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(Acts whose publication is obligatory)

COUNCIL DIRECTIVE 1999/35/EC

of 29 April 1999

on a system of mandatory surveys for the safe operation of regular ro-ro ferry and high-speed passenger craft services

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 84(2),

Having regard to the proposal from the Commission⁽¹⁾,

Having regard to the opinion of the Economic and Social Committee⁽²⁾,

Acting in accordance with the procedure referred to in Article 189c of the Treaty⁽³⁾,

(1) Whereas within the framework of the common transport policy further measures must be taken to improve safety in the maritime transport of passengers;

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

(3) Whereas the Council invited the Commission, in its resolution of 22 December 1994 on the safety of roll-on/roll-off passenger ferries⁽⁴⁾, to

submit proposals for a mandatory survey and control regime for the safety of all ro-ro passenger ferries operating to or from ports of the Community, including the right of investigation of marine casualties;

(4) 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;

(5) Whereas action at Community level is the best way to ensure the harmonised enforcement of some principles agreed on within the International Maritime Organisation (IMO), thus avoiding distortions of competition between different Community ports and ro-ro ferries and high-speed passenger craft;

(6) 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 the common safety standards, while leaving each Member State the right to decide which implementation tools best fit its internal system;

(7) Whereas the safety of ships is primarily the responsibility of flag States; whereas each Member State should ensure compliance with the safety requirements applicable to the ro-ro ferries and high speed passenger craft flying the flag of that Member State and to the companies that operate them;

⁽¹⁾ OJ C 108, 7.4.1998, p. 122.

⁽²⁾ OJ C 407, 28.12.1998, p. 106.

⁽³⁾ Opinion of the European Parliament of 7 October 1998 (OJ C 328, 26.10.1998, p. 82), Council Common Position of 21 December 1998 (OJ C 49, 22.2.1999, p. 15) and Decision of the European Parliament of 10 February 1999 (not yet published in the Official Journal).

⁽⁴⁾ OJ C 379, 31.12.1994, p. 8.

- (8) Whereas port State control does not provide for regular in-depth preventive surveys and verifications for ro-ro ferries and high speed passenger craft; whereas it therefore should be verified that companies and their ferries and craft comply with the safety standards agreed within the IMO and, where appropriate, at regional level, through a system of regular mandatory inspections by host States; whereas companies should be prevented from operating such ferries and craft if these inspections reveal dangerous non-conformity with these safety standards;
- (9) Whereas this Directive addresses the Member States in their capacity as host States; whereas the responsibilities exercised in that capacity are based on specific port State responsibilities that are fully in line with the 1982 United Nations Convention on the Law of the Sea (Unclos);
- (10) Whereas in the interest of improving safety and avoiding distortion of competition, the common safety standards should apply to all ro-ro ferries and high-speed passenger craft, regardless of the flag they fly, providing regular services to or from a port in the Member States both on international voyages and on domestic voyages in sea areas beyond 20 miles from a coast line where shipwrecked persons can land, while leaving the possibility to the Member States to extend the scope of application of the Directive to ro-ro ferries and high-speed passenger craft operating on domestic voyages in sea areas within 20 miles from a coast line;
- (11) Whereas it is necessary that host States check whether the ro-ro ferries and high-speed passenger craft operating to and from Community ports conform to certain harmonised requirements for certification and survey by the flag State;
- (12) Whereas those ro-ro ferries and high-speed passenger craft should also conform, at the building stage and during their entire lifetime, with the applicable classification standards as regards the construction and maintenance of their hull, main and auxiliary machinery, electrical installation and control installation and should be fitted with a voyage data recorder complying with the relevant international requirements;
- (13) Whereas host States should check that the companies providing those services operate their ro-ro ferries and high-speed passenger craft so as to guarantee maximum safety; whereas interested Member States, other than the flag State, should be allowed to participate fully in any investigation of a marine casualty;
- (14) Whereas it is fundamental to check that third flag State administrations concur with the companies' commitments to cooperate with any investigation of a marine casualty or incident and to comply with the rules of recognised organisations for classification and, where applicable, for certification; whereas such administrations should accept the use of harmonised survey and certification procedures;
- (15) Whereas, in order to ensure continuous compliance of ro-ro ferries and high-speed passenger craft with the requirements of this Directive, host States should carry out surveys prior to the start of a service and thereafter at regular intervals and whenever a significant change occurs in the operating circumstances;
- (16) Whereas in order to reduce the burden placed on companies, due account should be taken of previous verifications and surveys; ro-ro ferries and high-speed passenger craft should be exempted from surveys where it has been confirmed that they comply with this Directive for operation on similar routes and replacement ferries and craft should benefit from special arrangements; whereas ro-ro ferries and high-speed passenger craft which have been surveyed to the satisfaction of the host State should not be subjected to expanded inspections under 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) ⁽¹⁾;
- (17) Whereas Member States should cooperate to exercise their responsibilities as host States;

⁽¹⁾ OJ L 157, 7.7.1995, p. 1. Directive as last amended by Commission Directive 98/42/EC (OJ L 184, 27.6.1998, p. 40).

(18) Whereas Member States might find it useful to be assisted in the performance of their tasks by recognised organisations which meet the requirements of Council Directive 94/57/EC of 22 November 1994 on common rules and standards for ship inspection and survey organisations and for the relevant activities of marine administrations⁽¹⁾;

to improve its regime to take into account future amendments to the 1974 International Convention for the Safety of Life at Sea (SOLAS) which have entered into force and to ensure a harmonised implementation of amendments to some IMO resolutions without broadening its scope,

(19) Whereas due account should be taken, in planning the surveys, of the operational and maintenance schedules of the ro-ro ferries and high-speed passenger craft;

HAS ADOPTED THIS DIRECTIVE:

Article 1

Purpose

The purpose of this Directive is to lay down a system of mandatory surveys which will provide a greater assurance of safe operation of regular ro-ro ferries and high-speed passenger craft services to or from ports in the Member States of the Community and to provide for the right of Member States to conduct, participate in or cooperate with any investigation of maritime casualties or incidents on these services.

(20) Whereas Member States should ensure that their internal legal systems enable them and any other substantially interested Member States to participate or cooperate in, or conduct, accident investigations on the basis of the provisions of the IMO Code for the investigation of marine casualties; whereas the outcome of such investigations should be made publicly available;

(21) Whereas a set of accompanying measures in the areas of navigational guidance systems, contingency planning and local operational restrictions will further improve safety;

Article 2

Definitions

For the purpose of this Directive and its Annexes,

(22) Whereas, in order to enable the monitoring of the application of this Directive, a database should be established based on the information derived from the surveys;

(23) 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 goods⁽²⁾, can undertake that function;

(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 12 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 12 passengers;

(24) Whereas certain provisions of the Directive may be adapted by that Committee to bring them into line with Community or IMO measures and

(c) 'a passenger' is every person other than:

(i) the master and the members of the crew or other persons employed or engaged in any capacity on board a ship on the business of that ship, and

(ii) a child under one year of age;

⁽¹⁾ OJ L 319, 12.12.1994, p. 20. Directive as amended by Commission Directive 97/58/EC (OJ L 274, 7.10.1997, p. 8).

⁽²⁾ OJ L 247, 5.10.1993, p. 19. Directive as last amended by Commission Directive 98/74/EC (OJ L 276, 13.10.1998, p. 7).

- (d) '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;
- (e) '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;
- (f) '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, or a series of voyages from and to the same port without intermediate calls, either:
- (i) according to a published timetable; or
- (ii) with crossings so regular or frequent that they constitute a recognisable systematic series;
- (g) 'sea area' shall mean any sea area included in a list established in accordance with Article 4 of Council Directive 98/18/EC of 17 March 1998 on safety rules and standards for passenger ships⁽¹⁾;
- (h) 'certificates' shall mean:
- (i) for ro-ro ferries and high-speed passenger craft engaged on international voyages, the safety certificates issued under the 1974 SOLAS Convention as amended, together with the relevant records of equipment and where appropriate exemption certificates and permits to operate;
- (ii) for ro-ro ferries and high-speed passenger craft engaged on domestic voyages, the safety certificates issued in accordance with Directive 98/18/EC together with the relevant records of equipment and where appropriate exemption certificates and permits to operate;
- (i) 'exemption certificate' shall mean any certificate issued under the provisions of Regulation I B/12(a)(vi) of the 1974 SOLAS Convention;
- (j) '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;
- (k) 'host State' shall mean a Member State to or from whose port(s) a ro-ro ferry or a high-speed passenger craft is engaged on a regular service;
- (l) 'international voyage' shall mean a voyage by sea from a port of a Member State to a port outside that Member State, or conversely;
- (m) '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;
- (n) 'recognised organisation' shall mean an organisation recognised in accordance with Article 4 of Directive 94/57/EC;
- (o) '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) No 3051/95 of 8 December 1995 on the safety management of roll on/roll off passenger ferries (ro-ro ferries) ⁽²⁾ or a company operating high-speed passenger craft, to which 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;
- (p) 'Code for the investigation of marine casualties' shall mean the Code for the investigation of marine casualties and incidents adopted by the IMO by means of Assembly Resolution A.849(20) of 27 November 1997;
- (q) 'specific survey' shall mean a survey by the host State as specified in Articles 6 and 8;
- (r) '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 V;
- (s) 'deficiency' shall mean a condition found not to be in compliance with the requirements of this Directive.

⁽¹⁾ OJ L 144, 15.5.1998, p. 1.

⁽²⁾ OJ L 320, 30.12.1995, p. 14. Regulation as amended by Commission Regulation (EC) No 179/98 (OJ L 19, 24.1.1998, p. 35).

*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 covered by Class A as referred to in Article 4 of Directive 98/18/EC.

2. Member States may apply this Directive to ro-ro ferries and high-speed passenger craft engaged on domestic voyages in sea areas other 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***Initial verifications required in relation to ro-ro ferries and high-speed passenger craft**

1. Prior to the start of operation by a ro-ro ferry or high-speed passenger craft on a regular service, or within 12 months of the date referred to in Article 19(1) for a ro-ro ferry or high-speed passenger craft already operating a regular service on that date, host States shall check that ro-ro ferries and high-speed passenger craft:

- (a) carry valid certificates, issued by the administration of the flag State or by a recognised organisation acting on its behalf;
- (b) have been 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 stand at the time of adoption of this Directive or with procedures designed to achieve the same goal;
- (c) comply with the standards specified for classification by the rules of a recognised organisation, or rules accepted as equivalent by the administration of the flag State for construction and maintenance of their hull, machinery and electrical and control installation;

(d) are 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 International Electrotechnical Commission (IEC) standard No 61996. However, for VDRs to be placed on board ro-ro ferries and high-speed passenger craft built before the entry into force 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 16;

(e) comply with specific stability requirements adopted at regional level, and transposed into their national legislation in accordance with the notification procedure laid down in Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on information society services⁽¹⁾, when operating in that region a service covered by that national legislation, provided those requirements do not exceed those specified in the Annex on Resolution 14 (Stability Requirements Pertaining to the Agreement) of the 1995 SOLAS Conference and have been notified to the Secretary-General of the IMO, in accordance with the procedures specified in point 3 of that resolution.

2. Paragraph 1(e) shall apply to high speed passenger craft only where appropriate.

*Article 5***Initial verifications required in relation to companies and flag States**

Prior to the start of operation by a ro-ro ferry or high-speed passenger craft on a regular service, or within 12 months of the date referred to in Article 19(1) for a ro-ro ferry or high-speed passenger craft already operating on a regular service on that date, host States shall:

⁽¹⁾ OJ L 204, 21.7.1998, p. 37. Directive as amended by Directive 98/48/EC (OJ L 217, 5.8.1998, p. 18).

1. check that companies which operate or intend to operate such a ferry or craft on regular service:
 - (a) take the necessary measures to ensure that the specific requirements laid down in Annex I are applied and provide the evidence of compliance with this paragraph and with Article 4 to the host States involved in the regular service;
 - (b) will agree in advance that host States and any substantially interested Member State may conduct, participate fully in or cooperate with any investigation of a marine casualty or incident in accordance with Article 12, and will give them access to the information retrieved from the VDR of their ferry or craft involved in such a casualty or incident.
2. Check for such a ferry or craft flying a flag other than that of a Member State, the concurrence of that flag State that it has accepted the company's commitment to meet the requirements of this Directive.

Article 6

Initial specific surveys

1. Prior to the start of operation by a ro-ro ferry or high-speed passenger craft on a regular service, or within 12 months of the date referred to in Article 19(1) for a ro-ro ferry and high-speed passenger craft already operating a regular service on that date, host States shall carry out an initial specific survey, in accordance with Annexes I and III, to satisfy themselves that the ro-ro ferry or high-speed passenger craft fulfils the necessary requirements for safe operation of a regular service.
2. Where this Article is applied prior to the start of operation, host States shall set a date for the initial specific survey which is no more than one month after receipt of the evidence necessary to complete the verification under Articles 4 and 5.

Article 7

Special provisions

1. When a ro-ro ferry or high-speed passenger craft is to be engaged on another regular service, a new

host State shall take the utmost account of verifications and surveys previously carried out for that ferry or craft for operation on a previous regular service covered by this Directive. Provided that the new host State is satisfied with these previous verifications and surveys and that they are relevant to the new operational conditions, Articles 4, 5 and 6 need not be applied prior to the ro-ro ferry or high-speed passenger craft starting operation on the new regular service.

2. Articles 4, 5 and 6 need not apply when a ro-ro ferry or high-speed passenger craft which complies with this Directive already operating a regular service covered by this Directive transfers to another regular service covered by this Directive transfers to another regular service where the route characteristics are agreed by the relevant host States to be similar, and the host States all agree that the ro-ro ferry or high-speed passenger craft fulfils all the requirements for safe operation on that service.

At the request of a company, the host States concerned may confirm in advance their agreement as to where route characteristics are similar.

3. In cases where, following unforeseen circumstances, a replacement ro-ro ferry or high-speed passenger craft must be introduced rapidly to ensure continuity of service, and paragraphs 1 and 2 are not applicable, the host State may allow the ferry or craft to start operating provided that:

- (a) a visual inspection and document check raise no concerns that the ro-ro ferry or high-speed passenger craft does not fulfil the necessary requirements for safe operation, and
- (b) the host State completes the verifications and surveys under Articles 4, 5 and 6 within one month.

Article 8

Regular specific surveys and other surveys

1. Host States shall, once in every 12-month period, carry out:

- a specific survey, in accordance with Annex III, and
- a survey during a regular service, which shall aim to cover enough items listed in Annexes I, III and IV in order to satisfy the host State that the ferry or craft continues to fulfil all the necessary requirements for safe operation.

An initial specific survey in accordance with Article 6 counts as a specific survey for the purposes of this Article.

2. A host State shall carry out a specific survey in accordance with Annex III 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. However, in case of change in management or flag, or transfer of class, the host State may, after taking account of verifications and surveys previously issued for the ferry or craft, and provided that the safe operation of the ferry or craft is not affected by this change or transfer, dispense the ferry or craft from the specific survey required by this paragraph.

3. Should the surveys referred to in paragraph 1 confirm or reveal deficiencies in relation to the requirements of this Directive warranting a prevention of operation, all costs relating to the surveys in any normal accounting period shall be covered by the company.

Article 9

Notification

Host States shall inform companies promptly, in writing, of the outcome of verifications and surveys under Articles 4, 5, 6 and 8.

Article 10

Prevention of operation

1. A host State shall prevent the operation of a ro-ro ferry or high-speed passenger craft on a regular service:

- (a) when it has been unable to confirm compliance with the requirements in Articles 4 and 5;
- (b) whenever deficiencies are found during the surveys referred to in Articles 6 and 8 which pose an immediate danger to life, the ferry or craft, its crew and passengers;

(c) when there is an established failure to comply with the Community instruments listed in Annex II which poses an immediate danger of life, the ferry or craft, its crew and passengers;

(d) whenever it has not been consulted by the flag State on the matters referred to in Article 13(1) or (5),

until the host State has established that the danger has been removed and the requirements of the Directive are met.

The host State shall inform the company in writing of the decision to prevent that ro-ro ferry or high-speed passenger craft operating, giving full reasoning.

2. However, where the ro-ro ferry or high-speed passenger craft is already operating a regular service and 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, provided they do not pose an immediate danger to the safety of the ferry or craft, its crew and passengers. After rectification of the deficiencies, the host States concerned shall verify that the rectification has been carried out to their full satisfaction. If this is not the case, they shall prevent the ferry or craft from operating.

3. Member States shall, in accordance with national legislation, establish and maintain appropriate procedures covering the right of appeal by a company against a decision to prevent operation. Appeals should be dealt with expeditiously. An appeal shall not cause the decision to be automatically suspended.

The competent authority shall duly inform the company of its right of appeal.

4. In cases where Articles 4, 5 and 6 are applied prior to the start of operation by a ro-ro ferry or high-speed passenger craft on a regular service, a decision to prevent a ship operating must be taken within one month of the initial specific survey and communicated to the company immediately.

*Article 11***Procedures related to initial and regular specific surveys**

1. 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) shall be exempted by these host State(s) from expanded inspections referred to in Article 7(4) of Directive 95/21/EC and from expanded inspections based on the clear grounds that they belong to the category of passenger ships referred to in Article 7(1) and Annex V.A.3 of that Directive.

2. Administrations of two or more host States involved in a specific survey of the same ship or craft shall cooperate with each other. The specific surveys shall be carried out by a team composed of qualified inspectors of the involved host State(s). Wherever there is a need for qualitative assessment of the fulfilment of class-related provisions, host States shall ensure the necessary expertise is included in the team, where appropriate by including a surveyor of a recognised organisation. The inspectors shall report deficiencies to the administrations of the host States. The host State shall communicate this information to the flag State, if that State is not a host State involved in the survey.

3. An involved host State may agree to carry out a survey at the request of another involved host State.

4. Host States, when requested 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.

5. Host States, in planning a survey in accordance with Articles 6 and 8, shall take due account of the operational and maintenance schedule of the ferry or craft.

6. 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 16.

7. In case of persistent disagreement between host States on the fulfilment of the requirements of Articles

4 and 5(1), the administration of any host State involved in a specific survey shall immediately notify to the Commission the reasons of the disagreement.

8. The Commission shall immediately start proceedings in order to take a decision in accordance with the procedure laid down in Article 16.

*Article 12***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 participate, to cooperate in, or where provided for under the Code for the investigation of marine casualties, to conduct any marine casualty or incident investigation involving a ro-ro ferry or high-speed passenger craft.

2. 'Substantially interested State', 'lead investigating State' and 'marine casualty' shall have the same meaning as in the Code for the investigation of marine casualties.

3. When a ro-ro ferry or high-speed passenger craft is involved in a marine casualty, the investigation procedure shall be launched by the State in whose waters the accident or incident occurs or, if in other waters, by the last Member State visited by the ferry or craft. This State shall remain responsible for the investigation and coordination with other substantially interested States until such time as it is mutually agreed which is to be the lead investigating State.

4. Member States conducting, participating in or cooperating with 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.

5. Member States shall ensure that reports resulting from such an investigation are made public in accordance with point 12.3 of the Code for the investigation of marine casualties and notified to the Commission.

*Article 13***Accompanying measures**

1. Member States issuing or recognising 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 should operate shore-based navigational guidance systems and other information schemes in accordance with IMO Resolution A.795(19) to assist ro-ro ferries and high-speed passenger craft in the safe conduct of the regular service, or part of it, for the safety of which they bear responsibility.

3. Each Member State shall provide to the Commission copies of the survey reports referred to in Article 11(6), with the IMO identification number where applicable. The Commission may, in accordance with the procedure laid down in Article 16, decide on appropriate means for allocating an identification number to other vessels. If two or more host States are involved in the regular service, the data may be provided by one of these host States. The Commission shall set up and maintain a database containing the information provided. Conditions of access to the database shall be decided in accordance with the procedure laid down in Article 16.

4. 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.

5. 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 enforcement of these restrictions.

*Article 14***Cooperation between host States**

Host States involved in the same regular service shall liaise with each other when applying this Directive.

*Article 15***Supporting measures**

The Member States shall inform third States which have 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 16***Regulatory committee**

1. The Commission shall be assisted by the committee set up under Article 12(1) of Directive 93/75/EEC.

2. The representative of the Commission shall submit to the committee a draft of the measures to be taken. The committee shall deliver its opinion on the draft within a time limit which the chairman may lay down according to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 148(2) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States within the committee shall be weighted in the manner set out in that Article. The chairman shall not vote.

3. (a) The Commission shall adopt the measures envisaged if they are in accordance with the opinion of the committee.

(b) If the measures envisaged are not in accordance with the opinion of the committee, or if no opinion is delivered, the Commission shall, without delay, submit to the Council a proposal relating to the measures to be taken.

The Council shall act by a qualified majority. If, on the expiry of eight weeks from the date of referral to the Council, the Council has not acted, the proposed measures shall be adopted by the Commission.

Article 17

Amendment procedure

In accordance with the procedure laid down in Article 16:

- (a) the Annexes,
- (b) the definitions,
- (c) references to Community instruments,
- (d) references to IMO resolutions,

may be amended to the extent necessary to bring them into line with Community or IMO measures which have entered into force, but without broadening the scope of this Directive.

The Annexes may also be amended in accordance with the procedure laid down in Article 16 when it is necessary to improve the arrangements established by this Directive, but without broadening its scope.

Article 18

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 19

Application

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

2. The provisions of Article 4(1)(d) shall be applied no later than 30 months after the publication date of IEC standard No 61996 or by 1 January 2001, whichever of these dates comes later.

3. 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.

4. 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 20

Assessment of application

Three years after the date referred to in Article 19(1), the Commission shall assess, on the basis of information to be provided by the Member States in accordance with Article 13, the application of this Directive.

Article 21

Entry into force

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

Article 22

Addressees

This Directive is addressed to the Member States.

Done at Luxembourg, 29 April 1999.

For the Council

The President

W. MÜLLER

ANNEX I

SPECIFIC REQUIREMENTS TO BE FULFILLED BY COMPANIES

as referred to in Article 5(1), and Articles 6 and 8

Companies are to ensure that on board their ro-ro ferries and high-speed passenger craft:

1. 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 ferry or craft begins to sail, and that he makes use of the navigational guidance and information schemes set up by Member States;
 2. the relevant provisions of paragraphs 2 to 6 of MSC/Circular 699, on revised guidelines for passenger safety instructions, are applied;
 3. a table with the shipboard working arrangements is posted in an easily accessible place, and contains:
 - (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 for watchkeepers;
 4. the master is not constrained from taking any decision, which in his professional judgment is necessary for safe navigation and operation, in particular in severe weather and in heavy seas;
 5. the master keeps a record of navigational activities and incidents which are of importance to safety of navigation;
 6. 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;
 7. 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, are to be taken fully into account;
 8. 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.
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*ANNEX II***LIST OF COMMUNITY INSTRUMENTS**

referred to in Article 10(1c)

- 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 L 247, 5.10.1993, p. 19). Directive as last amended by Commission Directive 98/74/EC (OJ L 276, 13.10.1998, p. 7),
 - Council Directive 94/58/EC of 22 November 1994 on the minimum level of training of seafarers (OJ L 319, 12.12.1994, p. 28). Directive as last amended by Directive 98/35/EC (OJ L 172, 17.6.1998, p. 1), where applicable,
 - 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). Regulation as amended by Commission Regulation (EC) No 179/98 (OJ L 19, 24.1.1998, p. 35).
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ANNEX III

PROCEDURES FOR SPECIFIC SURVEYS

(as referred to in Articles 6 and 8)

1. The specific surveys are to ensure that statutory requirements, in particular those for construction, subdivision and stability, machinery and electrical installations, loading, stability, fire protection, maximum number of passengers, life saving appliances and the carriage of dangerous goods, radiocommunications and navigation are fulfilled and are for that purpose, and where applicable at least to 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 that all lifeboats and rescue boats correspond to the inventory,
 - the testing of the ship's or craft's steering gear and auxiliary steering gear.
2. Specific surveys shall include the verification of the planned maintenance system on board.
3. Specific surveys shall focus on the familiarisation of crew members with, and their effectiveness in, safety procedures, emergency procedures, maintenance, 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,

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- 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 as to whether rostering patterns are causing unreasonable fatigue particularly for watch-keeping personnel.

4. Certificates of competence of the crew members issued by third States shall only be recognised when they comply with Regulation I/10 of the revised International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW Convention).
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ANNEX IV

INDICATIVE GUIDELINES FOR QUALIFIED INSPECTORS WHEN CARRYING OUT
UNSCHEDULED SURVEYS DURING A REGULAR CROSSING

(as referred to in Article 8(1))

1. *Passenger information*

The means used to ensure that the passenger number for which the ro-ro ferry or high-speed passenger craft (hereafter referred to as '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 undertaking 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 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 paragraph 8.

11. *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.

12. *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.

13. *Safety equipment*

That the live-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.

14. *Navigational and radio equipment*

That the navigational and radio communications equipment, including emergency position-indicating radio beacons (EPIRBs), are operational.

15. *Supplementary emergency lighting*

That supplementary emergency lighting is fitted, when required by the regulations, and that a record of deficiencies is being kept.

16. *Means of escape*

Marking, in accordance with the applicable requirements, and the lighting, 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.

17. *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.

18. *Engine room cleanliness*

That the engine room is maintained in a clean condition with regard to maintenance procedures.

19. *Garbage disposal*

That the arrangements for the handling and disposal of garbage are satisfactory.

20. *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.

21. *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 V

CRITERIA OF QUALIFICATION AND INDEPENDENCE FOR QUALIFIED INSPECTORS

(as referred to in Article 2(r))

1. The qualified inspector must be authorised to carry out the specific surveys referred to in Article 6 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 1 600 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 3 000 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 equivalent 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 in 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 or issue certificates for that ro-ro ferry or high-speed passenger craft.
 6. Inspectors not fulfilling the above criteria are also accepted if they were employed by the competent authority for statutory surveys or port State control inspections at the date of adoption of Directive 95/21/EC.
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