Opinion of the Economic and Social Committee on the 'Proposal for a Council Directive amending Directive 95/21/EC concerning the enforcement, in respect of shipping using Community ports and sailing in the waters under the jurisdiction of the Member States, of international standards for ship safety, pollution prevention and shipboard living and working conditions'

(98/C 73/18)

On 11 September 1997 the Council decided to consult the Economic and Social Committee, under Article 84 (2) of the Treaty establishing the European Community, on the above-mentioned proposal.

The Section for Transport and Communications was instructed to prepare the Committee's work on the subject; it set up a study group and appointed Mr Whitworth as rapporteur.

At its 350th plenary session (meeting of 10 December 1997), the Economic and Social Committee appointed Mr Whitworth as rapporteur-general and adopted the following opinion by 93 votes for and 5 abstentions.

1. The Commission proposal

1.1. Directive 95/21/EC [1] lays down mandatory requirements for Member States to observe in the inspection of ships entering their ports as well as the standards which such ships are required to meet. It is the key directive in the EU's efforts to date to eliminate substandard ships from European waters.

1.2. In its opinion on the Commission's original proposal for such a directive [2], the Economic and Social Committee fully endorsed its objectives and made a substantial number of detailed comments designed to make its provisions more effective.

1.3. The directive entered into force on 27 July 1995. The Commission now proposes that it should be amended in three respects.

a) The scope of the port state control requirements should be expanded to embrace the protocols and amendments to the listed international conventions which have been adopted since July 1995.

b) A procedure should be adopted for Member States to apply in the absence of documentation evidencing compliance with the International Ship Management (ISM) code which enters into force for passenger ships and oil tankers, chemical tankers, gas carriers, bulk carriers and cargo high-speed craft over 500 grt on 1 July 1998.

c) The adaptation of the body of the directive to incorporate future amendments to the international instruments covered by the directive may in future be undertaken through the Committee procedure contained in Article 19 which at present covers only the adaptation of the annexes for this purpose.

2. General comments

2.1. The Committee readily endorses the proposals in a) and c) above. They are designed to ensure that the port state control requirements are kept fully up to date and consistent with new international safety requirements without the delay in future occasioned by the necessity to process an amending directive.

2.2. Proposal b) requires more detailed consideration. The ISM code requires shipping companies to develop and apply high quality standards for the management and operation of their ships. This involves the development of written policies as well as operating and emergency procedures and the precise definition of areas of responsibility both ashore and afloat. Governments are obliged to satisfy themselves that the requirements of the code are met by those shipping companies which conduct business in their territories and by those ships which operate under their flag and to evidence this respectively by the issue of a document of compliance on the part of the company and a safety management certificate for each individual ship. Such documents are among those which Member States are required to check by Article 6(1) of the directive.

[1] Council Directive 95/21/EC of 19 June 1995 concerning the enforcement, in respect of shipping using Community ports and sailing in the waters under the 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).

[2] ESC Opinion: OJ C 393 , 31.12.1994, p. 50.

2.3. The ISM code enters into force on 1 July l998 for passenger ships, oil tankers, chemical tankers, gas carriers, bulk carriers and cargo high-speed craft over 500 grt. Council Regulation 3051/95 [1] provided for its earlier mandatory enforcement from 1 July 1996 for all roll-on/roll-off passenger ferries operating to and from Community ports regardless of flag. This proposal was unreservedly supported by the Economic and Social Committee in its opinion [2]. In that opinion, the Committee recognized that a vast amount of work would need to be done if companies were to devise and institute the required procedures and have these monitored and approved by the relevant authority in advance of the deadline.

2.4. Experience has shown this warning to be justified. There is now widespread concern that despite, in many cases, the best efforts of their owners and operators, a significant number of the 12 000 ships affected will not have obtained documentation evidencing their compliance by the July 1998 date.

2.5. Against this background the Commission is now proposing, in an addition to Article 9 of the directive, to make detention mandatory from 1 July 1998 in the absence of such documentation but at the same time to permit Member States, in the absence of any further deficiencies, to lift the detention order and allow the ship to leave the port with the very clear proviso that it shall be refused access to all other Community ports until such time as it has obtained and is able to produce the required documentation.

2.6. Thus this amendment to the directive on the one hand makes detention mandatory for non-compliance with the code but on the other permits Member States, at their discretion, to allow ships which do not comply on their first call at a Community port after 1 July 1998 to be released from detention and to continue their voyages, but only to ports outside the Community. It should be noted that the amendment would preclude a ship registered in a Member State from returning to its home port in order to acquire the documentation. In particular it could not avail itself of the 'force majeure' provisions of Article 11(6) of the directive for this purpose.

3. Specific comments

3.1. The Economic and Social Committee re-affirms its support for the ISM code as a major and important instrument for improving standards of maritime safety worldwide. It believes that the code should be stringently enforced in Community ports and thus welcomes the Commission's proposal to make detention of a vessel mandatory in the absence of a recognized document of compliance and safety management certificate.

3.2. At the same time the Committee recognizes that significant practical problems need to be overcome as the code initially enters into force. The process of monitoring and approving the on-board procedures which a national authority or a classification society must undertake before issuing a document of compliance and safety management certificate is a lengthy one and can be subject to bureaucratic delays. Detention in a Community port for the absence of these documents is likely to be for a much longer period than that required to rectify a physical defect on board the ship. The detention of all such ships immediately following the 1 July 1998 deadline would be likely to lead to serious congestion in many Community ports and even in some cases prejudice their ability to handle their trade.

3.3. Accordingly the Committee accepts the Commission's proposal summarized in point 2.5 above but emphasizes that the mechanism for refusing the ship's access to all other Community ports until such time as it has obtained a valid Document of Compliance and safety management certificate must be fully effective. Apart from this single proviso there should be no further derogations of any sort and the provisions of the proposed new Article 9(a) should be strictly complied with.

3.4. One particular point should be mentioned. The provisional Guidelines for controlling the implementation of the ISM code issued by the Paris MOU Authority make reference to the possibility of the provision of 'acceptable information regarding the ISM implementation process' being recognized as a valid alternative to the production of a document of compliance and safety management certificate. The Committee considers that this potential derogation should be approached with extreme caution. It is of the utmost importance that the port state control provisions should be applied in a uniform manner throughout the Community so that owners are not tempted to send ships which do not totally comply with the requirements to ports where they perceive that a more lax inspection regime is applied.

3.5. As a more general point the Committee believes that confirmation that a ship carries this and the other necessary documentation required under the port state control procedures might be facilitated by the adoption of a pre-notification procedure and suggests that this might be the subject of further study by the Commission with a view to its possible development within the IMO.

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[1] Council Regulation (EC) No 3051/95 of 8.12.1995 on the safety management of roll-on/roll-off passenger ferries (ro-ro ferries) (OJ L 320, 30.12.1995, p. 14).

[2] ESC Opinion: OJ C 236, 11.9.1995, p. 42.

3.6. The Committee notes that, subsequent to the drawing-up of the draft directive and indeed only two weeks prior to the adoption of this opinion, the Assembly of the IMO adopted on 27 November 1997 a further Resolution on the implementation of the ISM Code. The Committee expects that the Commission will take the terms of this resolution into account in furthering the implementation of the directive.

Brussels, 10 December 1997.

The President
of the Economic and Social Committee
Tom JENKINS

Opinion of the Economic and Social Committee on the 'Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions promoting road safety in the EU — the programme for 1997-2001'

(98/C 73/19)

On 16 April 1997 the European Commission decided to consult the Economic and Social Committee, under Article 198 of the Treaty establishing the European Community, on the above-mentioned communication.

The Section for Transport and Communications, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 12 November 1997. The rapporteur was Mr Ghigonis.

At its 350th plenary session of 10 and 11 December 1997 (meeting of 10 December 1997) the Economic and Social Committee adopted the following opinion by 79 votes to one, with five abstentions.

1. **Introduction**

1.1. The Commission launched a first action programme on road safety [1] in 1993. Significant progress has been achieved, due in large part to the role of the Commission and the European Parliament as road safety champions. Nevertheless, the situation remains far from satisfactory, as illustrated by the 45 000 people killed and 1,6 million injured each year.

1.2. In its present communication the Commission therefore proposes an additional strategy to accelerate improvement in road safety. This three-pronged strategy, based on the principle that the high cost of accidents (roughly ECU 1 million per fatality) should be fully taken into account in the safety policies of Member States, comprises the following elements:

— gathering and dissemination of information and best practice, notably through the setting-up of an EU road safety information system;

— accident avoidance measures; for example curbing of alcohol and drug/medicine use by drivers, and the application of telematics;

— tools to reduce the consequences of accidents when they occur, including the development of safety rating programmes and submission of proposals for various technical measures.

1.3. The key elements of the 1997-2001 programme are:

— a Commission recommendation to fully take into account the very high costs of road accidents in a more widespread application of cost-benefit assessments for road safety measures;

— an integrated EU information system including information on accident statistics, exposure data, implementation of road safety measures, research, best practice and the application of existing legislation;

— measures to combat fatigue and the use of alcohol, medicines and drugs while driving;

[1] Communication from the Commission for a first action programme on road safety (COM(93) 246 final).