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**PROPOSAL FOR A COUNCIL DIRECTIVE
ON CONDITIONS FOR THE OPERATION OF REGULAR
RO-RO FERRY AND HIGH SPEED PASSENGER CRAFT
SERVICES
IN THE COMMUNITY**

(presented by the Commission)

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EXPLANATORY MEMORANDUM

GENERAL INTRODUCTION

1. When addressing the safety of ferries at Council level in the aftermath of disasters such as the "Herald of Free Enterprise", the "Scandinavian Star" and the "Estonia", Member States never wasted the opportunity to underline that this kind of transport is mostly regarded by their citizens as public transport by sea. It was therefore, after the latest tragedy, that the Council expressed its firm intention to offer the best possible safety guarantees to passengers travelling to and from Community ports. Being aware that the safety requirements applicable to ro-ro ferries sailing on international journeys differ between Member States and that a Community-wide harmonisation of these rules could not be achieved in the short term (see paragraph 6), the Council advocated that the best solution to achieve a coherent implementation of internationally agreed safety standards on specific ro-ro ferry routes in practice was the setting up of an expanded mandatory survey regime at EC level.

The Council was further of the opinion that it is for the benefit of both public protection and maritime safety that accidents are promptly and thoroughly investigated. Some Member States, encountered a negative experience with regard to accident investigation since they are not given the possibility to participate to the extent they require in the investigation of accidents occurred on ferries sailing regularly on routes to and from their ports and involving the safety of their citizens. This is due to the fact that at present the responsibility for such an investigation falls exclusively on the flag State of the vessel concerned when an accident occurs outside the territorial waters. For these reasons the Council was of the opinion that a solution for this problem should be searched for at Community level.

2. To cope with the concerns outlined above, the Council requested¹ the Commission to submit proposals for Council decisions on:
 - the advanced mandatory application of the ISM Code to all regular ro-ro passenger ships operating to or from European ports;
 - a mandatory registration of the passengers on all regular ro-ro passenger ships operating to or from European ports;
 - an expanded mandatory survey regime, including operational inspections etc. for all ro-ro passenger ferries operating to or from ports of the European Union prior to the start of a new service and subsequently at regular intervals;
 - a regime compatible with international law and the need to avoid arbitrary interference with the freedom to trade, for the control by Member States of the safety of all ro-ro passenger ferries serving European ports including the right of investigation of marine casualties as mentioned in relevant resolutions of the International Maritime Organization (IMO).

¹ Council Resolution of 22 December 1994 on the safety of ro-ro passenger ferries. (94/C 379/05). O.J. N° C 379 of 31.12.94, p.8.

The Council's views were shared by the European Parliament².

With regard to the first request the Commission forwarded to the Council and the European Parliament a proposal for a Council regulation in 1995 making the ISM Code mandatory in an anticipated way for ro-ro ferries sailing to and from EC ports. This proposal was adopted by the Council as Council Regulation(EC) N° 3051/95³.

For the second request the Commission forwarded a proposal to the Council and the European Parliament for a Council directive on the registration of persons sailing on board of passenger ships in 1996 on which the Council adopted a Common Position on 10 December 1997⁴.

For the two others, the Commission investigated the best possible way to achieve the main objective of the Council i.e. to satisfy to the utmost the legitimate safety expectations of the citizens travelling across European waters and the Member States' legitimate sense of responsibility to ensure public protection for ferry services to and from their ports.

The Commission had the choice between two possible solutions to encounter the Council's wishes. It could either restrict the right to operate such a public transport by sea to EC operators, who under EC law would be bound to apply the highest possible safety requirements, or set up a regime applicable to all ships sailing regularly to EC ports, irrespective of the flag they fly.

Within the spirit of the internal market and having regard to its open markets policy, the Commission has opted for the second option.

The Commission believes that the most appropriate answer to the Council's request should avoid making any distinction between ferry services on international and domestic voyages, and apply the same rules to all ferries and operators sailing under the same conditions irrespective of the flag of the ship or the nationality of its operator. Therefore the Commission has opted for a Directive⁵, establishing a regime ensuring an appropriate control of all the ro-ro ferries operating on a regular service to or from ports in Europe, based to the largest extent possible upon internationally agreed rules and principles. These requirements will be applied as a pre-requisite for providing regular services to or from a port of a Member State. The same approach has been followed under Regulation (EC) N° 3051/95, when making the ISM Code mandatory for ro-ro ferries.

² Resolution on safety at sea of 1.2.1996, OJ N° C 47, 19.02.96, p.27

³ Council Regulation (EC) N° 3051/95 on the safety management of roll-on/roll-off passenger ferries, OJ N° L 320, 30.12.95, p.14

⁴ Common position (EC) N°xxx, OJ N° C xxx, , p.

⁵ Such a proposal for a Directive has been included in the 1997 Legislative Programme of the Commission.

3. Underlining that the concern for safety is the main purpose of the Directive, the Commission could not ignore the competition aspects. Fair and non-distorted competition in the safest possible environment is necessary not only between ports of the Member States but also on each particular route within a Member State where ferries flying Member States' flags operate in direct competition among themselves and with vessels registered under third countries' flags. Since high speed passenger craft operating a regular service to or from EC ports operate in direct competition or in conjunction with ro-ro passenger ferries, the Commission believes that this Directive should also apply to these craft. A similar approach, placing high speed passenger craft on the same footing as the ro-ro ferries, was also followed by the Council when it adopted the Council Directive on safety rules and standards for passenger ships⁶.
4. In order to implement internationally agreed standards and principles on all ferries, irrespective of the flag they fly, the Commission primarily addresses the Member States in their capacity of "host States". For the purpose of this Directive, each Member State to or from whose ports a ro-ro ferry or a high speed passenger craft is engaged on a regular service will be considered as a "host State".

The notion of "host State" is based upon some specific port State responsibilities which some Member States today already exercise under their national legislation. The host State responsibilities listed in this Directive will be implemented through relevant port State obligations imposed on all ro-ro ferries and high speed passenger craft, irrespective of their flag, as a requirement to provide regular services to or from a port of a Member State of the Community. Member States, acting as host States, will thus be able to ensure that the ships and craft involved in such services effectively comply with international mandatory requirements and EC requirements expressed in accordance with this Directive.

5. Assurance that the international standards and some specific EC requirements related to ro-ro passenger ships, or to high speed passenger craft, to their crews and their management are complied with should be demonstrated to the host State's satisfaction before the vessel sails on regular journeys to or from its ports. The verification of compliance cannot be left solely to the flag State, given the obligation for a host State to adequately protect the safety of its citizens using these regular services to and from its ports as an extension of its public transport system. Nor can it be left solely to port State control procedures which operate on a sample basis and cannot represent an in-depth control of all statutory requirements (see paragraph 8).
6. The proposed Directive does not interfere with flag States' rights and obligations under international law for ships flying their flag and providing ferry services. It seeks only to ensure that where those services are provided regularly to and from EC ports, there is a parity of safety standards between all operators, irrespective of their nationality and their fleet's flag.

⁶ Common position (EC) N° 33/97 of 17 June 1997, OJ C 293, 26.09.97

To this end some additional requirements to those embodied in the SOLAS Convention will indirectly be imposed on all ferries and craft sailing regularly to and from a Community port. They will bring ferries and craft flying non-EC flags involved in international traffic under the same operating conditions as those flying EC flags and will avoid a different inspection regime according to the type of journey. At present, a distinction is made under EC law between ships and craft flying EC flags and those flying the flag of a third country with regard to the obligation to rely only upon a recognized organisation for delegating statutory tasks and for applying standards for the design, construction and maintenance of these ships and craft. This Directive will abolish this distinction for ro-ro ferries and high speed passenger craft.

By imposing a harmonised inspection scenario based upon the HSSC guidelines, the Commission intends to bring ro-ro ferries and high speed passenger craft operating on international voyages on an equal footing with those sailing on domestic routes.

The Commission wants to stress that when proposing to impose some additional requirements (internationally agreed within the IMO and strongly recommended by this organization) in this Directive, it aims to address a specific European niche by placing all operators on an equal footing and ensuring the highest possible level of safety within that niche. It does not have the intention to enlarge the scope of mandatory provisions to passenger ships which do not provide regular services on international routes. Indeed, the Commission recalls that when the Council adopted the Directive on safety rules and standards for passenger ships, it requested the Community to ensure the harmonised interpretation of SOLAS requirements within the IMO framework. Such an ambitious objective is not likely to be achieved by the IMO before 2005 due to the procedures inherent to the amendment of the Convention.

7. The Commission points out that in accordance with international law it could be deemed justified for the port State to impose certain obligations on ships flying the flag of another State. In this context reference is made to MSC Circular 606 on Port State Concurrence on SOLAS Exemptions, issued by the Maritime Safety Committee of the IMO. This circular recommends that flag States, prior to the operation of one of their vessels to or from a port of a State other than the flag State, should work together with the port State to resolve any disagreements concerning the suitability of such an exemption. For the sake of safety, the principle of this IMO recommendation will have to be applied to all ro-ro ferries and high speed passenger craft when operating on a regular service to and from a Community port.
8. An important aim put forward by the Council will be achieved through this Directive, namely to ensure that Member States are satisfied that all safety conditions for a ship or craft which intend to operate on a regular service to and from their ports are fulfilled prior to its putting into operation and also that maintenance of these conditions is checked to their satisfaction at regular intervals.

This aim cannot be achieved through an amendment to the port State control Directive⁷. It is important to stress that the port State control regime set up under this Directive implements the port State control provisions embodied in the SOLAS, MARPOL and ILO Conventions⁸ in the Community. This international legal framework is based upon the "clear ground" notion for inspections and does not provide the full legal basis for a systematic assessment of the condition of a ship or craft nor for carrying out inspections prior to its operation and at regular intervals. In addition, inspections under this regime are limited to foreign flags. Whilst port State control is recognised as being an effective and valuable tool, it has limitations which the proposed Directive seeks to address by providing, in addition to the right to detain a ship under the PSC Directive, the right to prevent a ship or craft from operating as long as the conditions to operate on a regular service are not fulfilled. Port State control operates post facto and can only be used to detain a ship in a port when it is found to have a detainable defect. Consequently it can have only a curative effect. On the contrary, inspections prior to operation will have a preventive effect and provide for a more certain and positive, pro-active approach as they will ensure that any non-compliance is highlighted and put right prior to entry into service of the ship or craft.

The Directive will not prejudice or alter the rights and obligations of Member States in their capacity as port States, or host States, to inspect a ro-ro ferry in accordance with the provisions of Council Directive 95/21/EC. However due account has to be taken of the expanded inspection regime provide for under that Directive. The expanded inspection regime, a more detailed annual inspection based upon non-mandatory guidelines, for passenger ships operating on a regular schedule has already been included in the EC port State control regime⁹. However, these guidelines do not allow a thorough inspection of the passenger ship since the PSC inspections must not obstruct the operation of the ship. These guidelines mainly focus on testing of alarms, fire drills and operational requirements.

In addition one should not lose sight of the fact that under the EC port State control regime the competent authority of a Member State is only bound to perform annual inspections on at least 25% of the number of individual foreign ships, irrespective of their flag, which enter their ports. This means that an effective implementation of an expanded PSC inspection cannot be ensured for all ro-ro ferries and high speed passenger craft operating on a regular schedule in or out of a port of a Member State. Further, it should be noted that the scope of application of this Directive differs from the scope envisaged by article 7 of the PSC Directive.

Whilst the latter refers to passenger ships on international voyages (engaged on regular services as referred to in article 7.4, or just because of the category of the

⁷ Directive 95/21/EC of 19 June 1995 concerning the enforcement, in respect of shipping using Community ports and sailing in the waters under jurisdiction of the Member States, of international standards for ship safety, pollution prevention and shipboard living and working conditions (port State control, OJ L 157, 7.7.1995, p. 1

⁸ The PSC Directive in fact implements the port State control regime set out in IMO Resolution A 787(19) in the Community.

⁹ Article 7 of Council Directive 95/21/EC and Annex V.

ship as referred to in Annex V through article 7.1), the former is intended to apply to ro-ro ferries (a sub-category of the category of passenger ships) and to high speed passenger craft (not defined in the PSC Directive) operating on a regular service, including both international and domestic voyages.

For the above mentioned reasons and in order to be complete, this Directive imposes a specific survey regime, as requested by the Council, which also takes due account of the PSC guidelines developed for such ships.

To avoid unnecessary duplication of inspections and taking account that an expanded PSC inspection is less detailed and less comprehensive than the inspection regime of this proposal, the Commission is of the opinion that Member States could refrain from applying the expanded PSC inspection regime to the ships and craft covered by and complying with this Directive.

By refraining from undertaking these expanded inspections annually PSC inspectors will then be able to concentrate their efforts more on targeting sub-standard ships, which is the main objective of the PSC Directive. On the other hand, the Commission recognises that some Member States will have to increase their staff of qualified inspectors to ensure an effective implementation of the new survey requirements. With a view to adequately protect the lives of many of their citizens using this mode of maritime transport, this should not represent an insurmountable effort for the Member States.

9. The proposed Directive also attempts to build on the approach of the ISM Code Regulation. Whilst the ISM Code provides each flag State with a tool for ensuring that vessels flying its flag meet the international standards on safety management, it is not unlikely that its application would be less effective when the flag State is not the State in which the company operating ships or craft is based.

The ISM Code Regulation addresses the responsibilities of the company, whereas the proposed Directive emphasises the need for an effective control by the host State, and indirectly by the involved flag State, that ro-ro ferries and high speed passenger craft and their crew comply with statutory international requirements. However the burden of proving that the vessel meets the conditions to operate will be placed onto the vessel's operator rather than on the host State. Within the Quality Shipping campaign launched by the Commission¹⁰ in November 1997 and fully supported by the European shipowners such proof of compliance should not constitute a burden for quality operators.

¹⁰ Announcement made by Commissioner Neil Kinnock at the 20th general Assembly of the IMO. London 17 November 1997.

PURPOSE AND SCOPE OF THE LEGISLATION

10. The main objectives of the proposed Directive are to achieve in practice, through commonly agreed principles, an increased harmonisation of the interpretation of international safety requirements, to ensure the effective application of these requirements and of the relevant EC legislation, and transparency on the conditions required for operating ro-ro ferry and high speed passenger craft on regular services to and from ports of a Member State, for all parties involved: host and flag administrations, as well as companies.

The proposed Directive aims to:

- list all the conditions related to maritime safety issues which have to be fulfilled by a company to operate its ro-ro ferry or high speed passenger craft on a regular service to or from European ports, as well as, although indirectly by a flag State, whose flag such ships or craft are flying.
- establish a regime for verifying and inspecting compliance with all conditions, including operational conditions, for ro-ro passenger ships and high speed passenger craft operating to or from EC ports, prior to their entry into service and subsequently at regular intervals.
- ensure the participation of host States in any investigation of maritime accidents or casualties involving a ro-ro ferry or high speed passenger craft operating on a regular service to or from an EC port.
- avoid unnecessary expanded PSC inspection procedures for ferries and craft which have demonstrated compliance with the conditions of this Directive.
- facilitate within the Community the putting into operation on a specific regular service of ships and craft confirmed to be in compliance with the requirements of the Directive as well as the transfer of such ships and craft to other regular services with similar operational conditions.

11. The scope of this Directive is limited to ro-ro passenger ships and high speed passenger craft operating on international or domestic voyages to or from EC ports, irrespective of the flags they fly and as far as they provide a regular service. It also intends to address the responsibilities of companies and crews and of flag state Administrations involved in the operation of such ferries and craft.

The Directive proposes to make a number of principles and requirements which are contained in some IMO resolutions mandatory with the aim to ensure that important safety issues are implemented on ro-ro ferries and high speed passenger craft operating a regular service to and from Community ports. The Commission is of the opinion that a mandatory implementation of relevant provisions contained in IMO resolutions in this niche is justified by the need for adequate standards for safety and accident investigation.

There is sufficient evidence that differing interpretations of the international safety standards by flag State Administrations introduce uncertainty and inconsistency, which weaken the value of an automatic mutual recognition of SOLAS certificates issued by those administrations.

This applies both to differences of interpretation between EC Member States on the one hand, and between EC Member States and third flag States on the other. The proposed Directive provides for a joint assessment of relevant safety rules by all parties directly concerned for aiming at the implementation of mutually accepted safety standards.

The proposed Directive is designed to avoid discrimination between vessels and craft flying a flag of an EC Member State and those flying the flag of other States. The Commission perceives the need to ensure a high standard of public protection on all ro-ro passenger ships and high speed passenger craft operating on regular services to and from EC ports, regardless of their flags. There is therefore no intention to debar vessels flying non-EC flags provided that they meet the necessary safety requirements. Flag States as well as non Member States in their capacity as port or coastal States will be positively encouraged to participate and co-operate in the survey regime.

The proposed Directive will provide positive effects for companies involved in regular services as they will know in advance the conditions they and their ships and craft have to fulfil to operate on regular services to and from EC ports. They will also be placed, from a safety point of view, on an equal footing with their competitors operating on the same route, irrespective of nationality or flag.

The Directive does not envisage that a ferry or craft, for which a host State has confirmed that it fulfils the conditions to operate on a regular service to and from a particular port, can automatically operate on another regular service to and from EC ports, but foresees that a confirmation of compliance previously issued be taken into consideration when the same ship or craft is to be engaged on other similar routes, to avoid unnecessary repetition of all the procedures.

12. Fully relying upon an internationally accepted IMO "Code for the conduct of the investigation of marine casualties", the proposed Directive intends to create a mechanism resulting in the abolishment of the barriers which today might still impede the involvement of the host State in a prompt and thorough investigation of a marine casualty. Beyond its territorial sea the possibility of a host State to participate in the investigation of an accident involving its citizens relies at present purely upon the goodwill of the flag State or the coastal State. This situation undergoes some changes in the proposed Directive.

As regards third country flag States, the proposed Directive does not interfere with their right to conduct investigations according to their own rules. However it imposes, as a condition on the company wishing to operate on a regular ferry service, the legal acceptance by the flag State of the host State's right to fully participate in the investigation of an accident even if that accident took place outside the host State's internal waters or territorial sea.

When it comes to accidents occurring within a third country's territorial waters, the Commission recognises that a host State's participation in the investigation of an accident involving a ship flying the flag of a third country cannot be fully ensured through this Directive. This is because if in such a case both the coastal State and the flag State are non-Community countries, the participation might have to depend on how well the coastal State respects the co-operation principles which are laid down in the Code for the conduct of the investigation of marine casualties.

Further the Commission fully acknowledges that a justified and legitimate involvement of the host States in marine casualty investigations which occur in the Community and adjacent waters should not be limited to ro-ro ferries and high speed passenger craft only.

Taking account of the formal request of the Council to safeguard the interest of the Member States for all regular ferry services to and from their ports and the recent adoption by the IMO of the Code for the investigation of marine casualties, the Commission considers this Directive as a first step towards a more general application of the Code.

In the light of the expertise gained with the application of this Directive it will, at an appropriate time, consider in close co-operation with the Member States, how and which further steps are necessary at Community level to ensure an effective implementation of the Code in all accidents and incidents involving ships, irrespective of their type or flag, occurring within waters falling under the Community's concern.

13. The proposed Directive imposes companies to co-operate directly with the flag State administration and requires that Member States inform third countries of the Community requirements imposed on companies which want to operate or continue to operate in this specific European transport niche. The Commission considers that this is necessary to secure sufficient co-operation from non-EC flag States to ensure that ships and craft flying their flag can operate to and from EC ports in full compliance with essential safety requirements. If companies cannot demonstrate compliance, due to a lack of co-operation by the flag State, they might have to resort, in those circumstances, to another flag which shares the perception of the safety regime set out at EC level.

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 obligations of the Community in this context are the improvement of safety in maritime transport as foreseen in Article 84 (2) of the Treaty read in conjunction with Article 75 (1) (c). The objective of the action proposed is to establish and implement harmonised conditions for the operation of ro-ro ferry and high speed passenger services to and from EC ports, to achieve a uniform safety standard and to ensure an adequate participation of the Member States in any investigation of maritime accidents or casualties involving such ships or craft.

Taking account of the scope of the Directive as defined in Article 3.1, this Directive will affect more than 500 passenger ships and high speed passenger craft sailing regularly to and from about 275 European ports¹¹.

Millions of European citizens and many others¹² travelling within Europe have recourse to this kind of transport to or from hundreds of ports in the Community. Almost all Member States are concerned as flag States as well as host States, and have introduced different standards, in particular for international voyages because of the large margin of interpretation and discretion and the many possibilities for exemptions left to the administrations in the international Conventions. This in turn leads to different safety levels over same routes where vessels will then compete under different conditions, hence unequal costs. Therefore it is essential to apply a common assessment procedure of the safety conditions on the main ferry and high speed passenger craft routes in Europe. This will be achieved through a set of conditions clearly established whereby operators will know in advance the conditions they and their ships and craft have to fulfil when they want to operate to and from EC ports and through a specific survey regime set up to permanently check compliance with the rules.

Common safety and survey requirements are thus required not only in order to attain a common level of safety but also to guarantee that competition takes place on an equal footing in Community waters for all operators irrespective of their nationality or the flag their ships and craft fly and without a distinction between international and domestic journeys. As stated in paragraph 8 of the general introduction, the envisaged objectives cannot be achieved through an amendment of the PSC Directive.

¹¹ An analysis by the Commission services, based upon cruise and ferry statistics for 1996 identified 549 vessels sailing from 277 ports.

¹² The above-mentioned analysis showed that these vessels carried 141,818,786 passengers.

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 the setting up of common safety and survey requirements at Community level.

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

The Community has a major interest in the implementation and maintenance of the highest possible safety standards in conformity with international law for a specific European transport niche i.e. for ro-ro ferries and high speed passenger craft operating on regular services to and from EC ports. Appropriate construction rules have been adopted at Community level for passenger ships, including ro-ro ferries and high speed craft sailing on domestic journeys. This is not the case for international journeys, where international conventions allow for considerable derogation possibilities and divergent interpretations of the implementation of the safety standards. European citizens and many others who travel in the Community regard this kind of transport as public transport by sea. They should have the right to expect the same level of protection irrespective of the type of ships or service they are using. Therefore this Directive proposes to enforce a harmonized safety level through a set of conditions, entirely based upon internationally accepted principles, to provide regular services to and from EC ports and through a specific survey regime set up to check compliance with the rules prior to the start of a service and at regular intervals.

The costs of no action would be insufficient protection for passengers with a persistent risk of high loss of human lives and the persistence of an overly complex and uncertain system for operators within the Community, as well as distortion of competition. Recent tragedies in European waters, where overall almost 2000 lives were lost are a further evidence for the need of action at EC level.

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

International negotiations to achieve a fully harmonised legislation for the construction and operation of ro-ro ferries and high speed passenger craft cannot be achieved within an acceptable time frame. In addition, the implementation of some instruments such as a Code for a coherent accident investigation with the participation of all interested parties in the investigation is entirely left to the appreciation of the individual flag States.

Even if adequate binding international rules exist the main problem remains the coherent and effective implementation of the agreed rules. Due to limitations inherent to the port State control regime established in conformity with international Conventions, a systematic control and assessment of the safety level of these ships and craft cannot be adequately ensured through an amendment of Directive 95/21/EC. In order to provide for homogeneous and effective protection of passengers in this transport mode, it is therefore necessary to introduce binding measures, either in the form of a directive or regulation ensuring a permanent assessment and survey of the required safety level and the right for the Member States to participate in any accident occurring in waters of Community interest. By embodying a broad Community system in an enforceable legislative framework, divergent national measures will be avoided.

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 at Community level to ensure the harmonised implementation and enforcement of internationally agreed rules and principles for ro-ro ferries and high speed passenger ships engaged on regular services to and from EC ports, while leaving the choice of practical and technical procedures for their implementation to each Member State. In doing so, this Directive leaves the responsibility to each Member State to decide on the implementation tools which best fit its internal system.

CONTENT OF THE DIRECTIVE

20. The proposed Directive requires Member States to verify that ro-ro passenger ships and high speed passenger craft intending to operate on a regular service to or from their ports comply with all the conditions for that service. This verification includes a check on the validity of all relevant certificates issued by flag States, and an inspection of the vessel or craft prior to its entry into service. The host State will invite the other host State(s) and possibly the flag State, if this is not an involved host State, to attend the inspection.
21. Companies will be bound to present evidence of compliance and submit their vessels and craft for inspection in good time before the proposed start date of the service. A vessel or craft may not start operating on a regular service until the host State has confirmed to the company that the vessel or craft has been found to comply with all the conditions to operate on that particular regular service. This confirmation will be in writing and will record who took the decision and under which conditions, if any. Companies will have a right of appeal against the host States' decision to prevent a ship or craft from operating on a regular service. Where a regular service within the EC involves more than one host State, the host States concerned will have to co-ordinate the fulfilment of their responsibilities under the Directive. Transitional arrangements will be included in the Directive for vessels and craft currently operating on regular services to demonstrate compliance with the Directive.
22. The confirmation by a host State that a ship or craft fulfils the conditions to operate will continue to be valid as long as the company and his ship or craft maintain compliance with the conditions to operate. However, the host State retains the right to carry out subsequent unscheduled surveys and will always have the right to inspect the ship or craft under the provisions of the PSC Directive whenever it has clear grounds to do so.
23. The confirmation that a company can operate his ship or craft on a regular service will be conditional upon the acceptance by the flag State that the host State will have the right to conduct or participate in any marine accident investigation involving that ship or craft.
24. The proposed Directive will list all the conditions that must be met by a company and will set out the principles by which Member States as host States must abide. It will specify a number of specific requirements to ensure a harmonised application of international standards.

SPECIAL CONSIDERATIONS

Article 1

This Article defines the purpose of the Directive: to establish conditions for the safe operation of regular ro-ro ferry and high speed passenger craft services to and from EC ports and to provide the right for Member States to fully participate in any investigation of maritime accidents on these services.

Article 2

This Article contains the definitions of the key words of the Directive. The Directive strives to ensure consistency with definitions in international legal instruments such as the 1974 SOLAS Convention and EC legislation in the maritime safety field.

Article 3

This Article defines the scope of application of the Directive. It explains which ships and craft are bound by the provisions of the Directive. Applying the Directive to all international voyages as well as to all domestic voyages in sea areas where the ro-ro ferry is more than 20 miles from the coast line, whilst leaving to the Member States the right to also apply the Directive to ro-ro ferries engaged on domestic voyages within 20 miles from the coast line. This will avoid the need to introduce provisions to exempt some ships and craft for which it would be unreasonable or impractical to comply with all the general provisions of the Directive.

Article 4

This article lays down the rules of the game to be applied by the Member States, acting as host States, to ensure, as a requirement to provide a regular service to and from their ports, that ships and craft and companies which operate or intend to operate them on these routes comply with the provisions of Articles 5 and 6.

This Article also lists the reasons for preventing such ships and craft from operating on a regular service and establishes the principle of host States' co-operation and procedures to inform companies on their rights and obligations.

Article 5

This Article lays down the general provisions to be fulfilled by all ro-ro ferries and high speed passenger craft :

Paragraph 1 confirms the need to carry valid certificates. To ensure an appropriate level of certification and to avoid distortion of competition it imposes on all ro-ro ferries and high speed passenger craft irrespective of their flag obligations which are already imposed under EC law on ships and craft flying the flag of a Member State or solely on ships and craft which sail on domestic voyages. There is no need to re-invent the wheel for ensuring that the statutory surveys are undertaken in a harmonized way since under IMO Resolution A.746(18) governments are already invited to carry out surveys following the guidelines annexed to this resolution.

This way of proceeding does not interfere with the ratification process of the Harmonized System of Survey and Certification Protocol of 1998.

Paragraph 2 deals with requirements regarding the construction, maintenance and fitting out of these ships and craft.

To ensure that the condition of the hull, main and auxiliary machinery and electrical and automatic plant do not impair the safety of the ship or craft it is compulsory that these features are constructed, maintained and surveyed in conformity with the standards specified for classification by the rules of a "recognized organisation". These "recognized organisations" are accurately defined in Council Directive 94/57/EC¹³ as organisations professionally efficient, reliable and able to maintain proper control of compliance with safety and environmental protection standards of the vessels they classify.

All ships and craft will have to be fitted with a voyage data recorder for which both the functional requirements and technical specifications have been established within the IMO. Due to circumstances out of the control of the EC Member States, a carriage requirement for this device could not yet be made mandatory under the SOLAS Convention.

Paragraph 3 ensures that specific regional stability requirements, such as those of the 1996 Stockholm Agreement, are applied in a harmonized way to all ro-ro ferries sailing in the region irrespective of their flag and without any distinction between international and domestic voyages.

Article 6

This Article lays down the obligations for companies.

Paragraph 1 requires companies to provide the necessary evidence of compliance with the rules of the game.

Paragraph 2 imposes that a company does not object to the participation of the host States in any accident investigation as referred to in Article 9.

Paragraph 3 imposes that the company, having regard to its commitment to fulfil the requirements imposed by the EC host States as a condition to provide a regular service to and from EC ports, obtain for each ship or craft flying the flag of a third State the acceptance and indirectly the co-operation of that flag's Administration.

13 O.J. N° L 319, 12.12.94, p. 20 on common rules and standards for ship inspection and survey organisations and for the relevant activities of maritime administrations.

Article 7

This Article contains the main provisions of the Directive since it lays down the procedures and detailed guidelines for the verification by the host States of the evidence of compliance with the requirements of the Directive.

Paragraphs 1 to 3 impose an initial survey which is a thorough survey prior to the putting into operation of a ship or craft on a regular service to or from an EC port, or within 1 year after the entry into force of the Directive for ships and craft which already operate on these services, as well as every time the operation conditions of the ship or craft change. Minimisation in the repetition of these procedures is fostered for ships and craft, confirmed to be in compliance with the Directive when they are to be transferred to operate on other similar services.

Paragraph 4 introduces the principle of the unscheduled surveys.

Paragraph 5 exempts ships and craft which have successfully passed the initial and unscheduled surveys from the expanded inspection under the PSC Directive, without prejudice to the right of a port State to subject a ship to a PSC inspection when it has clear grounds to do so and possibly detain it under the PSC regime.

Article 8

This Article sets out the procedures to be followed during the specific surveys as well as the qualifications and composition of the survey team. Co-operation between host States, involvement of the flag State and the need to avoid an unnecessary immobilisation of the ship are the main principles. Well-defined actions are proposed when deficiencies are established or when there is disagreement between host States on the fulfilment of the requirements.

Article 9

This article imposes Member States to ensure through their legislation the possibility for them and for other Member States to participate in the investigation involving any ro-ro ferry and high speed passenger craft engaged on a regular service to or from their ports. When involved in an investigation they will have to follow the principles of the IMO Code for the investigation of marine casualties.

Article 10

This article lists a set of accompanying measures which should contribute to a coherent and efficient implementation of the provisions imposed under Article 5 to 7.

To this end:

- the effective application of MSC Circular 606 on Port State Concurrence cannot be left to the discretion of the flag States only (see paragraph 7 of the general introduction),

- the recommendations addressed to the port States laid down in IMO Resolution A. 600 (15) on the IMO identification number, already mandatory for all passenger ships of and over 100 GT sailing on international voyages, and the IMO Resolution A. 795 (19) on navigational guidance should become mandatory for all ro-ro ferries and craft falling under the scope of this Directive,
- all available data of the ship and the crew, the operational conditions or limitations of the ship, the findings of the statutory and class surveys, as well as the outcome of the specific surveys, PSC, inspection records and of the specific surveys should be made available,
- clear and company friendly procedures with regard to recognition of the compliance with the requirements of this Directive have to be established,
- Administrations should closely co-operate with the companies for accepting a structure for an integrated system of contingency planning for shipboard emergencies as recommended by IMO Resolution A.852 (20).
- it is necessary to create an appropriate interface for operational restrictions between the host State and the local authorities.

Article 11

Paragraph 1 announces the Commission's commitment to set up a transparent system to ensure an "a posteriori" on line monitoring of the obligations under the new Directive. To this end a data base accessible to all parties concerned is suggested. It is worthwhile investigating whether the system of data exchange and storing set up under the Paris MOU (SIRENAC/CAAM) provides the most effective means to fulfil this requirement.

Paragraph 2 aims to ensure that third countries are properly informed by the host States about the conditions imposed on ro-ro ferries and high speed craft for operating regular services to and from EC ports allowing them to set up the necessary arrangements to assist potential companies which operate ships and craft under their flag to fully comply with the EC requirements.

Article 12

Here the Committee instituted under Article 12 of Council Directive 93/75/EEC¹⁴ is incorporated, describing also the procedure which must be followed when the Directive refers to Committee procedures.

Article 13

This Article allows the Commission to amend, in accordance with the procedure laid down in Article 12, this Directive, to ensure the application, for the purpose of this Directive, of subsequent amendments to the international Conventions or Community instruments which have entered into force after the adoption of this Directive, as well to IMO resolutions recognized important under the regime established by this Directive.

¹⁴ Council Directive 93/75/EEC of 13 September 1993 concerning minimum requirements for vessels bound for or leaving Community ports and carrying dangerous or polluting goods, OJ L247, 5.10.1993, p. 19

Articles 14 and 15

These Articles uphold the measures which each Member State has to comply with in order to enforce this Directive.

Articles 16 and 17

No comments.

Annexes

Annex 1 establishes the specific requirements to be fulfilled by companies as referred to in Article 6.1. In this context companies should rely upon relevant IMO Resolutions inviting them to take up specific responsibilities for the safe operation of ferry services.

Annex 2 lists, in addition to the reasons referred to in Article 4.3, the failures of compliance which will lead to preventing a company from operating its ship or craft on a regular service.

Annexes 3 and 5 specify detailed guidelines for inspectors carrying out the specific surveys required in Article 7.

Annex 4 lists the data which have to be collected by the host States on companies, ships and craft verified in compliance with the Directive, to serve as an input for the data base referred to in Article 10.4.

Annex 6 specifies the criteria to be met by qualified inspectors.

PROPOSAL FOR A COUNCIL DIRECTIVE ON CONDITIONS FOR THE OPERATION OF REGULAR RO-RO FERRY AND HIGH SPEED PASSENGER CRAFT SERVICES IN THE COMMUNITY.

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 Commission¹⁵,

Acting in accordance with the procedure referred to in Article 189c of the Treaty,

In co-operation with the European Parliament,

Having regard to the opinion of the Economic and Social Committee¹⁶,

Whereas within the framework of the common transport policy further measures must be taken to enhance safety in the maritime transport of passengers;

Whereas the Community is seriously concerned by shipping accidents involving ro-ro ferries which have resulted in a massive loss of lives; whereas persons using ro-ro passenger ships and high speed passenger craft throughout the Community have the right to expect, and be able to rely on an appropriate level of safety;

Whereas the Council in its Resolution of 22 December 1994 on the safety of roll-on/roll-off passenger ferries¹⁷ invited the Commission to submit proposals for a mandatory survey regime and for the establishment of a control regime for the safety of ro-ro ferries;

Whereas this Directive is in conformity with the right of Member States to impose on passenger ships and craft sailing to or from their ports, certain more stringent requirements than those laid down in the SOLAS Convention;

Whereas in view, in particular, of the internal market dimension of maritime passenger transport, action at Community level is the most effective way of establishing a common minimum level of safety for ships throughout the Community;

Whereas, in view of the proportionality principle, a Council Directive is the appropriate legal instrument as it provides a framework for the Member States' uniform and compulsory application of safety standards, while leaving each Member State the right to decide which implementation tools best fit its internal system;

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OJ C 379, 31.12.94, p.8

Whereas the safety of ships is the primary responsibility of flag States; whereas Member States can ensure compliance with adequate safety requirements by ferries and high speed craft flying their flag; whereas the only way to ensure safety of these vessels and craft irrespective of their flag operating or wishing to operate on a regular service to and from their ports is for the Member States to require their effective compliance with safety rules as a condition to operate on a regular service from their ports;

Whereas this Directive addresses the Member States in their capacity of host States, whereas these responsibilities are based upon specific port State responsibilities fully in line with the 1982 United Nations Convention on the Law of the Sea (UNCLOS);

Whereas action at Community level is the best way to ensure the mandatory enforcement of some principles agreed upon within the IMO, while avoiding distortion of competition between different Community ports and ro-ro ferries and high speed passenger craft;

Whereas in the interest of improving safety and avoiding distortion of competition the common safety requirements should apply to ro-ro ferries and high speed passenger craft providing regular services and engaged both on international and domestic voyages in sea areas where it is without doubt practical to apply the Directive, irrespective of the flag they fly, whilst leaving the possibility to the Member States to extend the scope of application to ships sailing in other areas if practicable;

Whereas companies should know in advance all the safety related conditions they have to fulfil to operate their ro-ro ferries and high speed craft in the Community; whereas companies operating ro-ro ferries and high speed passenger craft found in compliance with the requirements of the Directive should not be prevented from operating on a regular service within the Community and should duly be informed thereof;

Whereas this Directive does not interfere with the obligations and the right of a Member State to inspect ships or craft under the provisions of Article 5 of Directive 95/21/EC of 19 June 1995 concerning the enforcement, in respect of shipping using Community ports and sailing in the waters under jurisdiction of the Member States, of international standards for ship safety, pollution prevention and shipboard living and working conditions (port State control)¹⁸;

Whereas Member States should co-operate to exercise their responsibilities as host States;

Whereas it is necessary to identify harmonized requirements for survey and certification by the flag States; whereas Member States might find it necessary to delegate these tasks only to recognized organizations which meet the requirements of Council Directive 94/57/EC of 22 November 1994 on common rules and standards for ship inspection and survey organizations and for relevant activities of marine administrations¹⁹;

¹⁸ OJ L 157, 7.7. 1995, p. 1

¹⁹ OJ L 319, 12.12.94, p. 20

Whereas all ro-ro ferries operating to and from EC ports should conform, at the building stage and during their entire lifetime, with the relevant classification standards as regards their hull strength, main and auxiliary machinery and electrical and automatic plants and should be fitted with a voyage data recorder complying with the relevant international requirements;

Whereas regional stability requirements should apply without ambiguity to all ro-ro ferries sailing in the region irrespective of their flag or the nature of their voyage;

Whereas it is the responsibility of the companies as a condition to provide a regular service to and from EC ports to provide the evidence of compliance with the requirements of the Directive and to ensure that Member States can fully participate in any accident investigation according to the provisions of the IMO Code for the investigation of marine casualties;

Whereas verification of compliance of ro-ro ferries and high speed passenger craft with the requirements is necessary through specific surveys by the host States on the basis of harmonized procedures and detailed guidelines and should be carried out by a qualified team of inspectors prior to the start of a service fulfilling the requirements of this Directive and subsequently at regular intervals;

Whereas to reduce the burden upon companies for the verification of compliance of ships and craft due account should be taken of their operational and maintenance schedule as well as of the confirmation of compliance for operation on similar routes; whereas ships and craft which have been surveyed to the satisfaction of the host State should not be subjected to expanded inspections under Directive 95/21/EC;

Whereas Member States should ensure that their internal legal system enables them and any other substantially interested Member States to participate or co-operate in accident investigation on the basis of the provisions of the IMO Code for the investigation of marine casualties, whereas the outcome of such investigations should be given due publicity, bearing in mind the high public interest which accidents involving passenger traffic attract;

Whereas a set of accompanying measures to be taken by the Member States is suitable for a coherent and efficient implementation of the requirements by both host States and companies;

Whereas the Commission is bound to ensure an adequate monitoring of the implementation of this Directive and that all information related to a ship or craft falling under the scope of this Directive should be accessible to all parties with a vested interest in the operation of these ships and craft through a transparent data base which will be set up by the Commission;

Whereas it is necessary to ensure that all States involved in the traffic to and from EC ports fulfil the same requirements for the safe operation of ro-ro ferries and high speed passenger craft and for the investigation of marine casualties, whereas these requirements are not in conflict with UNCLOS, whereas third countries involved in the operation of ro-ro ferries and high speed passenger craft falling under the scope of this Directive should be informed by the Member States of the conditions imposed under Community legislation to companies to provide regular services to and from EC ports;

Whereas it is necessary for a Committee consisting of representatives of the Member States to assist the Commission in the effective application of this Directive; whereas the Committee set up in Article 12 of Council Directive 93/75/EEC of 13 September 1993 concerning minimum requirements for vessels bound for or leaving Community ports and carrying dangerous or polluting goods²⁰ can assume that function;

Whereas certain provisions of the Directive may be adapted by that Committee to take into account future amendments to the SOLAS Convention which have entered into force and to ensure a harmonised implementation of amendments to some IMO Resolutions,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Purpose

The purpose of this Directive is to lay down conditions for the safe operation of regular ro-ro ferry and high speed passenger craft services to or from ports in the Member States of the Community and to provide the right for Member States to conduct, participate in or co-operate with any investigation of maritime casualties or incidents on these services.

Article 2

Definitions

For the purpose of this Directive and its annexes,

- (a) "ro-ro ferry" shall mean a seagoing passenger vessel with facilities to enable road or rail vehicles to roll on and roll off the vessel, and carrying more than twelve passengers;
- (b) "high speed passenger craft" shall mean a high speed craft as defined in Regulation 1 of Chapter X of the 1974 SOLAS Convention, as amended on the date of the adoption of this Directive, which carries more than twelve passengers;

²⁰ OJ L247, 5.10.1993, p. 19

- (c) "1974 SOLAS Convention" shall mean the International Convention for the Safety Of Life At Sea, together with Protocols and amendments thereto, in force on the date of adoption of this Directive;
- (d) "High Speed Craft code" shall mean the "International Code for Safety of High Speed Craft" contained in IMO Maritime Safety Committee Resolution MSC 36 (63) of 20 May 1994, as amended on the date of the adoption of this Directive;
- (e) "regular service" shall mean a series of ro-ro ferry or high speed passenger craft crossings operated so as to serve traffic between the same two or more ports, either:
 1. according to a published time table; or
 2. with crossings so regular or frequent that they constitute a recognisable systematic series;
- (f) "sea area" shall mean any sea area as established in accordance with Article 4.2 of Council Directive 98/ /EC on safety rules and standards for passenger ships;
- (g) "certificates" shall mean for ro-ro ferries a Passenger Ship Safety Certificate, issued either under the provisions of the 1974 SOLAS Convention, or in accordance with Directive 98/ /EC on safety rules and standards for passenger ships, and for high speed passenger craft a High Speed Craft Safety Certificate, and a Permit to Operate High Speed Craft issued in accordance with the provisions of the High Speed Craft Code; together with the relevant records of equipment and where applicable Exemption Certificates;
- (h) "exemption certificate" shall mean any certificate issued under the provisions of Regulation I A/12(a)(vi) of the 1974 SOLAS Convention;
- (i) "administration of the flag State" shall mean the competent authorities of the State whose flag the ro-ro ferry or the high speed passenger craft is entitled to fly;
- (j) "host State" shall mean a Member State to or from whose ports a ro-ro ferry or a high speed passenger craft is engaged on a regular service;
- (k) "international voyage" shall mean a voyage by sea from a port of a Member State to a port outside that Member State, or conversely;
- (l) "domestic voyage" shall mean a voyage in sea areas from a port of a Member State to the same or another port within that Member State;
- (m) "recognized organization" shall mean an organization recognized in conformity with Article 4 of Council Directive 94/57/EC of 22 November 1994 on common rules and standards for ship inspection and survey organizations and for the relevant activities of maritime administrations;
- (n) "company" shall mean a company operating one or more ro-ro ferries to which a document of compliance has been issued in compliance with Article 5.2 of Council Regulation (EC) N° 3051/95 or a company operating high speed passenger craft, to whom a Document of compliance has been issued in accordance with Regulation IX/4 of the 1974 SOLAS Convention, as amended on the date of adoption of this Directive;

- (o) "Code for the investigation of marine casualties" shall mean the Code for the investigation of marine casualties and incidents adopted by the IMO through Assembly Resolution A.849(20) of 27 November 1997;
- (p) "specific survey" shall mean a survey by the host State as specified in Article 7;
- (q) "qualified inspector" shall mean a public-sector employee or other person, duly authorised by the competent authority of a Member State to carry out surveys and inspections related to the certificates and fulfilling the criteria of qualification and independence specified in Annex 6;
- (r) "deficiency" shall mean a condition found not to be in compliance with the requirements of this Directive.

Article 3

Scope

1. This Directive shall apply to all ro-ro ferries and high speed passenger craft operating to or from a port of a Member State on a regular service, regardless of their flag, when engaged on international voyages or on domestic voyages in sea areas of Class A.
2. A Member State may, as far as practicable, apply this Directive to ro-ro ferries and high speed craft engaged on domestic voyages in other sea areas than those referred to in paragraph 1. In those circumstances the relevant rules shall be applied to all ro-ro ferries or high speed passenger craft operating under the same conditions, without discrimination in respect of flag, nationality or place of establishment of the company.

Article 4

Application

1. Each host State shall ensure, as a requirement for ro-ro ferries and high speed passenger craft to provide a regular service to or from one or more of its ports, that companies which operate or intend to operate such ship or craft comply with the provisions of Article 6 and that their ships or craft fulfil the requirements of Article 5.
2. The host State which, after verification in accordance with the provisions of Article 7.1, is satisfied that the requirements of paragraph 1 are complied with shall confirm this in writing to the company and shall not prevent, for reasons arising from this Directive, the company from operating its ship or craft on that regular service.
3. A host State shall prevent a company from operating a ro-ro ferry or a high speed passenger craft on a regular service to or from one or more of its ports:
 - when the conditions referred to in Articles 5 and 6 are not fulfilled, or

- whenever it has not been consulted by the flag State on the suitability of exemptions granted, as referred to in Article 10.1, or
 - whenever the deficiencies found at the occasion of one of the specific surveys referred to in Article 7 are not rectified to its satisfaction in accordance with the provisions of Article 8.6,
 - or for reasons listed in Annex 2.
4. Whenever they have decided to prevent that company from operating a ship or craft in accordance with the provisions of paragraph 3 host States shall by a reasoned decision inform the company thereof as well as of its right of appeal. An appeal shall not cause the decision to be automatically suspended.
 5. Host States involved in the same regular service shall liaise with each other when applying the provisions of this Article.

Article 5

Provisions to be fulfilled by ro-ro ferries and high speed passenger craft

1. Ro-ro ferries and high speed passenger craft shall:
 - a) carry valid certificates, issued by the Administration of the flag State or by a recognized organisation acting on its behalf;
 - b) be surveyed for the issue of certificates in accordance with the relevant procedures and guidelines annexed to IMO Assembly Resolution A.746(18) on Survey Guidelines under the harmonised system of survey and certification, as they are at the time of adoption of this Directive or with procedures designed to achieve the same goal.
2. Ro-ro ferries and high speed passenger craft shall:
 - a) comply with the standards specified for classification by the rules of a recognized organization, or rules accepted as equivalent by the administration of the flag State for the construction and maintenance of their hull, machinery and electrical and control installation;
 - b) be fitted with a voyage data recorder (VDR) for the purpose of providing information for the benefit of a possible casualty investigation. The VDR shall meet the performance standards of IMO Assembly Resolution A.861(20) of 27 November 1997 and comply with the testing standards laid down in IEC standard N° 61996. However, for VDR to be placed on board ro-ro ferries or high speed passenger craft built before the adoption of this Directive, exemptions for compliance with some of the requirements may be granted. These exemptions and the conditions under which they can be granted shall be adopted in accordance with the procedure laid down in Article 12.

3. Ro-ro ferries shall fulfil the specific stability requirements adopted at regional level and notified to the Commission in accordance with Council Directive 83/189/EEC together with the common interpretations which may be adopted in accordance with the procedure laid down in Article 12, when operating in the region covered by such regional rules.

Article 6

Provisions to be fulfilled by companies

1. Companies shall take the necessary measures to ensure that the specific requirements laid down in Annex 1 of this Directive are applied and shall provide, in accordance with the procedures referred to in Article 10.5, the evidence of compliance with this paragraph and with Article 5 to the host States involved in the regular service.
2. Companies shall not prevent host States or any substantially interested Member State from conducting, participating fully in, or co-operating with any investigation of a marine casualty or incident as defined in the Code for the investigation of marine casualties, nor deny them access to the information retrieved from the VDR of their ferry or craft involved in such a casualty or incident.
3. Companies shall inform the host States that for ships or craft, flying a flag other than that of a Member State, the administration of that flag State has accepted the company's commitment to fulfil the requirements imposed by the host States as a condition to provide a regular service to or from one or more of their ports.

Article 7

Verification of evidence of compliance

1. Each host State shall verify the validity of the evidence provided in accordance with Article 5 and 6.1 and carry out an initial specific survey in accordance with the guidelines laid down in Annex 3, to satisfy itself that the ro-ro ferry or high speed passenger craft fulfils all the conditions to operate a regular service to or from one or more of its ports.
2. The verification of the validity of the evidence of compliance with Articles 5 and 6.1 and the initial specific survey referred to in paragraph 1 shall be carried out either prior to the entry into operation of the ship or craft on such a regular service, or no later than 12 months after the date mentioned in Article 15.1, if the ship or craft is already operating on regular services to or from ports of the Member States on that date.

Whenever a ro-ro passenger ferry or high speed passenger craft operating on a regular service for which the involved host States have confirmed to the company that it complies with the requirements to operate on that regular service, is to be engaged on another regular service involving another host State, this host State shall take the utmost account of the confirmations previously issued for that ship or craft. Provided that this other host State is satisfied with these previous confirmations and that the operational conditions of the regular services are the same, it may dispense that ship or craft from an initial specific survey prior to its entry into operation on that other regular service.

3. Host States shall also carry out a specific survey in accordance with the guidelines for an initial specific survey as laid down in Annex 3 each time the ro-ro ferry or high speed passenger craft undergoes repairs, alterations and modifications of a major character, or when there is a change in management or flag, or a transfer of class.
4. In addition to the initial surveys, two unscheduled specific surveys shall be carried out in accordance with the guidelines laid down in Annex 3 during the period of validity of the certificates. At least one of these unscheduled surveys shall take place during a regular crossing of the ro-ro ferry or high speed passenger craft.
5. Ro-ro ferries and high speed passenger craft that have been subject to the specific surveys to the satisfaction of the involved host State(s) are to be exempted by these host State(s) from expanded inspections as mentioned in Article 7.4 of Council Directive 95/21/EC and from expanded inspections based upon the clear grounds that they belong to the category of passenger ships as mentioned in Annex V .3 and referred to in article 7.1 of Council Directive 95/21/EC.

Article 8

Procedures related to specific surveys

1. Administrations of two or more host States involved in a specific survey of the same ship or craft shall co-operate with each other. The specific surveys shall be carried out by a team composed of qualified inspectors of the involved host State(s). For a specific initial survey the team shall also include a surveyor of a recognized organization. This team shall assess the compliance of the ro-ro ferry or high speed passenger craft with the requirements of Articles 5 and 6.1 on the basis of their professional judgement and taking into account the guidelines set out in Annex 5. They shall report deficiencies to the administrations of the host States.
2. Host States, when required by companies, shall invite the administration of the flag State which is not a host State to be represented in any specific survey under the provisions of this Directive.
3. Host States, in planning an initial survey, shall take due account of the operational and maintenance schedule of the ship or craft.

4. The findings of the specific surveys shall be recorded in a report of which the format shall be established in accordance with the procedure laid down in Article 12.
5. In case of persistent disagreement between host States on the fulfilment of the requirements of Articles 5 and 6.1, the Administration of any host State involved in a specific initial survey shall immediately notify to the Commission the reasons of the disagreement.

Unless the Commission is informed of an agreement between the host States concerned within one month it shall initiate proceedings in order to take a decision in accordance with the procedure laid down in Article 12.

6. In the case where deficiencies are established host States shall require the company to take the necessary measures for their prompt rectification or within a well-defined and reasonable period of time if they do not pose an immediate danger to the safety of the ship or craft, its crew and passengers. After rectification of the deficiencies the concerned host States shall verify that the rectification has been carried out to their full satisfaction, and if this is not the case, they shall prevent the ferry or craft from operating as provided under Article 4.3.

Article 9

Accident investigation

1. Member States shall define, in the framework of their respective internal legal systems, a legal status that will enable them and any other substantially interested Member State to conduct, to participate in, or to co-operate in any maritime casualty or incident investigation involving any ro-ro ferry and high speed passenger craft engaged on a regular service to or from their ports for which they bear responsibilities under this Directive.
2. Member States conducting, co-operating with or participating in such investigations shall ensure that the investigation is concluded in the most efficient way and within the shortest possible time taking into account the Code for the investigation of marine casualties.
3. Reports resulting from such an investigation shall be made public and notified to the Commission.

Accompanying measures

1. Member States issuing or recognizing an exemption certificate shall work together with the involved host State or administration of the flag State to resolve any disagreement concerning the suitability of the exemptions prior to the initial specific survey.
2. Member States shall establish the appropriate shore based navigational guidance systems and other information schemes to assist ro-ro ferries and high speed passenger craft in the safe conduct of the regular service, or part of it, for which they bear responsibility.
3. Ro-ro ferries and high speed passenger craft which operate on a regular service to or from ports of the Member States shall be provided with an identification number in accordance with the IMO ship identification number scheme adopted by IMO Resolution A.600(15).
4. Each Member State shall regularly provide the Commission with up-dated data as listed in Annex 4 for all ro-ro ferries and high speed passenger craft which operate on a regular service to or from its ports. If two or more host States are involved in the regular service, the data may be provided by one of these host States.
5. Member States shall establish and maintain appropriate procedures in accordance with their national legislation for:
 - an expeditious verification of the evidence and organisation of the initial survey mentioned in Article 7;
 - preventing companies to operate ro-ro ferries and high speed passenger craft on regular services to or from one or more of its ports, in accordance with Article 4.3;
 - the right of appeal for companies, in accordance with the provisions of Article 4.4.
6. Member States shall ensure that companies operating ro-ro ferries or high speed passenger craft on regular services to or from their ports are able to maintain and implement an integrated system of contingency planning for shipboard emergencies. To this end they shall make use of the framework provided by IMO Assembly Resolution A.852(20) on Guidelines for a structure of an integrated system of contingency. If two or more Member States are involved as host States in the regular service they shall jointly establish a plan for the different routes.
7. Member States shall ensure that they have been fully involved in their capacity as host State by the Administration of the flag State, before the issuance of the permit to operate high speed craft, in accordance with the provisions of paragraph 1.9.3 of the High Speed Craft Code. They shall ensure that operational restrictions required by local situations, necessary to protect life, natural resources and coastal activities are established or maintained and they shall take measures to ensure the effective enforcement of these restrictions.

Article 11

Supporting measures

1. The Commission shall set up and maintain a data base containing all the data provided by Member States in accordance with the provisions of Article 10.4. The data shall be accessible to all concerned flag State administrations and host States. The company responsible for a ro-ro ferry or high speed passenger craft falling under the scope of this Directive, as well as other parties with a vested interest in the operation of the ro-ro ferry or high speed passenger craft shall also have access to the data under the conditions to be determined in accordance with the procedure laid down in Article 12.
2. The Member States shall inform third countries which bear either flag State responsibilities or responsibilities similar to those of a host State for ro-ro ferries and high speed passenger craft falling under the scope of this Directive and operating between a port of a Member State and a port of a third State of the requirements imposed by this Directive on any company providing a regular service to or from a port of the Community.

Article 12

Regulatory Committee

The Commission shall be assisted by the Committee set up pursuant to Article 12 paragraph 1 of Directive 93/75/EEC. The Committee shall operate in accordance with the procedure laid down in paragraphs 2 and 3 of that Article.

Article 13

Amendment procedure

This Directive may be amended in accordance with the procedure laid down in Article 12, in order to adapt its Annexes to take into account relevant amendments of Conventions and Community instruments mentioned in this Directive, the coming into force of new Community instruments as well as any IMO Resolution recognized important for the establishment or improvement of the regime established by this Directive.

Article 14

Penalties

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

Article 15

Implementation

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than 1 January 2000 and forthwith inform the Commission thereof.

The provisions of Article 5.2.b shall be applied no later than [30] months after the publication date of IEC standard N°. 61996 [or by 1 January 2002, whichever of these dates comes later].

2. When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by the Member States.
3. The Member States shall immediately notify to the Commission all provisions of domestic law which they adopt in the field governed by this Directive. The Commission shall inform the other Member States thereof.

Article 16

Entry into force

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

Article 17

Addressees

This Directive is addressed to the Member States and the Commission.

ANNEX 1

SPECIFIC REQUIREMENTS TO BE FULFILLED BY COMPANIES (as referred to in Article 6.1)

Companies shall ensure that on board of their ro-ro ferries and high speed passenger craft:

- the master is provided with appropriate information on the availability of shore-based navigational guidance systems and other information schemes to assist him in the safe conduct of the voyages, before the ship or craft begins to sail, and that he participates in the navigational guidance and information schemes set up by the Member States;
- the relevant provisions of paragraphs 2 to 6 of MSC/Circular 699 - Revised Guidelines for Passenger Safety Instructions are applied;
- a table with the shipboard working arrangements is posted in an easily accessible place, and contains at least:
 - a) the schedule of service at sea and service in port; and
 - b) the maximum hours of work or the minimum hours of rest required;
- the master is not constrained from taking any decision, which in his professional judgement is necessary for safe navigation and operation, in particular in severe weather and in heavy seas;
- the master keeps a record of navigational activities and incidents which are of importance to safety of navigation;
- any damage to, or permanent deflection of shell doors and associated hull plating that may affect the integrity of the ferry or craft, and any deficiencies in the securing arrangements of such doors, are promptly reported to both the flag State Administration and the host State and are promptly repaired to their satisfaction;
- an up-to-date voyage plan is available before the departure of the ro-ro ferry or high speed passenger craft on its voyage. In preparing the voyage plan the guidelines set out in MSC Resolution...(70)on Guidelines on voyage planning shall be taken fully into account.
- general information about the services and assistance available to elderly and disabled persons on board is made known to the passengers and is made available in formats suitable for people with impaired sight.

ANNEX 2

ADDITIONAL REASONS FOR PREVENTING A COMPANY FROM OPERATING A RO-RO FERRY AND HIGH SPEED PASSENGER CRAFT

(as referred to in Article 4.3)

Established failure to comply with the obligations laid down in:

- Council Directive 93/75/EEC, as amended, or
- Council Directive 94/58/EC, as amended, or
- Council Regulation (EC) 3051/95, as amended.

ANNEX 3

GUIDELINES FOR SPECIFIC SURVEYS

(as referred to in Article 7)

1. The initial specific survey shall ensure that statutory requirements, in particular those for loading, stability, fire protection, maximum number of passengers, life saving appliances and the carriage of dangerous goods are fulfilled and shall for that purpose, and whenever applicable at least include:
 - the starting of the emergency generator;
 - an inspection of emergency lighting;
 - an inspection of the emergency source of power for radio-installations;
 - a test of the public address system;
 - a fire drill, including a demonstration of the ability to use firemen's outfits;
 - the operation of the emergency fire-pump with two firehoses connected to the fire main line in operation;
 - the testing of the remote emergency stop controls for fuel supply to boilers, main and auxiliary engines, and for ventilation fans;
 - the testing of remote and local controls for the closing of fire dampers;
 - the testing of fire detection and alarm systems;
 - the testing of proper closing of fire doors,
 - the operation of bilge pumps;
 - the closing of watertight bulkhead doors; both from the local and remote control positions;
 - a demonstration that shows that key crew members are acquainted with the damage control plan;
 - the lowering of at least one rescue boat and one lifeboat to the water, starting and testing their propulsion and steering system, and recovering them from the water into their stowed position on board;
 - the checking of the inventory of all lifeboats and rescue boats;
 - the testing of the ship's or craft's steering gear and auxiliary steering gear.

The initial specific surveys shall include a verification that the construction and maintenance of the ship's or craft's hull, machinery, electrical and control installation comply with the standards specified for classification by the rules of a recognized organization. Any subsequent specific survey shall verify the maintenance of this condition.

2. Any specific survey shall whenever appropriate include the tests mentioned in paragraph 1 and shall include the verification of the planned maintenance system on board.

Any specific survey shall focus on the familiarisation of crew members with, and their effectiveness in, safety procedures, emergency procedures, maintenance, safe manning, working practices, passenger safety, bridge procedures and cargo and vehicle-related operations. Seafarers' ability to understand and, where appropriate, give orders and instructions and report back in the common working language, as recorded in the ship's logbook shall be checked. The documented evidence that crew members have successfully followed a special training shall be checked, in particular with regard to:

- crowd management training;
- familiarisation training;
- safety training for personnel providing direct safety assistance to passengers in passenger spaces, and in particular to elderly and disabled persons in an emergency, and;
- crisis management and human behaviour training.

The specific survey shall include an assessment of fatigue and an assessment as to whether rostering patterns are causing unreasonable fatigue particularly for watch-keeping personnel. For this purpose the watch-keeping schedules, which have to be posted shall be used to check whether the minimum rest periods are respected.

3. When checking the certificates of competence of the crew members, certificates issued by third States shall only be recognised when they comply with Article 9 paragraph 3 of Council Directive 94/58/EC as amended and if these States are mentioned on the IMO white list.
4. Annex 5 contains a list of guidelines for qualified inspectors when carrying out specific surveys.

ANNEX 4

INFORMATION TO BE COMMUNICATED TO THE COMMISSION

(as referred to in Article 10.4)

Ship's name

Flag

Ownership

Company

IMO identification number

Classification symbols, marks and notations and number of entry in the society's register book

Information on statutory certificates (dates, validity, exemptions)

Survey reports by flag State and classification societies

Specific survey reports

Crew qualification

Operational limitations

Reports on deficiencies and detentions under Council Directive 95/21/EC

ANNEX 5

GUIDELINES FOR QUALIFIED INSPECTORS WHEN CARRYING OUT SPECIFIC SURVEYS

(as referred to in Article 8.1)

1. **Passenger information.** The means used to ensure that the passenger number for which the ship is certified is not exceeded. That the system for registration of passenger information complies with the regulations and is effective. How the information on the total number of passengers is passed to the master and, if appropriate, how passengers doing a double crossing without going ashore are included in the total for the return voyage.
2. **Loading and stability information.** That, when applicable, reliable draught gauges are fitted and are in use. That measures are taken to ensure that the ship is not overloaded and the appropriate sub-division load line is not submerged. That the loading and stability assessment, is carried out as required. That goods vehicles and other cargo are weighed where required and the figures passed to the ship for use in the loading and stability assessment. That damage control plans are permanently exhibited and that booklets containing damage control information are provided for the ship's officers.
3. **Security for sea.** The procedure to ensure that the ship is secured for sea before leaving the berth, which should include a positive reporting procedure that all the shell watertight and weather-tight doors are closed. That all the vehicle deck doors are closed before the ship leaves the berth or remain open long enough only to enable the bow visor to be closed, the closing arrangements for the bow, stern and side doors, and the provision of indicator lights and TV surveillance to show their status on the navigating bridge. Any difficulties with the operation of the indicator lights, particularly the switches at the doors, should be ascertained and reported.
4. **Safety announcements.** The form of routine safety announcements and the posting of instructions and guidance on emergency procedures in the appropriate language(s). That the routine safety announcement takes place at the commencement of the voyage and can be heard in all public spaces, including open decks, to which passengers have access.
5. **Log book entries.** An examination of the log book to ensure that the entries are being made regarding the closing of the bow, stern and other watertight and weather-tight doors, drills for sub-division watertight doors, testing of steering gears, etc. Also that draughts, freeboard and stability are being recorded as well as the common working language for the crew.

6. **Dangerous goods.** That any cargo of dangerous or polluting goods is carried in accordance with the relevant regulations and, in particular: that a declaration concerning dangerous and polluting goods is provided together with a manifest or stowage plan to show their location on board, that the carriage of the particular cargo is permitted on passenger ships, and that the dangerous and polluting goods are properly marked, labelled, stowed, secured and segregated.

That vehicles carrying dangerous and polluting goods are properly placarded and secured. That, when dangerous and polluting goods are carried, a copy of the relevant manifest or stowage plan is available ashore. That the master is aware of the notification requirements under Directive 93/75/EEC, as amended, and of the instructions on the emergency procedures to be followed and the rendering of first aid should there be an incident involving the dangerous goods or marine pollutants. That the means of ventilating the vehicle decks is in use at all times, is increased when the engines of the vehicles are running and that there is some form of indication on the bridge to show that the vehicle deck ventilation is in operation.

7. **Securing freight vehicles.** How freight vehicles are secured, for example, whether block stow or individual lashings. Whether sufficient strong points are available. The arrangements for securing freight vehicles when adverse weather is experienced or expected. The method of securing coaches and motor cycles, if any. That the ship has a Cargo Securing Manual.
8. **Vehicle decks.** Whether special category and ro-ro cargo spaces are being continuously patrolled or monitored by a TV surveillance system so that the movement of vehicles in adverse weather and the unauthorised entry of passengers may be observed. That fire doors and entrances are kept shut and that notices are posted to keep passengers off the vehicle decks whilst the ship is at sea.
9. **Closure of watertight doors.** That the policy laid down in the ship's Operational Instructions for the sub-division watertight doors is being followed. That the required drills are being carried out. That the bridge control for the watertight doors is kept, when possible, on 'local' control. That the doors are being kept closed in restricted visibility and any hazardous situation. That crews are instructed in the correct way to operate the doors and are aware of the dangers of their misuse.
10. **Fire patrols.** It should be confirmed that an efficient patrol is being maintained so that any outbreak of fire may be readily detected. This should include special category spaces where a fixed fire detection and alarm system is not fitted noting that these spaces may be patrolled as indicated in par. 8.
- 11 a). **Communications in an emergency.** That there are sufficient crew members in accordance with the Muster List to assist passengers in an emergency and that they are readily identifiable and able to communicate with the passengers in an emergency, taking into account an appropriate and adequate combination of any of the following factors:

- a) the language or languages appropriate to the principal nationalities of passengers carried on a particular route;
 - b) the likelihood that an ability to use elementary English vocabulary for basic instructions can provide a means of communicating with a passenger in need of assistance whether or not the passenger and crew member share a common language;
 - c) the possible need to communicate during an emergency by some other means (e.g. by demonstration, hand signals, or calling attention to the location of instructions, muster stations, life-saving devices or evacuation routes when verbal communication is impractical);
 - d) the extent to which complete safety instructions have been provided to passengers in their native language or languages;
 - e) the languages in which emergency announcements may be broadcast during an emergency or drill to convey critical guidance to passengers and to facilitate crew members in assisting passengers.
- 11 b) **Common working language between crew members.** Verify that a working language is established to ensure effective crew performance in safety matters and that this working language is recorded in the ship's logbook.
12. **Safety equipment.** That the life-saving and fire appliances, including the fire doors and other items of the structural fire protection that may be readily inspected, are being maintained. That fire control plans are permanently exhibited or booklets containing the equivalent information are provided for the information of the ship's officers. That the stowage of the lifejackets is appropriate and that the stowage of children's lifejackets may be readily identified. That the loading of vehicles does not prevent the operation of the fire controls, emergency shut-offs, controls for the storm valves etc., that may be located on the vehicle decks.
13. **Navigational and radio equipment.** That the navigational and radio communications equipment, including EPIRBs, are operational.
14. **Supplementary emergency lighting.** That supplementary emergency lighting is fitted, when required by the regulations, and that a record of deficiencies is being kept.
15. **Means of escape.** Marking, in accordance with the applicable requirements, and the illumination, from both the main and emergency sources of power, of the means of escape. The measures taken to keep vehicles clear of escape routes where the means of escape cross or pass through vehicle decks. That exits, particularly exits from duty free shops, which have been found to be blocked by an excess of goods, are kept clear.

16. **Operations book.** That copies of the operations book are provided for the master and each senior officer and that other copies are available for all members of the crew. Also that there are check lists to cover the preparation for sea and other operations.
17. **Engine Room Cleanliness.** That the engine room is maintained in a clean condition. with regard to maintenance procedures.
18. **Garbage disposal.** That the arrangements for the handling and disposal of garbage are satisfactory .
19. **Planned maintenance.** All companies should have specific standing orders, with a planned maintenance system, for all safety related areas including bow and stern doors and side openings, together with their closing arrangements, but also covering engine room maintenance and safety equipment. Plans should be in place for periodically checking all items so as to maintain safety standards at the highest level. Procedures should be in place for recording deficiencies and confirming they have been properly rectified so that the Master and the designated person ashore within the company management structure are aware of the deficiencies and are notified when they have been rectified within a time specified. Periodic checking of the operation of the inner and outer bow door closing arrangements should include the indicators, surveillance equipment and any scuppers in the spaces between the bow visor and the inner door and especially the closing mechanisms and their associated hydraulic systems.
20. **Making a voyage.** When making a voyage the opportunity should be taken to check overcrowding, including the availability of seats and the blocking of passageways, stairs and emergency exits by baggage and by passengers unable to find seats. That the vehicle deck is vacated by passengers before the ship sails and that they do not again have access until immediately prior to docking should also be checked.

ANNEX 6

CRITERIA OF QUALIFICATION AND INDEPENDENCE FOR QUALIFIED INSPECTORS (as referred to in Article 2(q))

1. The qualified inspector must be authorised to carry out the specific surveys referred to in article 7 by the competent authority of the Member State.
2. Either:

- The qualified inspector must have completed a minimum of one year's service with the competent authority of a Member State as a flag-State inspector dealing with surveys and certification in accordance with the 1974 SOLAS Convention,
- and be in possession of:
 - (a) a certificate of competency as master, enabling that person to take command of a ship of 1600 GT or more (see STCW, Regulation II/2); or
 - (b) a certificate of competency as chief engineer enabling him to take up that task on board a ship whose main power plant has a power equal or superior to 3000 kW, (see STCW, Regulation III/2); or
 - (c) have passed in a Member State an examination as a naval architect, mechanical engineer or an engineer related to the maritime fields and worked in that capacity for at least five years,
- The qualified inspectors mentioned under (a) and (b) must have served for a period of not less than five years at sea as officer in the deck- or engine-department respectively.

Or:

The qualified inspector must:

- hold a relevant university degree or an equivalent training in a Member State, and
 - have been trained and qualified at a school for ship safety inspectors in a Member State, and
 - have served at least two years with the competent authority of a Member State as a flag-State inspector dealing with surveys and certification in accordance with the 1974 SOLAS Convention.
3. Qualified inspectors shall have the ability to communicate orally and writing with seafarers in the language most commonly spoken at sea.
 4. Qualified inspectors shall have an appropriate knowledge of the provisions of the 1974 SOLAS Convention and of the relevant procedures of this Directive.
 5. The qualified inspectors carrying out specific surveys shall have no commercial interest either in the company concerned or any other company operating on a regular service to and from the involved host State or in the ro-ro ferries or high speed passenger craft inspected, nor shall the qualified inspectors be employed by or undertake work on behalf of non-governmental organisations which carry out statutory or classification surveys of ships or issue certificates for that purpose.

DECISION OF THE EEA JOINT COMMITTEE

N° (..) / 9.

of (..) (.....) 199.

amending Annex XIII (Transport) to the EEA Agreement

THE EEA JOINT COMMITTEE,

Having regard to the Agreement on the European Economic Area, as adjusted by the Protocol Adjusting the Agreement on the European Economic Area, hereinafter referred to as the Agreement, and in particular Article 98 thereof.

Whereas Annex XIII to the Agreement was amended by Decision of the EEA Joint Committee No 8/96 ⁽¹⁾;

Whereas Council Directive (98/./EC) of (.. ... 1998) on conditions for the operation of regular ro-ro ferry and high speed passenger craft services in the Community ⁽²⁾ is to be incorporated into the Agreement,

HAS DECIDED AS FOLLOWS:

Article 1

The following point shall be inserted after point 56c (Council Regulation (EC) No 3051/95):

"56.d 395 L : Council Directive (98/./EC) of (.. ... 1998) on conditions for the operation of regular ro-ro ferry and high speed passenger craft services in the Community.(OJ No L ..., ... 1998, p. ...)"

Article 2

The texts of Directive 98/./EC in the Icelandic and Norwegian languages, which are annexed to the respective language versions of this Decision, are authentic.

Article 3

This Decision shall enter into force on/..../19..., provided that all the notifications under Article 103 (1) of the Agreement have been made to the EEA Joint Committee.

Article 4

This Decision shall be published in the EEA Section of, and in the EEA Supplement to, the Official Journal of the European Communities.

Done at Brussels, / ... / 199..

For the EEA Joint Committee
The President

.....

- (1) O.J. No L 102, 25. 4. 96, p. 51.
- (2) O.J. No L, 9., p.

FINANCIAL STATEMENT

1 TITLE OF OPERATION **Proposal for a Council Directive on conditions for the operation of regular ro-ro ferry and high speed passenger craft services in the Community.**

2 BUDGET HEADING INVOLVED Part A (see §10)
Part B: B2-702 (See §7)

3 LEGAL BASIS

Achievements of Safety in Maritime Transport: Article 84 (2) of the Treaty linked with Article 75 (1) (c)

4 DESCRIPTION OF OPERATION

4.1 General Objective

The establishment of a common mandatory survey regime for regular ro-ro ferry and high speed passenger craft services and an accident investigation regime.

4.2 Period covered and arrangements for renewal

indefinite

5 CLASSIFICATION OF EXPENDITURE OF REVENUE

5.1 Non-compulsory expenditure

5.2 Non-differentiated appropriations: part A
Differentiated appropriations: part B

6 TYPE OF EXPENDITURE OR REVENUE

Expenditure for the development of a data base for the information to be collected on companies and their ships and craft operating on regular ferry services in the Community.

Administrative expenses for the operation of the data base (information updating)

7 FINANCIAL IMPACT on Part B (Operational Appropriations):

7.1 Method of calculating total cost of operation (relation between individual and total costs)

Total costs consist of the expenditure for the hardware and development costs for the software to run the database

7.2 Itemised breakdown of cost

Commitment appropriations in millions ECU
(at current prices)

Breakdown	year n	n+1	n+2	n+3	n+4	n+5 and subs yrs	Total
hardware	0,25	0,10	0,050	0,035	0,035	0,035	0.505
software	0,50	0,25	0,075	0,075	0,075	0,075	1,050
Total	0,75	0,35	0,125	0,110	0,110	0,110	1,555

8 FRAUD PREVENTION MEASURES

Application of the procedures for inviting Member States' experts to the Committee meetings.

9 ELEMENTS OF COST-EFFECTIVENESS ANALYSIS

9.1 Specific and quantified objectives; target population

Enhancement of the protection of human life of European citizens by measures reducing the risks to which they are exposed when traveling on board ro-ro ferries or high speed passenger craft on regular services in the Community, by ensuring that all ships and craft are subject to the same mandatory survey regime prior to starting to operate on a regular service. Results of these surveys should be made available to all interested parties in the most appropriate form, i.e. an electronic database which can be easily updated and consulted. This will ensure full transparency and clarity on the conditions to be fulfilled to operate regular ro-ro ferry services in each of the Member States.

9.2 Grounds for the operation

To assist Member States in the implementation by providing an information tool necessary for a harmonised and consistent application of the requirements of the Directive. To provide the Commission in a harmonised way with the information necessary to assess the effectiveness of the Directive and to allow the Committee to take decisions based upon reliable and complete information.

9.3 Monitoring and evaluation of the operation

Monitoring and evaluation of the operation will be done by analysing the information collected in the data base which is provided by the Member States' Administrations on the basis of the surveys they carried out, and by means of a yearly reporting to the Committee on Maritime Safety.

As measuring activities (output indicators) the number of ships and craft yearly surveyed will be used and performance measuring against objectives (impact indicators) will be assessed upon the number of and reasons for decisions by Member States to prevent ferries or craft to operate on regular services to and from their ports.

Where necessary this monitoring and evaluation shall be complemented by fact-finding missions to assess the causes and reasons for which ferries and craft might have been prevented to operate to and from ports of the Member States.

Assessment of the evaluation results obtained will be used to report to the Committee and to propose amendments where necessary to improve the implementation of the Directive.

10 ADMINISTRATIVE EXPENDITURE (SECTION III, PART A OF THE BUDGET)

Actual mobilization of the necessary administrative resources will depend on the Commission's annual decision on the allocation of resources, taking into account the number of staff and additional amounts authorized by the budgetary authority.

10.1 Effect on the number of posts

Type of post		Staff to be assigned to manage the operation		Source		Duration
		<u>Permanent posts</u>	<u>Temporary posts</u>	Existing resources in the DG or department concerned	Additional resources	
Officials or temporary staff	A	-	1	1	-	3 yrs indefinite
	B	1	-	1	-	
	C	-	-	-	-	
Other resources		-	-	-	-	-
Total		1	1	2	-	

10.2 Overall financial impact of additional human resources

ECU

	Amounts	Method of calculation
Officials	NA	NA
Temporary staff		
Other resources (indicate budget heading)		
Total	NA	

10.3 Increase in other administrative expenditure as a result of the operation

ECU

Budget heading	Amounts	Method of calculation
A 2510	20.000	*
A 130	12.000	**
Total	32.000	

* The Committee of Maritime Security already meets for issues related to other EC Directives dealing with maritime safety. An additional 1-day meeting/year is deemed necessary to discuss particular issues related to this proposal (travel expenses valued at 20.000 ECU)

** Missions: 6 missions are esteemed to be necessary within the EU for follow-up of the proposal. (Estimated annual expenses: 12.000 ECU). Resources will be obtained by redeployment of the mission budget.

IMPACT ASSESSMENT FORM

THE IMPACT OF THE PROPOSAL ON BUSINESS with special reference to small and medium-sized enterprises

TITLE OF PROPOSAL :

Proposal for a Council Directive on conditions for the operation of regular ro-ro ferry and high speed passenger craft services in the Community.

REFERENCE NUMBER : COM (95)302 final of 12.07.1995

The proposal

1. *Taking account of the principle of subsidiarity, why is Community legislation necessary in this area and what are its main aims?*

The obligation of the Community is the achievement of safety in maritime transport (Article 84(2) of the Treaty linked with Article 75(1)(c)). The main aim of the proposal is the establishment and implementation of harmonised conditions for the safe operation of regular ro-ro ferry and high speed passenger craft services to and from EC ports, to achieve a uniform safety standard and to ensure an adequate participation of the Member States in any investigation of maritime accidents involving such ships or craft.

Referring to the principle of subsidiarity, it will be the responsibility of the Member States to decide on the implementation tools which best fit in their internal system to ensure that the requirements of the Directive are implemented and enforced in a harmonised way.

It will be the responsibility of the Member States to decide if and to what extent the requirements of this Directive need to be extended to ro-ro ferries and high speed passenger craft operating on domestic voyages, in the course of which they do not proceed more than 20 miles from the nearest line of coast. This issue is left to the Member States in accordance with the principle of subsidiarity with the aim to reduce the impact on the involved business (see item 5 hereafter).

The impact on business

2. *Who will be affected by the proposal?*
 - *which sector of business?*
 - *which sizes of business?*
 - *are there particular geographical areas of the Community where these businesses are found ?*

The business sector which will be affected by this proposal includes the shipping companies operating ro-ro ferries and high speed passenger craft on regular services to and from the ports of the Member States. A number of these companies are small and medium-sized enterprises, in particular those operating in a geographically limited area on domestic services and most of the time only sailing within 20 miles from the coast.

On the other hand a number of regular ro-ro ferry and high speed passenger craft services, in particular on international routes, are operated by large companies, such as P&O and Stena Sealink in the Irish Sea and Finmare in the Adriatic Sea (with 92 ships).

The information provided by Member States indicates that the total number of ro-ro ferries and high speed passenger craft operated by these companies both on domestic and international voyages amounts to a few thousand, with a particular high concentration in France, Italy, Spain and Greece.

There are no particular geographical areas within the Community where these businesses can be found: regular ro-ro ferry and high speed passenger craft services are established in all Member States with a coastline. The number of ships and craft deployed is in general proportionate to the length of the coastline, the number of ports, the number of islands in the territorial waters, and for international voyages to the public demand for passenger transport by sea to neighbouring countries (cf. Cross Channel traffic and ferry services in the Baltic and Mediterranean Sea).

3. *What will businesses have to do to comply with the proposal?*

Companies will have to ensure and provide evidence that the ferries and high speed craft they intend to engage on regular services comply with the safety standards laid down in the international Conventions and in the relevant Community legislation. For that purpose they will have to submit these ships and craft prior to their putting into operation on a regular service to a initial survey by the Administrations of the Member States to and from whose ports they want to operate. At regular intervals maintenance of compliance with the requirements of this Directive by these ships and craft will be regularly checked by means of intermediate specific surveys.

In return ships and craft maintaining compliance with the conditions to operate a regular service, may benefit from dispensation of the expanded port State control inspections as established in Council Directive 95/21/EC.

In addition these companies will have to ensure that the involved Member States are granted the full right to participate in any investigation into maritime accidents involving one of their ships or craft, irrespective of the flag they fly and the place where the accident might occur. For the sake of facilitating such investigations, ro-ro ferries and high speed passenger craft will be required to carry a voyage data recorder (black box), complying with the performance standards adopted by the International Maritime Organisation (IMO).

4. *What economic effects is the proposal likely to have?*
- *on employment*
 - *on investment and the creation of new businesses*
 - *on the competitive position of businesses*

No impact on employment in the companies operating on regular ro-ro ferry and high speed passenger craft services is expected.

The proposal is likely to have a substantial and beneficial impact on the competitive position of business. By establishing a harmonised survey regime for all ships and craft operating on the same regular service to and from ports of the Member States, a level playing field will be created for all operators involved. Taking into account that maritime cabotage will be liberalised in the entire Community towards the end of the next decade, such a harmonisation in the implementation and enforcement of the international and Community's safety standards will avoid distortion of competition.

The proposal is expected to have a beneficial effect on investment and the creation of new businesses, as it will promote and expedite, through its requirement for the mandatory carriage of voyage data recorders, the development and manufacturing of this type of equipment. Installation of the equipment on board will also provide additional employment opportunities in the shipbuilding/repair sector and its related (electrical) industry.

5. *Does the proposal contain measures to take account of the specific situation of small and medium sized firms (reduced or different requirements)?*

For the reasons explained in paragraph 3 above, the scope of application of the Directive has been limited to regular services on international voyages and to domestic voyages, in the course of which the ship or craft does proceed more than 20 miles from the coast. It is left to the discretion of the Member States to decide whether the requirements should be partly or entirely applied to ships and craft operating on domestic voyages within 20 miles from the coast. It is in particular in this type of trade that most small and medium sized companies are active. It is esteemed that the safety of this category of ships and craft will be sufficiently covered once the Council Directive on safety rules and standards for passenger ships will enter into force, since it provides for a set of detailed and harmonised safety requirements for passenger ships and high speed passenger craft engaged on domestic voyages, backed up with a harmonised system of surveys and certification to ensure compliance.

Consultation :

6. *Organisations which have been consulted about the proposal and outline of their main views.*

European Community Shipowners Association (E.C.S.A.):

The companies operating ro-ro ferries and high speed passenger craft mainly expressed the concern that the proposal might entail another layer of surveys and certification, but recognised the substantial advantages it would offer for companies operating ships and craft that fully comply with the international and Community's safety standards.

Moreover, the survey regime proposed in this measure would ensure certainty for the operators on the conditions to be fulfilled and would also facilitate the transfer of such ships and craft to other similar regular services in the Community without being forced to adapt the ship's or craft configuration, equipment or manning to satisfy the differing demands of the individual Member States, as it appears to be the situation today.

Further, the dispensation from unscheduled and at random expanded port State control inspections for ships and craft in compliance with the conditions imposed by this Directive is considered by the companies as a substantial compensation awarding quality operators.

Federation of Transport Workers' Unions in the European Union (F.S.T.)

The FST fully supported the Commission initiative and insisted that the utmost account be taken of the effective implementation of crew requirements and internationally agreed social provisions.

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