Opinion of the Economic and Social Committee on the 'Proposal for a Council Directive on conditions for the operation of regular RO-RO ferry and high speed passenger craft services in the Community' [1]

(98/C 407/18)

On 9 March 1998 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, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 15 July 1998. The rapporteur was Mr Chagas.

At its 357th plenary session on 9 and 10 September 1998 (meeting of 9 September) the Economic and Social Committee adopted the following opinion by 109 votes for and three abstentions.

1. The Commission proposal

1.1. Basic safety rules for shipping are set internationally by the International Maritime Organization (IMO). After the tragedy of the ferry 'Estonia' in 1994, in which 852 lives were lost, the Council of Transport Ministers asked the European Commission to submit a series of proposals to guarantee the best possible safety standards to passengers travelling to and from EU ports.

1.2. The main objectives of the current proposal, following on the legislation adopted by the Council in 1995 with a view to making the IMO's International Safety Management Code mandatory for roll-on/roll-off (ro-ro) ferries [2] and the proposal for a directive introducing a compulsory passenger registration system on passenger ships [3], are:

— to achieve more standardized interpretation of international safety rules;

— to guarantee effective application of these rules and the relevant Community legislation;

— to ensure transparency regarding the conditions required for operation of regular roll-on/roll-off ferry and high-speed passenger craft services to and from EU ports, for all parties concerned — the host-State and flag-State administrations as well as companies.

1.3. The proposed Directive aims to:

— list the conditions related to safety which have to be fulfilled by a company to operate these ships and craft;

— establish an inspection regime for verifying compliance with all conditions prior to a ship or craft entering into service and then at regular intervals;

— ensure the participation of host Member States in any investigation of maritime accidents or casualties;

— avoid unnecessary expanded Port State Control (PSC) inspections;

— facilitate the putting into operation or transfer into similar services of ships and craft confirmed to be in compliance.

1.4. The proposed Directive is intended to ensure a safety regime that is common to all such ships and craft, irrespective of the flag they fly. Vessels must be fitted with a voyage data recorder (VDR) — the equivalent of an aircraft's 'black box' that records information to aid accident investigation. Companies must ensure that the ship's master is provided with appropriate information of both shore-based navigational guidance systems and other information systems as established by Member States in accordance with Article 10 paragraph 2.

1.4.1. The Commission emphasizes the need for a new directive on the grounds that it will be impossible to achieve the desired objectives by means of Directive 95/21 [4] ('Port State Control'), which only provides for inspection of a minimum of 25 % of foreign vessels calling at Community ports. Furthermore, in contrast to Directive 95/21, the present proposal is directed at all

[1] OJ C 108, 7.4.1998, p. 123.

[2] Council Regulation (EC) No 3051/95 of 8 December 1995 on the safety management of roll-on/roll-off passenger ferries (ro-ro ferries) (OJ L 320, 30.12.1995, p. 14). ESC Opinion: OJ C 236, 11.9.1995, p. 42 (rapporteur: Mr Whitworth).

[3] Proposal for a Council Directive on the registration of persons sailing on board passenger ship (OJ C 31, 31.1.1997, p. 5). ESC Opinion: OJ C 206, 7.7.1997, p. 111.

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

ferries and high-speed vessels, irrespective of whether they are operating domestic or international services.

2. General comments

2.1. The proposal is welcomed as a positive measure to aid the safety of passengers travelling to and from Community ports and seafarers serving on those vessels and craft.

2.2. The concept of an expanded mandatory survey regime appears to be a satisfactory way of achieving the objective given the differing nature of employment between Member States due to diversity of vessel type and location of principal routes. While appreciating the need to be consistent with international law and the Conventions, Codes and resolutions of IMO, such a regime is desirable. It is noted that the Commission gave consideration to restrict the right to operate public transport to EC operators. While this would have simplified the regulatory process via the direct application of EC law it was considered by the Commission to be contrary to its open markets policy.

2.2.1. The alternative option, having regard to the internal market and open markets policy, will only prove effective having regard to internationally agreed rules and principles, if there are satisfactory mechanisms for inspection and enforcement. In this context the concept of 'host state' is appropriate but necessitates additional requirements, obligations and responsibilities and involves all such vessels and craft, otherwise it would be no different from 'port state'.

2.2.2. Additional requirements that are designed to improve safety need to be both transparent and tangible so as to engender public confidence. Public confidence, if to be gained and maintained, requires a consistent pro-active approach throughout the Community.

2.3. The concept of an efficient and effective accident investigative procedure that involves Member States whose ports such vessels and craft sail to and from, in addition to flag involvement and/or port state is both desirable and essential as a means of reassuring citizens of those states as to the conduct of investigations.

2.4. The mandatory introduction of the ISM Code has been a welcomed measure. However, its effectiveness is dependent upon a satisfactory mandatory survey and inspection regime.

2.5. The reference to the mandatory introduction of registration of passengers is welcomed since this is essential for Search and Rescue Authorities. In this context the Economic and Social Committee opinion [1] on the Commission's proposal for the introduction of mandatory registration of passengers is recalled.

3. Specific comments

3.1. The inclusion of high speed passenger craft since they are in direct competition with ro-ro passenger ferries is noted. Vessels referred to as ro-ro freight ferries and high speed freight ferries in some Member States, when carrying passengers, are considered to be included.

3.2. There should be no exception to the safety conditions which need to be met prior to putting such a ship or craft into operation, nor should there be any exceptions granted on regular inspections.

3.3. While noting that the Commission recognizes that some Member States will need to increase their staff of qualified inspectors to meet their obligations, further consideration as to provision of adequate resources needs to be taken.

4. Specific comments on the Articles and Annexes

4.1. *Article 5*

4.1.1. While accepting 'there is no need to re-invent the wheel ...' there is a need to ensure that where statutory surveys are delegated by the regulatory body of a Member State in respect to vessels and craft flying its flag the host nation should have the option of verification. This should apply until the Harmonized System of Survey and Certification Protocol of 1998 is fully implemented. Articles 5 and 6 should stipulate that host States should ensure that the requirements are carried out.

4.1.2. The fitting of voyage data recorders (VDR) meeting the technical specifications established within IMO is welcomed.

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[1] Proposal for a Council Directive on the registration of persons sailing on board passenger ship (OJ C 31, 31.1.1997, p. 5). ESC Opinion: OJ C 206, 7.7.1997, p. 111.

4.2. *Article 6*

4.2.1. The reference to lack of cooperation by a flag state and the possible need to resort to an alternative flag by the operator is welcomed. It is important that the flag state has the necessary administrative infrastructure to support a safety regime set out to EU level.

4.3. *Article 7*

4.3.1. No provision is made with respect to fees for the initial survey prior to a vessel or craft entering service and for surveys conducted in accordance with the provisions in paragraph 3. Consideration should be given to this matter.

4.3.2. For subsequent surveys, other than those mentioned in paragraph 3, in the absence of specific provision as to inspection fees, it is assumed that the provisions of Directive 95/21 will be applied.

4.3.3. While accepting the necessity for one of the unscheduled surveys to take place during a regular crossing, the occurrence of the second unscheduled survey should not be mandatory.

4.4. *Article 8*

4.4.1. The provision for joint assessment by a team composed of qualified inspectors of the involved host states is welcomed as a means of removing inconsistency and reducing the inconvenience to companies. However, further clarification as to the co-ordination of responsibilities where more than one host state is involved is required. Similarly clarification of transitional arrangements for vessels and craft currently operating.

4.5. *Article 9*

4.5.1. The creation of a mechanism ensuring the inclusion of the 'host state(s)' in the investigative process following an accident is welcomed. However, further clarification as to the relationship and involvement of a host state(s) and the flag state in accident investigation is required.

4.5.2. The Committee attaches considerable importance to Member States setting up thorough and comprehensive procedures for the investigation of marine casualties involving all interested parties and complying with the provisions of SOLAS Chapter I, regulation 21.

4.6. *Annex 3*

4.6.1. Reference to navigational charts and publications is required or alternatively inclusion in Annex 5.

4.6.2. The provision for assessment for fatigue and rostering patterns of crew are welcomed. In this context the provisions of IMO and ILO are acknowledged as the appropriate yardstick.

4.7. *Annex 5*

4.7.1. The affirmation in paragraph 8 that passengers are to be kept off special category and enclosed ro-ro cargo spaces whilst a vessel or craft is at sea, is welcomed. The requirement is consistent with the intent of SOLAS regulation II-1 / 20-3 (and paragraph II-1/B/17.2 of Annex 1 to Directive 98/18/EC) on 'Access to ro-ro decks'. However, consideration should be given to this issue as it is reported that this measure is not being adhered to on certain routes.

4.8. *Annex 6*

4.8.1. Referring to paragraph 3 it is proposed that the term 'most commonly spoken at sea' be deleted and replaced by 'used for communication on board'.

4.8.2. Referring to paragraph 4 it is proposed that reference should be made not only to the 1974 SOLAS Convention but also to the criteria set out in Annex VII to the 1995 Port State Control Directive.

Brussels, 9 September 1998.

The President

of the Economic and Social Committee

Tom JENKINS