Opinion of the European Economic and Social Committee on:


(2003/C 85/05)

On 14 May 2002 the Council decided to consult the European Economic and Social Committee, under Articles 80(2) of the Treaty establishing the European Community, on the above-mentioned proposals.

The Section for Transport, Energy, Infrastructure and the Information Society which was responsible for preparing the Committee’s work on the subject, adopted its opinion on 31 October 2002. The rapporteur was Mr Chagas.

At its 395th plenary session (meeting of 11 December 2002) the European Economic and Social Committee adopted the following opinion by 94 votes to one and one abstention.

1. Background


1.2. Measures already in place since the 1990’s include:

— 98/18/EC: Directive on safety rules and standards for passenger ships;

— 98/179/EC: Regulation on the safe management of ro-ro ferries;

— 1999/35/EC: Directive on mandatory safety services for ro-ro ferries and high speed craft.

1.3. The new safety package for passenger ships aims at reducing the risk of horrific maritime tragedies such as the Estonia 1994 and the Express Samina 2000.

1.4. The objective of the proposal for a Directive on specific stability requirements for ro-ro passenger ships is to apply the Stockholm Agreement (SA) stability requirements to all ro-ro passenger ships, irrespective of flag, operating on regular scheduled international voyages in the EU. Such a measure aims at laying down a uniform level of stability requirements throughout the community and increase the level of survivability of damaged ro-ro passenger ships so providing for a higher level of safety for EU citizens travelling as passengers and seafarers.
1.4.1. The new stability requirements shall apply to all new ro-ro passenger ships built after 1 October 2004. For a ship that was built prior to that date, the proposals establish a phasing-in period that expires on 1 October 2010. The standards of the SA are currently applied by seven Member States party to the SA, namely, Germany, Denmark, Finland, Ireland, Netherlands, Sweden and the United Kingdom. Norway is also part to the SA.

1.5. The objective of the proposal for the amendment of Directive 98/18/EC on safety rules and standards for passenger ships aims to strengthen the safety of all passenger ships operating domestically, by introducing increased stability requirements for ro-ro ships and new safety guidelines for passengers with reduced mobility. The proposal also includes some amendments to Directive 98/18/EC in order to update and improve its implementation, amongst them a harmonised procedure for Member States for notification of the location of sea areas under their jurisdiction.

1.5.1. While the new stability requirements apply to all new ro-ro passenger ships built after 1 October 2004 for ships built prior to that date, the proposal establishes the 1 October 2010 for the deadline for compliance with the SA. Ships that do not comply with the requirements on that date should be phased out when they reach the age of 30 years, in any event no later than 1 January 2015 providing they comply with SOLAS 90 standards.

1.6. The communication presents views on how the liability for damages caused to passengers should be improved. The proposals call for compulsory insurance for carriers and strict liability up to EUR 250 000 per passenger and, if the carrier is at fault, unlimited liability should apply. A decision of the Diplomatic Conference on revision of the Athens Convention is awaited. In addition the communication addresses the provision for safety and access to disabled passengers.


2.1. General comments

2.1.1. The EESC recognises that it is important to have international agreement through the International Maritime Organisation (IMO). To some extent this is met by the provisions of SOLAS 90. However, in the absence of a satisfactory international safety regime, a community wide regional measure, as proposed by the Commission in accordance with the provisions of Regulation 14 of IMO SOLAS 95, is essential in order to ensure adequate safety rules and standards with respect to the carriage of passengers to and from community ports.

2.1.2. The EESC shares the concern of the Commission and the Secretary General of the IMO over the increased size of both ro-ro passenger vessels and other passenger vessels. The EESC has concern over the extrapolation of the rules of construction and the consequential operational safety of such vessels. Notwithstanding these reservations the proposals of the Commission represent a significant step in improving the safety rules and standards with respect to the carriage of passengers to and from community ports on ro-ro passenger ships.

2.1.3. Despite the limitations of the SA, the EESC generally welcomes these proposals. It is disappointing that it has taken some time for universal application of the SA to all Member States. Notwithstanding this qualification i.e. the limitation of the SA, the EESC strongly supports the Commission’s proposals for the extension to all Member States so as to ensure the safety of EU citizens, travelling as passengers on ro-ro passenger ferries and seafarers.

2.1.4. The EESC recognises that these proposals will not prevent such accidents from happening but will hopefully mitigate the consequences and the subsequent tragic loss of life in the circumstances identified.

2.1.5. The cost of upgrading should not be prohibitive and, in most cases, is not necessary. Where upgrading is required this provides the opportunity for the introduction of new tonnage that is invariably linked to the application of SOLAS 90 so improving the level of safety. Furthermore uniformity of application provides for fair competition amongst operators in Member States in addition to providing an improved level of safety to all EU citizens travelling as passengers and seafarers regardless of the route of operation.

2.1.6. While taking note of the Commission’s observation that wave heights in the Mediterranean are comparable to those in the Baltic Sea and wave heights in the Eastern Atlantic (the Atlantic Coast of France, Spain and Portugal) are comparable to the North Sea and Channel areas, it is not the wave height in itself that is significant, it is also the relative extent of the damage to the vessel and the ingress of water from whatever cause and the remaining freeboard that is the determinate factor in the time and survivability of such vessels. This was identified in a Joint North-West European Research Project entitled ‘Safetyp of Passenger/Ro-Ro Vessels by Det Norske Veritas Doc. No: REP-T00-001, Date: 1997.5.7’.
2.2. Specific Comments

2.2.1. In relation to the dates for implementing the SA in southern Europe, the EESC agrees with the Commission proposals with respect to the phasing in schedule. This is approximately the same as that given to Member States in Northern Europe. While recognising that ferry routes connect Member States to North African countries this should not be an excuse for delayed implementation given the recognition for universal standards of safety in relation to the potential risk. The intended date of 2010 is therefore entirely appropriate.

2.2.2. Article 1 — Calls for the introduction of a uniform level of stability requirements for ro-ro passenger ships in Europe in order to improve the survivability of this type of vessel in case of collision damage and provide for a higher level of safety for passenger and crew. The EESC supports this aim and therefore the wording should be retained.

2.2.3. Article 2a — The Commission is requested to re-examine the definition of ‘ro-ro passenger ship’ to provide for a stricter wording meeting both the requirements of the Stockholm Agreement and the SOLAS Convention.

2.2.4. Article 5.3 — The proposals for a new Internet based procedure for notification and publication of sea areas giving more integrity and transparency to the system is to be welcomed.

2.2.5. Article 9.1 — In the event of a ro-ro passenger ship being chartered in at short notice for a particular route the requirement to notify the competent authority of the host state or states not later than three months is somewhat onerous and impractical. It is suggested this be reduced to one month. In the event of unforeseen circumstances, i.e. technical reasons, a replacement ro-ro passenger ship should be provided rapidly to ensure continuity of service and the necessary social provision. As in Article 4 of the Stockholm Agreement, provision should also be made to allow individual journeys to be exempted from the particular criteria under specific circumstances.

2.2.6. Appendix, Model Test method, paragraphs 2.1 and 2.2.5.2 (editorial) refer to the Safety at Sea Convention. This should refer to the Safety of Life at Sea and reference to (SOLAS 90) in 2.1 should refer to (SOLAS).


3.1. Stability — General and Specific Comments

3.1.1. The EESC in general welcomes the proposals to amend Council Directive 98/18/EC.

3.1.2. The EESC notes and approves the Commission’s reasons for abolishing the present derogation for Greece.

3.1.3. The proposals concerning High Speed Craft (HSC) and the adoption of the new IMO HSC Code are noted. While the new Code applies to new vessels whose hulls were laid, or at a similar stage of construction, on or after 1 July 2002, the vulnerability of existing HSC must be recognised. This is particularly so in the event of bottom racking damage to both hulls where there is no double bottom protection.

3.1.4. The difficulties associated with application to existing ro-ro passenger ships of Class A, B, C and D is recognised, however, the dangers to passengers remain. The proposals, while acceptable, should be considered the minimum in the circumstances.

3.1.5. The EESC welcomes the proposals with respect specific stability requirements for new ro-ro passenger ships of Class A, B and C, the keel of which is laid or which are at a similar stage of construction on or after 1 October 2004.

3.1.6. The EESC welcomes the proposals with respect to the implementation date for specific stability requirements for existing ro-ro passenger ships of Class A, B, C and D, the keel of which is laid or which are at a similar stage of construction before 1 October 2004, of 1 October 2010. The provision for extension to 2013 is noted. This reflects a lack of urgency and an emphasis upon economic considerations above those of safety of EU citizens and seafarers.

3.1.7. Age in itself should not be the criteria for consideration in the phasing out of a ship; it should be the stability requirements and the ability of the vessel to meet the necessary safety standards. However, more rigorous inspections need to be carried out, as a ship gets older.
3.1.8. Having regard to the designation of Class ‘C’ and ‘D’, the specification makes reference to a significant wave height of 2.5 metres and 1.5 metres respectively. This occurring in not more than 10 % over a one year period for all of the year or over a specific restricted period of the year for operational exclusivity in such period, however, the risk of greater wave heights remains. In particular it must be noted that class ‘C’ designation refers to the significant wave height exceeding 2.5 metres in not more than 10 % over a one year period for all of the year round operation or of a specific restrictive period for year of operation exclusively and, in this regard, the percentage of the time in which it exceeds 1.5 metres may be considerably more. Such vessels may operate 15 miles from a place of refuge and 5 miles from a line of the coast where shipwrecked persons can land. These criteria have no direct bearing upon the vulnerability of such vessels since damage to such vessels and the ingress water would prevent them from reaching a place of safety or timely assistance responding to any distress. Likewise, the criteria with respect to class ‘D’ vessels, that may operate 6 miles from a place of refuge and no more than 3 miles from the line of the coast where shipwrecked persons can land, reinforces the argument for improved stability requirements regardless of size and operational area. In line with its wish for improved stability requirements the EESC notes with regret that the Council of Ministers has already progressed towards a compromise solution with the deletion of Article 6a (3).

4. Liability of Carriers of Passengers by Sea — General and Specific Comments

4.1. The EESC acknowledges that the regime concerning the liability of carriers with respect to passengers carried by sea is long overdue for revision and updating. Present levels of compensation have been eroded by inflation. The 1990 Protocol to the Athens Convention increased the limit to 175 000 SDR (EUR 250 000), which corresponds to the limit laid down for passenger ships in the 1996 Protocol to the Convention on Limitation of Liability for Maritime Claims (LLMC). However, neither of these Protocols has entered into force internationally.

4.2. The EESC notes that there is no uniformity with respect to the liability of carriers of passengers by sea either at international or European levels. It must be recognised that some Member States, as a result of public and media pressure, have amended their national legislation to ensure that adequate compensation levels exist, particularly in the event of death.

4.3. The EESC acknowledges that the Diplomatic Conference convened in London for the ‘Consideration of a Draft Protocol of 2002 to amend the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea 1974’ seeks to achieve a global regime. While accepting that an international standard is the most desirable option, it is necessary to ensure that uniformity applies across all EU Member States with respect to a satisfactory level and the type of compensation. It is, therefore, entirely reasonable that an adequate passenger liability regime should be established as an integral part of community legal framework for passenger ships.

4.4. The EESC, having regard to the negotiations in the IMO, acknowledges that the proposals of the Commission are broadly in line with the same principles as those proposed in the IMO to complement the Athens Convention, namely:

— introduction of strict liability for all risks related to the operation of the ship;

— fault-based liability for risks not directly related to the operation of the ship;

— introduction of compulsory liability insurance;

— introduction of claims directly against the insurer;

— liability limited to an amount per passenger, independently of the size of the vessel.

Given the proposals in the IMO the Commission will therefore need to make sure that ferry transport does not suffer any competitive disadvantage.

3.2. Passengers with Reduced Mobility — General and Specific Comments

3.2.1. The EESC welcomes the proposals with respect to making passenger vessels operating on domestic services safe and accessible for People with Reduced Mobility (PRM) and welcomes the proposals as outlined. In some respects the issue of PRM has already been recognised with respect to passenger ships and ro-ro passenger ships with carriers seeking to attract an aging population with increased disposable income.

3.2.2. It is, entirely sensible within the provisions of an integrated transport system to ensure that arrangements exist for PRM with respect to ro-ro passenger ships. However, a sensible distinction needs to be made between new and existing ships. A consultation exercise as set out in Article 6b.2 should be carried out by Member States not only with organisations representing PRM but also with other organisations representing port operators, shipowners and employee representatives.
4.5. The EESC recognises the difficulty in distinguishing between marine related and non-marine related claims. However, the Commission's proposals in line with the present draft text of the new Protocol to the Athens Convention considers that a distinction should be made between the two categories of claim. Damage that is caused by the operation of a ship, where the possibility for the passengers to control the events is typically limited, should be subject to a strict liability regime. A negligence based liability system may suffice for non-marine related claims such as personal injury damage incurred on board.

4.6. While most passenger ships are financially protected through entering into one of the mutual Protection and Indemnity (P&I) Clubs, it is essential to ensure that there is a compulsory element as is the case with respect to oil pollution.

4.7. The provision with respect to claimants being able to make claims directly against an insurer is to be welcomed. Due to the particular nature of shipping, it is often difficult to trace an owner or it may not be possible for a carrier to meet their financial obligations in some circumstances. This is particularly so in the case of ‘one ship companies’; when such a ship is lost, all assets of the company may be lost.

4.8. Since some national routes may in some instances be longer and more hazardous than comparable international ones it is entirely sensible to ensure that the provisions of the Athens Convention with its Protocol are extended to national carriage as well as to international voyages.

4.9. While it is hoped that the outcome of the diplomatic conference adopting the Athens Protocol would go some way with respect to addressing deficiencies internationally it may fail to receive universal acclaim. For that reason and the necessity to ensure adequate compensation in the event of death and personal injury of passengers, a community-wide regime, as proposed by the Commission, is well justified in order to provide the necessary guarantees to passengers.

5. Conclusions

5.1. The EESC, while accepting the desirability of an international agreement through the IMO, welcomes the proposals to extend the provisions of the Stockholm Agreement to all Member States. While this is acknowledged as a significant step, the limitations of the provisions of the Stockholm Agreement are recognised.

5.2. The EESC welcomes the proposals to amend Council Directive 98/18/EC. It notes however, with regret, that the Council of Ministers has already progressed towards a compromise solution with the deletion of Article 6a (3).

5.3. The EESC having regard to the IMO Diplomatic Conference convened in London for the ‘Consideration of a Draft Protocol of 2002 to amend the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea 1974’ acknowledges that the proposals of the Commission are broadly in line with the same principles. While accepting the desirability for an international agreement the EESC sees considerable benefit in uniformity across all Member States.

5.4. The EESC welcomes the proposals with respect to making passenger vessels operating on domestic services safe and accessible for People with Reduced Mobility (PRM).


The President
of the European Economic and Social Committee
Roger BRIESCH