

STANDING COMMITTEE
OF THE EFTA STATES

2/TR/W/006
16 September 1998
Brussels

WORKING GROUP ON TRANSPORT

**EFTA COMMENT ON THE COMMISSION PROPOSAL FOR
A COUNCIL DIRECTIVE ON MANNING CONDITIONS FOR REGULAR
PASSENGER AND FERRY SERVICES BETWEEN MEMBER STATES.**

COM (1998) 251 final

1. The EFTA EEA States wish to present their concerns about the Commission proposal for a Council Directive on manning conditions for regular passenger and ferry services between Member States.
2. According to international law and customary practice, passenger and ferry services operating between states are to be considered as international shipping trades. This implies that the host states are presumed not to interfere with social matters on board the vessel. The flag state is solely responsible for the application of labour, social, technical and administrative laws and regulations for ships in their register. This is a fundamental principle in international shipping trades.
3. The principle is covered by international conventions, such as the 1982 UN Convention of the Law of the Sea, Article 94. Likewise, ILO Convention 147 requires flag states to lay down laws and regulations for ships registered in their territory with respect to safety standards as well as shipboard conditions of employment and living conditions.
4. The Commission proposal, if adopted, would infringe the principle that flag states have the sole jurisdiction over their ships in respect of social matters.
5. The proposal is contrary to the liberal policy pursued by the Community. In this context, it is worth noticing that the Community participated in a diplomatic *démarche* against the US Clay Bill in 1994, which aimed at extending US labour laws to foreign flagged vessels.
6. Furthermore, the proposal is not consistent with the WTO Stand Still clause agreed as paragraph 7 of the 1994 Ministerial Decision on Negotiations on Maritime Transport Services, where the Parties undertook not to apply any measure affecting trade in maritime transport services. It is also contrary to the OECD Code of

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Liberalization of Current Invisible Operations and the OECD's Common Principles of Shipping Policy.

7. The EFTA EEA States are of the opinion that the proposal is not consistent with Regulation No. 4055/86 which lays down the principle of freedom to provide shipping services within the Community. On the contrary, the proposal appears to erode the freedom provided for in this Regulation.

8. The EFTA EEA States share the Commission's concerns about unemployment among Community seafarers. Nevertheless, problems of unemployment should be addressed within overall economic policies and not on a sectoral basis. It should also be taken into account that on a global basis we may be heading towards a serious shortage of qualified seafarers.

9. The proposal appears to be based on the assumption that seafaring personnel employed on board ships providing regular passenger services between two ports in the Community effectively reside in the Community. However, seafarers cannot be considered as residents when they actually do not have a place of residence within the Community.

10. The EFTA EEA States have noted that the proposal is based on the premise that labour conditions in line with European requirements for all crew members will improve maritime safety. This has not been substantiated. Seafarers' qualifications are established by international standards, in particular the STCW Convention, and apply regardless of nationality. Port State control will see to it that seafarers comply with these standards.

11. The EFTA EEA States would appreciate being kept informed of any substantive reactions to this comment, in particular legal opinions by the Commission or Council services, as well as the further procedural aspects of the proposal.

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