

EUROPEAN ECONOMIC AREA
STANDING COMMITTEE
OF THE EFTA STATES

Brussels, 1 April 2004
Ref. no: 1039543

SUBCOMMITTEE II ON THE FREE MOVEMENT OF CAPITAL AND SERVICES

EEA EFTA COMMENTS ON THE PROPOSAL FOR A REGULATION ON THE IMPLEMENTATION OF THE INTERNATIONAL SAFETY MANAGEMENT CODE WITHIN THE COMMUNITY (COM(2003) 767 final)

I EXECUTIVE SUMMARY

The EEA EFTA Member States welcome the Commission's proposal for a Regulation on the implementation of the International Safety Management Code (ISM Code) within the Community. The EFTA side proposes to extend the scope of application of the Regulation to include passenger ships, in all sea areas, carrying more than 100 passengers. The EEA EFTA Member States furthermore propose to extend the date of application for ships on domestic voyages from one to two years, and further to amend Article 3. 2 ensuring that government-operated ships used for non-commercial purposes are excluded from the application of the proposed Regulation. With regard to the definitions, the EEA EFTA Member States suggest, for the sake of clarity and to ensure a harmonised interpretation of the Regulation, the inclusion of a provision introducing a definition of High Speed crafts.

II INTRODUCTION

In general the EEA EFTA States welcome the Commission's proposal for a Regulation on the implementation of the International Safety Management Code (ISM Code) within the Community.

The adoption of the ISM Code in 1993 was a milestone for the promotion of safe operation of ships and a safety culture within shipping. The experience gained from the implementation of the ISM Code is positive and implies that the Code is beginning to achieve its aim of creating a culture of safety within shipping companies.

The EFTA Member States support the proposal to make the ISM Code applicable for certain categories of ships in domestic trade, and to ships regardless of their flag. However, it is the view of the EEA EFTA Member States that some aspects could be further clarified. In particular the EEA EFTA Member States consider it necessary that passenger ships carrying more than 100 passengers, regardless of the sea areas, should apply the ISM Code. Furthermore the date of application for ships on domestic voyages should be extended to two years.

III ARTICLE 3 – APPLICATION

(a) Article 3, paragraph 1 (c)

It follows from this Article that passenger ships engaged on domestic voyages in sea areas of Class A and B, as defined in Article 4 of Directive 98/18, fall under the scope of the Regulation.

Taking into consideration the potential risks involved for passenger ships carrying more than 100 passengers and the size of the companies operating such ships, it is considered important to have a Safety Management System in place for such companies and ships, regardless of the sea areas in which they sail. Thus it is the view of the EEA EFTA Member State that in order to ensure an appropriate level of safety for passenger ships carrying more than 100 passengers, engaged on domestic voyages, regardless of the sea area, should fall under the scope of the Regulation.

Consequently, the EEA EFTA Member States suggest that Article 3, paragraph 1 be amended as follows:

Insert new paragraph (f):

“Passenger ships engaged on domestic voyages, carrying more than 100 passengers in all sea areas, as defined in Article 4 of Directive 98/18/EC, regardless of their flag”

(b) Article 3, paragraph 2

It follows from SOLAS Regulation IX/2.2 that government-operated ships used for non-commercial purposes are excluded from the scope of the Convention.

The EEA EFTA States are of the opinion that such ships should not fall under the scope of this Regulation.

The EEA EFTA Member States propose that Article 3, paragraph 2 be amended as follows:

Insert new paragraph (d)

‘Government-operated ships used for non-commercial purposes’

IV - ARTICLE 7 - SAFEGUARD PROCEDURE

Article 7 introduces a safeguard procedure for suspension if there is a risk of serious danger to safety. A similar provision can be found in Regulation 3051/95/EC.

Accordingly, a Member State that suspends the operation of a service of a company shall notify the Commission, and the Commission shall subsequently determine whether or not the suspension is justified.

It is not entirely clear whether Article 7 is also applicable when the Administration withdraws the Document of Compliance where annual verification is not requested or where there is evidence of major non-conformities with the Code (Ref. para. 13.5).

It is assumed that the intentions of Article 7 are *not* to require notification and examination by the Commission in these circumstances.

For the sake of clarity, the EEA EFTA Member States propose that Article 7 be amended as follows:

Insert the following text at the beginning: “*Without prejudice to Part B chapter 13, where a Member...*”

V - ARTICLE 13 - ENTRY INTO FORCE

In accordance with Article 13 paragraph 2, the application date for cargo ships and passenger ships on domestic voyages is proposed for one year after the entry into force of the Regulation.

A large number of companies operating in domestic trade consist of small land-based organisation structures with few employees (1-2). The establishment of a Safety Management System will be a demanding and time-consuming task, particularly for these smaller companies. When the ISM Code was made mandatory from 1 July 2002 in the second phase of implementation, shipping companies had a five-year implementation phase.

It is the view of the EEA EFTA Member States that an implementation phase of two years would be more adequate for the small shipping companies in question.

Consequently the EEA EFTA Member States suggest that Article 13, paragraph 2 be amended as follows (amended text in italic):

“It shall apply to cargo ships and passenger ships operating exclusively on domestic voyages from *two* years after the date of entry into force of this Regulation”

VI - ARTICLE 2 - DEFINITIONS

(a) Article 2 (1) “ISM Code”

In new maritime acquis, there is a reference to international conventions and protocols “in its up-to-date version”. Such references are made in e.g., Directive 2002/84/EC of the European Parliament and of the Council of 5 November 2002 amending the Directives on maritime safety and the prevention of pollution from ships and Regulation (EC) No 2099/2002 of the European Parliament and of the Council of 5 November 2002 establishing a Committee on Safe Seas and the Prevention of Pollution from Ships (COSS) and amending the Regulations on maritime safety and the prevention of pollution from ships.

For the sake of clarity and harmonised interpretation, the EEA EFTA States propose that Article 2 paragraph 1 sub-paragraph (1) be amended as follows:

‘ISM Code’ means the International Management Code for the Safe operation of Ships and for Pollution Prevention, adopted by the International Maritime Organization (IMO) through Assembly Resolution A.741 (18) of 4 November 1993 *in its up-to-date version*.

(b) New Article 2 (11) “High speed craft”

All but high speed crafts, falling under the scope of the proposed Regulation, are clearly defined in Article 2. For the sake of clarity and to ensure a harmonised interpretation, a definition of high speed craft could be made in Article 2

Consequently the EEA EFTA Member States propose that Article 2 paragraph 1 be amended as follows:

Insert new paragraph (11):

'a high speed craft' means a high speed craft as defined in Regulation X/1 of the 1974 SOLAS Convention, in its up-to-date version.

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