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(Information)

COUNCIL

COMMON POSITION (EC) No 23/95

adopted by the Council on 28 September 1995

with a view to adopting Council Regulation (EC) No .../95 of ... on the safety management of roll-on/roll-off passenger ferries (ro-ro ferries)

(95/C 297/01)

THE COUNCIL OF THE EUROPEAN UNION,

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

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⁾,

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

Whereas the International Safety Management Code providing for the safe operation of ships and for pollution prevention, hereinafter referred to as the 'ISM Code', was adopted by the International Maritime Organization (IMO) through Assembly Resolution A.741(18) of 4 November 1993 in the presence of the Member States and, through its incorporation into the

International Convention on the Safety of Life at Sea 1974, will apply to ro-ro passenger vessels from 1 July 1998;

Whereas this represents one of a series of measures to improve safety at sea; whereas the ISM Code is not yet of a mandatory but of a recommendatory nature;

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

Whereas the Community's most urgent concern is for the safety management of ro-ro passenger ferries; whereas a uniform and coherent implementation of the ISM Code in all Member States can constitute a step towards the safety management of ro-ro passenger ferries;

Whereas in its resolution of 22 December 1994 on the safety of roll-on/roll-off passenger ferries ⁽⁴⁾, the Council invited the Commission to submit a proposal on the advance mandatory application of the ISM Code to all regular roll-on/roll-off passenger ferry services operating to or from European ports, in compliance with international law;

Whereas strict and mandatory application of the ISM Code is required to ensure the establishment and proper maintenance of safety management systems by companies

⁽¹⁾ OJ No C 000, ..., p. ..., and amended proposal forwarded on ... (not yet published in the Official Journal).⁽²⁾ Issued on 31 May 1995 (not yet published in the Official Journal).⁽³⁾ Opinion of the European Parliament of 16 June 1995 (not yet published in the Official Journal), Council common position of ... (not yet published in the Official Journal) and decision of the European Parliament of ... (not yet published in the Official Journal).⁽⁴⁾ OJ No C 379, 31. 12. 1994, p. 8.

operating seagoing ro-ro passenger ferries both at ship and at company level;

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

Whereas the advance mandatory implementation of the ISM Code to all ro-ro ferries regardless of their flag also takes into account the request contained in point 2 of IMO Resolution A.741(18) which strongly urges Governments to implement the Code as soon as possible, giving priority *inter alia* to passenger ships;

Whereas the safety of ships is the primary responsibility of flag States; whereas Member States can ensure compliance with adequate safety management rules by ferries flying their flag and companies operating them; whereas the only way to ensure the safety of all ro-ro ferries, irrespective of their flag, operating or wishing to operate on a regular service from their ports is for the Member States to require effective compliance with safety rules as a condition for operating on a regular service from their ports;

Whereas companies operating ro-ro ferries exclusively in sheltered waters between ports in the same Member State constitute a more limited risk and will need to assume a proportionately greater administrative work-load than other companies, and should therefore enjoy a temporary derogation;

Whereas it is necessary to identify the requirements under which the provisions of the ISM Code are enforced and to define the conditions for the issue and verification of the document of compliance and of the safety management certificate;

Whereas Member States might find it necessary to delegate or rely upon specialized bodies in order to fulfil their obligations under this Regulation; whereas the appropriate way of ensuring a uniform and adequate level of control is to require that such bodies should only be those which meet the requirements of Council Directive 94/57/EC of 22 November 1994 on common rules and standards for ship inspection and survey organizations and for the relevant activities of maritime administrations⁽¹⁾;

Whereas a Member State must have the possibility of suspending the operation of certain ro-ro ferries from its ports where it considers that there is a risk of serious danger to safety of life or property or the environment, subject to a decision to be taken in the framework of a regulatory committee, to which the Member States must conform;

Whereas a simplified procedure involving a committee of a regulatory nature is necessary to amend this Regulation taking into account developments at international level;

Whereas the rapid introduction of these safety rules raises specific technical and administrative problems for Greece because of the very large number of companies established in Greece operating ferries under the Greek flag and exclusively between Greek ports; whereas a derogation of limited duration to cover this situation should therefore be granted bearing in mind in addition that regular passenger and ferry services between Greek ports have been excluded until 1 January 2004 from the freedom to provide services granted by Council Regulation (EEC) No 3577/92 of 7 December 1992 applying the principle of freedom to provide services to maritime transport within Member States (maritime cabotage)⁽¹⁾,

HAS ADOPTED THIS REGULATION:

Article 1

The purpose of this Regulation is to enhance the safe management, safe operation and pollution prevention of ro-ro passenger ferries operating to or from ports of the Member States of the Community on a regular service by ensuring that companies operating ro-ro ferries comply with the ISM Code through:

- the establishment and proper maintenance of shipboard and shore-based safety management systems by companies, and
- the control thereof by flag and port State administrations.

Article 2

For the purpose of this Regulation and with a view to the implementation of the ISM code:

- (a) 'ro-ro-ferry' means 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;

⁽¹⁾ OJ No L 319, 12. 12. 1994, p. 20.

⁽²⁾ OJ No L 364, 12. 12. 1992, p. 7.

- (b) 'regular service' means a series of ro-ro ferry crossings operated so as to serve traffic between the same two or more points, either:
1. according to a published timetable; or
 2. with crossings so regular or frequent that they constitute a recognizable systematic series;
- (c) 'company' means the owner of a ro-ro ferry or any other organization or person such as the manager, or the bareboat charterer, who has assumed responsibility for operating the ro-ro ferry from the owner;
- (d) 'recognized organization' means a body recognized in compliance with the provisions of Directive 94/57/EC;
- (e) 'ISM Code' means the International Management Code for the Safe Operation of Ships and for Pollution prevention, adopted by the IMO through Assembly Resolution A.741(18) of 4 November 1993, and annexed to this Regulation;
- (f) 'administration' means the government of the State whose flag the ro-ro ferry is entitled to fly;
- (g) 'document of compliance' means the document issued to companies in conformity with paragraph 13.2 of the ISM Code;
- (h) 'safety management certificate' means the certificate issued to ro-ro ferries in conformity with paragraph 13.4 of the ISM Code;
- (i) 'sheltered waters' means areas where the annual probability of the significant wave height exceeding 1,5 m is less than 10 %, and in which a ro-ro ferry is at no time more than six nautical miles from a place of refuge where shipwrecked persons can land.

Article 3

The Regulation shall apply to all companies, operating at least one ro-ro ferry to or from a port of a Member State of the Community on a regular service regardless of its flag.

Article 4

1. All companies shall comply with all the provisions of paragraphs 1.2 to 13.1 and of paragraph 13.3 of the ISM Code, as if the provisions thereof were mandatory, as a requirement for their vessels to provide regular services to or from a port of a Member State of the Community.

2. By way of derogation from paragraph 1, companies operating a ro-ro ferry or ferries on a regular service exclusively in sheltered waters between ports situated in the same Member State may defer compliance with the provisions of this Regulation until 1 July 1997.

Article 5

1. Member States shall comply with the provisions of paragraphs 13.2, 13.4 and 13.5 of the ISM Code as if the provisions thereof were mandatory in relation to companies and ro-ro ferries.

2. For the purposes of paragraph 1, Member States may only authorize, or rely upon, fully or in part, a recognized organization.

For the purposes of paragraph 13.2 of the ISM Code, a Member State may only issue documents of compliance for a company which has its principal place of business on its own territory. Prior to such issue, the Member States shall consult the administration of the States whose flag the ro-ro-ferries of that company are entitled to fly, if that administration is not that of the issuing Member State.

3. The document of compliance shall only be valid for five years from the date of its issue, provided always that a verification takes place once a year, in order to confirm the proper functioning of the safety management system, and to confirm that possible modifications introduced since the latest verification satisfy the provisions of the ISM Code.

4. The safety management certificate shall only be valid for five years from the date of its issue, provided always that an intermediate verification takes place at least every 30 months or more frequently in order to confirm the proper functioning of the safety management system and to confirm that possible modifications introduced since the latest verification satisfy the provisions of the ISM Code.

5. For the purposes of this Regulation, and in particular Article 6, each Member State shall accept a document of compliance or a safety management certificate issued by the administration of any other Member State or by a recognized organization acting on its behalf.

6. A Member State shall recognize the documents of compliance and safety management certificates issued by, or on behalf of, the administrations of third countries if it is satisfied that they demonstrate compliance with the provisions of this Regulation.

Documents of compliance and safety management certificates issued on behalf of administrations of third countries may only be recognized if they have been issued by a recognized organization.

Article 6

Member States shall satisfy themselves that all companies providing regular ro-ro ferry services to or from their ports comply with the provisions of this Regulation.

Article 7

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

In the above circumstances the following procedure shall apply:

- (a) the Member State shall inform the Commission and the other Member States of its decision without delay, giving substantiated reasons therefor;
- (b) the Commission shall examine whether the suspension is justified for reasons of serious danger to safety and the environment;
- (c) it will be decided, in accordance with the procedure laid down in Article 10 (2), whether or not the decision of the Member State to suspend the operation of such service is justified for reasons of serious danger to safety of life or property, or the environment and, if the suspension is not justified, that the Member State concerned will be requested to withdraw the suspension.

Article 8

In order to take account of the general terms of the ISM Code, the Commission shall review the implementation of this Regulation three years after its entry into force and propose any appropriate measures.

Article 9

In order to take account of developments at international level and, in particular, in the IMO,

- (a) the definition of the 'ISM Code' in Article 2;
- (b) the periods of validity of the document of compliance and/or the safety management certificate and the frequency of verification relating thereto in Article 5 (3) and (4);
- (c) the Annex;
- (d) the definition of 'recognized organization' in Article 2;

may be amended, in accordance with the procedure laid down in Article 10 (2), in particular to introduce into the Annex guidelines for administrations for the implementation of the ISM Code.

Article 10

1. The Commission shall be assisted by the Committee established by Article 12 (1) of Council Directive 93/75/EEC⁽¹⁾.

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.

(c) If, on the expiry of a period of 40 days from the date of referral to the Council, the Council has not acted, the proposed measures shall be adopted by the Commission.

Article 11

This Regulation shall enter into force on 1 January 1996.

It shall be applicable as from 1 July 1996.

By way of derogation from the first subparagraph, this Regulation shall not apply until 31 December 1997 to companies which are incorporated under Greek law, which have their principal place of business in Greece, and which operate ro-ro ferries registered in and flying the flag of Greece providing regular services exclusively between ports situated in Greece.

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

Done at . . .

For the Council

The President

⁽¹⁾ Council Directive 93/75/EEC of 13 September 1993 concerning minimum requirements for vessels bound for a leaving Community ports and carrying dangerous or polluting goods (OJ No L 247, 5. 10. 1993, p. 19).

ANNEX

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

Safety and pollution prevention management requirements

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PREAMBLE

1. The purpose of this Code is to provide an international standard for the safe management and operation of ships and for pollution prevention.
2. The Assembly adopted resolution A.443(XI) by which it invited all governments to take the necessary steps to safeguard the shipmaster in the proper discharge of his responsibilities with regard to maritime safety and the protection of the marine environment.
3. The Assembly also adopted Resolution A.680(17) by which it further recognized the need for appropriate organization of management to enable it to respond to the need of those on board ships to achieve and maintain high standards of safety and environmental protection.
4. Recognizing that no two shipping companies or shipowners are the same, and that ships operate under a wide range of different conditions, the Code is based on general principles and objectives.
5. The Code is expressed in broad terms so that it can have widespread application. Clearly, different levels of management, whether shore-based or at sea, will require varying levels of knowledge and awareness of the items outlined.
6. The cornerstone of good safety management is commitment from the top. In matters of safety and pollution prevention it is the commitment, competence, attitudes and motivation of individuals at all levels that determines the end result.

1. GENERAL

1.1. Definitions

- 1.1.1. 'International Safety Management (ISM) Code' means the International Management Code for the Safe Operation of Ships and for Pollution Prevention as adopted by the Assembly, as may be amended by the organization.
- 1.1.2. 'company' means the owner of the ship or any other organization or person such as the manager, or the bareboat charterer, who has assumed the responsibility for operation of the ship from the shipowner and who on assuming such responsibility has agreed to take over all the duties and responsibility imposed by the Code.
- 1.1.3. 'administration' means the government of the State whose flag the ship is entitled to fly.

1.2. Objectives

- 1.2.1. The objectives of the Code are to ensure safety at sea, prevention of human injury or loss of life, and avoidance of damage to the environment, in particular, to the marine environment, and to property.
- 1.2.2. Safety management objectives of the company should, *inter alia*:
1. provide for safe practices in ship operation and a safe working environment;
 2. establish safeguards against all identified risks; and
 3. continuously improve safety management skills of personnel ashore and aboard ships, including preparing for emergencies related both to safety and environmental protection.
- 1.2.3. The safety management system should ensure:
1. compliance with mandatory rules and regulations; and
 2. that applicable codes, guidelines and standards recommended by the organization, administrations, classification societies and maritime industry organizations are taken into account.

1.3. Application

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

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

Every company should develop, implement and maintain a safety management system (SMS) which included the following functional requirements:

1. a safety and environmental protection policy;
2. instructions and procedures to ensure safe operation of ships and protection of the environment in compliance with relevant international and flag State legislation;
3. defined levels of authority and lines of communication between, and amongst, shore and shipboard personnel;
4. procedures for reporting accidents and non-conformities with the provisions of this Code;
5. procedures to prepare for and respond to emergency situations; and
6. procedures for internal audits and management reviews.

2. SAFETY AND ENVIRONMENTAL PROTECTION POLICY

- 2.1. The company should establish a safety and environmental protection policy which describes how the objectives, given in paragraph 1.2, will be achieved.
- 2.2. The company should ensure that the policy is implemented and maintained at all levels of the organization both ship based as well as shore based.

3. COMPANY RESPONSIBILITIES AND AUTHORITY

- 3.1. If the entity who is responsible for the operation of the ship is other than the owner, the owner must report the full name and details of such entity to the administration.
- 3.2. The company should define and document the responsibility, authority and interrelation of all personnel who manage, perform and verify work relating to and affecting safety and pollution prevention.
- 3.3. The company is responsible for ensuring that adequate resources and shore-based support are provided to enable the designated person or persons to carry out their functions.

4. DESIGNATED PERSON(S)

To ensure the safe operation of each ship and to provide a link between the company and those on board, every company, as appropriate, should designate a person or persons ashore having direct access to the highest level of management. The responsibility and authority of the designated person or persons should include monitoring the safety and pollution prevention aspects of the operation of each ship and ensuring that adequate resources and shore-based support are applied, as required.

5. MASTER'S RESPONSIBILITY AND AUTHORITY

- 5.1. The company should clearly define and document the master's responsibility with regard to:
 1. implementing the safety and environmental protection policy of the company;
 2. motivating the crew in the observation of that policy;
 3. issuing appropriate orders and instructions in a clear and simple manner;
 4. verifying that specified requirements are observed; and
 5. reviewing the SMS and reporting its deficiencies to the shore-based management.
- 5.2. The company should ensure that the SMS operating on board the ship contains a clear statement emphasizing the masters's authority. The company should establish in the SMS that the master has the overriding authority and the responsibility to make decisions with respect to safety and pollution prevention and to request the company's assistance as may be necessary.

6. RESOURCES AND PERSONNEL

- 6.1. The company should ensure that the master is:
 1. properly qualified for command;
 2. fully conversant with the company's SMS; and
 3. given the necessary support so that the master's duties can be safely performed.
- 6.2. The company should ensure that each ship is manned with qualified, certificated and medically fit seafarers in accordance with national and international requirements.
- 6.3. The company should establish procedures to ensure that new personnel and personnel transferred to new assignments related to safety and protection of the environment are given proper familiarization with their duties. Instructions which are essential to be provided prior to sailing should be identified, documented and given.

- 6.4. The company should ensure that all personnel involved in the company's SMS have an adequate understanding of relevant rules, regulations, codes and guidelines.
- 6.5. The company should establish and maintain procedures for identifying any training which may be required in support of the SMS and ensure that such training is provided for all personnel concerned.
- 6.6. The company should establish procedures by which the ship's personnel receive relevant information on the SMS in a working language or languages understood by them.
- 6.7. The company should ensure that the ship's personnel are able to communicate effectively in the execution of their duties related to the SMS.

7. DEVELOPMENT OF PLANS FOR SHIPBOARD OPERATIONS

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

8. EMERGENCY PREPAREDNESS

- 8.1. The company should establish procedures to identify, describe and respond to potential emergency shipboard situations.
- 8.2. The company should establish programmes for drills and exercises to prepare for emergency actions.
- 8.3. The SMS should provide for measures ensuring that the company's organization can respond at any time to hazards, accidents and emergency situations involving its ships.

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

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

10. MAINTENANCE OF THE SHIP AND EQUIPMENT

- 10.1. The company should establish procedures to ensure that the ship is maintained in conformity with the provisions of the relevant rules and regulations and with any additional requirements which may be established by the company.
- 10.2. In meeting these requirements the company should ensure that:
 1. inspections are held at appropriate intervals;
 2. any non-conformity is reported with its possible cause, if known;
 3. appropriate corrective action is taken; and
 4. records of these activities are maintained.
- 10.3. The company should establish procedures in SMS to identify equipment and technical systems the sudden operational failure of which may result in hazardous situations. The SMS should provide for specific measures aimed at promoting the reliability of such equipment or systems. These measures should include the regular testing of stand-by arrangements and equipment or technical systems that are not in continuous use.

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

11. DOCUMENTATION

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

11.2. The company should ensure that:

1. valid documents are available at all relevant locations;
2. changes to documents are reviewed and approved by authorized personnel; and
3. obsolete documents are promptly removed.

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

12. COMPANY VERIFICATION, REVIEW AND EVALUATION

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

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

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

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

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

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

13. CERTIFICATION, VERIFICATION AND CONTROL

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

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

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

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

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

STATEMENT OF THE COUNCIL'S REASONS

I. INTRODUCTION

On 15 February 1995 the Commission submitted to the Council its proposal for a Council Regulation, based on Article 84 (2) of the Treaty, on the safety management of roll-on roll-off passenger vessels ⁽¹⁾.

The European Parliament issued its opinion in the first reading on 14 June 1995 ⁽²⁾. The Economic and Social Committee issued its opinion on 31 May 1995 ⁽³⁾.

In the light of these opinions, the Commission amended its proposal and transmitted it to the Council on 15 June 1995 ⁽⁴⁾.

On 19 June 1995 the Council reached an agreement on the draft common position with a view to adopting the Regulation. The Council adopted its common position in accordance with Article 189c of the Treaty on 28 September 1995.

II. PURPOSE OF THE PROPOSAL

The proposal aims at implementing the Council resolution of 22 December 1994 on the safety of roll-on/roll-off passenger vessels ⁽⁵⁾, in which the Council 'invited the Commission to submit proposals for Council decisions concerning (i. a.) the advance mandatory application of the International Safety Management Code (IMO Resolution A.741/18) ⁽⁶⁾ by 1 July 1996 to all regular roll-on/roll-off passenger ferry services operating to or from European ports, in compliance with international law'.

The ISM Code is a non-mandatory instrument which will enter into force on 1 July 1996. It recommends shipping companies to set up a 'safety management system' (SMS), consisting of an enterprise policy, an organizational structure ashore and on board ships, a training programme, a personnel and ship management as well as control procedures, designed to provide for the safe operation of the ships and the protection of the environment.

III. ANALYSIS OF THE COMMON POSITION

The common position adopted by the Council corresponds largely to the amended proposal submitted by the Commission and takes on board most of the amendments adopted by the European Parliament. The other amendments introduced by the Council do not affect the purpose of the proposed Regulation; they rather enhance the expected effectiveness of certain provisions or clarify them.

A. Amendments by Parliament, accepted by the Council

Most of the amendments proposed by Parliament were accepted without reservation and others were accepted in substance and subject to redrafting.

All amendments below were also accepted by the Commission.

⁽¹⁾ Doc. COM(95) 28 final 95/0028 (SYN).

⁽²⁾ Doc. PE 192.035.

⁽³⁾ OJ No C 236, 11. 9. 1995, p. 42.

⁽⁴⁾ Doc. COM(95) 286 final.

⁽⁵⁾ OJ No C 379, 31. 12. 1994, p. 8 sub II 1.

⁽⁶⁾ Resolution A.741(18) on the International Management Code for the Safe Operation of Ships and for Pollution Prevention, adopted by the Assembly of IMO on 4 November 1993. The text of the ISM Code is annexed to the draft Regulation.

- Amendment 1 (third Council recital) — accepted in the modified form proposed by the Commission.
- Amendment 5 (fifth Council recital).
- Amendment 6 (Article 2) — in so far as it proposes a definition of ‘regular service’.
- Amendment 7 (Article 4) — however, the word ‘small’ was deleted, in the second paragraph. The Council, as well as the Commission, found that it was very difficult to define ‘small’ companies.
- Amendment 8 (see Article 11 of the Council text).
- Amendment 9 (see Article 2 (i) of the Council text).
- Amendment 10 (Article 5 (1)).
- Amendment 11 (Article 5 (4)) — the Council however preferred verifications at least every 30 months. It found that an intermediate verification once every year would put an excessive burden on the Member States. The Council text also corresponds to the minimum standard of IMO. Nevertheless, new Article 9 (b) opens the door for a later modification of this periodicity.
- Amendment 12 (Article 5 (3)).
- Amendment 14 (Article 8 of the Council text) — as proposed by the Commission, the Council deleted the words ‘and the differences . . .’.

B. Amendments by Parliament, rejected by the Council

All amendments below were also rejected by the Commission, unless otherwise indicated.

- Amendments 2, 3 and 4 (recitals 2b, 2c and 3).
These amendments introduce new recitals which refer to matters outside the scope of the Regulation.
- Amendment 6 (Article 2)
This amendment was rejected in so far as it introduces a new definition of ‘seagoing vessel’, because the definition proposed by Parliament excluded ships navigating in or close to sheltered waters.
- Amendment 13 (Article 7)
The amendment could affect the right of Member States to impose conditions for the resumption of the service.
- Amendment 15 (first ⁽¹⁾ and second part) (Article 9 of the Council text)
This amendment was rejected because the Community is not entitled to amend the ISM Code.
- Amendment 16 (Article 9a)
This new Article was considered to be unnecessary and would interfere with the responsibilities of the Member States.

C. Main amendments by the Council not proposed by Parliament

Ninth recital: This new recital is meant to help in justifying, together with Unclous Article 211 (3) (see the end of Article 4 (1)), the anticipated application of the ISM Code to companies and passenger vessels of third countries serving Community ports.

⁽¹⁾ The first part was accepted by the Commission.

11th recital: This new recital motivates new Article 4 (2).

12th recital: This new recital corresponds to the redrafting of Article 5.

Last recital: This new recital explains the new Article 11 (2).

Article 3: The words 'irrespective . . .' were deleted, as they could be interpreted as an attempt to give extra-territorial application to Community law.

Article 4 (1): The word 'requirement' was substituted for 'condition' in order not to give the impression that companies and ships would need to undergo a prior authorization procedure before opening a shipping line.

Article 5 (2), second subparagraph: Corresponds to Article 5 (3) of the Commission proposal. The idea was retained that a Member State may only issue documents of compliance for companies having their principal place of business on its territory. In order to take into account the provision of paragraph 13.2 of the ISM Code, it was provided that the flag States of the company's ships will be consulted by the Member State of establishment.

Article 5 (5) and (6): Correspond to Article 6 (2) and (3) of the Commission proposal. The wording has become more explicit.

Article 7: The word 'risk' was added in the first subparagraph. The end of (c) was modified so that the withdrawal of a suspension to operate will be decided, not by the Community, but by the body that has taken the suspension decision. The effects of the Community request to withdraw the suspension were explained in the 14th recital.

Article 9: The Council added a new letter (b), the meaning of which is explained in the comment on Parliament amendment 11 (see Part A).

Article 10: The Council introduced committee procedure IIIA of Decision 87/373/EEC.
