

— Article 20 of the proposal repeals Council Decision 73/391/EEC. Annex III to the proposal, however, also mentions Council Decision 76/641/EEC under the title 'Repealed Decision with its amendment'. Hence, in order to be consistent, the amendment introduced by Decision 76/641/EEC should also be repealed in Article 20.

2.6 Moreover, particular attention needs to be paid to ensuring that the translations are correct since inaccuracies could lead to legal uncertainty and to the legislation being wrongly applied.

Brussels, 30 June 2004.

The President
of the European Economic and Social Committee
 Roger BRIESCH

Opinion of the European Economic and Social Committee on the 'Proposal for a regulation of the European Parliament and of the Council on the implementation of the International Safety Management Code within the Community'

(COM(2003) 767 final — 2003/0291 (COD))

(2004/C 302/05)

On 13 January 2004, the Council of the European Union decided to consult the European Economic and Social Committee, under Article 80(2) of the Treaty establishing the European Community, on the above-mentioned proposal.

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 10 May 2004. The rapporteur was Dr Bredima Savopoulou.

At its 410th plenary session of 30 June and 1 July 2004 (meeting of 30 June), the European Economic and Social Committee adopted the following opinion by 155 votes to 2, with 4 abstentions:

1. Introduction

1.1 The International Management Code for the Safe Operation of Ships and Pollution Prevention (ISM Code) was adopted by the International Maritime Organisation (IMO) in 1979 as a tool to promote the development of a safety culture and environmental conscience in shipping. In 1994 the IMO decided to make the Code mandatory through the adoption of a new Chapter IX 'Management for the Safe Operation of Ships', in the International Convention for the Safety of Life at Sea (SOLAS) 1974.

1.2 The mandatory application of the Code was effected in two phases. On 1 July 1998 it became mandatory for companies operating passenger ships, oil tankers, chemical tankers, gas carriers and bulk carriers of 500 gross tons and over, engaged on international voyages. On 1 July 2002 the Code became mandatory for companies operating other cargo ships of 500 gross tons and over, engaged on international sea voyages.

1.3 In response to the Estonia tragedy the EU decided to take action for the early implementation of the ISM Code for ro-ro passenger ferries engaged on international and domestic voyages within the Community by 1/7/1996 under Regulation (EC) 3051/95 (8/12/1995) ⁽¹⁾. The EESC in its relevant opinion welcomed the proposed action and supported the Commission's initiative. ⁽²⁾

1.4 The Regulation has been amended twice: a) by Regulation 179/1998 ⁽³⁾ concerning the uniform implementation of the ISM Code documents / certificates for ferries operating in Europe and b) by the Regulation 1970/2002 ⁽⁴⁾ taking account of subsequent amendments to the ISM Code adopted by IMO. The Regulation entered into force on 26 November 2002.

⁽¹⁾ 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.

⁽²⁾ OJ C 236 of 11.9.1995, p. 42.

⁽³⁾ OJ L 19 of 24.01.1998, p. 35.

⁽⁴⁾ OJ L 302 of 6.12.2002, p. 3.

2. The Commission's proposal

2.1 When Regulation (EC) No 3051/95 was adopted Member States and the European Parliament stated that the application of the ISM Code to ro-ro passenger ferries was a priority, but also that it was the first of a series of continuing initiatives to improve safety at sea.

2.2 The proposed Regulation is of a more general nature, it will replace Regulation (EC) No 3051/95 and its main purpose is to facilitate the correct, strict and harmonised implementation of the Code in all Member States and acceding countries. The Regulation will maintain in parallel the existing EU ISM rules applicable to ro-ro ferries, irrespective of their flag and sailing on a regular service to and from European ports.

2.3 The Regulation will apply to any companies operating one or more of the following ships at sea:

- cargo ships, flying the flag of a Member State engaged in international and domestic voyages;
- passenger ships flying the flag of a Member State engaged on international voyages;
- passenger ships engaged on domestic voyages in sea areas of Class A and B, as defined in article 4 of Directive 98/18/EC, regardless of their flag;
- ro-ro passenger ferries operating to or from ports of the Member States of the Community on a regular ro-ro passenger ferry service, regardless of their flag; and
- cargo ships, operating to or from ports of the Member States of the Community on a cabotage feeder service, regardless of their flag.

2.4 The scope of the proposed regulation is based on the provisions of Chapter IX of SOLAS Convention, and applies to all ships falling under the scope of SOLAS and flying the flag of a Member State, even if they operate on domestic voyages. Nevertheless, for passenger ships operating on domestic voyages the provisions will only apply to passenger ships operating more than five miles from the coastline, but these rules will apply to all flags.

2.5 Any company operating one or more of the aforementioned ships will have to comply with the International Management Code for the safe operation of ships and for pollution prevention (ISM Code), reproduced at Title I of the Annex. Member States will have to comply with the Guidelines on the certification process (Provisions for the Administration concerning the implementation of the ISM Code), as outlined in Title II of the Annex.

3. General comments

3.1 The ISM Code is one of the most significant steps forward that IMO has taken in the field of maritime safety because it provides the framework through which IMO Conventions can be effectively implemented. The EESC view, as expressed in its past opinions, is that Regulation 3051/95 has served a useful purpose in advancing the implementation of the ISM Code to ro-ro passenger ships by two years and extending its application to such ships engaged in domestic sea voyages.

3.2 The EESC notes that with respect to companies operating passenger and cargo ships engaged on international voyages, the objective of the proposed regulation has already been achieved, since the obligation to comply with the ISM Code stems from the SOLAS Convention. Likewise, for companies operating ro-ro passenger ships engaged on domestic voyages the objective has been achieved through the implementation of Regulation 3051/95.

3.3 The Commission's basic justification for the proposal is that the transposition of the full ISM Code and relevant IMO guidelines into EU law will enhance the effective implementation of the ISM Code within the Community. The EESC agrees with the justification and fully supports the objective to the extent that it relates to ships to which the ISM Code is already applicable. However, regarding the added value of the proposed extension of application of the ISM Code to other types of ships the EESC has the following comments.

3.3.1 The ISM Code originated from an industry initiative as a voluntary tool to promote quality shipping. The experience from the ISM Code mandatory global implementation since the first phase in 1998, as expected, has revealed the strengths and shortcomings of the Code. It has been generally recognised that there is a need for a better understanding throughout the maritime community (flag states, classification societies and shipping companies) of the objectives of the Code, for improved links between those who issue ISM certificates and uniform standards of training for ISM Code auditors. The cornerstone of good safety management is commitment from the top. In maritime safety and pollution prevention it is the commitment and motivation of individuals at all levels that determine the end result. Without the understanding of the maritime cluster the ISM Code could become the paper exercise that the sceptics would like to suggest.

3.3.2 Risk assessment is nowadays being widely used as an objective and reliable tool for the consideration of safety improvements. Based on this approach, and taking into account the demonstrated need, the mandatory application of the ISM Code within the EU for ferries operating on a regular service to and from European ports was fully justified and endorsed. On the same grounds, the application of the Guidelines to all other ships engaged in domestic voyages so far has been left, quite rightly, to the discretion of the national administrations on the basis of the subsidiarity principle. The EESC is not aware of any national legislation extending the mandatory implementation of the ISM Code to other ships engaged in domestic voyages.

3.3.3 The ISM Code, designed for ships engaged on international voyages, and hence beyond the easy reach of administrations and companies, places significant obligations to companies and their ships and requires compliance with international conventions and encourages adherence to industry standards. Furthermore, the safety regime of cargo ships engaged exclusively on domestic voyages is regulated by national legislations and, by implication, such ships may have to comply with the regime applicable to cargo ships engaged on international voyages.

3.3.4 The EESC as the guardian, inter alia, of the interests of small and medium-sized undertakings in Europe, is concerned about the mandatory application of the ISM Code on small and medium-sized shipping companies exclusively engaged in domestic voyages. In light of the above considerations, the proposed regulation should take into consideration the bureaucratic formalities and the cost of compliance regarding its application to the ships of such companies. Hence, flexibility of application and/or derogations will be required.

4. Specific comments

4.1 Article 3 — Application

4.1.1 The EESC believes that derogations may be necessary for reasons of practicality in cases of small cargo ships and passenger ships engaged in domestic voyages and especially when such ships are operated by the owner himself or under its direct supervision.

4.2 Article 4 — Safety management requirements

4.2.1 By implication, the aforementioned ships may have to comply with the regime applicable to ships engaged on international voyages. The EESC believes that, the Regulation should clearly stipulate the basic requirements of the ISM Code which may be relevant to such ships.

4.3 Article 5 — Certification

4.3.1 The EESC endorses the mandatory application of the certification process, which is the main valid justification for the proposed regulation.

4.3.2 With respect to paragraphs 2 and 6 it should be noted that Documents of Compliance and Safety Management Certificates respectively can also be issued by an Administration at the request of the flag Administration.

4.3.3 The EESC maintains that Art. 5 paragraphs 4 and 9 need clarification and streamlining with the ISM Code provisions because they place unnecessary restrictions and lead to confusion.

4.4 Article 7 — Safeguard procedure

4.4.1 The safeguard procedure does not, as it should, involve the Member State or the flag State that has issued the Document of Compliance and which may need to suspend the validity or withdraw the Document.

4.5 Article 9 — Reporting

4.5.1 The article refers to a reporting form to be established by the Commission, however it does not stipulate what should be reported. It should be clarified if reporting of compliance of Member States with the Regulation and more specifically with the certification procedures is envisaged, or reporting of compliance of companies and their ships, as may be evidenced by flag and port state control.

4.6 Article 13 — Entry into force

4.6.1 Consistent with the comments under Articles 3 and 4, the EESC considers that the one-year transitional period for the compliance of cargo ships and passenger ships engaged on domestic voyages is appropriate.

5. Conclusions

5.1 The EESC supports the transposition of the full ISM Code and relevant IMO guidelines into EU law through the proposed new Regulation replacing Regulation 3051/95. However, in real terms, the added value of the extension of the scope of the proposed regulation could be limited, since ships engaged on international voyages and ro-ro passenger ships engaged in domestic voyages already comply with the ISM Code.

5.2 The EESC notes that the experience from the ISM implementation since the first phase in 1998 has revealed the strengths and shortcomings of the Code. All parties of the maritime cluster involved in the implementation of the ISM Code should fully understand the objectives of the Code, otherwise it could become a paper exercise. The need is more obvious regarding companies and ships thus far excluded from the ISM Code regime.

5.3 The initiative to extend the application of the ISM Code to all ships engaged on domestic voyages needs to be reviewed with a view to render it more flexible. Inadvertently and disproportionately, the new categories of ships may have to comply with the regime applicable to ships engaged on international voyages with probably prohibitive cost for compliance, in particular in cases of ships operated or under the direct supervision of the owner of the ship. The certification procedure of the proposed regulation needs to be adjusted so as not to impose unnecessary restrictions for small and medium-sized companies engaged in domestic voyages. Hence, derogations or alternatively stipulation of basic requirements of the ISM Code relevant to those ships may be necessary.

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