COUNCIL DIRECTIVE 94/58/EC

of 22 November 1994

on the minimum level of training of seafarers

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 84 (2) thereof,

Having regard to the proposal from the Commission (1),

Having regard to the opinion of the Economic and Social Committee (2),

Acting in acordance with the procedure referred to in Article 189c of the Treaty (3),

Whereas in its conclusions of 25 January 1993 on maritime safety and pollution prevention in the Community, the Council noted the importance of the human element in the safe operation of ships;

Whereas in its resolution of 8 June 1993 on a common policy on safe seas (4), the Council set the objective of removing substandard crews and gave priority to Community action aiming at enhancing training and education by developing common standards for minimum training levels of key personnel, including the question of a common language on board Community vessels;

Whereas the standards of training for the award of vocational competency certificates to seafarers vary from one Member State to another; whereas such a diversity of national laws in the area of training covered by this Directive does not ensure the consistent level of training required in the interests of maritime safety;

Whereas Council Directive 89/48/EEC (5) and 92/51/EEC (6) on the general systems for the recognition of professional education and training apply to maritime occupations covered by this Directive; whereas they will help promote compliance with the obligations laid down in the Treaty abolishing obstacles to the free movement of persons and services between Member States;

Whereas the mutual recognition of diplomas and certificates provided for under the general systems Directives does not always ensure a standardized level of training for all seafarers serving on board vessels flying the flag of a Member State including ships registered in Euros once that register is approved by the Council; whereas this is, however, vital from the viewpoint of maritime safety;

Whereas it is therefore essential to define a minimum level of training for seafarers in the Community; whereas it is appropriate that the action in this field should be based on the standards of training already agreed at international level, namely the IMO Convention on Standards of Training, certification and Watchkeeping for Seafarers, 1978, (STCW Convention); whereas all Member States are parties to that Convention;

Whereas the amendment to STCW of 22 May 1991 (Resolution MSC 21 (59)) introduces the funcion of radio operator in order to conform to the GMDSS-requirements;

Whereas in order to enhance maritime safety and prevent loss of human life and maritime pollution, communication among crew members on board ships sailing in Community waters should be improved;

Whereas personnel on board passenger ships nominated to assist passengers in emergency situations should be able to communicate with the passengers; whereas in this context, all relevant provisions of IMO Resolution A.770 (18) on minimum training requirements for personnel nominated to assist passengers in emergency situations on passenger ships should be taken into account;

(1) OJ No C 212, 5. 8. 1993, p. 1.
(2) OJ No C 34, 2. 2. 1994, p. 10.
(3) Opinion of the European Parliament of 9 March 1993 (OJ No C 91, 28. 3. 1994, p. 120), Council common position of 19 September 1994 (OJ No C 301, 27. 10. 1994, p. 41) and Decision of the European Parliament of 16 November 1994 (not yet published in the Official Journal).
(4) OJ No C 271, 7. 10. 1993, p. 1
(5) OJ No L 19, 24. 1. 1989, p. 16
(6) OJ No L 209, 24. 7. 1992, p. 25

Whereas crews serving on board tankers carrying noxious or polluting cargo should be capable of coping efficiently with accident prevention and emergency situations; whereas it is paramount that a proper communication link between the master, officers and ratings is established, covering the requirements provided for in Article 8;

Whereas Article 8 (3) is necessitated by the fact that the relevant standards, to be established through an amendment to the 1978 STCW Convention, have not yet been agreed in the IMO;

Whereas measures should be taken to ensure that seafarers holding certificates issued by third countries have a level of competence commensurate with that required by the STCW Convention;

Whereas in order to attain this objective, common criteria should be defined for the recognition of foreign certificates in the Community; whereas for this purpose, the Council should decide on the common criteria acting in accordance with the conditions of the Treaty;

Whereas a committee should be established to assist the Commission in carrying out the tasks related to the exercise of the recognition of certificates issued by training institutes or administrations of third countries;

Whereas measures should be taken for allowing seafarers serving on board ships flying the flag of a Member State, including ships registered in Euros once that register is approved by the Council, and holding certificates not issued according to this Directive, to continue their work during a transitional period up to and beyond the adoption of the common criteria;

Whereas Member States, as port authorities, are required to enhance safety and prevention of pollution in Community waters through priority inspection of vessels flying the flag of a third country which has not ratified the STCW Convention, or which have crews holding certificates which have not been recognized under the provisions of this Directive, thereby ensuring no more favourable treatment to vessels flying the flag of a third State;

Whereas it is necessary to provide for procedures for adapting the Directive to changes in international conventions and codes,

HAS ADOPTED THIS DIRECTIVE:

Article 1

This Directive shall apply to seafarers as mentioned in this Directive serving on board seagoing ships flying the flag of a Member State with the exception of:

— warships, naval auxiliaries or other ships owned or operated by a Member State and engaged only on government non-commercial service,

— fishing vessels,

— pleasure yachts not engaged in trade,

— wooden ships of primitive build.

Article 2

Member States shall take the measures necessary to ensure that masters, officers, ratings forming part of the navigational watch or the engine room watch and lifeboatmen, serving on a ship referred to in Article 1, are trained as a minimum in compliance with the requirements of the STCW Convention, as laid down in the Annex to this Directive, and hold a certificate as defined in Article 3.

Article 3

A certificate shall be a valid document by whatever name it may be known, issued by or under the authority of the competent authority of a Member State, authorizing the holder to serve as stated in that document or as authorized by national regulations.

Article 4

For the purpose of this Directive:

(a) 'master' means the person having command of a ship;

(b) 'officer' means a member of the crew, other than the master, designated as such by national law or regulations or, in the absence of such designation, by collective agreement or custom;

(c) 'deck officer' means a qualified officer in the deck department;

(d) 'chief mate' means the deck officer next in rank to the master and upon whom the command of a ship will fall in the event of the incapacity of the master;

(e) 'engineer officer' means a qualified officer in the engine department;

(f) 'chief engineer officer' means the senior engineer officer responsible for the mechanical propulsion of the ship;

(g) 'second engineer officer' means the engineer officer next in rank to the chief engineer officer and upon whom the responsibility for the mechanical propulsion of the ship will fall in the event of the incapacity of the chief engineer officer;

(h) 'assistant engineer officer' means a person under training to become an engineer officer and designated as such by national law or regulations;

(i) 'radio operator' means a person holding an appropriate certificate related to the global maritime distress and safety system issued or recognized by the competent authority or body designated by a Member State under the provisons of the Radio Regulations;

(j) 'rating' means a member of the ship's crew other than the master or an officer;

(k) 'lifeboatman' means a Member of the ship's crew holding a certificate of proficiency in survival craft and rescue boats issued as a seperate document or as included in his certificate of competency;

(l) 'sea-going ship' means a ship other than those which navigate exclusively in inland waters or in waters within, or closely adjacent to, sheltered waters or areas where port regulations apply;

(m) 'ship flying the flag of a Member State' means a ship registered in and flying the flag of a Member State in accordance with its legislation, including ships registered in Euros once that Register is approved by the Council. Ships not corresponding to this definition are assimilated to ships flying the flag of a third country;

(n) 'near-coastal voyages' means voyages in the vicinity of a Member State as defined by that Member State;

(o) 'propulsion power' means the power in kilowatts which appears on a ship's Certificate of Registry or other official document;

(p) 'oil tanker' means a ship constructed and used for the carriage of petroleum and petroleum products in bulk;

(q) 'chemical tanker' means a ship constructed and used for the carriage in bulk of any liquid chemical listed in the 'Code for the Construction and Equipment of Ships carrying Dangerous Chemicals in Bulk' as it is in force at the time of adoption of this Directive;

(r) 'liquefied gas tanker' means a ship constructed and used for the carriage in bulk of any liquefied gas listed in the 'Code for the Construction and Equipment of Ships carrying Liquefied Gases in Bulk' as it is in force at the time of adoption of this Directive;

(s) 'Radio Regulations' means the revised radio regulations, adopted by the World Administrative Radio Conference for the Mobile Service;

(t) 'passenger ship' means a sea-going ship which carries more than 12 passengers;

(u) 'fishing vessel' means a vessel used for catching fish, whales, seals, walrus or other living resources of the sea;

(v) 'STCW Convention' means the IMO International Convention on Standards of Training Certification and Watchkeeping for Seafarers, 1978, as it is in force at the time of adoption of this Directive.

Article 5

The training required by Article 2 shall be in a form appropriate to the theoretical knowledge and practical skills required by the Annex to this Directive, in particular the use of life saving and firefighting equipment, and approved by the competent authority or body designated by each Member State.

Article 6

1. In circumstances of exceptional necessity, competent authorities may, if in their opinion this does not cause danger to persons, property or the environment, issue a dispensation permitting a specified seafarer to serve in a specified ship for a specified period not exceeding six months in a capacity, other than that of the radio operator, except as provided by the relevant Radio Regulations, for which he does not hold the appropriate certificate, provided that the person to whom the dispensation is issued shall be adequately qualified to fill the vacant post in a safe manner to the satisfaction of the competent authorities. However, dispensations shall not be granted to a master or chief engineer officer, except in circumstances of *force majeure* and then only for the shortest possible period.

2. Any dispensation granted for a post shall be granted only to a person properly certificated to fill the post immediately below. Where certification of the post below is not required, a dispensation may be issued to a person whose qualification and experience are, in the opinion of the competent authorities, of a clear equivalence to the requirements for the post to be filled, provided that, if such a person holds no appropriate certificate, he or she shall be required to pass a test accepted by the competent authorities as demonstrating that such a dispensation may safely be issued. In addition, competent authorities shall ensure that the post in question is filled by the holder of an appropriate certificate as soon as possible.

Article 7

Member States shall designate the authorities or bodies which shall:

— give the training referred to in Article 5,

— organize and/or supervise the examinations where required. The Member State shall ensure that all examiners are properly qualified,

— issue the certificate of competence,

— grant the dispensations provided for in Article 6.

Article 8

Member States shall ensure that:

1. on board all ships flying the flag of a Member State and on all passenger ships starting and/or finishing a voyage in a Member State port, there are at any time means in place for effective oral communication related to the safety between all members of the ship's company particularly with regard to the correct and timely reception and understanding of messages and instructions. Furthermore, there should be adequate means for communication between the ship and the shore-based authorities, either in a common language or in the language of those authorities;

2. on board passenger ships, personnel nominated on muster lists to assist passengers in emergency situations are readily identifiable and have communication skills that are sufficient for that purpose, taking into account an appropriate and adequate combination of any of the following criteria:

   (a) the language or languages appropriate to the principal nationalities of passengers carried on a particular route;

   (b) the likelihood that an ability to use elementary English vocabulary for basic instructions can provide a means of communicating with a passenger in need of assistance whether or not the passenger and crew member share a common language;

   (c) the possible need to communicate during an emergency by some other means (e. g. by demonstration, or hand signals, or calling attention to the location of instructions, muster stations, life-saving devices or evacuation routes when verbal communication is impractical;

   (d) the extent to which complete safety instructions have been provided to passengers in their native language or languages; and

   (e) the languages in which emergency announcements may be broadcast during an emergency or drill to convey critical guidance to passengers and to facilitate crew members in assisting passengers;

3. on board oil tankers, chemical tankers and liquefied gas tankers flying the flag of a Member State, the master, officers and ratings are able to communicate with each other in (a) common working language(s). Furthermore, there should be adequate means for communication between the ship and the shore-based authorities either in a common language or in the language of those authorities;

4. when carrying out a ship inspection in their capacity of State of the port, Member States shall check that ships flying the flag of a State other than a Member State also comply with this Article.

Article 9

1. Mutual recognition among Member States of certificates referred to in Article 3 held by seafarers who are nationals of Member States shall be subject to the provisions of Directives 89/48/EEC and 92/51/EEC.

2. Mutual recognition among Member States of certificates referred to in Article 3 held by seafarers who are not nationals of Member States shall also be subject to the provisions of Directives 89/48/EEC and 92/51/EEC.

3. Seafarers who do not possess the certificate provided for in Article 3, may be allowed to serve on ships flying the flag of a Member State provided a decision on the recognition of their type of certificate has been adopted through the procedure set out below:

(a) A set of criteria for the recognition of types of certificates issued by institutes or administrations will be defined by the Council before 1 July 1995, acting in accordance with the conditions of the Treaty.

(b) Member States shall notify the Commission and the other Member States of the types of certificates they have recognized or intend to recognize in compliance with the criteria mentioned under (a).

(c) If, within a period of three months following that notification, an objection is raised by a Member State or the Commission on the basis of the criteria referred to in (a), the matter shall be submitted by the Commission to the procedure in Article 13. The Member State concerned shall take the appropriate measures to implement the decisions taken in accordance with the procedure in that Article.

(d) The Commision shall draw up and update a list of the certificates notified by the Member States. The list shall be published in the *Official Journal of the European Communities.*

4. Seafarers who do not possess the certificates provided for in Article 3 but who are serving on a ship flying the flag of a Member State may be allowed to continue to serve on ships flying the flag of that Member State until two years after the common criteria provided for in paragraph 3 (a) have been fixed. After that date they shall possess either a type of certificate provided for in Article 3 or a type of certificate recognized in accordance with the procedure mentioned in paragraph 3 above.

Article 10

Member States shall take the measures necessary to ensure that ships flying the flag of a third country which has not ratified the STCW Convention, or which have a master, officers and ratings holding certificates which have not been recognized under the provisions of Article 9, are inspected, as a matter of priority, by the competent authority of the port State to check whether the level of vocational training and competence of their crews meet the standards laid down in the STCW Convention and in Article 8.

Article 11

Member States shall take approriate steps, including the possible detention of a ship, if the competent authorities of the port State discover in the course of an inspection that crews are unable to provide proof of professional proficiency for the duties assigned to them for the safety of the ship and the prevention of pollution.

Article 12

1. This Directive may be amended in accordance with the procedure laid down in Article 13, in order to apply, for the purposes of this Directive, subsequent amendments to the international codes referred to in Article 4 (q), (r) and (s) which have entered into force.

2. Following the adoption of new instruments or protocols to the STCW Convention referred to in Article 4 (v), the Council, acting on a proposal from the Commission, shall decide, taking into account the Member States' parliamentary procedures, as well as the relevant procedures within IMO on the detailed arrangements for ratifying those new instruments or protocols, while ensuring that they are applied uniformly and simultaneously in the Member States.

Article 13

1. The Commission shall be assisted by a committee composed of representatives of the Member States and chaired by the representative of the Commission.

2. The representative of the Commission shall submit to the committee a draft of the measures to be taken. The committee shall deliver its opinion on the draft within a time limit which the chairman may lay down according to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 148 (2) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States within the committee shall be weighted in the manner set out in that Article. The chairman shall not vote.

3. (a) The Commission shall adopt the measures envisaged if they are in accordance with the opinion of the committee.

(b) If the measures envisaged are not in accordance with the opinion of the committee, or if no opinion is delivered, the Commission shall, without delay, submit to the Council a proposal relating to the measures to be taken. The Council shall act by a qualified majority.

(c) If, on the expiry of eight weeks from the date of referral to the Council, the Council has not acted, the proposed measures shall be adopted by the Commission.

Article 14

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive no later than 31 December 1995.