



**COUNCIL OF
THE EUROPEAN UNION**

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STATEMENT OF THE COUNCIL'S REASONS

Subject : Proposal for a Directive of the European Parliament and of the Council amending
 Directive 2002/59/EC establishing a Community vessel traffic monitoring and
 information system

STATEMENT OF THE COUNCIL'S REASONS

I. INTRODUCTION

In November 2005, the Commission adopted its proposal ¹ for a Directive of the European Parliament and of the Council amending Directive 2002/59/EC establishing a Community vessel traffic monitoring and information system. This proposal was transmitted to the Council on 13 January 2006.

The European Parliament adopted its first-reading opinion on 25 April 2007.

The Economic and Social Committee adopted its opinion on 13 September 2006. ²

The Committee of the Regions adopted its opinion on 15 June 2006. ³

In the framework of the codecision procedure (article 251 TEC), the Council reached on 7 June 2007, a political agreement on the draft directive. Following legal/linguistic revision, the Council adopted its common position on xx May 2008.

II. OBJECTIVE

The main objective of the proposed Directive is to amend Directive 2002/59/EC in order to incorporate additional measures to enhance ship safety and environmental protection as well as to harmonise the implementation of the “places of refuge”.

The proposal includes in particular the development of the Community maritime safety information exchange system SafeSeaNet, the designation by Member States of an independent authority for the accommodation of ships in distress, measures to be taken in the presence of ice as well as the treatment of uninsured ships. Furthermore, the proposal suggests the use of automatic identification systems (AIS) to be made compulsory for fishing vessels longer than 15 metres and tightening of the shipper's information obligations.

¹ Doc. 5171/06 - COM(2005) 589 final

² OJ C 2006/318, 23.12.2006

³ OJ C 2006/229, 22.9.2006

III. ANALYSIS OF THE COMMON POSITION

General

The common position on the above proposal, as agreed by the Council, updates the directive in force in order to contribute to enhanced maritime safety. Although the Council agrees with the Commission as regards the objective of the proposal, the Council's approach involved some adaptations aiming at increasing safety in fishing vessels with an overall length of more than 15 metres fitting them with automatic identification systems (AIS), establishing the rules for the acceptance or refusal of ships in need of assistance in places of refuge and enhancing ship monitoring through the SafeSeaNet information exchange system.

It should be noted that the common position also includes a number of changes other than those envisaged in the European Parliament's first-reading opinion as provisions from the Commission's proposal have been supplemented with new elements or entirely redrafted.

In addition, a number of drafting changes merely seek to clarify the text or to ensure the overall coherence of the directive.

Two major issues, the fitting of automatic identification systems (AIS) to fishing vessels and the accommodation of ships in places of refuge, were considered of major significance during the discussions within the concerned Council bodies.

Specific issues

A. Use of automatic identification systems (AIS)

The use of automatic identification systems (AIS, class A) by fishing vessels with an overall length of more than 15 metres, which is one of the main feature of the amended directive, was accepted by the Council. Nonetheless, the Council considers that it is necessary to clearly identify to which vessels this obligation applies. To this end, Council's common position modifies the Commission proposal and determines precisely the conditions for this mandatory provision.

Furthermore, the Council accepted the European Parliament's amendment 17, and consequently, reference is made in the directive to the IMO Resolution A.917(22) (Guidelines for onboard use of AIS).

Moreover, the Council reviewed the implementation timetable (annex II(I)) proposed by the Commission in order to make sure that the time constraints are practically feasible for the concerned parties. In the Council's opinion, it is necessary to indicate that the shipping vessels equipped with AIS shall maintain it operational at all times except in some particular cases.

B. Accommodation of ships in places of refuge

The Council is of the opinion that, as regards the accommodation of ships in places of refuge, Member States should apply the IMO guidelines on places of refuge for ships in need of assistance (IMO Resolution A.949(23)) that stipulate that the Member State has the right to admit or to refuse the access of a vessel to a place of refuge. The Council's modification of the Commission's proposal makes clear that the acceptance or refusal of a ship in need of assistance in a place of refuge shall be the subject to a prior assessment of the situation carried out on the basis of the plan for the accommodation and a decision taken by the competent authority. For the Council, it is necessary to ensure that the plans for the accommodation will be prepared on the basis of the IMO Resolutions A.949(23) (IMO Guidelines on places of refuge for ships in need of assistance) and A.950(23) (Maritime Assistance Services).

Furthermore, the Council, contrary to the Commission, is of the opinion that the plans for accommodation of ships in need of assistance should contain information on the coastline of the Member States, which should assist the assessment of a ship in need of assistance in a place of refuge. Related to the communication of these plans to neighbouring Member States, the Council introduced the possibility for Member States to impose confidentiality.

Another issue raised in the discussions within the Council bodies, in relation to the accommodation in places of refuge, was the role of "the competent authority". The Council added an additional definition of "competent authority" aiming at a better understanding of this term and describing the role of the competent authority. The objective of the Council is to leave sufficient flexibility to Member States in order to organise their competent authority, taking also due account of their internal administrative and organisational structures.

Other issues

In addition to the above mentioned two main issues, the Council further modified the Commission's proposal, in particular regarding measures in the case of ice conditions. On this matter, it was spelled out that the competent authorities should proceed without prejudice to the duty of assistance and to relevant international rules.

With regard to the proposed provision on financial guarantees establishing the possibility for Member States to request an insurance certificate or a financial guarantee to the ship's operator, the Council considers it inappropriate to refer to another Commission's proposal being examined in the framework of the codecision procedure (proposal on the civil liability and financial guarantees of shipowners).

In relation to the entry into force of the amended directive, the period granted to Member States in order to bring into force the national implementation measures for this draft directive was extended from 12 months to 18 months.

Concerning SafeSeaNet, the Council's common position includes a provision, on the basis of the European Parliament's amendment 65, according to which the Commission shall ensure that SafeSeaNet is operational on a 24 hours-a-day basis.

IV. EUROPEAN PARLIAMENT'S AMENDMENTS

The common position incorporates some of the European Parliament's first-reading amendments, improving or clarifying the text of the proposed directive.

The Council accepted in full the amendments 17 and 65 of the European Parliament (as set out in doc. 8724/07) and agreed to redraft the amendments 22 and 23 so that Article 6a, 2nd paragraph, should read: "*Fishing vessels, equipped with AIS, shall maintain it in operation at all times. In exceptional circumstances, AIS may be switched off where the master considers this necessary in the interest of the safety or security of his vessel.*"

However, not all other European Parliament's amendments are reflected in the common position. For different reasons they were not acceptable to the Council. In this way, for example, the amendments 10, 11, 15, 18, 35 and 45 could not be accepted by the Council as they aim at the extension of the directive's scope. The amendments 5, 31, 32, 33 and 34, which are related to the competent authority, cannot be accepted by the Council as they are too specific and detailed. They would lead to organisational inflexibility and do not allow the possibility to take into consideration the specificities of the Member States. With regard to the use of AIS by fishing vessels, the Council supports the length proposed by the Commission, taking also account of the additional modifications thereto included in the common position. Therefore, the amendments 24, 50 and 51 could not be supported by the Council. The amendments 8, 9, 38, 39, 40 and 41 were considered by the Council as inappropriate as they refer to another proposal of the third maritime safety package which is still in the process of examination in the framework of the codecision procedure. Concerning the exchange of confidential information (amendments 7, 37, 44, 47 and 64), the Council is of the opinion that these amendments might raise some problems related to the confidentiality of the concerned information. Finally, on the amendments 50, 52, 53 and 54 specifying when the different fishing vessels shall be subject to the provisions of the directive, the Council considers that the implementation timetable included in the common position might be more appropriate for the concerned parties.

The Council also considers that some amendments could be more appropriate as recitals, such as the amendments 42 and 43.

V. CONCLUSION

The Council is of the opinion that the common position enables Member States to take appropriate and preventive actions as well as to respond correctly to dangerous situations.

The Council looks forward to constructive discussions with the European Parliament with a view to the early adoption of the directive.