

SAFETY AND ENVIRONMENT

MARITIME

INTRODUCTION

Community priorities on maritime safety and environmental issues have been dictated by the global nature of the shipping industry. The EU's internal rules, therefore, have focused on ensuring compliance with international legislation, largely formed within the International Maritime Organisation (IMO). Various committees and sub-committees carry out the bulk of the IMO's work, while a Council, consisting of 32 members, acts as the governing body. Over 150 members, representing the majority of the world's shipping, meet at an IMO Assembly every two years. International legislation developed by the International Labour Organisation (ILO) is also important to the Community's maritime policy.

Although the Community itself, as an intergovernmental organisation, has no more than observer status within the IMO, the 15 Member States are members. The Community strategy, therefore, revolves around ensuring that the Member States use their influence jointly to pursue common objectives. The foundations of the EC's relationship with the IMO lie in a cooperation agreement signed by the two parties in 1974. A more structured relationship evolved in the mid-1980s with the establishment of a partnership, under which it was accepted by the Commission that the IMO would draw up conventions and set standards, while the Member States would be encouraged to ratify the conventions and would draw up legislation to ensure their implementation.

Despite the existence of international rules, however, safety standards continue to vary widely between flag states. This is due to the fact that not all IMO instruments are compulsory, and those that are, have been diluted during the negotiation phase. Most importantly, however, the manner of implementation of these measures varies widely from one flag state to another. Moreover, with global shipping markets being prised open to market forces, an increasingly important factor has been the tendency of certain flag states to keep costs - and therefore prices - down through a lax enforcement of international rules.

A number of high profile passenger ferry disasters and an acceleration in cargo accident rates during the late 1980s and into the 1990s prompted the IMO to step up action. The same factors, as well as the increasing importance of the cost of safety to single market issues, has also led the Community to look much more closely at the whole area of safety. The 1992 Common Transport Policy white paper set out the main aspects of a maritime safety policy, and these then were reinforced, in February 1993, with a Communication called "A common policy on safe seas".

The 1993 Communication contained an action programme of measures in four areas: implementation of existing international rules in the Community; more effective control of ships by the port States; the promotion of maritime traffic infrastructures to encourage a coherent and harmonised development of navigational aids and traffic surveillance; and support to strengthen the IMO. It also mentioned the need for action with regard to training levels, dangerous goods, and classification societies. The Council responded, in June 1993, with a Resolution fully supporting the objectives of the Communication, and urging the Commission to proceed on most of the proposals mentioned. In fact, the 1990s has seen the Community develop laws in all these areas.

*The 1993
Communication
on safe seas*

The Commission's important 1996 Communication "Towards a new maritime strategy", although covering maritime policy in general, also looked in detail at how Community policy on maritime safety should evolve. The main themes identified earlier in the decade were still predominant in the 1996 report, but there was more emphasis on the need for high levels of safety to be adopted internationally, in order that the Community's shipowners might not be at a competitive disadvantage in the global market. By the end of the decade, this Communication remained the Commission's most up-to-date general policy statement on maritime safety (some of its suggestions were still on the drawing board). It said, the Commission proposes:

*The 1996
Communication
on a new
maritime strategy*

"- To pursue a policy based upon a convergent application of internationally agreed rules. To the largest extent possible this policy should be applied to all flags. This is the case, for instance, of those non-binding resolutions of the IMO which will be made compulsory through EC legislation. These binding requirements should be enforced also on ships flying the flag of non-EC states when trading to or from EC ports. These ships should not receive a more favourable treatment than EC-flagged ships;

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- a joint effort by Community and Member States in the IMO to agree on a worldwide basis on certain conditions for flag administrations and their ship registers;
- a Community legal instrument, most likely a Directive, laying down certain principles for Member States' shipping registers . . . ;
- to strengthen port state control through operational links with other third countries;
- to promote self-regulatory codes of behaviour in shipping;
- to encourage operators to achieve high quality standards (e.g. fiscal incentives, differential port charges);
- to consider legislative action on financial sanctions for cargo owners who knowingly or negligently use sub-standard shipping;
- to examine the question of mandatory third party liability coverage in shipping as a condition for entry into EC ports;
- to consider legislative action to support any agreement made between carriers and unions on terms and conditions of working on board ferries providing regular services to and from EC ports."

This chapter looks at all the main legislative developments during the 1990s at Community level that can be attributed to maritime safety or environmental concerns, particularly the measures on training, port state control, the safety of passenger vessels and bulk carriers, and requirements for vessels and ports concerning dangerous cargoes. Although introduction of the rules on working time in the maritime sector may be considered as much a single market measure as a social one, the topic is also covered in this chapter. The chapter concludes with a look at the Commission's "Quality shipping campaign" package.

VESSEL CERTIFICATION, AND THE DEBATE OVER REGISTERS

One of the first maritime safety measures to be adopted by the EU, following the 1993 Communication and action plan for "A common policy on safe seas", was a Directive to harmonise conditions for the recognition of classification societies. These are private inspection and survey organisations to which a Member State may delegate the role of certifying vessels' compliance with relevant international codes and conventions. There had been a rapid growth in the number of such societies, and the Commission felt that many of them did not have "adequate structures and experience to be relied upon and to enable them to carry out their duties in a highly professional manner".

In essence, the Directive, which was adopted in November 1994, provides for the recognition of classification societies only if they fulfil particular criteria, and for Member States to entrust certification and inspection duties only to recognised societies. It requires Member States to establish a "working relationship" between its competent authorities and relevant organisations, and to ensure that vessels flying Member State flags are constructed and maintained in accordance with the standards of a recognised classification society. Several Member States - including Italy, Belgium and Ireland - had some difficulty in meeting the December 1995 implementation deadline. The Commission took them to the Court of Justice in 1997 and, during 1998, the Court upheld the charge in each case. The Member States in turn declared they were in the final stages of implementing the Directive.

The 10 recognised classification societies

In September 1996, the Commission published a list of the approved classification societies, as notified by the Member States. In June 1998 the list was updated - in that the Russian Maritime Register of Shipping was added, and the Hellenic Register of Shipping was removed - and includes:

- American Bureau of Shipping
- Bureau Veritas
- China Classification society
- Det Norske Veritas
- Germanischer Lloyd
- Korean register of shipping
- Lloyd's Register of Shipping
- Nippon Kaiji Kyokai
- Registro Italiano Navale
- Russian Maritime Register of Shipping

The status of the Hellenic Register of Shipping

A separate Commission Decision in April 1998 stated that the Hellenic Register of Shipping could be recognised in Greece alone, pursuant to a derogation in the Directive which allows for a Member State to apply for recognition of a register even though it fails to meet one or both of two specific conditions; i.e. that the organisation should have in its class a fleet of 1,000 ocean-going vessels (over 100grt) totalling no less than 5m grt, and it should employ no less than 100 technical staff.

The role of shipping registers and ideas for the future

More controversial, however, is the subject of shipping registers. In the late 1980s and early 1990s, the Commission made an attempt, for single market purposes, to persuade the Council of the need for a Community shipping register - the Euros proposal (Chapter Four). The Council rejected the idea but, nevertheless, adopted a less ambitious Regulation, in March 1991, to allow the transfer of vessels from one Member State register to another without the impediment of certain technical barriers. An amendment to this was on the Commission's work programme for the period up to 2000.

Registers - a crucial tool

The Commission returned to the subject, in its 1996 maritime strategy paper, with a detailed discussion under the heading "Registers: a crucial tool to ensure safe and fair competition". It looked at defining and enforcing flag state obligations at world level, and at Member States registers.

Firstly, the Commission identified a broad consensus, in the IMO, the ILO and the EC, that "a compelling case" existed for all flag states "to demonstrate that they can carry out and indeed that they are carrying out their supervisory responsibility effectively". States which did not enforce safety or environmental standards should be discouraged from competing with those who were, the Commission argued; and to translate this into policy required the enforcement, by the Member States, of IMO resolutions to vessels flying non-EC flags as well as EC flags. It proposed a set of criteria for registers for which the EC and the Member States should strive to get international acceptance (through the Safety of Life at Sea Convention, for example, and the UN Convention on the Law of the Sea). Such criteria would include:

Potential criteria for shipping registers

- full ship inspection to ensure compliance with all standards;
- the possession by the flag state of machinery to ensure the proper training of seafarers;
- a sufficient number of well-trained personnel, including surveyors;
- non-state organisations entrusted with flag state control responsibilities should have appropriate qualifications authorised by the state;
- a fee structure that allows enforcement of standards;
- a duty to conduct transparent investigations of all major incidents involving ships flying the flag of the state.

Secondly, the Commission stated in the 1996 paper, the Community should define, in a legal instrument, common criteria for registers, irrespective of their denomination as first, second or alternative register. These criteria should include both effective government monitoring, and mechanisms to ensure the financial, administrative, civil and criminal liability of owners and managers. There should not be any crew nationality requirements, the Commission argued (largely as a result of the abortive negotiations over the Euros proposal), but the possibility should exist for States to promote the employment of EC seafarers through other means (Chapter Four).

No crew or ownership criteria

The Commission also discussed whether such criteria should include ownership restrictions and concluded, again, that the promotion of Community shipping should be encouraged through other means, while leaving Member States' registers open "to attract good tonnage to EC flags by fostering high quality shipping". Sub-standard operators would not be able to gain unfair advantages, it argued, so long as flag state control criteria were rigorously enforced, and state support schemes linked to specific criteria. The Commission dismissed the concept of registers established on territories of Member States outside the Community as "not conducive to improving maritime safety".

Although no sign of a proposal for such criteria appeared in the next few years, the idea was included on a Commission list, published in December 1998, of "main possible tasks" in the period 2000-04.

Standards for marine equipment from January 1999

To ensure more even application of international standards in vessel certification procedures, a further harmonisation measure was adopted by the Council in December 1996, on standards for marine equipment. Although such standards already existed at IMO level, they were too flexible, leading to differences in interpretation by flag states and classification societies. This led to varying safety standards, and to reluctance among Member States to certify vessels carrying equipment approved in other States.

The Directive sets out conditions for EU type approval of marine equipment, based on international standards. It refers to a wide range of equipment for lifesaving, fire protection,

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pollution prevention, navigation, and radio communication. It came into force for all new equipment fitted on vessels in January 1999. Equipment approved in this way bears a validation mark, and can be sold freely within the single market. Where adequate standards are lacking at international level, the Directive calls on Member States to push for their adoption within the IMO, failing which, it allows for European standards to be adopted.

Although Member States were supposed to have transposed the Directive into national legislation by June 1998, by the end of that year only three of them had: Germany, Greece and France. Infringement proceedings were thus started against the other 12 States.

COMPULSORY STANDARDS OF TRAINING FOR SEAFARERS

Although considerable effort has been made within the Community and on the international front to curb accidents due to mechanical or structural failures, it is widely recognised that human error is the major cause of accidents at sea, often resulting from inadequate training and problems related to communications between officers and ratings (particularly because of language). As in other areas of maritime safety, action taken by the Community is generally aimed at ensuring common and consistent application in EC waters of international laws; in this area, the 1978 IMO Convention of Standards on Training, Certification and Watchkeeping for Seafarers (STCW Convention) is the main framework.

The 1994 Directive implementing the IMO's STCW Convention

Again, as a direct response to the 1993 Communication on safe seas, the Council adopted, in November 1994, a Directive aimed at enforcing a minimum level of training for seafarers. It requires Member States to ensure that masters and officers on board Community-flagged vessels, as well as ratings forming part of the navigational or engine room watch, hold a certificate to show they have been trained according to the minimum requirements laid down in the STCW Convention. Such certificates are recognised throughout the EU. In addition, the Directive lays down minimum requirements regarding the ability of ships' company members to communicate with one another, with shore based authorities, and (if necessary) with passengers. Although the Directive is predominantly a flag state measure, it also includes provisions ensuring that the level of training of crews on third country flag vessels can be verified by the port state.

STCW Directive updated, but not without criticism from MEPs

Even as the Directive was being adopted at Community level, however, the STCW Convention itself was being revised within the IMO because of widespread concern that the 1978 standards were insufficiently rigorous. A new version of the Convention, adopted in 1995, included heavily revised Regulations, and it transferred technical requirements into an associated code (the STCW Code). The code came in two parts, a mandatory section and a set of non-binding recommendations. The revisions aimed to ensure that the Convention was up-to-date and to guarantee uniform minimum standards of competence.

In order to avoid a conflict between Community requirements and Member States' obligations at international level, the Commission proposed, in October 1996, a revision of the STCW Directive. This was adopted into EU law in May 1998. It reinforces the new STCW rules within EU law, but also carries provisions on watchkeeping, including rest hours, which were ignored in the original Directive, as well as common criteria for Member States' recognition of seafarers' certificates issued by third countries, and more specific criteria for port state control assessments of crew competence.

EP concern over conflict between EU law and revised STCW

The European Parliament was highly critical of the Commission's proposal, but, with only cooperation powers, its many amendments carried little weight. MEPs said the rules might cause rather than prevent conflict between Member States' international obligations and the requirements of Community law. They drew attention to the fact that the draft Directive was not a complete transposition of the revised STCW Convention and particularly to a failure to amend the language requirements to conform with STCW provisions.

CONTROLLING THIRD COUNTRY VESSELS THROUGH PORT STATE CONTROL

Despite increased efforts by the IMO towards better implementation of its rules, there is an ongoing temptation for flag states to attract vessels to their registers by offering weaker enforcement of rules, thus allowing the operators to work more cheaply. For the Community, the enforcement of safety rules by port state control measures is one of the most important means through which it can pressurise third countries to adopt and enforce IMO and European Community standards.

In 1982, 15 European maritime administrations signed the Paris Memorandum of Understanding (MoU) on port state control mechanisms which outlined general commitments on the inspection of vessels and detention of substandard ships. It was not until 1994, by which time it had become very clear that the MoU was “far from achieving” its objectives, that the Commission finally put forward a proposal for an EU Directive on port state control.

The Directive, adopted in June 1995, gives a basis in Community law to the principal features of the Paris MoU, and lays down harmonised control measures to be followed by the Member States. It applies to all merchant shipping and crews using a seaport or offshore terminal of a Member State, or anchored off such a port or installation. It stipulates that Member States must establish and maintain national authorities charged with inspecting ships in their ports or territorial waters. Such authorities have to carry out detailed inspections on at least 25% of the third country flagged vessels using a given port, examining all relevant certificates and documents, as well as checking that living and working conditions conform to ILO standards. In general, where no problems are revealed, the vessel is exempted from further inspection for a period of six months.

The Port State Control Directive

Where an inspection reveals grounds for questioning compliance with an international convention, however, a more detailed inspection must be carried out, including tests on the functioning of equipment. Such detailed inspections must, in any case, be carried out on passenger ships and on ships deemed to be high-risk. The Directive provides for the detention of unsafe ships and their removal to repair facilities, and, if necessary, for vessels owned by unsafe operators to be refused access to Community ports. More detailed inspections are also carried out as a matter of course, at least annually, on vessels in categories which have a poor safety record. This includes: oil tankers more than 20 years old; bulk carriers more than 12 years old; passenger vessels; and gas and chemical tankers more than 10 years old. As a complement to the main rules, a Commission Directive, adopted in 1996, defines mandatory parameters for an identity card for use by port state control inspectors.

More safety inspections for vessels with a poor safety record

Port measures to cope with ISM code and for vessel targeting

A first significant revision to the Port State Control Directive, proposed in July 1997, concerned the important international safety management (ISM) code. Initially adopted by the IMO in 1993, the ISM code sets a formal documented system of international standards for the safe management and operation of seagoing vessels, that can be certified by classification societies. Under amendments to the Safety of Life at Sea (Solas) Convention, agreed in 1994, the ISM code became mandatory in July 1998 for all passenger ships and oil, chemical and gas tankers of over 500gt, and will become mandatory in 2001 for other cargo vessels. However, the International Association of Classification Societies warned that a large number of eligible vessels would not have acquired ISM certification by the due date.

The Commission said the Community must “react strongly and take all measures necessary to inform the shipping world that, with effect from July 1998, all Member States will check compliance with the ISM code”. In fact, the Commission was concerned that strict enforcement of the traditional control procedures, for vessels without ISM certification, would block up Community ports. The Council approved the changes to the Directive in April 1998. Member States’ port state control authorities are now obliged to check compliance with the ISM code, but uncertified vessels, which are not considered unsafe, are allowed to leave port. The vessel is not allowed to return to any Community port until ISM certification can be demonstrated.

Fears of ISM code failures blocking Community ports

Subsequently, a Commission Directive, adopted in June 1998, updated the procedures and guidelines to be observed by vessel inspectors. It established criteria to be used as “overriding priorities” for inspection of vessels. These criteria are: any vessel identified by pilots or port authorities, or which has been the subject of a legitimate complaint; any ship which has been involved in a collision, grounding or stranding on the way to port; and any vessel which has been suspended from their class on safety grounds within the previous six months.

Targeting system for inspection priorities

The Directive also created a more sophisticated targeting system to help the efficiency of port state control procedures. It provides for vessels to be given a “targeting factor” according to the level of risk associated with them. Hence, if a vessel is visiting a Member State port for the first time, for example, its targeting factor will increase by 20 points. If it has been detained in a previous port, its score will increase by 15 points. Other ‘scoring’ factors include the age of the vessel, its country of origin, and that country’s overall detention rate. The higher the score, the greater the priority for inspection.

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SPECIFIC SAFETY RULES FOR PASSENGER VESSELS

Specific laws exist at Community level to ensure high safety standards for passenger vessels. Indeed, following the Estonia accident in 1994, which focused political attention on the need for improvements in the safety of roll-on/roll-off (ro-ro) ferries in particular, the Council adopted a Resolution which called upon the Commission to adopt four proposals to improve safety: “the advance mandatory application” of the ISM code, a mandatory registration scheme, an expanded survey regime, and an IMO-compatible accident investigation regime.

Application of ISM code to all passenger ro-ro services in the EU

The first of these was adopted quickly, in 1995, in the form of a Regulation requiring all companies, operating at least one ro-ro ferry to or from a Member State port, to apply the ISM code for all passenger ro-ro services involving a Community port from July 1996 (i.e. two years before the deadline set by the IMO for mandatory imposition of the safety inspections and certification criteria).

Registration of persons on board passenger ships

The second took until June 1998 to be adopted. A Directive on registration of persons sailing on board passenger ships operating to or from a Community port is aimed at preventing such vessels from being overloaded and at easing search and rescue operations in the event of an accident. The rules oblige operators to count their passengers and crew prior to departure. For voyages of over 20 nautical miles, they must record the names, sex and age category of passengers as well. The agreement does provide for certain derogations, relating to protected sea areas and to short voyages where the risk of wave height above two metres is less than 10%. A further derogation was also inserted, during the negotiations, to take specific account of Italy’s concerns regarding the Straits of Messina, where there is a rapid loading of railway carriages and cars aboard vessels for short trips. In its Opinion, under the cooperation procedure, the European Parliament wanted, but did not get, the Channel Tunnel rail services brought within the scope of the Directive.

	91	92	93	94	95	96
Oil	48	2	15	70	2	3
Bulk dry	154	28	41	148	84	50
Gen. cargo	217	78	219	149	192	168
Pass./gen. cargo	39			145	2	
Ro-ro cargo			5	51	28	1
Pass./ro-ro cargo	608	1	58	876		342
Passenger	17	9			3	4
Not specified	121	128	166	113	68	122
Total	1,204	246	504	1,552	379	690

Source: Transport DG

Port inspections and accident inquiry rights

In response to the third and fourth requests by the Council, the Commission put forward a proposal in February 1998, which was translated into a Directive by April 1999. It ensures that all ferries are subject to safety inspections, carried out by the host state from whose ports the vessel will be operating, before entering into service, and on a random basis thereafter. It also gives host states the right to participate in accident inquiries involving vessels serving their ports; and it requires the fitting of voyage data recorders to all relevant ships. During the Council debate, some Member States suggested that an adequate inspection regime had already been established by the Port State Control Directive. The Commission argued that port state control measures were designed to address existing problems, by identifying substandard shipping, but that the new Directive, by contrast, would be preventative. The European Parliament, in October 1998, called for certain exemptions, from the compulsory fitting of voyage data recorders, to be limited to five years, and for information on ferry surveys to be made available to the public.

Apart from the request for legislation in four specific areas, the Council’s 1994 Resolution also supported the Commission’s plans to bring forward several other measures that “could favourably affect the safety of roll-on/roll-off passenger ferries”, notably safety rules for passenger vessels engaged in domestic trade, and working time rules (see below).

Safety standards for passenger vessels on domestic routes

An EU Directive, adopted in March 1998, seeks to compensate for the failure of the Solas Convention to cover vessels operating on domestic routes, by extending the Convention’s provisions on safety standards and vessel construction to all passenger and high-speed vessels operating on domestic voyages within the Community. It also gives the Community the right to negotiate within the IMO for harmonised applications of Solas provisions on passenger vessels generally, in order to prevent divergent interpretations of those rules among IMO states.

During the negotiations prior to adoption of this Directive, there was a characteristic tussle between the Commission and the Council over competences, which resulted in several

explanatory statements being attached to the Council's minutes. The Commission stated that the Directive creates new areas of Community competence, and that, while it does not dispute the active participation of Member States in IMO, "there will be proper, constructive coordination between all Member States and the Commission on matters subject to Community competence, in order to ensure that Community rules are complied with by all Member States in IMO discussions". The Commission and the Council together stated that a section in the Directive on penalties is not intended to prejudice the competences of Member States. The Commission also stated that, in a bid to "ensure the same level of safety for all ro-ro passenger ferries operating in similar conditions on international and domestic voyages", it will "examine local environmental and operational conditions prevailing in all European waters" in which such vessels operate.

Statements on aspects of Community competences

SPECIFIC RULES FOR SAFETY OF BULK CARRIERS

The safety record of dry bulk carriers globally is relatively poor. According to a Commission working document, distributed in March 1999, 106 ships were lost between 1990 and 1997, at a cost of 637 lives. Half of those fatalities occurred in sinkings which were not attributable to bad weather. While in many cases structural defects were to blame, dry bulk cargo handling operations were also identified as an important factor affecting vessel safety.

In the paper, the Commission drew on information from two surveys: one, funded by the Community, assessing terminal procedures in the EU, and a similar worldwide survey undertaken by a joint industry working group on bulk carrier safety. Both studies, the report said, identified a worrying lack of communication between the carriers and the handling terminals, and identified incorrect handling procedures as a source of damage to vessels. The global survey also noted that "the performance of some West European terminals is poor compared to that of some terminals in developing countries" The Commission concluded: "*The major risks associated with improper loading or unloading of dry bulk carriers are excessive stresses, the results of which are invisible but may nevertheless become potentially damaging especially when magnified once the vessel encounters the dynamic forces of wave action on passage*". It "cannot be excluded", it went on to say, that the impact of loading and unloading on vessel structure has been a contributory factor in sinkings.

Surveys point to communication and cargo handling problems

Following wide consultations on the basis of the working document, the Commission aims to put forward legislative proposals - to cover all dry bulk carriers, irrespective of the flag they fly, and all terminals in the EU where those carriers can load or unload dry bulk cargoes - in 2000, for implementation by 2002. In essence, the proposal will seek to make mandatory specific parts of the IMO Code of Practice for the Safe Loading and Unloading of Bulk Carriers. In particular, this will involve creating a legal framework to apply five key principles contained in the code:

Five key principles for a legal framework

- terminal operators should be required to comply with relevant IMO provisions on the following: ship-port cooperation, with regard to the suitability criteria to be fulfilled by ships at terminals; communication between ship and terminal prior to arrival; cooperation procedures prior to cargo handling (including the use of a ship-shore safety checklist and a loading or unloading plan); and procedures for loading and unloading, and for handling ballast;
- terminals, as part of their basic suitability criteria, should be obliged to appoint a "terminal representative";
- a principle that "the master remains responsible at all times for the safe loading and unloading of the ship" should be applied, details of which should be confirmed with the terminal operator in the form of a loading or unloading plan;
- in cases of non-compliance with agreed loading and unloading plans or "any other situation which endangers the ship", the master should have the right to stop the loading or unloading;
- port authorities should have the right to stop the loading or unloading of solid bulk carriers when the safety of the ship is endangered - this would "help to settle possible disputes between master and terminal representatives on the need for suspending cargo operations for the sake of the ship's safety".

THE WORKING TIME AGREEMENT OF THE SOCIAL PARTNERS

The question of working time aboard ships was one of the key points on the agenda for the 84th maritime conference of the ILO held in Geneva in October 1996. The meeting saw a breakthrough, for which the Commission had lobbied strenuously through the Member States, with the adoption of a "Convention concerning seafarers' hours of work and the manning of ships", known as Convention 180. This stipulates that normal working hours should be based on an eight hour day with one weekly rest day. However, this can be applied flexibly provided that either maximum hours do not exceed 14 hours in any 24 hour period, or 72 hours in any seven day period; or

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minimum hours of rest are not less than ten hours in any 24, or 77 hours in any seven day period. It also insists that no more than 14 hours should be worked between rest periods.

Agreement on working time between the Social Partners

Subsequently, in September 1998, the EU's Social Partners in the maritime sector, the European Community Shipowners' Associations and the Federation of Transport Workers in the European Union, signed an agreement based on Convention 180, but allowing for the introduction of some features of the Community's Working Time Directive - such as provisions on minimum paid leave - which were not included in the 1996 Convention. The Commission's package of working time proposals, later the same year, included one draft Directive enacting that agreement, and a second draft Directive to enforce the rules by introducing a port state control mechanism to ensure that vessels calling at EU ports comply with Convention 180.

In April 1999, the Parliament endorsed the enforcement proposal without any amendments. Although no Opinion from the EP was required on the seafarers working time Directive itself (because it is based on Article 4-2 of the Social Policy Protocol), MEPs, nevertheless, passed a Resolution welcoming the agreement of the Social Partners and recalling that "a strong link exists between occupational and operational safety in the maritime sector, and a high level of both is also a guarantor for protection of the environment".

Directive on enforcing working time rules and ILO Convention

The Council agreed the Directive on working time for seafarers in June 1999. The Member States will have until June 2002 to implement its provisions. A Common Position on the second Directive, "concerning the enforcement of seafarers' hours of work on board ships using Community ports", agreed in July 1999, establishes a port state control regime allowing port state authorities to verify compliance with the Directive in the case of EU registered vessels, or, in the case of third country vessels, those parts which correspond to ILO Convention 180.

THE HAZMAT DIRECTIVE TO PROTECT THE MARINE ENVIRONMENT

Several of the laws already mentioned, particularly the Port State Control Directive, were designed not only to improve safety conditions but also to protect the marine environment. However, since the Braer oil tanker accident off Shetland in 1993, the Community has also implemented powerful specific legislation to reduce the risks of marine pollution, although, again as with safety, the IMO tends to be the chief regulator.

A cornerstone of the EU's policy in this respect is the 1993 Directive concerning "minimum requirements for vessels bound for or leaving Community ports and carrying dangerous or polluting goods", better known as the Hazmat Directive. It requires shippers to provide the master of any vessel with a detailed declaration regarding the quantity and nature of any hazardous materials to be carried on board. The operator of a vessel leaving a Community port must alert the competent authorities, giving details of the ship's identity and planned route, as well as the cargo being carried. Ships entering an EU port from outside the Community must give the authorities in the first planned port of call the same information, while in the event of any incident, the master of a vessel must inform the competent authorities in the Member States concerned. Further clauses relate to pilotage and Vessel Traffic Systems (VTS) requirements. The Commission has also passed two implementing Directives.

In July 1998, the Council amended the Hazmat Directive to take account of the carriage by sea of flasks containing irradiated nuclear fuel, plutonium and high level radioactive waste, as well as to adapt it in line with international developments.

Problems with transposition of Hazmat Directives

The Commission has reported significant problems with transposition of the Hazmat Directive into national law. By the end of 1998, the Commission was still not satisfied with the transposition of the 1993 Directive by Belgium, the UK and Germany, nor had any Member State transposed the July 1998 amending Directive on time.

The same year as the Hazmat Directive was adopted, in 1993, the Commission proposed a second stage for the reporting system, under which all vessels, including those only transiting EU waters, would have to make themselves known to local designated VTS. Although there was good support for the proposal from some of the southern Member States and from Ireland, it met with strong opposition from the UK, France and Denmark. The arguments, within the Council, focused on how to define the point at which vessels would have to make themselves known to coastal authorities, and the application of the Directive to vessels flying third country flags. The Commission is believed to be looking at revising this proposal or putting forward an entirely new one in 2000.

A Regulation, adopted in 1994, implements a voluntary IMO resolution on preferential treatment for environmentally-friendly oil tankers with segregated ballast. The EU law requires port authorities to charge at least 17% less port fees for such tankers than for those without segregated ballasts. According to the terms of the Regulation, the Commission was supposed to present an evaluation report on the Regulation by December 1998, but, by November 1999, had not done so.

Regulation on segregated ballast

Port reception facilities to deal with ship-generated waste

A further measure, proposed by the Commission in July 1998, and agreed in principle by the Council in June 1999, concerns a Directive for port reception facilities to deal with ship-generated waste and cargo residues. When in force, the Directive will oblige ships to discharge waste at each port of call unless they have sufficient storage capacity to allow it to remain on board until a subsequent port of call. Each EC port will be required to have a waste reception and handling plan and be equipped with adequate reception facilities for the vessels it normally caters for. According to the draft text, the cost of providing the facilities is to be recovered from ships through port charges, but fees should consist of a fixed component, potentially complemented by a variable charge relating to the actual amount and type of waste discharged. Member States will be able to decide on the details of the cost recovery system themselves under the proviso it must not give vessels an incentive to discharge wastes at sea.

The European Parliament, which inherited codecision powers on this proposal during 1999 after completing its first reading, has called for amendments to clarify the scope of the Directive; notably by specifying the extent of the financial contribution vessels must make to the cost of facilities; setting out where additional fees or discounts may apply; and establishing that the fundamental obligation to dispose of wastes properly applies to all vessels, including those exempt from the terms of the Directive. The Directive will move through the final stages of the legislative process in late 1999, but, if the conciliation procedure is needed to resolve differences between the Council and the Parliament, may take until 2000 to enter the statute books.

EP calls for changes to proposal on port waste facilities

Finally, it is worth recording that, for more than 20 years, since 1978, the Commission has managed an action programme for helping Member States to assist one another in preparing for and responding to accidental pollution. The programme provides for exchanges of information, joint training measures, pilot projects and international dialogue. Since 1981, a database known as the Community Information System (CIS) has been available to encourage Member States to pool experience; moreover, a task force of Member States' experts is available to help with national clean-up efforts.

In line with a recent but general policy to underpin all Community programmes with a formal legal base, the Commission put forward, in December 1998, a draft Council Decision for these initiatives to be organised within a new framework for the 2000-04 period. The action programme, the Commission proposed, should be redefined as a "three year rolling plan", benefiting from an annual contribution of Ecu 1m from the EC budget; some Ecu 750,000 of which would go towards pilot projects and courses and workshops. The CIS should be modernised to include an internet site and to make use of a modern automatic data processing system, it said, and the remaining funds should be used to sponsor the task force, exchanges of experts and pollution control exercises. The European Parliament passed a first Opinion on the proposal in September 1999, while the Council agreed its Common Position a few weeks later, in October.

Action programme for assistance with accidental pollution

THE COMMISSION'S QUALITY SHIPPING CAMPAIGN

During 1998 and 1999, the Commission tried to take a lead in strengthening international standards for maritime safety with what it called a "Quality shipping campaign". This was launched at the IMO Assembly in November 1997 by the then Transport Commissioner Neil Kinnock and comprised, basically, several high level meetings, a draft Maritime Industry Charter, and the Equasis information system.

At a meeting in London in December 1998, hosted by the UK government, Kinnock told industry representatives from all levels of the responsibility chain, that "throughout the last 12 months it has become increasingly evident that a quality shipping initiative should signify a continuous way of thinking rather than be a time-limited campaign". It should, he said, continue to provide a way of putting pressure on substandard elements in the shipping industries, while providing encouragement and support for responsible operators, and should be seen as a global, rather than merely European, initiative.

Kinnock presented the conference with a draft of a Maritime Industry Charter on quality. This was subsequently altered before being opened for signature at the following event in Amsterdam - the

Chapter Ten

Mare Forum 99. At that meeting Kinnock said: *"I am aware . . . that there has been some degree of doubt among some industry sectors about the intent behind the Charter . . . Quite simply, we wish the normal safety considerations that are referred to in the Charter to be part of the internal strategy of industry associations and participants - and we hope that each association, to the extent its internal rules permit, will do its best to give effect to those principles for the benefit of everyone. We do not have the interest, the intent of the powers to transform the responsibility chain into a liability chain and we will not attempt to do so."*

By autumn 1999, about 20 industry associations and other organisations had signed the Charter. The signatories agree to subscribe to the following principles:

"- Each link in the maritime responsibility chain, be it at sea or on shore, should make safety considerations an integral part of its activities.

*- Industry participants should take reasonable care to ensure that the ships with which they are dealing are of good standards of quality. Accordingly, they should avoid using, servicing, supplying or otherwise doing business with ships which clearly do not meet the internationally applicable requirements.**

- Industry participants should resist substandard practices in any part of the maritime industry. In doing so they should promote dialogue and cooperation with other links in the maritime responsibility chain and with public authorities.

- Industry participants should, where appropriate and on a voluntary basis, share relevant information relating to compliance with international regulations and thus contribute to greater transparency in the maritime industry.

- In their joint and individual participation in this Charter, industry associations and participants should ensure that their conduct always remains within applicable legal constraints.

- Industry associations should reflect the principles stated herein in any Charter and/or code of conduct and should encourage their members to observe those principles at all times.

- The maritime industry, in cooperation with the relevant public authorities, should observe and evaluate developments within the context of this Charter at regular intervals.

** Internationally applicable requirements refers to those international instruments that are generally applicable to all ships, irrespective of flag, relating to safety, protection of the marine environment and the crew."*

The Maritime
Industry Charter

Equasis -
European
Quality Shipping
Information System

The Commission's objective behind the Equasis (European Quality Shipping Information System) project, Kinnock told delegates at Mare Forum 99, would be a joint effort by public authorities and industry to collect and make available existing information on the safety of individual ships. It would be linked to existing databases, including port state control data from different regions, through gateways which would provide direct access to the database in question, subject to the rules on release of information by the data provider. The Commission hopes to have the system functioning in the first half of 2000.