarantee third-country nationals employed on board ships used for such services, the terms and conditions of employment as laid down
 - (a) by law, regulation or administrative provision, and/or
 - (b) by collective agreements or arbitration awards which have been declared universally applicable in so far as they apply to the activities referred to in Article 1(1),which are applicable to the residents of the Member State of registration of the vessel.
2. If the vessel used is not registered in a Member State, the terms and conditions of employment referred to in paragraph 1 shall be those applicable to the residents of one of the Member States between whose ports the service is provided and with which the service has the closest connection. The closest connection shall be determined on the basis of the place from which the service is effectively managed and of the place of residence of the seafarers concerned.
3. The terms and conditions of employment referred to in paragraph 1 shall cover the following matters:
 - (a) maximum work periods and minimum rest periods;
 - (b) minimum annual paid holiday;
 - (c) the minimum rates of pay, including overtime rates;
 - (d) health, safety and hygiene at work;
 - (e) protective measures with regard to the terms and conditions of employment of pregnant women or women who have recently given birth, of children and of young people;
 - (f) equality of treatment for men and women and other provisions on non-discrimination;
 - (g) measures for the repatriation of seafarers and the payment of outstanding salary and social contributions in the event of the insolvency of their employer.
4. Paragraphs 1 and 2 shall not prevent the application of terms and conditions of employment which are more favourable to workers.
5. Collective agreements or arbitration awards which have been declared universally applicable means those which are to be observed by all shipping companies concerned at national level.

In the absence of a system for declaring collective agreements or arbitration awards to be universally applicable, Member States shall base themselves on:

- (a) collective agreements or arbitration awards which are generally applicable to all shipping companies as referred to in Article 1(1) and (2), and/or
- (b) collective agreements which have been concluded by the most representative employers' and labour organizations in the relevant market at national level.

The second subparagraph shall be subject to the condition that the application of those agreements or awards to the shipping companies referred to in Article 1(1) and (2) ensures equality of treatment on matters listed in paragraph 3 of this Article between all shipping companies concerned.

Article 3

1. Member States may, after consulting employers and labour, and in accordance with the traditions and practices of each Member State, decide not to apply the provisions of points (b) and (c) of Article 2(3), when the length of the employment period of the third-country nationals concerned does not exceed one month within any 12-month period.
2. Member States may grant for a period of two months a derogation from points (b) and (c) of Article 2(3), to a provider of services as referred to under Article 1(1) for vessels chartered-in to compensate for an acute shortage of capacity on a ferry route which has arisen owing to unforeseen circumstances. For derogations exceeding two months, prior authorization by the Commission shall be required.
3. Member States shall inform the Commission without delay of derogations pursuant to paragraph 2 and of the circumstances on which they are based.

Article 4

1. For the purpose of implementing this Directive, Member States shall, in accordance with national legislation and/or practice, designate one or more liaison offices or one or more competent national bodies.
2. Member States shall make provisions for cooperation between the public authorities which, under national legislation, are responsible for monitoring the terms and conditions of employment referred to in Article 2.

Mutual administrative assistance shall be provided free of charge.

3. Each Member State shall notify the other Member States and the Commission of the liaison offices and/or competent bodies referred to in paragraph 1.

Article 5

Member States shall determine the penalties applicable to infringements of the national provisions implementing this Directive and shall take all measures necessary to ensure that those provisions are enforced. The penalties thus laid down shall be effective, proportionate and dissuasive. Member States shall notify the provisions to the Commission by the date mentioned in Article 6 and shall notify it of any subsequent amendments to them without delay.

Article 6

Member States shall adopt the laws, regulations and administrative provisions necessary to comply with this Directive by 30 June 1999 at the latest. They shall forthwith inform the Commission thereof.

They shall apply those provisions with effect from [1 January 2000].

When Member States adopt these provisions, these shall contain a reference to this Directive or shall be accompanied by such reference at the time of their official publication. The procedure for such reference shall be adopted by Member States.

Article 7

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

Article 8

This Directive is addressed to the Member States.

Done at Brussels,

For the Council
The President

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