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## International Developments in Shipping

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June 1998

### Abstract

*This Article deals with the Commission's latest proposals on the manning of regular passenger services, presents the objectives and the employment in the EU Ferry Market. It also deals with the cabotage in general, as well as with the cabotage passenger services and the regular passenger services between Member States.*

### 1. Introduction

The commission's latest proposals on the manning of regular passenger services operating within and between Member States have received a mixed response.

Some say that the new proposals prove again that the Commission is an ultra-liberal body obsessed by the dogma of free competition. They claim that the cabotage proposal will lead to ruinous competition amongst operators, resulting in the loss of jobs for many thousands of European seafarers.

Others say, on the contrary, that the new proposal on traffic between Member States proves that the Commission has lost the true liberal faith and is now embarking upon the dangerous path of protectionism.

None of this is true of course, as has also been recognised by other parties in the shipping world who consider that the Commission's proposals are reasonable and balanced. What the Commission wants is quite simple. It wants free competition in open markets, but competition on fair and equal terms.

### 2. Objectives

To establish a level playing field between passenger ferry operators in the Common market is the first objective. The second objective is to safeguard and

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promote employment of Community seafarers. This is not so much a separate objective, but rather a consequence that follows from the realisation of the first objective. One can have confidence in the skills and efficiency of the European seafarer, who will be able to hold his position in a competitive environment provided he can compete on equal terms.

Before turning to the precise content of the new proposals, let us have a look at the employment situation of European seafarers.

### **3. Employment In The EU Ferry Market**

The total number of Community seafarers working aboard ships under Member States' flags is presently estimated at 120.000; of this, roughly half, that is 60.000 persons, are employed on regular passenger services (35.000 in cabotage, 25.000 in traffic between Member States). Passenger services including catering staff, cabin crew etc.) are of course far more labour intensive than cargo ships.

It is also to be noted that the «flagging out phenomenon» was until now mainly restricted to the cargo sector. In this global market there is fierce competition between different flags and registers. The ferry market is different in this respect.

The question is, however, whether the employment situation in the Community's regular passenger sector will remain as stable as it now looks to be. It is only natural that operators will try to reduce their operating costs. And now even more so, in a period when the revenues of ferry operators will be under pressure due to certain external developments, such as: (a) the abolition of duty free next summer, (b) the completion of fixed links which has generated over capacity in certain regions (UK, France, Denmark, Sweden) and (c) more competition in island cabotage in the Mediterranean. In conclusion there is a realistic danger of a downward spiral in the labour conditions of European Union seafarers employed in the ferry sector.

Certain attempts have already been made to start ferry services between Member States with ships under third country flags and crews entirely recruited from outside the European Union. Until now, these attempts have failed due to strong opposition from the labour unions. But in a civilised world, the rules should not be dictated by «Union Power» alone. The question of the market rules should be addressed by Member States' Transport Ministers at Community level.

#### **4. Cabotage In General**

Let us first look at the cabotage proposal. It was in 1992 that the Council adopted a regulation on the liberalisation of maritime cabotage. However, it was provided that certain transitional measures would apply to certain segments of the market. For instance: transport between the Mediterranean islands and the mainland of the Member State concerned will only be liberalised as from 1.1.1999. And for the Greek islands, an additional transitional period of 5 years has been granted.

On the manning rules for island cabotage, the Council had difficulty in reaching a final agreement. It was decided that the Commission would re-examine the matter and submit a proposal before 1.1.1999. In response to this the Commission submitted its proposal (COM (1998) 251 final) on 29.04.1998.

In analysing the situation a distinction should be made between cargo and passenger cabotage. The present regulation of 1992 provides the following. First, for ships smaller than 660 Gt., the host State shall determine all matters relating to manning. Second, for ships over 650 Gt engaged in mainland cabotage the flag State decides on manning issues. Third, the same is true for ships over 650 Gt engaged in consecutive island cabotage (consecutive cabotage means that the cabotage operation follows precedes and international journey.). However, if a ship over 650 Gt engages in non-consecutive island cabotage (two or more island trips at a row) then all matters related to manning will fall within the competence of the host State.

This last rule seems impractical for the cargo sector. In cargo trades it is quite common that ships participate for alternating periods in domestic and international operations (be it between Member States or in traffic with third countries). All such ships operate under their flag State rules, as is common practice in maritime transport. It is difficult to imagine that for example the rules governing the composition of the crew would suddenly change if a ship after having completed a consecutive island cabotage operation would be used for a second trip between that island and the mainland of the Member State to which the island belongs.

The Commission has now proposed a simplification of these rules. It is proposed to drop the distinction between island and mainland cabotage for cargo trades. As a general rule, the flag State would be responsible for manning issues. However, for cabotage operations with below 650 GT the host State would remain responsible, since operations with such small ships are of local importance only.

Some parties have expressed concern that the wider application of the flag state rule in cabotage would distort competition: the Commission does not share this fear for the following reasons.

First of all, it should be recalled that only ships under EU flags have the right of access to cabotage under Community law. Second, the composition of the crew on cargo ships is subject to the international provisions regarding the Safe

Manning Certificate, hence, there is a certain degree of harmonisation. Third, crew costs form a relatively small cost component in cargo trades.

## 5. Cabotage Passenger Services

Passenger services should be examined with special attention since they are far more labour intensive. In addition, regular island passenger services are of vital importance for the regional public transport systems. For these obvious reasons special attention has been given to these services in the cabotage study. The Commission arrived at the conclusion that the forthcoming liberalisation should go hand in hand with the introduction of some special measures to ensure fair competition on equal terms.

In Southern Europe all Member States require that the crews on board ferries in cabotage must consist entirely of EU nationals. Whereas, several Member States in Northern Europe leave their ferry operators free in this respect. The Commission would consider it unfair if ferry operators using the flags of these latter Member States, having their ferries partly crewed by cheap labour from non-EU countries, could start competing freely with domestic ferry operators in Southern Europe. To prevent this situation it is proposed to introduce the following rules<sup>1</sup>.

- (a) if a host Member State imposes the condition on its own ferry operators that 100% of the staff working on board must consist of EU nationals, the same rule shall apply to ships from other Member States engaged in that trade;
- (b) if a host Member State allows a certain percentage of non-EU seafarers, these latter must be treated for the purpose of labour laws and standards as if they were residents of the Member State where the ship is registered.

In this way competition between operators of different Member States is allowed to develop on a fair basis and in line with European labour standards.

The question has been asked whether the total number of crew required on board passenger ferries should also be determined by the host State. The Commission's answer has been negative. As mentioned before, there are international rules in force regarding the number of nautical crew required (Safe Man-

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<sup>1</sup> According to the proposal these rules shall be applicable to vessels carrying out regular passenger and ferry services, including mixed passenger cargo services and domestic scheduled cruise services.

ning Certificate for which the flag State has competence). As regards cabin crew and catering staff, it would not be well possible or desirable to draw up stringent rules. It can be left to the market forces to determine which level of service is the most appropriate on a given route. To draw a comparison: there are 5 star and 1 star hotels. They each have a different price and service level. It is not for governments to decide what is best. However, the authorities must see to it that all general rules relating to safety, hygiene etc. are fully respected.

## **6. Regular Passenger Services Between Member States**

In line with the desire to ensure a level playing field for ferry operators competing on domestic routes, the Commission considered that certain additional rules are needed for ferry services between Member States. If one accepts that crew members on board ships engaged in domestic in domestic ferry services should be paid in accordance with European social standards, it would follow that in the context of the Single Market something similar should apply to passenger ferries operating between Member States. In some cases, domestic and international ferry services are even in direct competition with each other. This is for example the case Corsica where regular links with France and Italy exist.

However, there also important differences between domestic routes and international routes linking Member States, which need to be taken into account. The market access rules for such international links are governed by Council regulation n°4055/ 86 which provides that companies established in a Member State can operate on such routes under any flag.. Whereas the cabotage regulation n°3577/ 92 contains an EU-flag requirement. Obviously, the Commission has no intention to restrict market access or to introduce any form of discrimination on grounds of nationality.. A rule stating that only EU- nationals would be allowed to work on board ferries operating a regular service between EU ports is therefore not considered. The Commission has taken the view that a sufficient degree of harmonisation can be brought about applying a mechanism similar to the one used in the so -called posted workers Directive n° 96/71/EC OF 16 December 1996<sup>2</sup>.

The adoption of the Commissions latest proposal by the Council would mean in essence that the labour contract of a third country seafarer employed on a regular passenger ferry service operating between Member States must be drawn up in line with the labour laws and minimum social standards as applicable in the Member State to which the contract has the closest connection. If the ferry in question operates under a Member State's flag, this is the State with the closest connection. If not, the place of establishment from where the ferry serv-

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<sup>2</sup> This directive is applicable to all undertakings providing transitional construction firms . Companies providing maritime transport services have been exempted in respect of their seagoing personnel.

ice is effectively managed is normally taken as the basis for determining this connection.

It would seem that on this basis free and open access to EU ferry routes can be maintained without running the risk that thousands of European seafarers may lose their jobs as a result of substitution by imported cheap labour. To avoid any possible legitimate to make use of imported non-EU labour on passenger ferries providing a regular service between different Member States, provided that certain minimum labour standards as applicable in the EU Member States are respected.