



**COUNCIL OF
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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: Common position adopted by the Council with a view to the adoption of a Directive of the European Parliament and of the Council amending Directive 2002/59/EC establishing a Community vessel traffic monitoring and information system

**DIRECTIVE 2008/.../EC OF THE EUROPEAN PARLIAMENT
AND OF THE COUNCIL**

of ...

**amending Directive 2002/59/EC establishing a Community vessel traffic monitoring
and information system**

(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 Committee¹,

Having regard to the opinion of the Committee of the Regions²,

Acting in accordance with the procedure laid down in Article 251 of the Treaty³,

¹ OJ C 318, 23.12.2006, p. 195.

² OJ C 229, 22.9.2006, p. 38.

³ Opinion of the European Parliament of 25 April 2007 (not yet published in the Official Journal), Council Common Position of ... (not yet published in the Official Journal) and Position of the European Parliament of

Whereas:

- (1) With the adoption of Directive 2002/59/EC¹, the European Union reinforced its capacity for preventing situations posing a threat to the safety of human life at sea and to the protection of the marine environment.
- (2) Since this Directive concerns the amendment of Directive 2002/59/EC, most of the obligations it contains will not be applicable to Member States without sea shores and sea ports. Consequently, the only obligations which will be applicable to Austria, the Czech Republic, Hungary, Luxembourg or Slovakia are those obligations concerning ships flying the flag of those Member States, without prejudice to Member States' duty of cooperation to ensure continuity between maritime and other modal traffic management services, in particular river information services.
- (3) Under this Directive Member States that are coastal States should be able to exchange information, which they gather in the course of maritime traffic monitoring missions, which they carry out in their areas of competence. The Community maritime information exchange system "SafeSeaNet" (hereinafter referred to as "SafeSeaNet"), developed by the Commission in agreement with the Member States, comprises, on the one hand, a data exchange network and, on the other hand, a standardisation of the main information available on ships and their cargo (advance notice and reporting). It thus makes it possible to locate at source and communicate to any authority accurate and up-to-date information on ships in European waters, their movements and their dangerous or polluting cargoes, as well as marine incidents.

¹ OJ L 208, 5.8.2002, p. 10.

- (4) Accordingly, in order to guarantee operational use of the information gathered in this way, it is essential that the infrastructure necessary for the data collection and exchange referred to in this Directive and implemented by the national administrations be integrated into the SafeSeaNet.
- (5) Of the information notified and exchanged pursuant to Directive 2002/59/EC, that concerning the precise characteristics of dangerous or polluting goods carried by sea is particularly important. Accordingly, and in the light of recent maritime accidents, coastal authorities should be allowed easier access to the characteristics of the hydrocarbons being carried by sea, an essential factor in choosing the most suitable control techniques, and, in an emergency, provided with a direct link with those operators who have the best knowledge of the goods being carried.
- (6) The automatic ship identification systems (AIS – Automatic Identification System) referred to in the International Convention for the Safety of Life at Sea of 1 November 1974 make it possible not only to improve the possibilities of monitoring these ships but above all to make them safer in close navigation situations. AIS have accordingly been integrated into the enacting terms of Directive 2002/59/EC. Considering the large number of collisions involving fishing vessels that have clearly not been seen by merchant ships or which have not seen the merchant ships around them, extension of that measure to include fishing vessels with a length of more than 15 metres is very much to be desired. In the framework of the European Fisheries Fund, financial assistance may be provided for the fitting on board of fishing vessels of safety equipment such as AIS.

- (7) The obligation to fit AIS should be understood also to require that AIS be maintained in operation at all times except where international rules or standards provide for the protection of navigational information.
- (8) It would be useful to study what synergies might be possible between AIS and the positioning and communication systems used in the context of the common fisheries policy, such as the satellite-based vessel monitoring system. For this purpose, the Commission, in cooperation with the Member States, should study the feasibility and determine the detailed rules for integrating AIS with the positioning and communication systems used in the context of the common fisheries policy. Investigation of the possibilities of integrating these systems should take account of the needs and requirements of controlling fishing fleets, particularly as regards the security and confidentiality of the data transmitted.
- (9) Directive 2002/59/EC provides that Member States are to adopt special measures in respect of ships posing a potential hazard due to their behaviour or condition. It therefore seems desirable to add to the list of these ships those which do not have satisfactory insurance cover or financial guarantees or which have been reported by pilots or port authorities as having apparent anomalies which may prejudice their safe navigation or create a risk for the environment.

- (10) In accordance with Directive 2002/59/EC, it seems necessary, in relation to the risks posed by exceptionally bad weather, to take into account the potential danger to shipping from ice formation. Therefore, where a competent authority designated by a Member State considers, on the basis of an ice forecast provided by a qualified meteorological information service, that the sailing conditions are creating a serious threat to the safety of human life or a serious threat of pollution, it should so inform the masters of the ships present in its area of competence or intending to enter or leave the port or ports in the area concerned. The authority concerned should be able to take any appropriate steps to ensure the safety of human life at sea and to protect the environment.
- (11) Directive 2002/59/EC provides that Member States are to draw up plans to accommodate, if the situation so requires, ships in distress in their ports or in any other protected place in the best possible conditions, in order to limit the consequences of accidents at sea. However, taking into account the Guidelines on Places of Refuge for Ships in Need of Assistance annexed to Resolution A.949(23) of the International Maritime Organisation of 13 December 2003 (hereinafter referred to as "IMO Resolution A.949(23)"), which were adopted subsequently to Directive 2002/59/EC and refer to ships in need of assistance when safety of life is not involved, rather than to ships in distress, that Directive should be amended accordingly.

- (12) On the basis of IMO Resolution A.949(23) and following the work carried out jointly by the Commission, the European Maritime Safety Agency (hereinafter referred to as the "Agency") and the Member States, it is necessary to lay down the basic provisions that plans for accommodating ships in need of assistance should contain in order to ensure a harmonised and effective implementation of this measure and clarify the scope of obligations incumbent on the Member States.
- (13) IMO Resolution A.949(23) is to form the basis of any plans prepared by Member States in order to respond effectively to threats posed by ships in need of assistance. However, when assessing the risks associated with such threats, Member States may, in view of their special circumstances, take into consideration other factors, such as the use of sea water for the production of potable water as well as the generation of electricity.
- (14) When a ship is in need of assistance, a decision may have to be taken as regards the accommodation of that ship in a place of refuge. To this end, the authority concerned should make a preliminary evaluation of the situation on the basis of the information contained in the relevant plan for accommodation of ships in a place of refuge.

- (15) Plans for accommodating ships in need of assistance should describe precisely the decision-making chain with regard to alerting and dealing with the situations in question. The authorities concerned and their remits should be clearly described, as should the means of communication between the parties involved. The applicable procedures should ensure that an appropriate decision can be taken quickly on the basis of expertise and adequate information available to the competent authority.
- (16) When drawing up the plans, Member States should gather information on potential places of refuge on the coast so as to allow the competent authority, in the event of an accident or incident at sea, to identify clearly and quickly the most suitable areas for accommodating ships in need of assistance. This relevant information should contain a description of certain characteristics of the sites under consideration and the equipment and installations available to make it easier to accommodate ships in need of assistance or deal with the consequences of an accident or pollution.
- (17) It is important for the list of competent authorities responsible for deciding whether to accommodate a ship in a place of refuge, and the list of authorities responsible for receiving and handling alerts, to be published appropriately. It may also prove useful for the parties involved in a maritime assistance operation, including assistance and towing companies, and the authorities of neighbouring Member States likely to be affected by an emergency at sea, to have access to relevant information.

- (18) The specific function of the vessel traffic monitoring and ship's routing measures is to allow Member States to obtain a true knowledge of the ships using the waters under their jurisdiction and thus enable them to take more effective action against potential risks if necessary. Sharing the information gathered helps to improve its quality and makes it easier to process.
- (19) In accordance with Directive 2002/59/EC, Member States and the Commission have made substantial progress towards harmonising electronic data exchange, in particular as regards the transport of dangerous or polluting goods. SafeSeaNet, in development since 2002, should now be established as the reference network at Community level.
- (20) The progress made in the new technologies and in particular in their space applications, such as beacon-based ship monitoring systems, imaging systems or Global Navigation Satellite System (GNSS), now makes it possible to extend traffic monitoring further offshore and thereby to ensure better coverage of European waters, including by Long Range Identification and Tracking (LRIT) systems. There will have to be full cooperation within the Community on this work if these tools are to become an integral part of the vessel traffic monitoring and information system established by Directive 2002/59/EC.
- (21) In order to guarantee the best possible use, harmonised at Community level, of information gathered under Directive 2002/59/EC concerning maritime safety, the Commission should be able, if necessary, to process and use these data and disseminate them to the authorities designated by Member States.

- (22) In this context, the development of the "Equasis" system has shown how important it is to encourage a "safe seas" culture, especially in maritime transport operators. The Commission should be able to contribute to the dissemination, particularly via this system, of any information in relation to maritime safety.
- (23) Regulation (EC) No 2099/2002 of the European Parliament and of the Council of 5 November 2002 establishing a Committee on Safe Seas and the Prevention of Pollution from Ships (COSS)¹ centralises the tasks of the committees set up under the relevant Community legislation on maritime safety, prevention of pollution from ships and protection of living and working conditions on board. The existing committee should therefore be replaced by the COSS.
- (24) Amendments to the international instruments referred to should also be taken into account.
- (25) The measures necessary for the implementation of this Directive 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 to the Commission².
- (26) In particular, the Commission should be empowered to amend Directive 2002/59/EC in order to apply subsequent amendments to the international conventions, protocols, codes and resolutions related thereto. Since those measures are of general scope and are designed to amend non-essential elements of that Directive, inter alia by supplementing it with new non-essential elements, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.

¹ OJ L 324, 29.11.2002, p. 1. Regulation as last amended by Commission Regulation (EC) No 93/2007 (OJ L 22, 31.1.2007, p. 12).

² OJ L 184, 17.7.1999, p. 23. Decision as amended by Decision 2006/512/EC (OJ L 200, 22.7.2006, p. 11).

- (27) In accordance with Regulation (EC) No 1406/2002 of the European Parliament and of the Council of 27 June 2002 establishing a European Maritime Safety Agency¹, the Agency provides the Commission and Member States with the necessary support in implementing Directive 2002/59/EC.
- (28) In accordance with point 34 of the Interinstitutional Agreement on better law-making², Member States are encouraged to draw up, for themselves and in the interests of the Community, their own tables illustrating, as far as possible, the correlation between this Directive and the transposition measures, and to make them public.
- (29) Directive 2002/59/EC should therefore be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

¹ OJ L 208, 5.8.2002, p. 1. Regulation as last amended by Regulation (EC) No 1891/2006 (OJ L 394, 30.12.2006, p. 1).

² OJ C 321, 31.12.2003, p. 1.

Article 1
Amendments

Directive 2002/59/EC is hereby amended as follows:

1) in Article 2(2), the introductory wording shall be replaced by the following:

"Unless otherwise provided, this Directive shall not apply to:";

2) Article 3 shall be amended as follows:

(a) point (a) shall be amended as follows:

(i) the introductory wording shall be replaced by the following:

""Relevant international instruments" means the following instruments, in their up-to-date version:";

(ii) the following indents shall be added:

"– "IMO Resolution A.917(22)" means International Maritime Organisation Resolution 917(22) entitled "Guidelines for the onboard use of AIS", as amended by IMO Resolution A.956(23);

- "IMO Resolution A.949(23)" means International Maritime Organisation Resolution 949(23) entitled "Guidelines on places of refuge for ships in need of assistance";
- "IMO Resolution A.950(23)" means International Maritime Organisation Resolution 950(23) entitled "Maritime assistance services (MAS)";";

(b) point (k) shall be replaced by the following:

"(k) "competent authorities" means the authorities and organisations designated by Member States to perform functions under this Directive.";

(c) the following points shall be added:

"(s) "SafeSeaNet" means the Community maritime information exchange system developed by the Commission in cooperation with the Member States to ensure the implementation of Community legislation;

(t) "scheduled service" means a series of ship crossings operated so as to serve traffic between the same two or more ports, either according to a published timetable or with crossings so regular or frequent that they constitute a recognisable systematic series;

- (u) "fishing vessel" means any vessel equipped for commercial exploitation of living aquatic resources;
- (v) "ship in need of assistance" means a ship in a situation, apart from one requiring rescue of persons on board, that could give rise to loss of the ship or an environmental or navigational hazard.";

3) the following Article shall be inserted:

"Article 6a

Use of automatic identification systems (AIS) by fishing vessels

Any fishing vessel with an overall length of more than 15 metres and flying the flag of a Member State and registered in the Community, or operating in the internal waters or territorial sea of a Member State, or landing its catch in the port of a Member State shall, in accordance with the timetable set out in Annex II, part I(3), be fitted with an AIS (Class A) which meets the performance standards drawn up by the IMO.

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.";

4) Article 12 shall be replaced by the following:

"Article 12

Obligations on the shipper

No dangerous or polluting goods shall be offered for carriage or taken on board any ship, irrespective of its size, in a port of a Member State unless a declaration has been delivered to the master or operator containing the following information:

- (a) the information listed in Annex I(2);
- (b) for the substances referred to in Annex I to the MARPOL Convention, the safety data sheet detailing the physico-chemical characteristics of the products, including their viscosity expressed in cSt at 50°C and their density at 15°C;
- (c) the emergency numbers of the shipper or any other person or body in possession of information on the physico-chemical characteristics of the products and on the action to be taken in an emergency.

It shall be the duty of the shipper to deliver to the master or operator such declaration and to ensure that the shipment offered for carriage is indeed the one declared in accordance with the first paragraph.";

5) the following points shall be added to Article 16(1):

- "(d) ships which have failed to notify, or do not have, insurance certificates or financial guarantees pursuant to any Community legislation and international rules;
- (e) ships which have been reported by pilots or port authorities as having apparent anomalies which may prejudice their safe navigation or create a risk for the environment.";

6) the following Article shall be inserted:

"Article 18a

Measures in the event of risks posed by the presence of ice

1. Where the competent authorities consider, in view of ice conditions, that there is a serious threat to the safety of human life at sea or to the protection of their shipping areas or coastal zones, or of the shipping areas or coastal zones of other States:
 - (a) they shall supply the master of a ship which is in their area of competence, or intends to enter or leave one of their ports, with appropriate information on the ice conditions, the recommended routes and the icebreaking services in their area of competence;

(b) they may, without prejudice to the duty of assistance to ships in need of assistance and other obligations flowing from relevant international rules, request that a ship which is in the area concerned and intends to enter or leave a port or terminal or to leave an anchorage area, satisfy the strength and power requirements commensurate with the ice situation in the area concerned.

2. The measures taken pursuant to paragraph 1 shall be based, as regards the data concerning the ice conditions, upon ice and weather forecasts provided by a qualified meteorological information service recognised by the Member State.";

7) the following subparagraph shall be added to Article 19(2):

"To this end they shall communicate to the competent national authorities, on request, the information referred to in Article 12.";

8) Article 20 shall be replaced by the following:

"Article 20

Accommodation of ships in need of assistance in places of refuge

1. The acceptance or refusal of a ship in need of assistance in a place of refuge shall be the subject of a prior assessment of the situation carried out on the basis of the plan referred to in Article 20a and a decision taken by a competent authority.

2. The authorities referred to in paragraph 1 shall meet regularly to exchange their expertise and improve the measures taken pursuant to this Article. They may meet at any time, on account of specific circumstances.";

9) the following Article shall be inserted:

"Article 20a

Plans for the accommodation of ships in need of assistance

1. Member States shall draw up plans for responding to threats presented by ships in need of assistance in the waters under their jurisdiction.
2. The plans referred to in paragraph 1 shall be prepared after consultation of the parties concerned, on the basis of IMO Resolutions A.949(23) and A.950(23), and shall contain at least the following:
 - (a) the identity of the authority or authorities responsible for receiving and handling alerts;
 - (b) the identity of the competent authority for assessing the situation and taking a decision on acceptance or refusal of a ship in need of assistance in the place of refuge selected;

- (c) information on the coastline of the Member States, which will assist the assessment of a ship in need of assistance in a place of refuge, including the description of environmental, economic and social factors and natural conditions;
 - (d) the assessment procedures for acceptance or refusal of a ship in need of assistance in a place of refuge;
 - (e) the resources and installations suitable for assistance, rescue and combating pollution;
 - (f) procedures for international coordination and decision-making;
 - (g) the financial guarantee and liability procedures in place for ships accommodated in a place of refuge.
3. Member States shall publish the name of the competent authority referred to in Article 20(1) and of the authorities appointed for receiving and handling alerts.

Member States shall communicate on request the relevant information concerning the plans to the neighbouring Member States.

In implementing the procedures provided for in the plans for accommodating ships in need of assistance, Member States shall ensure that relevant information is made available to the parties involved in the operations.

If requested by Member States, those receiving information in accordance with the second and third subparagraphs shall be bound by an obligation of confidentiality.

4. Member States shall inform the Commission by ...^{*} of the measures taken in application of this Article.";

10) the following Article shall be inserted:

"Article 22a

SafeSeaNet

1. Member States shall establish maritime information management systems, at national or local level, to process the information referred to in this Directive.
2. The systems set up pursuant to paragraph 1 shall allow the information gathered to be used operationally and shall satisfy, in particular, the conditions laid down in Article 14.

* OJ: 18 months from the entry into force of this Directive.

3. To guarantee an effective exchange of the information referred to in this Directive, Member States shall ensure that the national or local systems set up to gather, process and preserve that information can be interconnected with SafeSeaNet. The Commission shall ensure that SafeSeaNet is operational on a 24 hours-a-day basis.";

11) Article 23 shall be amended as follows:

(a) point (c) shall be replaced by the following:

"(c) extending the cover of the Community vessel traffic monitoring and information system, and/or updating it, with a view to enhanced identification and monitoring of ships, taking into account developments in information and communication technologies. To this end, Member States and the Commission shall work together to put in place, where necessary, mandatory reporting systems, mandatory maritime traffic services and appropriate ship's routing systems, with a view to submitting them to the IMO for approval. They shall also collaborate, within the regional or international bodies concerned, on developing long-range identification and tracking systems;"

(b) the following point shall be added:

"(e) ensuring the interconnection and interoperability of the national systems used for managing the information referred to in Annex I, and developing and updating SafeSeaNet.";

12) the following Article shall be inserted:

"Article 23a

Processing and management of maritime safety information

1. The Commission shall ensure, where necessary, the processing, use and dissemination to the authorities designated by the Member States, of the information gathered under this Directive.
2. Where appropriate, the Commission shall contribute to the development and operation of systems for collecting and disseminating data relating to maritime safety, in particular through the "Equasis" system or any other equivalent public system.";

13) Article 28 shall be replaced by the following:

"Article 28

Committee

1. The Commission shall be assisted by the Committee on Safe Seas and the Prevention of Pollution from Ships (COSS) established by Regulation (EC) No 2099/2002 of the European Parliament and of the Council*.
2. Where reference is made to this paragraph, Article 5a(1) to (4) and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

* OJ L 324, 29.11.2002, p. 1. Regulation as last amended by Commission Regulation (EC) No 93/2007 (OJ L 22, 31.1.2007, p. 12).";

14) the following point shall be added to Annex II(I):

"3. Fishing vessels

Fishing vessels with a length of more than 15 metres overall are subject to the carrying requirement laid down in Article 6a according to the following timetable:

- fishing vessels of overall length 24 metres and upwards but less than 45 metres: not later than ...^{*};
- fishing vessels of overall length 18 metres and upwards but less than 24 metres: not later than ...^{**};
- fishing vessels of overall length exceeding 15 metres but less than 18 metres: not later than ...^{***}.

New built fishing vessels of overall length exceeding 15 metres are subject to the carrying requirement laid down in Article 6a as from ...^{****}."

* OJ: 3 years from the entry into force of this Directive.

** OJ: 4 years from the entry into force of this Directive.

*** OJ: 5 years from the entry into force of this Directive.

**** OJ: 18 months from the entry into force of this Directive.

Article 2

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by ...*. They shall forthwith communicate to the Commission the text of those measures.

When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 3

Entry into force

This Directive shall enter into force on the third day following that of its publication in the *Official Journal of the European Union*.

* OJ: 18 months from the entry into force of this Directive.

Article 4
Addressees

This Directive is addressed to the Member States.

Done at

For the European Parliament
The President

For the Council
The President
