II

(Preparatory Acts)

COMMISSION

Proposal for a Council Regulation on the safety management of ro-ro passenger vessels

(95/C 298/11)

(Text with EEA relevance)

COM(95) 28 final — 95/0028(SYN)

(Submitted by the Commission on 17 February 1995)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, in particular Article 84 (2) thereof, and acting in accordance with the procedure referred to in Article 189c of the Treaty,

Having regard to the proposal from the Commission,

In cooperation with the European Parliament,

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

Whereas the Community is seriously concerned by shipping casualties with loss of life;

Whereas the International Safety Management Code providing for the safe operation of ships and for pollution prevention (IMO Resolution A.741 (18)) was adopted by the IMO on 4 November 1993 in the presence of the Member States, and, through its incorporation into the International Convention on the Safety of Life at Sea 1974, will apply to ro-ro passenger vessels from 1 July 1998;

Whereas the International Safety Management Code is not yet of a mandatory but of a recommendatory nature;

Whereas safety of human life at sea may be effectively enhanced by applying the International Safety Management Code strictly and on a mandatory basis;

Whereas the Community's most urgent concern is for the safety management of ro-ro passenger vessels;

Whereas in its resolution of 22 December 1994 on the safety of ro-ro passenger ferries, the Council has invited the Commission to submit a proposal on the mandatory and anticipated implementation of the International Safety Management Code for all ro-ro passenger ferries operating regular services to or from European ports, in compliance with international law;

Whereas strict and mandatory application is required to ensure the establishment and proper maintenance of safety management systems by companies operating seagoing ro-ro passenger ferries both at company and at ship level;

Whereas the safety of ships is the primary responsibility of flag States and Member States can ensure compliance with adequate safety management rules by ferries flying their flag and companies operating them; whereas the only way to ensure the safety of all ro-ro ferries irrespective of their flag operating or wishing to operate on a regular service 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 a Member State must have the possibility of suspending the operation of certain ro-ro ferries from its ports where it considers that they pose a serious threat to safety or environment, subject to a decision of the Commission assisted by an advisory committee;

Whereas verification of compliance with the safety rules every year should guarantee continued efforts by companies to maintain the required safety management level;

Whereas Member States might find necessary to delegate or rely upon specialized bodies in order to fulfil their obligations under this Regulation; whereas the appropriate way of ensuring a uniform and adequate level of control is to require that such bodies should comply with the requirements of Council Directive 94/57/EC (1) on common rules and standards for ship inspection and survey organizations and for the relevant activities of maritime administrations;

Whereas recourse to a committee of a consultative nature is necessary in order to assist the Commission to ensure that the standards set by the Regulation, including the requirements for recognized organizations, remain adequate and as far as possible in line with international standards;

Whereas action at Community level is the best way to ensure mandatory and anticipated enforcement of the provisions of the Code and effective control of its application, while avoiding distortion of competition between different Community ports and ro-ro ferries; whereas only a Regulation, which is of direct applicability, can ensure anticipated and mandatory enforcement of the provisions of the Code; whereas anticipated implementation requires that the Regulation be applicable as from 1 July 1996,

HAS ADOPTED THIS REGULATION:

Article 1

The purpose of this Regulation is to enhance the safe management, operation, and pollution prevention of ro-ro ferries operating to or from ports of the European Community on a regular service by ensuring:

— the establishment and proper maintenance of shipborne and shorebased safety management systems by Companies, and

— the control thereof by flag and port State administrations.

Article 2

For the purpose of this Regulation and of the ISM Code:

— 'ro-ro ferry' means a seagoing passenger vessel with arrangements to enable road and rail vehicles to roll-on and roll-off the vessel, and carrying more than 12 passengers;

— 'company' means the owner of a ro-ro ferry or any other organization or person such as the manager, or the bareboat charterer, who has assumed the responsibility for operation of the ro-ro ferry from the owner;

— 'recognized organization' means a body recognized in compliance with the provisions 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;

— 'ISM Code' means the International Management Code for the safe operation of ships and for pollution prevention as adopted by the International Maritime Organization through Assembly Resolution A.741 (18) of 4 November 1993, and annexed to this Regulation;

— 'administration' means the Government of the State whose flag the ro-ro ferry is entitled to fly;

— 'document of compliance' means the document issued to companies in conformity with this Regulation;

— 'safety management certificate' means the certificate issued to ro-ro ferries in conformity with this Regulation.

Article 3

The Regulation shall apply to Companies, irrespective of their place of incorporation, establishment or business, which operate at least one ro-ro ferry operating to or from a port of the European Community on a regular service regardless of its flag.

Article 4

All Companies shall comply with all the provisions of paragraphs 1.2 to 13.5 of the ISM Code, as amended hereby, as if the provisions thereof were mandatory and not only of a recommendatory nature, as a condition to provide regular services to or from a port of the European Community.

Article 5

1. Member States shall comply with the provisions of paragraphs 13.2, 13.4 and 13.5 of the ISM Code, as amended hereby, as if the provisions thereof were mandatory and not only of a recommendatory nature, in relation to companies and ro-ro ferries.

2. For the purposes of this Regulation, Member States may only authorize, or rely upon, fully or in part, a recognized organization.

3. For the purposes of paragraph 13.2 of the ISM Code as amended hereby, a document of compliance issued by the authorities of a Member State in the territory of which a company conducts its business or by a recognized organization acting on their behalf shall be accepted by other Member States.

(1) OJ No L 319, 12. 12. 1994, p. 20.

4. For the purposes of paragraph 13.5 of the ISM Code, as amended hereby, a periodical verification shall take place at least once every year.

Article 6

1. Member States shall satisfy themselves of the effective compliance with the provisions of this Regulation prior to allowing companies to provide regular ro-ro ferry services to or from their ports.

2. For the purposes of paragraph 1, each Member State shall accept certificates issued by the authorities of any other Member State.

3. Each Member State shall recognize the documents of compliance and safety management certificates issued by the administrations of third countries or by recognized organizations acting on their behalf if it is satisfied that they guarantee the observance of the provisions of this Regulation.

Article 7

Where a Member State considers that a company, notwithstanding the fact that it holds a document of compliance, cannot operate on a regular service to or from its ports for reasons of serious danger to safety of life or property, or environment, the operation of such service may be suspended until such time as the danger is removed.

In the above circumstances the following procedure shall apply:

(a) the Member State shall inform the Commission and the other Member States of its decision without delay, giving substantiated reasons therefor;

(b) the Commission shall examine whether the suspension is justified for reasons of serious danger to safety and environment;

(c) acting in accordance with the procedure laid down in Article 9 (2), the Commission shall inform the Member State whether or not its decision to suspend the authorization is justified for reasons of serious danger to safety or environment and, if it is not justified, decide to revoke the suspension decision taken by the Member State.

Article 8

In order to take account of developments at international level:

1. the definition of 'ISM-Code' in Article 2;

2. the Annex;

3. the definition of 'recognized organization' in Article 2;

may be amended, in particular to introduce into the Annex guidelines for administrations for the implementation of the ISM Code, in accordance with the procedure laid down in Article 9 (2).

Article 9

1. The Commission shall be assisted by the Committee established by Article 12 (1) of Council Directive 93/75/EEC [1], concerning minimum requirements for vessels bound for or leaving Community ports and carrying dangerous or polluting goods.

2. Where reference is made to this paragraph the following procedure shall apply:

(a) the representative of the Commission shall submit to the Committee referred to in paragraph 1 a draft of the measures to be taken;

(b) the Committee shall deliver its opinion within a time limit which the chairman may lay down according to the urgency of the matter, if necessary by taking a vote;

(c) the opinion shall be recorded in the minutes; in addition each Member State shall have the right to have its position recorded in the minutes;

(d) the Commission shall take the utmost account of the opinion delivered by the Committee. It shall inform the committee of the manner in which its opinion has been taken into account.

Article 10

This Regulation shall enter into force on 1 January 1996. It shall be applicable as from 1 July 1996.

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

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[1] OJ No L 247, 5. 10. 1993, p. 19.

ANNEX

INTERNATIONAL MANAGEMENT CODE FOR THE SAFE OPERATION OF SHIPS AND FOR POLLUTION PREVENTION (INTERNATIONAL SAFETY MANAGEMENT (ISM) CODE)

Safety and pollution prevention management requirements

PREAMBLE

1. The purpose of this Code is to provide an international standard for the safe management and operation of ships and for pollution prevention.

2. The assembly adopted resolution A.443 (XI) by which it invited all Governments to take the necessary steps to safeguard the shipmaster in the proper discharge of his responsibilities with regard to maritime safety and the protection of the marine environment.

3. The assembly also adopted resolution A.680 (17) by which it further recognized the need for appropriate organization of management to enable it to respond to the need of those on board ships to achieve and maintain high standards of safety and environmental protection.

4. Recognizing that no two shipping companies or shipowners are the same, and that ships operate under a wide range of different conditions, the Code is based on general principles and objectives.

5. The Code is expressed in broad terms so that it can have a widespread application. Clearly, different levels of management, whether shore-based or at sea, will require varying levels of knowledge and awareness of the items outlined.

6. The cornerstone of good safety management is commitment from the top. In matters of safety and pollution prevention it is the commitment, competence, attitudes and motivation of individuals at all levels that determines the end result.

1. GENERAL

1.1. Definitions

1.1.1. 'International Safety Management (ISM) Code' means the International Management Code for the safe operation of ships and for pollution prevention as adopted by the assembly, as may be amended by the organization.

1.1.2. 'Company' means the owner of the ship or any other organization or person such as the Manager, or the Bareboat Charterer, who has assumed the responsibility for operation of the ship from the shipowner and who on assuming such responsibility has agreed to take over all the duties and responsibility imposed by the Code.

1.1.3. 'Administration' means the Government of the State whose flag the ship is entitled to fly.

1.2. Objectives

1.2.1. The objectives of the Code are to ensure safety at sea, prevention of human injury or loss of life, and avoidance of damage to the environment, in particular, to the marine environment, and to property.

1.2.2. Safety management objectives of the Company should, *inter alia:*

1. provide for safe practices in ship operation and a safe working environment;

2. establish safeguards against all identified risks; and

3. continuously improve safety management skills of personnel ashore and aboard ships, including preparing for emergencies related both to safety and environmental protection.

1.2.3. The safety management system should ensure:

1. compliance with mandatory rules and regulations; and

2. that applicable codes, guidelines and standards recommended by the organization, administrations, classification societies and maritime industry organizations are taken into account.

1.3. **Application**

The requirements of this Code may be applied to all ships.

1.4. **Functional requirements for a safety management system (SMS)**

Every Company should develop, implement and maintain a safety management System (SMS) which includes the following functional requirements:

1. a safety and environmental protection policy;

2. instructions and procedures to ensure safe operation of ships and protection of the environment in compliance with relevant international and flag State legislation;

3. defined levels of authority and lines of communication between, and amongst, shore and shipboard personnel;

4. procedures for reporting accidents and non-conformities with the provisions of this Code;

5. procedures to prepare for and respond to emergency situations; and

6. procedures for internal audits and management reviews.

2. SAFETY AND ENVIRONMENTAL PROTECTION POLICY

2.1. The Company should establish a safety and environmental protection policy which describes how the objectives, given in paragraph 1.2, will be achieved.

2.2. The Company should ensure that the policy is implemented and maintained at all levels of the organization both ship based as well as shore based.

3. COMPANY RESPONSIBILITIES AND AUTHORITY

3.1. If the entity who is responsible for the operation of the ship is other than the owner, the owner must report the full name and details of such entity to the administration.

3.2. The Company should define and document the responsibility, authority and interrelation of all personnel who manage, perform and verify work relating to and affecting safety and pollution prevention.

3.3. The Company is responsible for ensuring that adequate resources and shore based support are provided to enable the designated person or persons to carry out their functions.

4. DESIGNATED PERSON(S)

To ensure the safe operation of each ship and to provide a link between the company and those on board, every company, as appropriate, should designate a person or persons ashore having direct access to the highest level of management. The responsibility and authority of the

designated person or persons should include monitoring the safety and pollution prevention aspects of the operation of each ship and to ensure that adequate resources and shore based support are applied, as required.

5. MASTER'S RESPONSIBILITY AND AUTHORITY

5.1. The Company should clearly define and document the master's responsibility with regard to:

1. implementing the safety and environmental protection policy of the Company;

2. motivating the crew in the observation of that policy;

3. issuing appropriate orders and instructions in a clear and simple manner;

4. verifying that specified requirements are observed; and

5. reviewing the SMS and reporting its deficiencies to the shore based management.

5.2. The Company should ensure that the SMS operating on board the ship contains a clear statement emphasizing the master's authority. The Company should establish in the SMS that the master has the overriding authority and the responsibility to make decisions with respect to safety and pollution prevention and to request the Company's assistance as may be necessary.

6. RESOURCES AND PERSONNEL

6.1. The company should ensure that the master is:

1. properly qualified for command;

2. fully conversant with the company's SMS; and

3. given the necessary support so that the master's duties can be safely performed.

6.2. The company should ensure that each ship is manned with qualified, certificated and medically fit seafarers in accordance with national and international requirements.

6.3. The company should establish procedures to ensure that new personnel and personnel transferred to new assignments related to safety and protection of the environment are given proper familiarization with their duties. Instructions which are essential to be provided prior to sailing should be identified, documented and given.

6.4. The company should ensure that all personnel involved in the company's SMS have an adequate understanding of relevant rules, regulations, codes and guidelines.

6.5. The company should establish and maintain procedures for identifying any training which may be required in support of the SMS and ensure that such training is provided for all personnel concerned.

6.6. The company should establish procedures by which the ship's personnel receive relevant information on the SMS in a working language or languages understood by them.

6.7. The company should ensure that the ship's personnel are able to communicate effectively in the execution of their duties related to the SMS.

7. DEVELOPMENT OF PLANS FOR SHIPBOARD OPERATIONS

The company should establish procedures for the preparation of plans and instructions for key shipboard operations concerning the safety of the ship and the prevention of pollution. The various tasks involved should be defined and assigned to qualified personnel.

8. EMERGENCY PREPAREDNESS

8.1. The company should establish procedures to identify, describe and respond to potential emergency shipboard situations.

8.2. The company should establish programmes for drills and exercises to prepare for emergency actions.

8.3. The SMS should provide for measures ensuring that the company's organization can respond at any time to hazards, accidents and emergency situations involving its ships.

9. REPORTS AND ANALYSIS OF NON-CONFORMITIES, ACCIDENTS AND HAZARDOUS OCCURENCES

9.1. The SMS should include procedures ensuring that non-conformities, accidents and hazardous situations are reported to the company, investigated and analysed with the objective of improving safety and pollution prevention.

9.2. The company should establish procedures for the implementation of corrective action.

10. MAINTENANCE OF THE SHIP AND EQUIPMENT

10.1. The company should establish procedures to ensure that the ship is maintained in conformity with the provisions of the relevant rules and regulations and with any additional requirements which may be established by the company.

10.2. In meeting these requirements the company should ensure that:

1. inspections are held at appropriate intervals;

2. any non-conformity is reported with its possible cause, if known;

3. appropriate corrective action is taken; and

4. records of these activities are maintained.

10.3. The company should establish procedures in SMS to identify equipment and technical systems the sudden operational failure of which may result in hazardous situations. The SMS should provide for specific measures aimed at promoting the reliability of such equipment or systems. These measures should include the regular testing of stand-by arrangements and equipment or technical systems that are not in continuous use.

10.4. The inspections mentioned in 10.2 as well as the measures referred to 10.3 should be integrated in the ship's operational maintenance/routine.

11. DOCUMENTATION

11.1. The company should establish and maintain procedures to control all documents and data which are relevant to the SMS.

11.2. The company should ensure that:

1. valid documents are available at all relevant locations;

2. changes to documents are reviewed and approved by authorized personnel; and

3. obsolete documents are promptly removed.

11.3. The documents used to describe and implement the SMS may be referred to as the 'safety management manual'. Documentation should be kept in a form that the company considers most effective. Each ship should carry on board all documentation relevant to that ship.

12. COMPANY VERIFICATION, REVIEW AND EVALUATION

12.1. The company should carry out internal safety audits to verify whether safety and pollution prevention activities comply with the SMS.

12.2. The company should periodically evaluate the efficiency and when needed review the SMS in accordance with procedures established by the company.

12.3. The audits and possible corrective actions should be carried out in accordance with documented procedures.

12.4. Personnel carrying out audits should be independent of the areas being audited unless this is impracticable due to the size and the nature of the company.

12.5. The results of the audits and reviews should be brought to the attention of all personnel having responsibility in the area involved.

12.6. The management personnel responsible for the area involved should take timely corrective action on deficiencies found.

13. CERTIFICATION, VERIFICATION AND CONTROL

13.1. The ship should be operated by a company which is issued a document of compliance relevant to that ship.

13.2. A document of compliance should be issued for every company complying with the requirements of the ISM Code by the administration, by an organization recognized by the administration or by the Government of the country, acting on behalf of the administration, in which the company has chosen to conduct its business. This document should be accepted as evidence that the company is capable of complying with the requirements of the Code.

13.3. A copy of such a document should be placed on board in order that the master, if so asked, may produce it for the verification of the administration or organizations recognized by it.

13.4. A certificate, called a safety management certificate, should be issued to a ship by the administration or organization recognized by the administration. The administration should, when issuing the certificate, verify that the company and its shipboard management operate in accordance with the approved SMS.

13.5. The administration or an organization recognized by the administration should periodically verify the proper functioning of the ship's SMS as approved.