Regulation (EC) No 336/2006 of the European Parliament and of the Council of 15 February 2006 on the implementation of the International Safety Management Code within the Community and repealing Council Regulation (EC) No 3051/95 (Text with EEA relevance)

REGULATION (EC) No 336/2006 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 15 February 2006

on the implementation of the International Safety Management Code within the Community and repealing Council Regulation (EC) No 3051/95

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 80(2) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee[(1)],

After consulting the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the Treaty[(2)],

Whereas:

(1) The International Management Code for the Safe Operation of Ships and for Pollution Prevention, hereinafter referred to as 'the ISM Code', was adopted by the International Maritime Organisation (IMO) in 1993. This Code gradually became mandatory for most ships sailing on international voyages with the adoption in May 1994 of Chapter IX 'Management for the Safe Operation of Ships' of the International Convention for the Safety of Life at Sea (SOLAS), 1974.

(2) The ISM Code was amended by the IMO by Resolution MSC.104(73), adopted on 5 December 2000.

(3) Guidelines on Implementation of the ISM Code by Administrations were adopted by IMO Resolution A.788(19) on 23 November 1995. These Guidelines were amended by Resolution A.913(22), adopted on 29 November 2001.

(4) Council Regulation (EC) No 3051/95 of 8 December 1995 on the safety management of roll-on/roll-off passenger ferries (ro-ro ferries)[(3)] made the ISM Code mandatory at Community level with effect from 1 July 1996 for all ro-ro passenger ferries operating on a regular service to and from ports of the Member States, on both domestic and international voyages and regardless of their flag. This was a first step towards ensuring uniform and coherent implementation of the ISM Code in all Member States.

(5) On 1 July 1998 the ISM Code became mandatory under the provisions of Chapter IX of SOLAS for companies operating passenger ships, including high-speed passenger craft, oil tankers, chemical tankers, gas carriers, bulk carriers and cargo high-speed craft of 500 gross tonnage and upwards, on international voyages.

(6) On 1 July 2002 the ISM Code became mandatory for companies operating other cargo ships and mobile offshore drilling units of 500 gross tonnage and upwards, on international voyages.

(7) The safety of human life at sea and the protection of the environment may be effectively enhanced by applying the ISM Code strictly and on a mandatory basis.

(8) It is desirable to apply directly the ISM Code to ships flying the flag of a Member State as well as to ships, regardless of their flag, engaged exclusively on domestic voyages or on a regular shipping service operating to or from ports of the Member States.

(9) The adoption of a new Regulation with direct applicability should ensure the enforcement of the ISM Code on the understanding that it is left to the Member States to decide whether to implement the Code for ships, regardless of their flag, operating exclusively in port areas.

(10) Consequently, Regulation (EC) No 3051/95 should be repealed.

(11) If a Member State considers it difficult in practice for companies to comply with specific provisions of Part A of the ISM Code for certain ships or categories of ships exclusively engaged on domestic voyages in that Member State, it may derogate wholly or partly from those provisions by imposing measures ensuring equivalent achievement of the objectives of the Code. It may, for such ships and companies, establish alternative certification and verification procedures.

(12) It is necessary to take into account Council Directive 95/21/EC of 19 June 1995 on port State control of shipping[(4)].

(13) It is also necessary to take into account Council Directive 94/57/EC of 22 November 1994 on common rules and standards for ship inspection and survey organisations and for the relevant activities of maritime administrations[(5)], in order to define the recognised organisations for the purpose of this Regulation, and Council Directive 98/18/EC of 17 March 1998 on safety rules and standards for passenger ships[(6)], for the purpose of establishing the scope of application of this Regulation as regards passenger ships engaged on domestic voyages.

(14) The measures necessary for amending Annex II should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission[(7)].

(15) Since the objectives of this Regulation, namely to enhance the safety management and safe operation of ships as well as the prevention of pollution from ships, cannot be sufficiently achieved by the Member States and can therefore be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the

principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives,

HAVE ADOPTED THIS REGULATION:

Article 1

Objective

The objective of this Regulation is to enhance the safety management and safe operation of ships as well as the prevention of pollution from ships, referred to in Article 3(1), by ensuring that companies operating those ships comply with the ISM Code by means of:

(a) the establishment, implementation and proper maintenance by companies of the shipboard and shore-based safety management systems; and

(b) the control thereof by flag and port State administrations.

Article 2

Definitions

For the purpose of this Regulation the following definitions shall apply:

(1) 'the ISM Code' means the International Management Code for the Safe Operation of Ships and for Pollution Prevention adopted by the International Maritime Organisation by Assembly Resolution A.741(18) of 4 November 1993, as amended by Maritime Safety Committee Resolution MSC.104(73) of 5 December 2000 and set out in Annex I to this Regulation, in its up-to-date version;

(2) 'recognised organisation' means a body recognised in accordance with Directive 94/57/EC;

(3) 'company' means the owner of the ship or any other organisation or person, such as the manager or the bareboat charterer, who has assumed responsibility for the operation of the ship from the shipowner and who, on assuming such responsibility, has agreed to take over all the duties and responsibilities imposed by the ISM Code;

(4) 'passenger ship' means a ship, including a high-speed craft, carrying more than 12 passengers, or a passenger submersible craft;

(5) 'passenger' means every person other than:

  (a) the master and the members of the crew or other persons employed or engaged in any capacity on board a ship on the business of that ship; and

  (b) a child under one year of age;

(6) 'high-speed craft' means a high-speed craft as defined in Regulation X-1/2 of SOLAS, in its up-to-date version. For high-speed passenger craft, the limitations indicated in Article 2(f) of Directive 98/18/EC shall apply;

(7) 'cargo ship' means a ship, including a high-speed craft, which is not a passenger ship;

(8) 'international voyage' means a voyage by sea from a port of a Member State or any other State to a port outside that State, or vice versa;

(9) 'domestic voyage' means a voyage in sea areas from a port of a Member State to the same or another port within that Member State;

(10) 'regular shipping service' means a series of ship crossings operated so as to serve traffic between the same two or more points, either:

(a) according to a published timetable; or

(b) with crossings so regular or frequent that they constitute a recognisable systematic series;

(11) 'ro-ro passenger ferry' means a seagoing passenger vessel as defined in Chapter II-1 of SOLAS, in its up-to-date version;

(12) 'passenger submersible craft' means a passenger-carrying mobile vessel which primarily operates under water and relies on surface support, such as a surface ship or shore-based facilities, for monitoring and for one or more of the following:

(a) recharging of power supply;

(b) recharging high pressure air;

(c) recharging life-support;

(13) 'mobile offshore drilling unit' means a vessel capable of engaging in drilling operations for the exploration for or exploitation of resources beneath the seabed such as liquid or gaseous hydrocarbons, sulphur or salt;

(14) 'gross tonnage' means the gross tonnage of a ship determined in accordance with the International Convention on Tonnage Measurement of Ships, 1969 or, in the case of ships engaged exclusively on domestic voyages and not measured in accordance with the said Convention, the gross tonnage of the ship determined in accordance with national tonnage measurement regulations.

Article 3

Scope

1 This Regulation shall apply to the following types of ships and to companies operating them:

a cargo ships and passenger ships, flying the flag of a Member State, engaged on international voyages;

b cargo ships and passenger ships engaged exclusively on domestic voyages, regardless of their flag;

c cargo ships and passenger ships operating to or from ports of the Member States, on a regular shipping service, regardless of their flag;

d mobile offshore drilling units operating under the authority of a Member State.

2 This Regulation shall not apply to the following types of ships or to the companies operating them:

a ships of war and troopships and other ships owned or operated by a Member State and used only on government non-commercial service;

b ships not propelled by mechanical means, wooden ships of primitive build, pleasure yachts and pleasure craft, unless they are or will be crewed and carrying more than 12 passengers for commercial purposes;

c fishing vessels;

d cargo ships and mobile offshore drilling units of less than 500 gross tonnage;

e passenger ships, other than ro-ro passenger ferries, in sea areas of Class C and D as defined in Article 4 of Directive 98/18/EC.

Article 4

Compliance

Member States shall ensure that all companies operating ships falling within the scope of this Regulation comply with the provisions of this Regulation.

Article 5

Safety management requirements

The ships referred to in Article 3(1) and the companies operating them shall comply with the requirements of Part A of the ISM Code.

Article 6

Certification and verification

For the purposes of certification and verification, Member States shall comply with the provisions of Part B of the ISM Code.

Article 7

Derogation

1 A Member State may, if it considers it difficult in practice for companies to comply with paragraphs 6, 7, 9, 11 and 12 of Part A of the ISM Code for certain ships or categories of ships exclusively engaged on domestic voyages in that Member State, derogate wholly or partly from those provisions by imposing measures ensuring equivalent achievement of the objectives of the Code.

2 A Member State may, for ships and companies for which a derogation has been adopted by virtue of paragraph 1, if it considers it difficult in practice to apply the requirements laid down in Article 6, establish alternative certification and verification procedures.

3 In the circumstances set out in paragraph 1 and, if applicable, paragraph 2, the following procedure shall apply:

a the Member State concerned shall notify the Commission of the derogation and of the measures which it intends to adopt;

b if, within six months of the notification, it is decided, in accordance with the procedure referred to in Article 12(2), that the proposed derogation is not justified or that the proposed measures are not sufficient, the Member State shall be required to amend or refrain from adopting the proposed provisions;

c the Member State shall make any adopted measures public with a direct reference to paragraph 1 and, if applicable, paragraph 2.