

# Procedure file

Basic information	
COD - Ordinary legislative procedure (ex-codecision procedure) Directive	2005/0239(COD) Procedure completed
Maritime safety: establishing a Community vessel traffic monitoring and information system Amending Directive 2002/59/EC <a href="#">2000/0325(COD)</a>	
Subject 3.15.08 Fishing enterprises, fishermen, working conditions on board 3.20.03.01 Maritime safety 3.20.10 Transport undertakings, transport industry employees	

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	<b>CODE</b> EP Delegation to Conciliation Committee		24/09/2008
		ALDE <a href="#">STERCKX Dirk</a>	
	Former committee responsible		
	<b>TRAN</b> Transport and Tourism		24/06/2008
		ALDE <a href="#">STERCKX Dirk</a>	
	<b>TRAN</b> Transport and Tourism		21/03/2006
		ALDE <a href="#">STERCKX Dirk</a>	
	Former committee for opinion		
	<b>ENVI</b> Environment, Public Health and Food Safety	The committee decided not to give an opinion.	
	<b>PECH</b> Fisheries		31/01/2006
		PSE <a href="#">PIECYK Willi</a>	
Council of the European Union	Council configuration	Meeting	Date
	<a href="#">Justice and Home Affairs (JHA)</a>	<a href="#">2927</a>	26/02/2009
	<a href="#">Justice and Home Affairs (JHA)</a>	<a href="#">2908</a>	27/11/2008
	<a href="#">Transport, Telecommunications and Energy</a>	<a href="#">2875</a>	06/06/2008
	<a href="#">Transport, Telecommunications and Energy</a>	<a href="#">2805</a>	06/06/2007
	<a href="#">Transport, Telecommunications and Energy</a>	<a href="#">2735</a>	08/06/2006
European Commission	Commission DG	Commissioner	
	Energy and Transport	TAJANI Antonio	

Key events			
23/11/2005	Legislative proposal published	<a href="#">COM(2005)0589</a>	Summary

17/01/2006	Committee referral announced in Parliament, 1st reading		
08/06/2006	Debate in Council	<a href="#">2735</a>	Summary
27/02/2007	Vote in committee, 1st reading		Summary
28/03/2007	Committee report tabled for plenary, 1st reading	<a href="#">A6-0086/2007</a>	
24/04/2007	Debate in Parliament		
25/04/2007	Decision by Parliament, 1st reading	<a href="#">T6-0146/2007</a>	Summary
06/06/2008	Council position published	<a href="#">05719/3/2008</a>	Summary
19/06/2008	Committee referral announced in Parliament, 2nd reading		
04/09/2008	Vote in committee, 2nd reading		Summary
09/09/2008	Committee recommendation tabled for plenary, 2nd reading	<a href="#">A6-0334/2008</a>	
23/09/2008	Debate in Parliament		
24/09/2008	Decision by Parliament, 2nd reading	<a href="#">T6-0443/2008</a>	Summary
27/11/2008	Parliament's amendments rejected by Council		
08/12/2008	Formal meeting of Conciliation Committee		
03/02/2009	Final decision by Conciliation Committee		
03/02/2009	Joint text approved by Conciliation Committee co-chairs	<a href="#">03722/2008</a>	
25/02/2009	Report tabled for plenary, 3rd reading	<a href="#">A6-0100/2009</a>	
26/02/2009	Decision by Council, 3rd reading		
10/03/2009	Debate in Parliament		
11/03/2009	Results of vote in Parliament		
11/03/2009	Decision by Parliament, 3rd reading	<a href="#">T6-0108/2009</a>	Summary
22/04/2009	End of procedure in Parliament		
23/04/2009	Final act signed		
28/05/2009	Final act published in Official Journal		

## Technical information

Procedure reference	2005/0239(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Directive
	Amending Directive 2002/59/EC <a href="#">2000/0325(COD)</a>

Legal basis	EC Treaty (after Amsterdam) EC 080-p2
Stage reached in procedure	Procedure completed
Committee dossier	CODE/6/67575

## Documentation gateway

Legislative proposal		<a href="#">COM(2005)0589</a>	23/11/2005	EC	Summary
Document attached to the procedure		<a href="#">SEC(2005)1514</a>	23/11/2005	EC	Summary
Committee draft report		<a href="#">PE374.225</a>	07/07/2006	EP	
Committee opinion	PECH	<a href="#">PE369.846</a>	04/09/2006	EP	
Committee report tabled for plenary, 1st reading/single reading		<a href="#">A6-0086/2007</a>	28/03/2007	EP	
Text adopted by Parliament, 1st reading/single reading		<a href="#">T6-0146/2007</a>	25/04/2007	EP	Summary
Council position		<a href="#">05719/3/2008</a>	06/06/2008	CSL	Summary
Commission communication on Council's position		<a href="#">COM(2008)0310</a>	11/06/2008	EC	Summary
Committee draft report		<a href="#">PE407.946</a>	27/06/2008	EP	
Committee recommendation tabled for plenary, 2nd reading		<a href="#">A6-0334/2008</a>	09/09/2008	EP	
Text adopted by Parliament, 2nd reading		<a href="#">T6-0443/2008</a>	24/09/2008	EP	Summary
Commission opinion on Parliament's position at 2nd reading		<a href="#">COM(2008)0829</a>	08/12/2008	EC	Summary
Joint text approved by Conciliation Committee co-chairs		<a href="#">03722/2008</a>	03/02/2009	CSL/EP	
Report tabled for plenary by Parliament delegation to Conciliation Committee, 3rd reading		<a href="#">A6-0100/2009</a>	25/02/2009	EP	
Text adopted by Parliament, 3rd reading		<a href="#">T6-0108/2009</a>	11/03/2009	EP	Summary
Draft final act		<a href="#">03722/2008/LEX</a>	23/04/2009	CSL	
Follow-up document		<a href="#">COM(2012)0715</a>	30/11/2012	EC	Summary

## Additional information

National parliaments	<a href="#">IPEX</a>
European Commission	<a href="#">EUR-Lex</a>

## Final act

[Directive 2009/17](#)  
[OJ L 131 28.05.2009, p. 0101](#) Summary

Maritime safety: establishing a Community vessel traffic monitoring and information system

For further information regarding the context of this issue, please refer to the summary of the Commission's initial document COM(2005)0589: proposal for a Directive of the European Parliament and of the Council on amending Directive 2002/59/EC establishing a Community vessel traffic monitoring and information system.

## 1- POLICY OPTIONS AND IMPACTS

The Commission considered four policy options.

1.1- Option 1: To do nothing at this stage. This option would allow fundamental differences of interpretation to persist with regard to certain provisions of the Directive, in particular as regards the extent of Member States' obligations concerning places of refuge.

1.2- Option 2: Let the Member States act through regional cooperation bodies (such as Helcom for the Baltic or the Bonn Agreement for the North Sea). This would mean giving up the principle of harmonised application of the Directive between the different maritime regions of the European Union. For some measures, this solution would create appreciable differences of treatment between ships without justification.

1.3- Option 3: Completely recast the Directive to take into account the results of the work done to set up the Community maritime safety information exchange system, SafeSeaNet, and to merge, in particular, certain report messages. However, considering the state of progress with transposing Directive 2002/59/EC and the opinion of most of the Member States, such a drastic review seems premature at this stage.

1.4- Option 4: Carry out a specifically targeted amendment of the Directive. After a detailed analysis of the situation, taking into account the impact of the proposed measures and in particular the urgent need for harmonisation of the Member States' different 'places of refuge' procedures, a targeted amendment of Directive 2002/59/EC would seem to be the best way to make sure that it is implemented properly.

**CONCLUSION:** The European Commission selected Option 4. It considered that the current proposal is fully justified by the need to clarify and improve the directive in force, to take into account technological progress, to increase safety of certain categories of vessels or in certain maritime areas, and to implement the principles of the European Union's policy with respect to 'better legislation'.

## IMPACTS

In view of the fact that this proposal relates to the amendment of existing legislation, the reader will find below the impacts of the options selected for each specific measure proposed.

Measure: improvement of information systems (SafeSeaNet).

The selected option would :

- guarantee the interoperability of national systems;
- facilitate future developments of the system on the basis of a common tool;
- reduce the costs for Member States by the provision of a flexible and easily accessible system (Internet).

Measure: improvement of the legal framework in relation to 'places of refuge'.

The selected option would :

- ensure harmonised, clear and efficient application of procedures for the accommodation of ships in distress in places of refuge;
- improve the objectivity of decision-making, by means of the requirement for the independence of competent authorities;
- contribute to reducing the risks of pollution and, where appropriate, the spread of pollution.
- guarantee maritime transport operators that demands for accommodation in places of refuge will be examined and will be the subject of a decision.

Measure: obligation to have an AIS (Automatic Identification System) capability on board fishing vessels.

The selected option would :

- permit the improvement of safety at sea and a reduction in the risk of accidents involving fishing vessels and commercial vessels, and thus the consequences of such accidents (loss of human lives, pollution, etc.);
- entail equipment costs for fishing vessels which should be compensated by synergies with other equipment on board, in particular tracking and monitoring systems for fishing fleets.

Measure: navigation in icy conditions.

The selected option would :

- apply in a uniform manner to all vessels in the area under consideration;
- help to reduce the potentially disastrous environmental consequences and the significant costs arising from pollution in ice-covered areas.

## 2- FOLLOW-UP

Given that this proposal relates to the amendment of a directive, its implementation will follow the usual procedure of monitoring the implementation of Community law.

The proposal also provides for the application, in the framework of Directive 2002/59/EC, of the procedure relating to the Committee on Safe Seas and the Prevention of Pollution (COSS) established by Regulation 2099/2002/EC of the European Parliament and of the Council.

## Maritime safety: establishing a Community vessel traffic monitoring and information system

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**PURPOSE :** to amend Directive 2002/59/EC establishing a Community vessel traffic monitoring and information system, particularly in order to reflect technological developments and to harmonise the 'places of refuge' plans.

**PROPOSED ACT :** Directive of the European Parliament and of the Council.

CONTENT : for more than ten years the EU has been pursuing a proactive maritime safety policy aimed at improving ship safety, safeguarding human life at sea and protecting the marine environment.

Directive 2002/59/EC requires all the ship monitoring tools now available to be properly organised and coordinated and sets up a system of deployment of resources and coordination between national authorities, to enable Member States to take better preventive action or respond better to dangerous situations.

It has become clear that some of the provisions of Directive 2002/59/EC will have to be amended. In particular this is to take account of the good results obtained by novel equipment such as automatic identification systems or to ensure cohesion between national policies, for example on plans for accommodating ships in distress in places of refuge. Certain sea areas of the EU, in particular the Baltic Sea, are ice-covered for several winter months, entailing greater risks of accidents and pollution and potentially disastrous consequences for the environment. The trend observed for a number of years, of a steady increase in the transport of oil products in the Baltic, calls for more stringent protection and surveillance measures. The proposal deals with the enhancement of ship monitoring by means of SafeSeaNet, the laying down of measures concerning navigation in ice conditions and the implementation of a stronger framework for the accommodation of ships in distress in places of refuge.

This amendment is intended to:

- incorporate in Directive 2002/59/EC additional measures for better ship safety and environmental protection. The proposal introduces an obligation to carry an automatic identification system (AIS) for fishing vessels of more than 15 metres is a response to the large number of collisions involving fishing vessels which have evidently not been identified by commercial vessels. This measure takes into account the work of the International Maritime Organisation (IMO), which several years ago adopted the principle of the carriage of AIS on board commercial vessels (Class A AIS) to limit the number of accidents;

- harmonise the implementation of the 'places of refuge' plans to ensure they are applied uniformly in the different Member States, which will help in preventing serious pollution. There is a need, in particular, to clarify the rules for applying these principles. Directive 2002/59/EC introduced provisions requiring the Member States to draw up plans to accommodate ships in distress in places of refuge. The experience gained with implementing the Directive has revealed differences of understanding and implementation by the Member States as regards the content of the plans and the responsibilities of the authorities concerned, which have to be remedied by making the existing provisions clearer and more focused;

- integrate in the Directive the principles defined in the work done by the Member States and the Commission to set up the Community maritime safety information exchange system SafeSeaNet. In particular, the principles have to be established on the one hand for the systematic exchange of maritime safety information at Community level via the SafeSeaNet system and on the other hand for cooperation between the Member States on monitoring and developing the system. All national systems will have to be compatible with SafeSeaNet and any information of Community interest will have to be

presented in a harmonised manner;

- prepare the Community legal framework for future technological developments, especially the space applications such as ship monitoring beacons, imaging systems or Galileo. This progress has to make it possible to extend surveillance of maritime traffic into European waters and, in particular, provide better coverage of the open sea.

In addition, the proposal deals with:

- new harmonised rules for winter navigation in the Baltic, which are necessary for reducing the very high accident risk in that area. There will be specific measures allowing coastal States to take appropriate measures to limit the potential threat to navigation from ice formation in certain northern sea areas of the European Union;

- improving the exchange of information on dangerous goods being carried by ships, which will enable all Member States to improve their ability to anticipate and prevent risks.

#### FINANCIAL IMPLICATIONS :

There is no operational expenditure of administrative expenditure within the reference amount.

Administrative expenditure not included within the reference amount (human resources): EUR 0.324 million (EUR 0.054 each year over five years.)

Total staff: 0.5 per annum.

## Maritime safety: establishing a Community vessel traffic monitoring and information system

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The Council reached, pending the European Parliament first-reading opinion, a general approach on a proposal for a Directive amending directive 2002/59/EC1 on the Community vessel traffic monitoring and information system. However, it has to be noted that one delegation indicated that,

waiting for the opinion of the European Parliament, it could not take a position on the general approach.

The general approach adopted by the Council on the basis of a Presidency compromise proposal concerns in particular the following issues:

- ? the introduction of automatic identification systems (AIS) in fishing vessels with a length of more than 15 metres overall, ensuring that financial assistance for fitting them on board could be provided in the framework of the European Fisheries Fund;

- ? the following implementation timetable for the different categories of fishing vessels according to their overall length:

- fishing vessel of overall length 24 metres and upwards but less than 45 metres: not later than 3 years after the entry into force of the Directive;

- fishing vessel of overall length 18 metres and upwards but less than 24 metres: not later than 4 years after the entry into force of the Directive;

- fishing vessel of overall length 15 metres and upwards but less than 18 metres: not later than 5 years after the entry into force of the Directive;
- newly built fishing vessel of more than 15 metres overall: not later than 18 months after the entry into force of the directive;
- ? the acceptance or refusal of a ship in need of assistance in a place of refuge will depend on the decision of the competent authority.

## Maritime safety: establishing a Community vessel traffic monitoring and information system

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The committee adopted the report by Dirk STERCKX (ALDE, BE) amending - under the 1st reading of the codecision procedure - the proposed directive establishing a Community vessel traffic monitoring and information system:

- the aim of the directive should include enhancing port and maritime security;
- whereas the Commission was proposing that fishing vessels over 15 metres long should be equipped with the Automatic Identification System (AIS), the committee said that this should be required only of ships over 24 metres long;
- fishing vessels equipped with AIS should keep the system operational at all times, "except when international agreements, rules or standards provide for the protection of navigation data". Moreover, in accordance with the IMO Guidelines for the onboard use of AIS, the system may be switched off "where the master considers this necessary in the interests of the safety or security of his vessel";
- a new article 6b was designed to incorporate into Community legislation the progress made in the IMO on long-range identification and tracking of ships (LRIT);
- each Member State should designate an independent authority empowered "to take decisions on its own initiative concerning the accommodation of ships in distress" with a view to the protection of human life, coastal protection, the protection of the marine environment, safety at sea and minimising economic damage;
- Member States should respect the IMO Guidelines on the fair treatment of seafarers in the event of a maritime accident in relation to the crew of a ship in distress in the waters under their jurisdiction;
- Member States should ensure that, when they are cooperating within regional agreements or cross-border, inter-regional or transnational projects, the information systems or networks developed comply with the requirements of the directive and are compatible with the European SafeSeaNet information and management system;
- the SafeSeaNet system should become fully operational on 1 January 2009.

## Maritime safety: establishing a Community vessel traffic monitoring and information system

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The European Parliament adopted a resolution drafted by Dirk STERCKX (ALDE, BE) making amendments to the proposed directive establishing a Community vessel traffic monitoring and information system:

- the purpose of the Directive is to establish in the Community a vessel traffic monitoring and information system with a view to enhancing the safety and efficiency of maritime traffic, port and maritime security, improving the response of authorities to incidents, accidents or potentially dangerous situations at sea, including search and rescue operations, and contributing to a better prevention and detection of pollution by ships;
- whereas the Commission was proposing that fishing vessels over 15 metres long should be equipped with the Automatic Identification System (AIS), Parliament said that this should be required only of ships over 24 metres long;
- fishing vessels equipped with an AIS, shall maintain it in operation at all times, except where international agreements, rules or standards provide for the protection of navigational information;
- in accordance with the IMO Guidelines for the onboard use of AIS, AIS may be switched off where the master considers this necessary in the interests of the safety or security of his vessel;
- a new article 6b was designed to incorporate into Community legislation the progress made in the IMO on long-range identification and tracking of ships (LRIT);
- vessels coming from a port outside the Community and heading for a port of a Member State or an anchorage in the territorial waters of a Member State which have dangerous or polluting substances on board must be in possession of a declaration by the shipper containing certain prescribed information;
- Member States shall designate a competent authority which has the required expertise and is independent in that it has the power, at the time of the rescue operation, to take decisions on its own initiative concerning the accommodation of ships in distress with a view to: the protection of human lives, coastal protection, the protection of the marine environment, safety at sea, minimising economic loss;
- the competent authority may follow certain courses of action, including the following: restrict the movement of the ship or direct it to follow a specific course; give official notice to the master of the ship to put an end to the threat to the environment or maritime safety; come aboard or send an evaluation team aboard the ship to assess the damage to the ship and the degree of risk, help the master to remedy the situation and keep the competent coastal station informed; call on and deploy rescue workers itself where necessary; cause the ship to be piloted or towed;
- on the basis of a preliminary assessment of the circumstances, the authority shall decide on the accommodation of a ship in distress in a place of refuge. The authority shall ensure that, based on an assessment of the circumstances, ships in distress are admitted to a place of refuge in all cases where the accommodation of the ship in distress in a place of refuge permits the risks associated with those circumstances to be reduced;
- the absence of an insurance certificate or financial guarantee shall not exonerate the Member States from the preliminary assessment and

decision referred to in the legislation and is not of itself sufficient reason for a Member State to refuse to accommodate a ship in distress in a place of refuge;

- Member States shall respect the IMO Guidelines on the fair treatment of seafarers in the event of a maritime accident in relation to the crew of a ship in distress in the waters under their jurisdiction;

- the Commission shall ensure that the Community maritime information exchange system SafeSeaNet is operational on a 24 hours-a-day basis;

- when cooperating within regional agreements or in the framework of cross-border, inter-regional or transnational projects, Member States shall ensure that information systems or networks developed comply with the requirements of this Directive and are compatible with and connected to the SafeSeaNet system;

- to ensure that there is a sufficient period to test the functioning of the SafeSeaNet system, that system shall become fully operational on 1 January 2009.

## Maritime safety: establishing a Community vessel traffic monitoring and information system

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The Council's common position which was adopted unanimously accepted 4 amendments, in total or in part, proposed by the European Parliament in 1st reading which aim to improve or clarify the text of the proposed directive. However, other European Parliament amendments were not incorporated in the common position. Although the Council shares the overall objective of the proposal with the Commission, it made the following adjustments:

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 features 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. 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.

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: 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.

## Maritime safety: establishing a Community vessel traffic monitoring and information system

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The Commission takes note of the Council's common position, which was unanimously adopted, but points out its differing view on the key issue of places of refuge (the principle of accommodating vessels in distress in places of refuge and the requirement for Member States to set up an independent authority).

The Council departs significantly from one substantial point in the Commission's proposal, i.e. the question of places of refuge, which the Commission cannot accept. This is because the Council has considerably reduced the scope of the Commission's proposal by deleting, firstly, the principle that vessels in distress must be accommodated in places of refuge, subject to the results of an assessment of the situation, and secondly the requirement for the Member States to set up an independent authority to assess the situation and take a decision. However, the Commission takes the view that such independence is essential to ensure that the most appropriate decision is taken in good time, free from

local political pressure, to make vessels in major difficulties safe or contain pollution where it cannot be avoided and thus reduce its impact, also on neighbouring countries.

On the other hand the Commission notes that the Council backs other aspects of its proposal, in particular by accepting that fishing vessels with a length of more than 15 metres should be equipped with automatic identification systems ? AIS ? to reduce the risk of collisions, and by recognising the need to ensure that SafeSeaNet, i.e. the Community data exchange network for vessels and their movements and cargo, operates continuously, i.e. 24 hours a day, seven days a week.

## Maritime safety: establishing a Community vessel traffic monitoring and information system

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The Committee on Transport and Tourism adopted the recommendation for second reading contained in the report by Dirk STERCKX (ALDE, BE), amending the Council common position for adopting a directive of the European Parliament and of the Council amending Directive 2002/59/EC establishing a Community vessel traffic monitoring and information system.

The committee reintroduces several amendments from first reading:

**Purpose:** it has been specified that the purpose of this Directive is to establish in the Community a vessel traffic monitoring and information system with a view to enhancing the safety and efficiency of maritime traffic, port and maritime security, improving the response of authorities to incidents, accidents or potentially dangerous situations at sea, including search and rescue operations, and contributing to better prevention and detection of pollution by ships. The Directive shall also lay down rules applicable to certain aspects of the obligations on operators in the maritime-transport chain as regards civil liability and shall introduce suitable financial protection for seafarers in the event of abandonment.

**Competent authority for accommodation of ships in need of assistance:** MEPs propose that each Member State shall designate a competent authority which has the required expertise and is independent insofar as it has the power, at the time of the rescue operation, to take decisions on its own initiative concerning the accommodation of ships in distress with a view to the protection of human lives, coastal protection, the protection of the marine environment, safety at sea and minimising economic damage.

**Ships in need of assistance:** the Commission, supported by the European Parliament, used the expression ?ships in distress?. Basing itself on IMO guidelines for the accommodation of ships in need of assistance, the common position uses the expression ?ship in need of assistance?. While agreeing with the Council on this point, MEPs wish to make it clear that the rescue of persons on board is primarily governed by the 1979 Search and Rescue Convention (SAR) concerning the rescue of human lives.

**Fair treatment of masters and crews:** MEPs urge Member States to apply Resolution LEG.3(91) of the IMO Legal Committee, of 27 April 2006, on the adoption of Guidelines on the fair treatment of seafarers in the event of a maritime accident. Therefore, according to MEPs, master and crews should be treated fairly and not be criminalised in the event of an accident.

**Use of long-range identification and tracking of ships (LRIT):** any ship engaged in international voyages calling at a port of a Member State shall be fitted with an LRIT system in accordance with the SOLAS Convention and the performance standards and functional requirements adopted by the IMO. Member States and the Commission shall cooperate to establish an LRIT European Data Centre (a component of the European maritime information and exchange system, SafeSeaNet) in charge of processing the long-range identification and tracking information.

**Liability and financial-guarantee regime:** MEPs propose that Member States shall determine the regime of civil liability for ship owners and shall ensure that the right of ship owners to limit their liability is governed by all provisions of the 1996 Convention. Each Member State shall take the necessary measures to ensure that every owner of a ship flying its flag provides a financial guarantee for civil liability in accordance with the ceiling laid down in the 1996 Convention.

**Financial guarantee:** each Member State shall take the necessary measures to ensure that every owner of a ship flying its flag provides a financial guarantee to protect the seafarers employed or engaged on board the ship in case of abandonment, in accordance with IMO Resolution A 930(22).

**Financial-guarantee certificates:** the existence of the financial guarantee and the validity thereof shall be proved by one or more certificates. The certificate shall be carried on board the ship and a copy shall be deposited with the authority which keeps the record of the ship's registry or, if the ship is not registered in a Member State, with the authority of the State which issued or certified the certificate. According to MEPs, the absence of financial guarantees or insurance does not exonerate a Member State from its obligation to assist a ship in distress and to accommodate it in a place of refuge if by doing so it can reduce the risks to the crew and the environment. The act of requesting the certificate shall not lead to a delay in accommodating the ship in distress.

**Compensation for ports and places of refuge:** MEPs propose that Member States shall ensure the reimbursement of costs and potential economic damage suffered by a port as a result of accommodating a ship in distress, if such costs or damage are not reimbursed within a reasonable time by the owner or operator of the ship pursuant to the Directive and the existing financial compensation mechanisms.

## Maritime safety: establishing a Community vessel traffic monitoring and information system

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The European Parliament adopted a legislative resolution amending the Council common position for adopting a directive of the European Parliament and of the Council amending Directive 2002/59/EC establishing a Community vessel traffic monitoring and information system.

The recommendation for second reading (co-decision procedure) had been tabled for consideration in plenary by Dirk STERCKX (ALDE, BE) on behalf of the Committee on Transport and Tourism.

The Parliament reintroduces several amendments from first reading:

**Purpose of the directive:** MEPs specify that the purpose of the directive is to establish in the Community a vessel traffic monitoring and information system with a view to enhancing the safety and efficiency of maritime traffic, port and maritime security, improving the response of authorities to incidents, accidents or potentially dangerous situations at sea, including search and rescue operations, and contributing to better prevention and detection of pollution by ships. The Directive shall also lay down rules applicable to certain aspects of the obligations on



operators in the maritime-transport chain as regards civil liability and shall introduce suitable financial protection for seafarers in the event of abandonment.

Competent authority for accommodation of ships in need of assistance: MEPs propose that each Member State shall designate a competent authority which has the required expertise and is independent insofar as it has the power, at the time of the rescue operation, to take decisions on its own initiative concerning the accommodation of ships in distress with a view to the protection of human lives, coastal protection, the protection of the marine environment, safety at sea and minimising economic damage. The authority may, inter alia: (i) restrict the movement of the ship or direct it to follow a specific course; (ii) give official notice to the master of the ship to put an end to the threat to the environment or maritime safety; (iii) come aboard or send an evaluation team aboard the ship to assess the damage to the ship and the degree of risk, help the master to remedy the situation and keep the competent coastal station informed; (iv) call on and deploy rescue workers where necessary; (v) cause the ship to be piloted or towed.

Ships in need of assistance: the Commission, supported by the European Parliament, used the expression 'ships in distress'. Basing itself on IMO guidelines for the accommodation of ships in need of assistance, the common position uses the expression 'ships in need of assistance'. While agreeing with the Council on this point, MEPs wish to make it clear that the rescue of persons on board is primarily governed by the 1979 Search and Rescue Convention (SAR) concerning the rescue of human lives.

Fair treatment of masters and crews: MEPs urge Member States to apply Resolution LEG.3(91) of the IMO Legal Committee, of 27 April 2006, on the adoption of Guidelines on the fair treatment of seafarers in the event of a maritime accident. Therefore, according to MEPs, master and crews should be treated fairly and not be criminalised in the event of an accident.

Use of long-range identification and tracking of ships (LRIT): any ship engaged in international voyages calling at a port of a Member State shall be fitted with an LRIT system in accordance with the SOLAS Convention and the performance standards and functional requirements adopted by the IMO. The Commission shall lay down, in cooperation with the Member States, the modalities and requirements for the fitting of LRIT equipment on board ships sailing in waters within the coverage of AIS fixed-based stations of Member States, in accordance with the regulatory procedure with scrutiny. Member States and the Commission shall cooperate to establish an LRIT European Data Centre (a component of the European maritime information and exchange system, SafeSeaNet) in charge of processing the long-range identification and tracking information.

Liability and financial-guarantee regime: MEPs propose that Member States shall determine the regime of civil liability for ship owners and shall ensure that the right of ship owners to limit their liability is governed by all provisions of the 1996 Convention. Each Member State shall take the necessary measures to ensure that every owner of a ship flying its flag provides a financial guarantee for civil liability in accordance with the ceiling laid down in the 1996 Convention. Every owner of a ship flying the flag of a third country shall also provide a financial guarantee, as soon as that ship enters their exclusive economic area or equivalent area.

Abandonment of seafarers: Member States shall take the necessary measures to ensure that every owner of a ship flying their flag provides a financial guarantee to protect seafarers employed or engaged on board the ship in case of abandonment, in accordance with IMO Resolution A.930(22).

Financial-guarantee certificates: the existence of the financial guarantee and the validity thereof shall be proved by one or more certificates. Certificates shall be issued by the competent authorities of the Member States. The conditions for the issue and the validity of certificates, in particular the criteria and conditions for issue, shall be determined by the Commission. The certificate shall be carried on board the ship. The operator, agent or captain of a ship entering the exclusive economic area or equivalent area of a Member State shall notify the authorities of that Member State that a financial guarantee certificate is being carried on board. Furthermore, MEPs call for the mutual recognition by Member States of financial guarantee certificates.

Absence of financial guarantees or insurance: according to MEPs, the absence of financial guarantees or insurance does not exonerate a Member State from its obligation to assist a ship in distress and to accommodate it in a place of refuge if by doing so it can reduce the risks to the crew and the environment. The act of requesting the certificate shall not lead to a delay in accommodating the ship in distress.

Compensation for ports and places of refuge: MEPs propose that Member States shall ensure the reimbursement of costs and potential economic damage suffered by a port as a result of accommodating a ship in distress, if such costs or damage are not reimbursed within a reasonable time by the owner or operator of the ship pursuant to the Directive and the existing financial compensation mechanisms.

## Maritime safety: establishing a Community vessel traffic monitoring and information system

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The Commission accepts in full 27 amendments to the common position, adopted by the European Parliament in first reading. These are amendments which:

- improve the Commission proposal on the question of places of refuge, as regards the plans for accommodating vessels in places of refuge and insurance;
- relate to the establishment of the LRIT European Data Centre for the long-distance tracking of vessels, the SafeSeaNet maritime data exchange network, fair treatment of seafarers, navigation in ice conditions, and requirements concerning the shipment of dangerous goods;
- relate to comitology, correlation tables and the entry into force of the Directive;
- incorporate elements of the proposal for a directive on civil liability and insurance for shipowners, another part of the Third Package which, on the date of the second reading by the European Parliament, had not yet been approved by the Council.

The amendments partially accepted by the Commission are as follows:

- amendments on the compensation for economic losses suffered by ports which accommodate vessels in distress. The Commission fully supports one of the objectives, which is to stress how important it is that the Member States ratify and/or implement international conventions on compensation for pollution damage. However, the obligation on Member States to reimburse all the costs and compensate for the damage resulting from a decision to accommodate a vessel is excessive and poses legal and practical problems. In the view of the Commission, it is desirable that Member States have a legal framework in place that allows for compensation for such damage whenever necessary;
- an amendment intended to oblige the Member States to comply with the IMO guidelines on fair treatment of seafarers. In the view of

the Commission, Member States should take the guidelines into consideration, but it would be difficult to envisage making them compulsory in Community law, given that they relate essentially to questions of judicial and criminal procedure, and are not directly connected to the objectives of the Directive;

- an amendment on the scope of the comitology procedure.

Lastly, the Commission accepted in principle and/or subject to rewording, amendments on:

- incorporating AIS systems for short-distance monitoring of vessels into VMS systems used for fisheries control;
- the decision-making process for the accommodation of vessels in places of refuge and 'place of refuge' plans;
- the establishment of the LRIT European Data Centre for the long-distance tracking of vessels flying the flag of an EU Member State and operating off the EU coast;
- the confidentiality of information obtained under the Directive, whether relating to information sent by vessels using AIS or LRIT systems, or information circulated among Member States using the SafeSeaNet maritime data exchange network;
- enabling the development of the constituent parts of the SafeSeaNet maritime data exchange network within the content of Annex III to the Directive;
- the use of information obtained under the Directive for the purposes of maritime safety;
- strengthening checks on compliance with building and maintenance requirements for navigation in ice filled waters;
- obliging vessels to inform the coastal authorities of the quantity of bunker fuel, irrespective of the volume on board;
- strengthening the provisions of the Directive relating to the information to be provided by the shipper when dangerous or polluting goods are offered for carriage;
- alleviating the burden on scheduled services using Community ports to provide notifications of entry into port.

No amendments were rejected.

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The European Parliament adopted by 642 votes to 17, with 3 abstentions, under the third reading of the codecision procedure, a legislative resolution approving the joint text approved by the Conciliation Committee 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.

For details of the agreement, see the summary dated 08/12/2008.

## Maritime safety: establishing a Community vessel traffic monitoring and information system

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**PURPOSE:** to amend Directive 2002/59/EC establishing a Community vessel traffic monitoring and information system, particularly in order to reflect technological developments and to harmonise the 'places of refuge' plans.

**LEGISLATIVE ACT:** Directive 2009/17/EC of the European Parliament and of the Council amending Directive 2002/59/EC establishing a Community vessel traffic monitoring and information system.

**CONTENT:** following conciliation between Parliament and Council and a third reading by the European Parliament. The Council adopted this Directive which is aimed, in particular, at incorporating additional measures to enhance ship safety and environmental protection and harmonising the implementation of plans regarding places of refuge by Member States. The text approved includes the development of the Community maritime safety information exchange system, SafeSeaNet, which will strengthen vessel monitoring measures; and the designation by Member States of one or more authorities responsible for the accommodation of ships in distress, whether insured or not. In addition, it makes the use of automatic identification systems (AIS) compulsory for fishing vessels longer than 15 metres and tightens the shipper's information obligations.

The main points are as follows:

**Use of 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 the text 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.

**Information requirements concerning the transport of dangerous goods:** the provisions on the exchange of information on dangerous goods being carried by ships are improved. This will enable all Member States to improve their ability to anticipate and prevent risks.

**Plans for the accommodation of ships in need of assistance:** Member States must 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 competent authority must participate in drawing up and carrying out those plans. The plans must include 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, as well as the assessment procedures for acceptance or refusal of a ship in need of assistance in a place of refuge

**SafeSeaNet:** Member States must establish maritime information management systems, at national or local level, to process the information referred to in the Directive. The systems set up must allow the information gathered to be used operationally. To guarantee an effective exchange of information, 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 the text.

**Measures in the event of risks posed by the presence of ice:** 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 must 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 will be able to take any appropriate steps to ensure the safety of human life at sea and to protect the environment. Member States can also verify 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.

This Directive is part of a series of measures, comprising the third maritime package, aiming to strengthen the security of maritime transport in Europe by improving accident prevention and investigations into accidents and by strengthening vessel quality control. (See also [COD/2005/0236](#), [COD/2005/0237](#), [COD/2005/0238](#), [COD/2005/0240](#), [COD/2005/0241](#) and [COD/2005/0242](#)).

ENTRY INTO FORCE: 31/05/2009.

TRANSPOSITION: 30/11/2010.

## Maritime safety: establishing a Community vessel traffic monitoring and information system

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The Commission presents a report on liability and compensation for financial damages sustained by places of refuge when accommodating a ship in need of assistance.

Legal framework and purpose of the report: the Commission decided in 2005 to present a modification to the legal framework on reception of ships in need of assistance to places of refuge as initially set up by Directive 2002/59/EC establishing a Community vessel traffic monitoring and information system. The Commission proposed the introduction of an obligation to receive ships in need of assistance if, following an assessment, this appears to be the best course of action with a view to protecting human safety and the environment.

Having regard to specific concerns about the costs ports would have to assume when providing refuge to vessels in need of assistance the amended text of Directive 2002/59/EC requires the Commission to examine existing compensation mechanisms in MS for potential economic losses suffered by places of refuge when accommodating a ship, and to report on the results of this exercise to the European Parliament and the Council.

Before its amendment in 2009, Directive 2002/59/EC established an obligation for the Commission to report on the implementation by Member States of appropriate plans for places of refuge. The Commission had asked the European Maritime Safety Agency (EMSA) to produce relevant information also on the mechanisms of liability and compensation applicable in case of reception of a ship in a place of refuge. The data collected by EMSA formed the basis for the Commission's report in 2005 and provided additional input during the inter-institutional discussions for the third maritime safety package, in particular for Directive 2009/17/EC.

Directive 2002/59/EC has been amended by Directive 2009/17/EC, and following the adoption of the latter, the Commission has received additional, up-to-date, information from EMSA, focusing mainly on the applicable international instruments and the reinforced EU law framework pertaining to liability and compensation for damages to places of refuge. The Commission has also designated an external consultant to undertake a study on the liability and compensation mechanisms available under national law in EU Member States.

It is on the basis of this input that the need for an additional mechanism of liability and compensation for the damages suffered by a place of refuge following reception of a vessel in need of assistance is assessed in this report. The question of insurance of ships is also considered in this context, in view of the recent entry into force of Directive 2009/20/EC on the insurance of shipowners for maritime claims, and the latest amendments to the liability limits introduced under the International Convention for Limitation of Liability in Maritime Claims (LLMC Convention 1976), as amended by the 1996 Protocol, in the international plane.

Conclusions and recommendations: in light of the Commission's analysis, it concludes that there are three layers of applicable law to the issue of liability and compensation for damages sustained by places of refuge, which are complementary. The Commission sets out some recommendations for better implementation of the existing framework.

1. International framework: international conventions adopted to date on the subject of liability in the area of maritime transport offer a system of rules ensuring the applicability of liability mechanisms that are satisfactory in the areas covered by these conventions, and also pertinent in the context of reception of a ship in a place of refuge.

Member States have endorsed in Council in 2008 a strict commitment to ratify all relevant international instruments for the complete international system of rules relating to maritime safety addressing also damages to places of refuge to enter into force. The Commission has reminded Member States of this commitment on several occasions. For these purposes, an up-to-date table on the status of ratification of pertinent international conventions, including EU Member States, is published by the IMO.

Recommendations for better implementation:

- with regard to limitation of liability for maritime claims, Member States should ratify the 1996 Protocol to the LLMC Convention. In order to avoid the risk of reduction of payable compensation following application of these limits, the latter should be regularly updated, as has been done recently at IMO;
- it would also be advisable that all Member State parties or prospective parties to the LLMC Convention exclude from the scope of application, the costs of removing wrecks within their territorial waters, including damages to places of refuge. This will mean that there cannot be a liability limit for such damages. Such exclusion is possible under the Nairobi Wreck Removal Convention;
- it could be useful to obtain all relevant clarifications at the IMO level in order to confirm that reception of a vessel in a place of refuge can, in principle, be considered a preventive measure, as this would ensure applicability of some international conventions (e.g. CLC-IOPC, Bunker Oil) to this issue.
- another possible improvement of the current system would be the clarification, at the IMO level, of the notion of 'pure economic losses' for which compensation can be excluded, in order to achieve a coherent approach to this matter, bearing in mind that these may not have a sufficiently direct causal link with the damaging act;
- lastly, a general compulsory liability insurance requirement, including third party liability, in line with the current practice of P&I Clubs, should be created at the international level, following up on earlier discussions at the IMO on this subject.

2. EU framework: apart from Directive 2002/59/EC (amended by Directive 2009/17/EC), EU law regulates, indirectly, the issue of liability and

damages for losses sustained by places of refuge when accommodating a vessel in distress in two legal instruments: (i) Directive 2004/35/EC on environmental liability with regard to the prevention and remedying of environmental damage and (ii) Directive 2009/20/EC on the insurance of shipowners for maritime claims.

The existing EU legislation on this issue adds to the international conventions a particularly strict approach to liability for environmental damage, and an obligation to have sufficient insurance cover or other financial guarantee for every vessel entering EU waters without exceptions. This regime also protects places of refuge as it addresses the most 'sensitive' aspects of their operation.

Albeit not relevant for the purposes of the report, the Commission states that enhancing cooperation and communication between Member States in order to facilitate decision-making in cases of ships in need of assistance can form a potential improvement to the general framework on places of refuge.

3. National framework: cases where national law will apply instead of the international and EU framework are limited to: (a) non-ratification by the State concerned of the relevant international instrument; (b) non-entry into force of the relevant international convention; (c) the exemptions to and limitation of liability that are established above under international and EU law; and (d) type of damages to places of refuge not covered by international and EU law.

For the remaining cases that rely solely on national laws, the study carried out on behalf of the Commission shows that in the majority of Member States, damages to places of refuge are sufficiently covered by rules of reparation, which in some cases go as far as ensuring systematic compensation for any potential damages.

The few differences that exist in regimes of compensation among Member States do not threaten the uniform application of the Directive in respect of reception of vessels in places of refuge. Hence, these are not sufficient to justify the creation of a new regime specific to one category of operators.

Recommendations: Member States, in their national laws, should continue to carefully consider and define the risks that places of refuge must assume as part of their normal operation, as it is the case with other economic operators.