COMMISSION REGULATION (EC) No 1970/2002

of 4 November 2002

amending Council Regulation (EC) No 3051/95 on the safety management of roll-on/roll-off passenger ferries (ro-ro ferries)

(Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3051/95 of 8 December 1995 on the safety management of roll-on/roll-off passenger ferries (ro-ro ferries) [1], as amended by Commission Regulation (EC) No 179/98 [2], and in particular Article 9 thereof,

Whereas:

(1) Regulation (EC) No 3051/95 provides that companies and Member States shall comply with the provisions of the International Safety Management Code adopted by the International Maritime Organisation (IMO) through Assembly Resolution A.741 (18) of 4 November 1993, in respect of ro-ro ferries operating to or from ports of the Member States of the Community.

(2) With a view to ensuring uniform implementation of the ISM Code, Regulation (EC) No 3051/95 contains provisions for administrations, based upon the Guidelines on implementation of the International Safety Management Code (ISM) by Administrations, adopted by the International Maritime Organisation (IMO) through Assembly Resolution A.788 (19) of 23 November 1995.

(3) These IMO Resolutions have been amended by the International Maritime Organisation (IMO) through Resolution MSC.104 (73), adopted on 5 December 2000, and Resolution A.913 (22), adopted on 29 November 2001.

(4) It is necessary to take account of developments at international level by introducing detailed rules concerning certification and verification.

(5) The measures provided for in this Regulation are in accordance with the opinion of the Committee provided for in Article 12 of Council Directive 93/75/EEC [3], as last amended by Commission Directive 98/74/EC [4],

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 3051/95 is amended as follows:

1. Article 2(e) is replaced by the following:

   '(e) "ISM Code" means the International Management Code for the Safe Operation of Ships and for Pollution Prevention, adopted by the International Maritime Organisation (IMO) through Assembly Resolution A.741 (18) of 4 November 1993, as amended by IMO Resolution MSC.104 (73) of 5 December 2000 and annexed to this Regulation.';

2. Article 2(h) is replaced by the following:

   '(h) "safety management certificate" means the certificate issued to ro-ro ferries in conformity with paragraph 13.7 of the ISM Code.';

3. Article 4(1) is replaced by the following:

   '1. All companies shall comply with all the provisions of paragraphs 1.2 to 13.1 and of paragraph 13.6 of the ISM Code, as if the provisions thereof were mandatory, as a requirement for their vessels to provide regular services to or from a port of a Member State of the Community.';

4. Article 5(1) is replaced by the following:

   '1. Member States shall comply with the provisions of paragraph 13.2, 13.3, 13.4, 13.5, 13.7 to 13.11, 14 and 16 of the ISM Code as if the provisions thereof were mandatory, in relation to companies and ro-ro ferries.';

5. the Annex is replaced by the Annex to this Regulation.

Article 2

This Regulation shall enter into force on the 20th day following that of its publication in the *Official Journal of the European Communities*.

[1] OJ L 320, 30.12.1995, p. 14.
[2] OJ L 19, 24.1.1998, p. 35.
[3] OJ L 247, 5.10.1993, p. 19.
[4] OJ L 276, 13.10.1998, p. 7.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 4 November 2002.

For the Commission
Loyola DE PALACIO
Vice-President

ANNEX

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TITLE I

International Management Code for the safe operation of ships and for pollution prevention (International Safety Management (ISM) Code

PART A — IMPLEMENTATION

1. General

1.1. Definitions

The following definitions apply to parts A and B of this Code.

1.1.1. "International Safety Management (ISM) Code" means the International Management Code for the Safe Operation of Ships and for Pollution Prevention as adopted by the Assembly, as may be amended by the Organisation.

1.1.2. "Company" means the owner of the ship or any other organisation or person such as the manager or the bareboat charterer, who has assumed the 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 responsibility imposed by the Code.

1.1.3. "Administration" means the government of the State whose flag the ship is entitled to fly.

1.1.4. "Safety Management System" means a structured and documented system enabling Company personnel to implement effectively the Company safety and environmental protection policy.

1.1.5. "Document of Compliance" means a document issued to a Company which complies with the requirements of this Code.

1.1.6. "Safety Management Certificate" means a document issued to a ship which signifies that the Company and its shipboard management operate in accordance with the approved safety management system.

1.1.7. "Objective evidence" means quantitative or qualitative information, records or statements of fact pertaining to safety or to the existence and implementation of an safety management system element, which is based on observation, measurement or test and which can be verified.

1.1.8. "Observation" means a statement of fact made during a safety management audit and substantiated by objective evidence.

1.1.9. "Non-conformity" means an observed situation where objective evidence indicates the non-fulfillment of a specified requirement.

1.1.10. "Major non-conformity" means an identifiable deviation that poses a serious threat to the safety of personnel or the ship or a serious risk to the environment that requires immediate corrective action and includes the lack of effective and systematic implementation of a requirement of this Code.

1.1.11. "Anniversary date" means the day and month of each year that corresponds to the date of expiry of the relevant document or certificate.

1.1.12. "Convention" means the International Convention for the Safety of Life at Sea, 1974 as amended.

1.2. Objectives

1.2.1. The objectives of the Code are to ensure safety at sea, prevention of human injury or loss of life, and avoidance of damage to the environment, in particular, to the marine environment, and to property.

1.2.2. Safety management objectives of the Company should, *inter alia*:

1.2.2.1. provide for safe practices in ship operation and a safe working environment;

1.2.2.2. establish safeguards against all identified risks; and

1.2.2.3. continuously improve safety management skills of personnel ashore and aboard ships, including preparing for emergencies related both to safety and environmental protection.

1.2.3. The safety management system should ensure:

1.2.3.1. compliance with mandatory rules and regulations; and

1.2.3.2. that applicable codes, guidelines and standards recommended by the Organisation, administrations, classification societies and maritime industry organisations are taken into account.

1.3. Application

The requirements of this Code may be applied to all ships.

1.4. Functional requirements for a safety management system (SMS)

Every company should develop, implement and maintain a safety management system (SMS) which includes the following functional requirements:

1.4.1. a safety and environmental protection policy;

1.4.2. instructions and procedures to ensure safe operation of ships and protection of the environment in compliance with relevant international and flag State legislation;

1.4.3. defined levels of authority and lines of communication between, and amongst, shore and shipboard personnel;

1.4.4. procedures for reporting accidents and non-conformities with the provisions of this Code;

1.4.5. procedures to prepare for and respond to emergency situations; and

1.4.6. procedures for internal audits and management reviews.

2. **Safety and environmental protection policy**

2.1. The company should establish a safety and environmental protection policy which describes how the objectives, given in paragraph 1.2, will be achieved.

2.2. The Company should ensure that the policy is implemented and maintained at all levels of the organisation both ship-based as well as shore-based.

3. **Company responsibilities and authority**

3.1. If the entity who is responsible for the operation of the ship is other than the owner, the owner must report the full name and details of such entity to the administration.

3.2. The company should define and document the responsibility, authority and interrelation of all personnel who manage, perform and verify work relating to and affecting safety and pollution prevention.

3.3. The company is responsible for ensuring that adequate resources and shore-based support are provided to enable the designated person or persons to carry out their functions.

4. **Designated person(s)**

To ensure the safe operation of each ship and to provide a link between the company and those on board, every company, as appropriate, should designate a person or persons ashore having direct access to the highest level of management. The responsibility and authority of the designated person or persons should include monitoring the safety and pollution prevention aspects of the operation of each ship and to ensure that adequate resources and shore-based support are applied, as required.

5. **Master's responsibility and authority**

5.1. The company should clearly define and document the master's responsibility with regard to:

5.1.1. implementing the safety and environmental protection policy of the company;

5.1.2. motivating the crew in the observance of that policy;

5.1.3. issuing appropriate orders and instructions in a clear and simple manner;

5.1.4. verifying that specified requirements are observed; and

5.1.5. reviewing the SMS and reporting its deficiencies to the shore-based management.