

DIRECTIVE 2009/17/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 23 April 2009
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 Committee ⁽¹⁾,

Having regard to the opinion of the Committee of the Regions ⁽²⁾,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁽³⁾, in the light of the joint text approved by the Conciliation Committee on 3 February 2009,

Whereas:

(1) With the adoption of Directive 2002/59/EC of the European Parliament and of the Council ⁽⁴⁾, 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', 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.

(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. The International Maritime Organisation (IMO) has

⁽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 (OJ C 74 E, 20.3.2008, p. 533), Council Common Position of 6 June 2008 (OJ C 184 E, 22.7.2008, p. 1), Position of the European Parliament of 24 September 2008 (not yet published in the Official Journal), Council Decision of 26 February 2009 and Legislative Resolution of the European Parliament of 11 March 2009 (not yet published in the Official Journal).

⁽⁴⁾ OJ L 208, 5.8.2002, p. 10.

recognised that the publication for commercial purposes on the internet or elsewhere of AIS data transmitted by ships could be detrimental to the safety and security of ships and port facilities and has urged its member governments, subject to the provisions of their national laws, to discourage those who make AIS data available to others for publication on the internet or elsewhere from doing so. In addition, the confidentiality of information sent to Member States pursuant to this Directive should be ensured, and the Member States should use that information in compliance with this Directive.

- (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) A Member State which so requests should be entitled to seek information from another Member State regarding a ship and dangerous or polluting goods carried by it. This information should be available through SafeSeaNet and should only be requested for reasons of maritime safety or security or the protection of the marine environment. It is therefore essential that the Commission investigate possible network and information security problems.
- (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. Member States should also have the possibility of verifying that the necessary documentation on board provides evidence that the ship complies with strength and power requirements commensurate with the ice situation in the area concerned.

- (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 (IMO Resolution A.949(23)), which were adopted subsequently to Directive 2002/59/EC and refer to ships in need of assistance, rather than to ships in distress, that Directive should be amended accordingly. This Directive does not affect the rules applicable to rescue operations such as those laid down by the International Convention on Maritime Search and Rescue, where the safety of human life is at stake.
- (12) To make provision for ships in need of assistance as referred to in IMO Resolution A.949(23), one or more competent authorities should be designated to take decisions with a view to minimising risks to maritime safety, the safety of human life and the environment.
- (13) On the basis of IMO Resolution A.949(23) and following the work carried out jointly by the Commission, the European Maritime Safety Agency (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.
- (14) 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.

- (15) Seafarers are recognised as a special category of worker and, given the global nature of the shipping industry and the different jurisdictions that they may be brought into contact with, need special protection, especially in relation to contacts with public authorities. In the interests of increased maritime safety, seafarers should be able to rely on fair treatment in the event of a maritime accident. Their human rights and dignity should be preserved at all times and all safety investigations should be conducted in a fair and expeditious manner. To that end, Member States should, in accordance with their national legislation, further take into account the relevant provisions of the IMO guidelines on the fair treatment of seafarers in the event of a maritime accident.
- (16) 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. This is particularly important in the event of a situation that could give rise to the loss of a vessel or an environmental or navigational hazard. In such a case, it is necessary to be able to call on an authority in a Member State, depending on the internal structure of that Member State, having the required expertise and the power to take independent decisions as regards the accommodation of a ship in a place of refuge. It is also important that the decision is taken after 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. It is desirable that the competent authorities should be permanent in nature.
- (17) Plans for accommodating ships in need of assistance should describe precisely the decision-making chain with regard to alerting and dealing with the situation 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 specific maritime expertise and adequate information available to the competent authority.
- (18) Ports which accommodate a ship should be able to rely on prompt compensation in respect of costs and any damage arising from the operation. To that end, it is important that the relevant international conventions be applied. Member States should endeavour to put in place a legal framework under which they could, in exceptional circumstances and in accordance with Community law, compensate a port or other entity for costs and economic loss suffered as a result of accommodating a ship. Moreover, the Commission should examine existing mechanisms within Member States for the compensation of potential economic loss suffered by a port or a body and should, on the basis of this examination, put forward and evaluate different policy options.
- (19) 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.
- (20) 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.
- (21) The absence of financial insurance does not exonerate a Member State from its obligation to perform a preliminary assessment and to decide on the acceptance of the ship in a place of refuge. Though the competent authorities may verify whether the ship is covered by insurance or some other effective form of financial security permitting appropriate compensation for costs and damages associated with its accommodation in a place of refuge, the act of requesting this information must not delay the rescue operation.
- (22) 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.
- (23) 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. SafeSeaNet should aim at reducing administrative burdens and costs for industry and the Member States. It should also aim at facilitating the uniform implementation, where appropriate, of international reporting and notification rules.

- (24) 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 co-operation 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.
- (25) In order to enable cost savings and avoid unnecessary fitting of equipment on board ships sailing in maritime areas within the coverage of AIS fixed-based stations, Member States and the Commission should cooperate to determine the requirements concerning the fitting of equipment for transmitting LRIT information and should submit to the IMO any appropriate measures.
- (26) Publication of AIS and LRIT data transmitted by ships should not create a risk to safety, security or the protection of the environment.
- (27) In order to guarantee the best possible harmonised use 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 that information and disseminate it to the authorities designated by the Member States.
- (28) 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 relating to maritime safety.
- (29) 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.
- (30) Amendments to the international instruments referred to should also be taken into account.
- (31) 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 Commission ⁽²⁾.
- (32) 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.
- (33) 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 Agency ⁽³⁾, the Agency provides the Commission and Member States with the necessary support in implementing Directive 2002/59/EC.
- (34) In accordance with point 34 of the Interinstitutional Agreement on better law-making ⁽⁴⁾, 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.
- (35) Directive 2002/59/EC should therefore be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Amendments

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

1. Article 2(2) shall be amended as follows:

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

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

⁽¹⁾ OJ L 324, 29.11.2002, p. 1.

⁽²⁾ OJ L 184, 17.7.1999, p. 23.

⁽³⁾ OJ L 208, 5.8.2002, p. 1.

⁽⁴⁾ OJ C 321, 31.12.2003, p. 1.

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

'(c) bunkers on ships below 1 000 gross tonnage and ships' stores and equipment for use on board all ships.');

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)";

— "IMO guidelines on the fair treatment of seafarers in the event of a maritime accident" means the guidelines as annexed to resolution LEG. 3(91) of the IMO Legal Committee of 27 April 2006 and as approved by the Governing Body of the ILO in its 296th session of 12 to 16 June 2006.;

(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, without prejudice to the provisions of the SAR Convention concerning the rescue of persons, a ship in a situation that could give rise to its loss or an environmental or navigational hazard;

(w) "LRIT" means a system for the long-range identification and tracking of ships in accordance with SOLAS regulation V/19-1.;

3. the following Articles 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.

Article 6b

Use of systems for the long-range identification and tracking of ships (LRIT)

1. Ships to which SOLAS regulation V/19-1 and the performance standards and functional requirements adopted by the IMO apply shall carry LRIT equipment complying with that regulation, when calling at a port of a Member State.

Member States and the Commission shall cooperate to determine the requirements concerning the fitting of equipment for transmitting LRIT information on board ships sailing in waters within the coverage of AIS fixed-based stations of Member States, and shall submit to the IMO any appropriate measures.

2. The Commission shall cooperate with Member States to establish an LRIT European Data Centre in charge of processing long-range identification and tracking information.;

4. Article 12 shall be replaced by the following:

‘Article 12

Information requirements concerning the transport of dangerous goods

1. No dangerous or polluting goods shall be offered for carriage or taken on board any ship, irrespective of its size, in the port of a Member State unless a declaration has been delivered to the master or operator before the goods are taken on board 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, where applicable, their viscosity expressed in cSt at 50 °C and their density at 15 °C and the other data contained in the safety data sheet in accordance with IMO Resolution MSC.150(77);
- (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.

2. Vessels coming from a port outside the Community and calling at a port of a Member State which have dangerous or polluting goods on board shall be in possession of a declaration, as provided for by the shipper, containing the information required under paragraph 1(a), (b) and (c).

3. It shall be the duty and responsibility of the shipper to deliver to the master or operator such a declaration, and to ensure that the shipment offered for carriage is indeed the one declared in accordance with paragraph 1.;

5. in the second paragraph of Article 14, point (c) shall be replaced by the following:

- (c) upon request, through SafeSeaNet, and if needed for the purpose of maritime safety or security or the protection of the maritime environment, Member States shall be able to send information on the ship and the dangerous or polluting goods on board to the national and local

competent authorities of another Member State without delay.;

6. Article 15 shall be replaced by the following:

‘Article 15

Exemptions

1. Member States may exempt scheduled services performed between ports located on their territory from the requirements of Articles 4 and 13 provided the following conditions are met:

- (a) the company operating those scheduled services keeps and updates a list of the ships concerned and sends that list to the competent authority concerned;
- (b) for each voyage performed, the information listed in Parts 1 or 3, as appropriate, of Annex I is kept available for the competent authority upon request. The company shall establish an internal system to ensure that, upon request 24 hours a day and without delay, such information can be sent to the competent authority electronically, in accordance with Article 4(1) or Article 13(4), as appropriate;
- (c) any deviations from the estimated time of arrival at the port of destination or pilot station of three hours or more are notified to the port of arrival or to the competent authority in accordance with Article 4 or Article 13, as appropriate;
- (d) exemptions are only granted to individual vessels as regards a specific service.

For the purposes of the first subparagraph, the service shall not be regarded as a scheduled service unless it is intended to be operated for a minimum of one month.

Exemptions from the requirements of Articles 4 and 13 shall be limited to voyages of a scheduled duration of up to 12 hours.

2. When an international scheduled service is operated between two or more States, of which at least one is a Member State, any of the Member States involved may request the other Member States to grant an exemption for that service. All Member States involved, including the coastal States concerned, shall collaborate in granting an exemption to the service concerned in accordance with the conditions set out in paragraph 1.

3. Member States shall periodically check that the conditions set out in paragraphs 1 and 2 are being met. Where at least one of these conditions is no longer being met, Member States shall immediately withdraw the benefit of the exemption from the company concerned.

4. Member States shall communicate to the Commission a list of companies and ships to which an exemption has been granted under this Article, as well as any updates to that list.;

7. 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.;

8. 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 document that it satisfies 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.;

9. Article 19 shall be amended as follows:

(a) the following subparagraph shall be added to paragraph 2:

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

(b) the following paragraph shall be added:

'4. In accordance with their national law, Member States shall take into account the relevant provisions of the IMO guidelines on the fair treatment of seafarers in the event of a maritime accident in the waters under their jurisdiction.;

10. Article 20 shall be replaced by the following:

'Article 20

Competent authority for the accommodation of ships in need of assistance

1. Member States shall designate one or more competent authorities which have the required expertise and the power, at the time of the operation, to take independent decisions on their own initiative concerning the accommodation of ships in need of assistance.

2. The authority or authorities referred to in paragraph 1 may, as appropriate and in particular in the event of a threat to maritime safety and protection of the environment, take any of the measures included in the list set out in Annex IV, which is non-exhaustive.

3. The authority or authorities referred to in paragraph 1 shall meet regularly to exchange expertise and improve measures taken pursuant to this Article. They may meet at any time on account of specific circumstances.;

11. the following Articles shall be inserted:

Article 20a

Plans for the accommodation of ships in need of assistance

1. Member States shall draw up plans for the accommodation of ships in order to respond to threats presented by ships in need of assistance in the waters under their jurisdiction, including, where applicable, threats to human life and the environment. The authority or authorities referred to in Article 20(1) shall participate in drawing up and carrying out those plans.

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 Member States and all elements facilitating a prior assessment and rapid decision regarding the place of refuge for a ship, including a 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 and contact address of the authority or authorities 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 plans to 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 30 November 2010 of the measures taken in application of this Article.

Article 20b

Decision on the accommodation of ships

The authority or authorities referred to in Article 20(1) shall decide on the acceptance of a ship in a place of refuge following a prior assessment of the situation carried out on the basis of the plans referred to in Article 20a. The authority or authorities shall ensure that ships are admitted to a place of refuge if they consider such an accommodation the best course of action for the purposes of the protection of human life or the environment.

Article 20c

Financial security and compensation

1. The absence of an insurance certificate within the meaning of Article 6 of Directive 2009/20/EC of the European Parliament and of the Council of 23 April 2009 on the insurance of shipowners for maritime claims (*) shall not exonerate a Member State from the preliminary assessment and decision referred to in Article 20b, and shall not in itself be considered sufficient reason for a Member State to refuse to accommodate a ship in a place of refuge.

2. Without prejudice to paragraph 1, when accommodating a ship in a place of refuge, a Member State may request the ship's operator, agent or master to present a insurance certificate within the meaning of Article 6 of Directive 2009/20/EC. The act of requesting the certificate shall not lead to a delay in accommodating the ship.

*Article 20d***Examination by the Commission**

The Commission shall examine existing mechanisms within Member States for the compensation of potential economic loss suffered by a port or a body as a result of a decision taken pursuant to Article 20(1). It shall, on the basis of that examination, put forward and evaluate different policy options. By 31 December 2011, the Commission shall report to the European Parliament and to the Council on the results of the examination.

(*) OJ L 131, 28.5.2009, p. 128;

12. 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.

3. To guarantee an effective exchange of the information referred to in this Directive, Member States shall ensure that 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 hour-a-day basis. The description and principles of SafeSeaNet are laid down in Annex III.

4. Without prejudice to paragraph 3, where operating under intra-Community agreements or in the framework of cross-border interregional or transnational projects within the Community, Member States shall ensure that information systems or networks comply with the requirements of this Directive and are compatible with and connected to SafeSeaNet.;

13. 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.;

14. 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.;

15. Article 24 shall be replaced by the following:

*'Article 24***Confidentiality of information**

1. Member States shall, in accordance with Community or national legislation, take the necessary measures to ensure the confidentiality of information sent to them pursuant to this Directive, and shall only use such information in compliance with this Directive.

2. The Commission shall investigate possible network and information security problems and propose appropriate amendments to Annex III for improving the security of the network.;

16. Articles 27 and 28 shall be replaced by the following:

Article 27

Amendments

1. References to Community and IMO instruments in this Directive, the definitions set out in Article 3 hereof and the Annexes hereto may be amended to bring them into line with provisions of Community or international law which have been adopted or amended or which have entered into force, in so far as such amendments do not broaden the scope of this Directive.

Those measures, designed to amend non-essential elements of this Directive, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 28(2).

2. Annexes I, III and IV may be amended in the light of experience gained with this Directive, in so far as such amendments do not broaden its scope.

Those measures, designed to amend non-essential elements of this Directive, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 28(2).

Article 28

Committee procedure

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.;

17. in Part 4 of Annex I, indent X shall be replaced by the following:

— X. Miscellaneous:

- characteristics and estimated quantity of bunker fuel, for ships of more than 1 000 gross tonnage,

— navigational status';

18. the following point shall be added to Part I of Annex II:

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 31 May 2012,

— fishing vessels of overall length 18 metres and upwards but less than 24 metres: not later than 31 May 2013,

— fishing vessels of overall length exceeding 15 metres but less than 18 metres: not later than 31 May 2014.

New built fishing vessels of overall length exceeding 15 metres are subject to the carrying requirement laid down in Article 6a as from 30 November 2010.;

19. Annex III shall be replaced by the text appearing in the Annex to 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 30 November 2010. 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 its publication in the *Official Journal of the European Union*.

*Article 4***Addressees**

This Directive is addressed to the Member States.

Done at Strasbourg, 23 April 2009.

For the European Parliament

The President

H.-G. PÖTTERING

For the Council

The President

P. NEČAS

ANNEX

'ANNEX III

ELECTRONIC MESSAGES AND SAFESEANET**1. General concept and architecture**

The Community maritime information and exchange system, SafeSeaNet, shall enable the receipt, storage, retrieval and exchange of information for the purpose of maritime safety, port and maritime security, marine environment protection and the efficiency of maritime traffic and maritime transport.

SafeSeaNet is a specialised system established to facilitate the exchange of information in an electronic format between Member States and to provide the Commission with the relevant information in accordance with Community legislation. It is composed of a network of national SafeSeaNet systems in Member States and a SafeSeaNet central system acting as a nodal point.

The SafeSeaNet network shall link all national SafeSeaNet systems and include the SafeSeaNet central system.

2. Management, operation, development and maintenance of SafeSeaNet**2.1. Responsibilities****2.1.1. National SafeSeaNet systems**

Member States shall establish and maintain a national SafeSeaNet system allowing for the exchange of maritime information between authorised users under the responsibility of a national competent authority (NCA).

The NCA shall be responsible for the management of the national system, which shall include the national co-ordination of data users and data providers as well as ensuring that UN LOCODES are designated and that the necessary national IT infrastructure and the procedures described in the interface and functionalities control document referred to in point 2.3 are established and maintained.

The national SafeSeaNet system shall enable the inter-connection of users authorised under the responsibility of an NCA and may be made accessible to identified shipping actors (shipowners, agents, masters, shippers and others) when authorised by the NCA, in particular in order to facilitate the electronic submission of reports in accordance with Community legislation.

2.1.2. Central SafeSeaNet system

The Commission is responsible for the management and development at policy level of the central SafeSeaNet system and for the oversight of the SafeSeaNet system, in cooperation with Member States, while, in accordance with Regulation (EC) No 1406/2002 of the European Parliament and of the Council ⁽¹⁾, the Agency, in cooperation with the Member States and the Commission, is responsible for its technical implementation.

The central SafeSeaNet system, acting as a nodal point, shall interconnect all national SafeSeaNet systems and shall establish the necessary IT infrastructure and procedures as described in the interface and functionalities control document referred to in point 2.3.

2.2. Principles of management

The Commission shall establish a high-level steering group, which shall adopt its rules of procedure, composed of representatives of the Member States and of the Commission to:

- make recommendations to improve the effectiveness and security of SafeSeaNet,
- provide appropriate guidance for the development of SafeSeaNet,
- assist the Commission in reviewing the performance of SafeSeaNet,
- approve the interface and functionalities control document referred to in point 2.3, and any amendments thereto.

⁽¹⁾ OJ L 208, 5.8.2002, p. 1.

2.3. *Interface and functionalities control document and SafeSeaNet technical documentation*

The Commission shall develop and maintain, in close cooperation with the Member States, an interface and functionalities control document (IFCD).

The IFCD shall describe in detail the performance requirements and procedures applicable to the national and central elements of SafeSeaNet designed to ensure compliance with the relevant Community legislation.

The IFCD shall include rules for:

- access rights guidance for data quality management,
- security specifications for data transmission and exchange, and
- the archiving of information at national and central level.

The IFCD shall indicate the means of storage and the availability of the information on dangerous or polluting goods concerning scheduled services to which an exemption has been granted in accordance with Article 15.

Technical documentation related to SafeSeaNet, such as standards for data exchange format, users' manuals and network security specifications, shall be developed and maintained by the Agency in cooperation with the Member States.

3. **Exchange of data through SafeSeaNet**

The system shall use industry standards and be able to interact with public and private systems used to create, provide or receive information within SafeSeaNet.

The Commission and the Member States shall cooperate in order to examine the feasibility and development of functionalities that as far as possible will ensure that the data providers, including masters, owners, agents, operators, shippers and relevant authorities, need to submit information only once. Member States shall ensure that the information submitted is available for use in all relevant reporting, notification and VTMS systems.

Electronic messages exchanged in accordance with this Directive and relevant Community legislation shall be distributed through SafeSeaNet. To this end, Member States shall develop and maintain the necessary interfaces for automatic transmission of data by electronic means to the SafeSeaNet.

Where internationally-adopted rules allow routing of LRIT information concerning third country vessels, SafeSeaNet networks shall be used to distribute amongst Member States, with an appropriate level of security, the LRIT information received in accordance with Article 6b of this Directive.

4. **Security and access rights**

The central and the national SafeSeaNet systems shall comply with the requirements of this Directive concerning confidentiality of information, as well as with the security principles and specifications described in the IFCD, in particular as regards access rights.

Member States shall identify all users to which a role and a set of access rights is attributed in compliance with the IFCD.'
