

Amended proposal for a Directive of the European Parliament and of the Council establishing a Community monitoring, control and information system for maritime traffic ⁽¹⁾

(2001/C 362 E/04)

(Text with EEA relevance)

COM(2001) 592 final — 2000/0325(COD)

(Submitted by the Commission pursuant to Article 250(2) of the EC Treaty on 12 October 2001)

⁽¹⁾ OJ C 120 E, 24.4.2001, p. 67.

INITIAL PROPOSAL

AMENDED PROPOSAL

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Unchanged

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 Economic and Social Committee,

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

Acting in accordance with the procedure indicated in Article 251 of the Treaty,

Whereas:

(1) In its communication of 24 February 1993 on a common policy on safe seas, the Commission indicated that one objective at Community level was the introduction of a mandatory information system to give Member States rapid access to all important information relating to the movements of ships carrying dangerous or polluting materials and to the precise nature of their cargo.

(2) Directive 93/75/EEC ⁽¹⁾ of 13 September 1993 introduced a system whereby the competent authorities receive information regarding ships bound for or leaving a Community port and carrying dangerous or polluting goods, and regarding incidents at sea. Article 13 of the Directive requires the Commission to produce new proposals for the introduction of a fuller reporting system for the Community, possibly covering ships transiting along the coasts of Member States.

⁽¹⁾ OJ L 247, 5.10.1993, p. 19.

INITIAL PROPOSAL

- (3) The Council Resolution of 8 June 1993 ⁽¹⁾ on a common policy on safe seas agreed that the main objectives of Community action included the adoption of a fuller information system.
- (4) Setting up a Community monitoring, control and information system for maritime traffic will help to prevent accidents and pollution at sea and to minimise their impact on the environment, the economy and the health of local communities. The efficiency of maritime traffic, and in particular of the management of ships' calls into ports, also depends on ships giving sufficient advance notice of their arrival.
- (5) Several mandatory ship reporting systems have been set up along Europe's coasts, in accordance with the relevant rules adopted by the International Maritime Organisation (IMO). It ought to be ensured that transiting ships comply with the reporting requirements in force under these systems. Reporting by these ships must at least include certain information advising the coastal authorities of the number of persons aboard, the cargo, and bunker fuels in excess of a certain volume which might pose a serious risk of pollution.
- (6) Vessel traffic services and ships' routing systems have also been introduced and are playing an important part in the prevention of accidents and pollution in certain shipping areas which are congested or hazardous for shipping. It is necessary that ships use the services offered by vessel traffic services and that they follow the rules applicable to ships' routing systems approved by the IMO.
- (7) Key technological progress has been made in the area of on-board equipment allowing automatic identification of ships (AIS systems) for enhanced ship monitoring, as well as voyage data recording (VDR systems or 'black boxes') to facilitate investigations following accidents. Given its importance in the formulation of a policy to prevent shipping accidents, such equipment ought to be made compulsory on board ships making national or international voyages which call at Community ports.

AMENDED PROPOSAL

- (7) Key technological progress has been made in the area of on-board equipment allowing automatic identification of ships (AIS systems) for enhanced ship monitoring, as well as voyage data recording (VDR systems or 'black boxes') to facilitate investigations following accidents or near-misses. Given its importance in the formulation of a policy to prevent shipping accidents, such equipment ought to be made compulsory on board ships making national or international voyages which call at Community ports.
- (8) Having AIS and voyage data recorder systems on board is not in itself enough to prevent accidents; the level of training and competence of the crew is equally important. Member States must ensure, in addition, that there are enough shore staff, particularly in vessel traffic services, coastal stations and rescue services, and that they are properly trained.

⁽¹⁾ OJ C 271, 7.10.1993, p. 1.

INITIAL PROPOSAL

- (8) Accurate knowledge of dangerous or polluting goods being carried on board ships is essential to the preparation and effectiveness of operations to tackle pollution or the risk of pollution at sea. Ships leaving or bound for Member States must notify this information to the competent authorities or port authorities of those Member States. Ships not calling at a port located in the Community must provide the reporting systems operated by the coastal authorities of the Member States with information on the quantity and type of dangerous goods they are carrying
- (9) To streamline and accelerate the transmission and utilisation of what may be huge amounts of information on cargo, such information ought to be sent electronically to the competent authority or port authority concerned. Where EDI protocols are used, only those formats mentioned in the Directive should be employed so as to avoid an undesirable proliferation of incompatible standards. For the same reasons, exchanges of information between the competent authorities of the Member States should take place electronically.
- (10) Where the companies concerned have, to the satisfaction of the Member States, introduced internal procedures to ensure that information required by the Directive is sent to the competent authority without delay, it must be possible to exempt scheduled services between the ports of one or more Member States from the reporting requirement for each voyage.
- (11) Where a Member State considers exceptionally poor weather and sea conditions, are creating a serious threat for the environment to stop such ships from leaving port until the situation returns to normal. Within the framework of its power of discretion, the Member State must consider such conditions to have been reached if a force of 10 or more on the Beaufort scale, and corresponding sea conditions, have been noted in the area concerned.
- (12) Because of their behaviour or condition, some ships pose potential risks to the safety of shipping and the environment. Member States should pay particular attention to the monitoring of such ships, take the appropriate measures, consistent with international law, to prevent any worsening of the risk they pose, and send any relevant information they possess on these ships to the other Member States concerned.

AMENDED PROPOSAL

- (9) Accurate knowledge of dangerous or polluting goods being carried on board ships and of other relevant safety-related information, such as information related to navigational incidents, is essential to the preparation and effectiveness of operations to tackle pollution or the risk of pollution at sea. Ships leaving or bound for Member States must notify this information to the competent authorities or port authorities of those Member States. Ships not calling at a port located in the Community must provide the reporting systems operated by the coastal authorities of the Member States with information on the quantity and type of dangerous goods they are carrying and other relevant safety-related information.
- (10) To streamline and accelerate the transmission and utilisation of what may be huge amounts of information on cargo, such information ought to be sent electronically to the competent authority or port authority concerned. Where EDI protocols are used, only those formats mentioned in the Directive should be employed so as to avoid an undesirable proliferation of incompatible standards. For the same reasons, exchanges of information between the competent authorities of the Member States should take place electronically.
- (11) Where the companies concerned have, to the satisfaction of the Member States, introduced internal procedures to ensure that information required by the Directive is sent to the competent authority without delay, it must be possible to exempt scheduled services between the ports of one or more Member States from the reporting requirement for each voyage.
- (12) Where a Member State considers, in the event of exceptionally poor weather and sea conditions, that certain ships are creating a serious threat for the environment or the life and safety of the crew and passengers, it may take any appropriate measures, including a prohibition to leave port to stop such ships from leaving port until the situation returns to normal. In addition, Member States may also recommend ships in the area concerned not to leave port. Within the framework of its power of discretion, the Member State must consider such conditions to have been reached if a force of 10 or more on the Beaufort scale, and corresponding sea conditions, have been noted in the area concerned.
- (13) Because of their behaviour or condition, some ships pose potential risks to the safety of shipping and the environment. Member States should pay particular attention to the monitoring of such ships, take the appropriate measures, consistent with international law, to prevent any worsening of the risk they pose, and send any relevant information they possess on these ships to the other Member States concerned.

INITIAL PROPOSAL

- (13) Member States need to guard against the threats to maritime safety, local communities and the environment certain situations at sea and the presence of polluting slicks or packages floating at sea. To this end, masters of ships must report such occurrences to the coastal authorities, supplying all appropriate information.
- (14) In the event of an incident or accident at sea, full and complete cooperation by the parties involved in the carriage contributes significantly to the effectiveness of operations by the competent authorities.
- (15) Non-availability of a port of refuge may have serious consequences in the event of an accident at sea. Member States ought therefore to draw up plans whereby ships in distress may, if the situation so requires, be given refuge in their ports in the best conditions possible.
- (16) The effectiveness of the Directive depends greatly on the Member States enforcing its implementation strictly. To this end, Member States must carry out appropriate checks to ensure that the communication links established to meet the requirements of the Directive are operating satisfactorily. Deterrent penalties must also be introduced to ensure that the parties concerned comply with the reporting and equipment carrying requirements laid down by the Directive.
- (17) A framework for cooperation between the Member States and the Commission needs to be established to enhance the implementation of the monitoring, control and information system for maritime traffic, with proper communication links being established between the authorities and ports of the Member States. Moreover, the coverage of the ship identification and monitoring system needs to be supplemented in those shipping areas of the Community where it is insufficient. In addition, information management centres ought to be set up in the Community's maritime regions so as to facilitate the exchange or sharing of useful data in relation to traffic monitoring and the implementation of the Directive. The creation of the European Maritime Safety Agency by Regulation .../.../EC will help achieve these objectives.

AMENDED PROPOSAL

- (14) Member States need to guard against the threats to maritime safety, local communities and the marine and coastal environment that may result from certain situations at sea and from the presence of polluting slicks or packages floating at sea. To this end, masters of ships must report such occurrences to the coastal authorities, supplying all appropriate information.
- (15) In the event of an incident or accident at sea, full and complete cooperation by the parties involved in the carriage contributes significantly to the effectiveness of operations by the competent authorities.
- (16) Non-availability of a port of refuge, a sheltered zone or place of anchorage may have serious consequences in the event of an accident at sea. Member States ought therefore to draw up plans whereby ships in distress may, if the situation so requires, be given refuge in their ports or any sheltered place along the coast in the best conditions possible.
- (17) The effectiveness of the Directive depends greatly on the Member States enforcing its implementation strictly. To this end, Member States must carry out appropriate checks to ensure that the communication links established to meet the requirements of the Directive are operating satisfactorily. Deterrent penalties must also be introduced to ensure that the parties concerned comply with the reporting and equipment carrying requirements laid down by the Directive.
- (18) A framework for cooperation between the Member States and the Commission needs to be established to enhance the implementation of the monitoring, control and information system for maritime traffic, with proper communication links being established between the authorities and ports of the Member States. Moreover, the coverage of the ship identification and monitoring system needs to be supplemented in those shipping areas of the Community where it is insufficient. In addition, information management centres ought to be set up in the Community's maritime regions so as to facilitate the exchange or sharing of useful data in relation to traffic monitoring and the implementation of the Directive. The creation of the European Maritime Safety Agency by Regulation .../.../EC will help achieve these objectives.

INITIAL PROPOSAL

- (18) With a view to the effective application of this Directive, the Commission needs to be assisted by a committee composed of representatives of the Member States. Since the measures needed to implement this Directive are measures of general scope within the meaning of Article 2 of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ⁽¹⁾, they ought to be adopted in accordance with the regulatory procedure laid down in Article 5 of that Decision.
- (19) The provisions of Directive 93/75/EEC are significantly reinforced, extended and amended by the current Directive. Accordingly, Directive 93/75/EEC ought to be repealed.
- (20) Given the principle of subsidiarity, a Directive of the European Parliament and of the Council is the appropriate legal instrument as it establishes a framework for the compulsory and uniform application by the Member States of the requirements and procedures laid down in this Directive, while leaving each of them free to choose the detailed implementing rules best suited to their national system,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Purpose

The purpose of this Directive is to establish in the Community a monitoring, control and information system for maritime traffic with a view to enhancing the safety and efficiency of such traffic and preventing pollution by ships.

Article 2

Scope

This Directive applies to ships of 300 gross tonnage and upwards

- (a) warships, naval auxiliaries and other ships owned or operated by a Member State and used for non-commercial public service;

⁽¹⁾ OJ L 184, 17.7.1999, p. 23.

AMENDED PROPOSAL

- (19) With a view to the effective application of this Directive, the Commission needs to be assisted by a committee composed of representatives of the Member States. Since the measures needed to implement this Directive are measures of general scope within the meaning of Article 2 of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ⁽¹⁾, they ought to be adopted in accordance with the regulatory procedure laid down in Article 5 of that Decision.
- (20) Taking account of the development of international instruments and experience of implementation of this Directive, it may be necessary to amend certain provisions of this Directive. Such amendments may also be proposed following a detailed study of the implementation of this Directive.
- (21) The provisions of Directive 93/75/EEC are significantly reinforced, extended and amended by the current Directive. Accordingly, Directive 93/75/EEC ought to be repealed.
- (22) Given the principle of subsidiarity, a Directive of the European Parliament and of the Council is the appropriate legal instrument as it establishes a framework for the compulsory and uniform application by the Member States of the requirements and procedures laid down in this Directive, while leaving each of them free to choose the detailed implementing rules best suited to their national system,

Unchanged

1. This Directive applies to ships of 300 gross tonnage and upwards.

2. Notwithstanding the provisions of paragraph 1, this Directive shall not apply to:

Unchanged

⁽¹⁾ OJ L 184, 17.7.1999, p. 23.

INITIAL PROPOSAL

AMENDED PROPOSAL

(b) fishing vessels with a length of less than 45 metres and recreational craft.

(c) ships' stores and equipment for use on board ships.

(c) bunkers below 5 000 tons, ships' stores and equipment for use on board ships.

Article 3

Unchanged

Definitions

For the purpose of this Directive:

- (a) 'operators' means the owners or managers of a ship;
- (b) 'agent' means any person mandated or authorised to supply information on behalf of the operator of the ship;
- (c) 'shipper' means any person by whom or in whose name or on whose behalf a contract of carriage of goods has been concluded with a carrier;
- (d) 'company' means a company within the meaning of Regulation 1(2) of Chapter IX of the SOLAS Convention;
- (e) 'ship' means any sea-going vessel or craft;
- (f) 'dangerous goods' means:
 - goods classified in the IMDG Code,
 - dangerous liquid substances listed in Chapter 17 of the IBC Code,
 - liquefied gases listed in Chapter 19 of the IGC Code,
 - solids referred to in Appendix B of the BC Code.

Also included are goods for the carriage of which appropriate preconditions have been laid down in accordance with paragraph 1.1.3 of the IBC Code or paragraph 1.1.6 of the IGC Code;

- (g) 'polluting goods' means:
 - oils as defined in Annex 1 to the Marpol Convention,
 - noxious liquid substances as defined in Annex 2 to the Marpol Convention,
 - harmful substances as defined in Annex 3 to the Marpol Convention;
- (h) 'haulage unit' means a vehicle for the road haulage of goods, a wagon for the carriage of goods by rail, a container, a road tank-vehicle, a rail tanker or a movable tank;

INITIAL PROPOSAL

AMENDED PROPOSAL

(i) 'relevant international instruments' means the following instruments, in the version in force at the time of adoption of this Directive:

- 'Marpol' means the International Convention for the prevention of pollution from ships, 1973 and its 1978 Protocol;
- 'SOLAS' means the International Convention for the Safety of Life at Sea, together with the protocols and amendments thereto;
- the International Convention on Tonnage Measurement of Ships, 1969;
- the International Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 1969 and its 1973 Protocol relating to Intervention on the High Seas in Cases of Pollution by Substances other than Oil;
- 'ISM Code' means the International Safety Management Code;
- 'IMDG Code' means the International Maritime Dangerous Goods Code;
- 'IBC Code' means the IMO International Code for the construction and equipment of ships carrying dangerous chemicals in bulk;
- 'IGC Code' means the IMO International Code for the construction and equipment of ships carrying liquefied gases in bulk;
- 'BC Code' means the IMO Code of Safe Practice for Solid Bulk Cargoes;
- 'INF Code' means the IMO Code for the Safe Carriage of Irradiated Nuclear Fuel, Plutonium and High-Level Radioactive Wastes in Flasks on board Ships;
- 'IMO Resolution A.851(20)' means International Maritime Organisation Resolution 851(20) entitled 'General principles for ship reporting systems and ship reporting requirements, including guidelines for reporting incidents involving dangerous goods, harmful substances and/or marine pollutants';

(j) 'address' means the name and the communication links whereby contact may, where necessary, be made with the operator, agent, port authority, competent authority or any other authorised person or body in possession of detailed information regarding the ship's cargo;

INITIAL PROPOSAL

AMENDED PROPOSAL

- (k) 'competent authorities' means the authorities and organisations authorised by Member States to receive and pass on information reported pursuant to this Directive;
- (l) 'port authorities' means the competent port authorities authorised by Member States to receive and pass on information reported pursuant to this Directive;
- (m) 'coastal station' means any of the following, designated by Member States pursuant to this Directive: a vessel traffic service, a shore-based installation responsible for a mandatory reporting system approved by the IMO, or a body responsible for coordinating search and rescue operations or operations to tackle pollution at sea;

- (n) 'place of refuge' means a port, the part of a port or another protective berth or anchorage or any other sheltered area identified by a Member State for accommodating ships in distress.

TITLE I

Unchanged

SHIP REPORTING AND MONITORING IN EUROPEAN WATERS*Article 4***Notification prior to entry into Community ports**

Member States shall take the necessary measures to ensure that any ship bound for a port located in the Community announces its arrival to the port authority:

- (a) at least forty-eight hours before its arrival, if the port of call is known, or
- (b) as soon as the port of call is known, if this information is available less than forty-eight hours before its arrival, or
- (c) at the latest, at the time the ship leaves the previous port, if the journey time is less than forty-eight hours.

*Article 5***Participation in mandatory reporting systems**

1. ships entering the area of a mandatory reporting system

1. The Member State concerned shall monitor and take all necessary and appropriate measures to ensure that all ships entering the area of a mandatory reporting system adopted by the IMO according to Regulation 11 Chapter V SOLAS and operated by one or more States, of which at least one is a Member State, in accordance with the relevant guidelines and criteria developed by the IMO, comply with that system in reporting the information required without prejudice to additional information required by a Member State in accordance with IMO Resolution A.851(20).

INITIAL PROPOSAL

2. Ship reports shall include at least the information referred to in Annex I-1

Automatic identification systems

1. Any ship calling at a Community port must, in accordance with the timetable set out in Annex II-1, be fitted with an automatic identification system which meets the performance standards drawn up by the IMO and is capable of transmitting the information referred to in Annex I-2.

2. Member States shall see that they furnish themselves, on a timescale compatible with the timetable set out in Annex II-1, with appropriate equipment and shore-based installations for receiving and utilising the information referred to in paragraph 1.

Article 6

Article 6a

AMENDED PROPOSAL

2. Ship reports shall include at least the information referred to in Annex I-1.

Article 5a

Unchanged

Use of ship's routing systems

1. Member States shall monitor and take all necessary and appropriate measures to ensure that all ships entering the area of a mandatory ships' routing system adopted by the IMO according to Regulation 10 Chapter V SOLAS and operated by one or more States, of which at least one is a Member State, use the system in accordance with the relevant guidelines and criteria developed by the IMO.

2. When implementing a ship's routing system, which has not been adopted by the IMO, under their responsibility, Member States shall take into account, wherever possible, the guidelines and criteria developed by the IMO and promulgate all information necessary for the safe and effective use of the ship's routing system.

Unchanged

Monitoring of the compliance of ships with vessel traffic services

Member States shall monitor and take all necessary and appropriate measures to ensure that:

1. Ships entering the area of applicability of a vessel traffic service (VTS) operated by one or more States, of which at least one is a Member State, within their territorial sea and based on the guidelines developed by the IMO, participate in, and comply with, the rules of that VTS.

INITIAL PROPOSAL

AMENDED PROPOSAL

Article 7

Unchanged

2. Ships flying the flag of a Member State or ships bound for a port of a Member State of the Community and entering the area of applicability of such a VTS outside the territorial sea of a Member State and based on the guidelines developed by the IMO, comply with the rules of that VTS.
3. Ships flying the flag of a third State and not bound for a port in a Member State of the Community entering a VTS area outside the territorial sea of a Member State, follow the rules of that VTS wherever possible. Member States should report to the flag State concerned any apparent serious breach of those rules in such a VTS area.

Infrastructure for ship reporting systems, ships' routing systems and vessel traffic services

1. Member States shall take all necessary and appropriate measures to furnish themselves gradually on a time-schedule compatible with the timetable set out in Annex II-I with appropriate equipment and shore-based installations for receiving and utilising the AIS information taking into account a necessary range for transmission of the reports.
2. The process of building up all necessary equipment and shore-based installations for implementing this Directive shall be completed by the end of 2007. Member States shall ensure that the appropriate equipment for relaying the information to and exchanging it between the national systems of Member States shall be operational at the latest one year thereafter.

Article 8

Unchanged

Voyage data recorders (black boxes)

Ships calling at a port located in the Community must be fitted with a voyage data recorder (black box) in accordance with the detailed rules laid down in Annex II-2. Any exemptions granted to ro-ro ferries or high-speed passenger craft under Article 4(1)(d) of Council Directive 1999/35/EC ⁽¹⁾ shall terminate on the date on which this Directive enters into force.

The voyage data recorder must be able to store, in a secure and retrievable form, and make available to the Member State involved in an enquiry following a maritime accident, relevant information concerning the position, movement, physical status, and command and control of the ship concerned.

1. Ships calling at a port located in the Community must be fitted with a voyage data recorder (black box) in accordance with the detailed rules laid down in Annex II-2. Any exemptions granted to ro-ro ferries or high-speed passenger craft under Article 4(1)(d) of Council Directive 1999/35/EC ⁽¹⁾ shall terminate on the date on which this Directive enters into force.

The voyage data recorder must be able to store, in a secure and retrievable form, and make available to the Member State involved in an enquiry following a maritime accident, relevant information concerning the position, movement, physical status, and command and control of the ship concerned.

⁽¹⁾ OJ L 138, 1.6.1999, p. 1.

⁽¹⁾ OJ L 138, 1.6.1999, p. 1.

INITIAL PROPOSAL

AMENDED PROPOSAL

TITLE II

Unchanged

NOTIFICATION OF DANGEROUS OR POLLUTING GOODS ON BOARD SHIPS (HAZMAT)*Article 9***Obligations on the shipper**

No dangerous or polluting goods may be offered for carriage or taken on board any ship in a port of a Member State unless a declaration has been delivered to the master or operator containing the correct technical names of the dangerous or polluting goods, the United Nations (UN) numbers where they exist, the hazard classes and the quantities of such goods and, if they are being carried in haulage units other than tanks, the identification numbers thereof.

It shall be the duty of the shipper to deliver to the master or operator the declaration required by this Directive and to ensure that the shipment offered for carriage is indeed the one declared in compliance with the first paragraph.

*Article 10***Notification by ships carrying dangerous or polluting goods**

1. The operator, agent or master of a ship carrying dangerous or polluting goods and leaving a port in a Member State shall, at the latest at the moment of departure, notify the information indicated in Annex III to the competent authority designated by that Member State.

2. The operator, agent or master of a ship carrying dangerous or polluting goods coming from a port located outside the Community and bound for a port located in the Community or an anchorage located in a Member State's territorial waters shall, at the latest upon departure from the loading port or as soon as the port of destination is known, if this information is unavailable at the moment of departure, notify the information indicated in Annex III to the competent authority of the Member State in which the first port of destination is located.

2. The data collected in accordance with paragraph 1 shall be made available to the Member State concerned in the event of an enquiry following a maritime accident occurring within the waters under the jurisdiction of a Member State. Member States shall ensure that such data is used in the investigation and analysed in conjunction with relevant investigation statistics. Member States shall ensure that the findings of the investigation are published as soon as possible after its conclusion.

2. The operator, agent or master of a ship carrying dangerous or polluting goods coming from a port located outside the Community and bound for a port located in the Community or an anchorage located in a Member State's territorial waters shall, at the latest upon departure from the loading port or as soon as the port or anchorage of destination is known, if this information is unavailable at the moment of departure, notify the information indicated in Annex III to the competent authority of the Member State in which the first port or anchorage of destination is located.

INITIAL PROPOSAL

AMENDED PROPOSAL

3. Member States may put in place a procedure authorising the operator, agent or master of a ship referred to in the above paragraphs to notify the information listed in Annex III to the port authority of the port of departure or destination in the Community, as appropriate.

Unchanged

The procedure put in place must ensure that the competent authority has access to the information indicated in Annex III at all times should it be needed. To this end, the competent port authority shall retain the information listed in Annex III long enough for it to be usable in the event of an accident or incident at sea. The port authority shall take the necessary measures to provide this information electronically and without delay to the competent authority, 24 hours a day upon request.

4. The operator, agent, or master of the ship must communicate the cargo information indicated in point 5 of Annex III to the port authority or the competent authority electronically. Where EDI messages are used to transmit data, the EDIFACT message formats indicated in Annex IV must be used.

*Article 11***Computerised exchange of data between Member States**

Member States shall cooperate to ensure the interconnection and interoperability of the national systems used to manage the information indicated in Annex III.

Communication systems set up in application of the above paragraph must display the following features:

- data exchange must be electronic and enable messages notified in accordance with Article 10 to be received and processed;
- the system must allow information to be transmitted 24 hours a day;
- each Member State must be able, upon request, to send information on the ship and the dangerous or polluting cargo on board without delay to the competent authority of another Member State.

*Article 12***Exemptions**

1. Member States may exempt national scheduled services performed between ports located on their territory from the requirement laid down in Article 10 where the following conditions are met:

- the company operating the scheduled services referred to above keeps and updates a list of the ships concerned and sends it to the competent authority concerned,

INITIAL PROPOSAL

AMENDED PROPOSAL

— for each journey performed, the information listed in Annex III is kept available for the competent authority upon request. The company must establish an internal system to ensure that, upon request 24 hours a day and without delay, the said information can be sent to the competent authority electronically, in accordance with Article 10(2).

2. Member States shall periodically check that the conditions laid down in paragraph 1 are being met. Where at least one of these conditions is no longer being met, Member States shall immediately withdraw enjoyment of the exemption from the company concerned.

3. Member States shall communicate to the Commission a list of companies and ships granted exemption under this Article, as well as any updating of that list.

4. Where two or more Member States are concerned in an international scheduled service operated by a single company, they may collaborate in granting an exemption to the company concerned in accordance with the requirements laid down by this Article.

TITLE III

**MONITORING OF HAZARDOUS SHIPS AND INTERVENTION
IN THE EVENT OF INCIDENTS AND ACCIDENTS AT SEA***Article 13***Ships posing a potential hazard to shipping**

1. Ships meeting the criteria set out below shall be considered to be ships posing a potential hazard to shipping or a threat to the environment within the meaning of this Directive:

- ships which have been involved in accidents or incidents at sea as referred to in Article 14;
- ships which have failed to comply with the reporting requirements imposed by this Directive;
- ships which have failed to comply with the applicable rules in ships' routing systems and vessel traffic services placed under the responsibility of a Member State;
- ships in respect of which there is proof or strong presumptive evidence of deliberate discharges of oil or other infringements of the Marpol Convention in waters under the jurisdiction of a Member State;

INITIAL PROPOSAL

AMENDED PROPOSAL

— ships which have been refused access to Community ports or which have been the subject of a report or notification by a Member State in accordance with Annex I-1 to Directive 95/21/EC.

2. Coastal stations holding relevant information on the ships referred to in paragraph 1 shall communicate it to the coastal stations concerned in the other Member States located along the planned route of the ship.

3. Without prejudice to Article 15, Member States shall, in compliance with international law, take the appropriate measures regarding the ships referred to in paragraph 1 which they have identified or which have been reported to them by other Member States, with a view to preventing or reducing the risk to safety or the environment at sea. They shall carry out any checks or action they deem appropriate, in conditions compatible with Directive 95/21/EC, with a view to establishing any infringements of the provisions of this Directive or of the relevant rules of international conventions in force. Where appropriate, they shall inform the Member State which sent them the information pursuant to paragraph 2 of the results of the action they take.

*Article 14***Reporting of incidents and accidents at sea**

1. With a view to preventing or mitigating any significant threat to maritime safety, the safety of individuals or the environment, the master of any ship sailing in the territorial sea or exclusive economic zone of a Member State or the high seas off the coast of a Member State must immediately report to the coastal station responsible for that geographical area:

- any incident or accident affecting the safety of the ship, such as collision, running aground, damage, malfunction or breakdown, flooding or shifting of cargo, any defects in the hull or structural failure,
- any incident or accident which compromises shipping safety, such as failures likely to affect the ship's manoeuvrability or seaworthiness, or any defects affecting the propulsion system or steering gear, the power generation equipment, navigation equipment or communications equipment,
- any situation liable to lead to pollution of the waters or shore of a Member State, such as the discharge or threat of discharge of polluting products into the sea, as well as any slicks of polluting materials and containers or packages seen drifting at sea.

INITIAL PROPOSAL

2. The report message sent in application of paragraph 1 include at least the ship's identity, its position, the port of departure, the port of destination, the address from which information may be obtained on the, the number of persons aboard, details of the incident and any relevant information referred to in IMO Resolution A.851(20).

*Article 15***Measures in the event of exceptionally bad weather**

1. In the event of incidents or accidents at sea as referred to in Article 14, Member States shall take all appropriate measures, consistent with international law, to ensure the safety of shipping and of persons and to protect the marine environment.

AMENDED PROPOSAL

2. The report message sent in application of paragraph 1 shall include at least the ship's identity, its position, the port of departure, the port of destination, the address from which information may be obtained on the dangerous or polluting goods on board, the number of persons aboard, details of the incident and any relevant information referred to in IMO Resolution A.851(20).

Unchanged

1. When a Member State, in the event of exceptionally bad weather and sea conditions, considers that:

(a) a particular ship is likely to create a serious threat for the safety of human life at sea or of pollution of its shipping areas or coastal zones, or of the shipping areas or coastal zones of other States, it may take any appropriate measures, which may include a prohibition to leave port, until it has been established that there is no longer a risk to the human life and/or to the environment;

(b) ships' departure can create a risk to safety or of pollution, it may recommend ships not to leave the ports located in the areas affected.

2. The master shall inform the company of the appropriate measures or recommendations referred to under paragraph 1. These recommendations do however not prejudice the decision of the master on the basis of his/her professional judgment corresponding to SOLAS.

3. The appropriate measures or recommendations, referred to under paragraph 1, shall be based upon a sea state and weather forecast provided by a qualified meteorological information service recognised by the Member State.

Unchanged

*Article 16***Measures relating to incidents or accidents at sea**

1. In the event of incidents or accidents at sea as referred to in Article 14, Member States shall take all appropriate measures, consistent with international law, to ensure the safety of shipping and of persons and to protect the marine and coastal environment.

INITIAL PROPOSAL

AMENDED PROPOSAL

Annex V sets out a non-exhaustive list of measures available to Member States in application of this Article.

Unchanged

2. The operator, the master of the ship and the owner of the must cooperate fully with the competent national authorities, at the latter's request, with a view to minimising the consequences of an incident or accident at sea.

2. The operator, the master of the ship and the owner of the dangerous or polluting goods on board must cooperate fully with the competent national authorities, at the latter's request, with a view to minimising the consequences of an incident or accident at sea.

3. The master of a ship to which the provisions of the ISM Code are applicable shall inform the company of any accident or incident which occurs at sea. As soon as it has been informed of such a situation, the company must contact the competent coastal station and place itself at its disposal as necessary.

Unchanged

*Article 17***of refuge****Places of refuge**

Plans for accommodating ships in distress shall be made available upon demand. Member States shall inform, the Commission of the measures taken in application of the preceding paragraph.

Member States, having consulted the parties concerned, shall draw up, taking into account relevant guidelines by IMO, plans to accommodate, in the waters under their jurisdiction, ships in distress. Such plans shall contain the necessary arrangements and procedures taking into account operational and environmental constraints, to ensure that ships in distress may immediately go to a place of refuge subject to authorisation by the competent authority.

Plans for accommodating ships in distress shall be made available upon demand. Member States shall inform, within 12 months of the date of application of this Directive, the Commission of the measures taken in application of the preceding paragraph.

*Article 18***Informing the parties concerned**

Unchanged

1. The competent coastal authority of the Member State concerned shall, as necessary, broadcast within the relevant areas any incident notified under Article 14(1) and information with regard to any ship which poses a threat to other shipping.

2. Competent authorities holding information notified in accordance with Articles 10 and 14 shall make adequate arrangements to provide such information at any time upon request for safety reasons by the competent authority of another Member State.

INITIAL PROPOSAL

AMENDED PROPOSAL

3. Any Member State whose competent authorities have been informed, pursuant to this Directive or in some other way, of facts which involve or increase the risk for another Member State of a hazard being posed to certain shipping areas and coastal zones, shall take whatever measures are appropriate to inform any interested State thereof as soon as possible and consult it regarding the action being envisaged. Where appropriate, Member States shall cooperate with a view to pooling the arrangements for joint action.

Each Member State shall make the necessary arrangements to use fully the reports which ships are required to transmit to them pursuant to Article 14.

TITLE IV

ACCOMPANYING MEASURES*Article 19***Designation and publication of a list of competent bodies**

1. Each Member State shall designate the competent authorities, port authorities and coastal stations to which the notifications required by this Directive must be made.

2. Each Member State shall ensure that the shipping industry is properly informed and regularly updated, notably via nautical publications, regarding the authorities and stations designated pursuant to paragraph 1, including where appropriate the geographical area for which they are competent, and the procedures laid down for notifying the information required by the Directive.

3. Member States shall send the Commission a list of the bodies they designate pursuant to paragraph 1, as well as any updates thereof.

*Article 20***Cooperation between the Member States and the Commission**

1. The Member States and the Commission shall cooperate on attaining the following objectives:

(a) making optimum use of the information notified pursuant to this Directive, notably by developing appropriate telematic links between coastal stations and port authorities with a view to exchanging data relating to ships' movements, their estimated times of arrival in ports and their cargo;

INITIAL PROPOSAL

AMENDED PROPOSAL

- (b) developing and enhancing the effectiveness of telematic links between the coastal stations of the Member States with a view to obtaining a clearer picture of traffic, improving the monitoring of ships in transit along European coasts, and harmonising and, as far as possible, streamlining the reports required from ships en route;
- (c) extending the cover of the European monitoring, control and information system for maritime traffic with a view to enhanced identification and monitoring of ships sailing in European waters. To this end, the Member States and the Commission shall work together to put in place mandatory reporting systems, mandatory vessel traffic services and, where necessary, appropriate ships' routing systems, with a view to submitting them to the IMO for approval.

2. The European Maritime Safety Agency created by Regulation .../EC shall help attain the following objectives:

- facilitating cooperation between the Member States and the Commission to attain the objectives set out in paragraph 1;
- promoting cooperation between riparian States in the shipping areas concerned in the fields covered by this Directive;
- seeing that the shipping industry is better informed of the requirements and procedures stipulated by this Directive;
- collecting and making available to the interested parties the list of competent bodies designated pursuant to Article 19, the relevant data regarding companies granted an exemption under Article 12 and ships posing a potential hazard to shipping referred to in Article 13 and any appropriate information for implementing this Directive;
- developing and operating any information system necessary for attaining the objectives referred to in the indents above;
- with a view *inter alia* to ensuring optimum traffic conditions in areas of high traffic density or which are hazardous for shipping, establishing regional centres to manage the information gathered and utilised pursuant to this Directive.

INITIAL PROPOSAL

AMENDED PROPOSAL

Article 21

Confidentiality of information

Member States shall take the necessary measures to ensure the confidentiality of information sent to them pursuant to this Directive, and must use such information only for the purposes of maritime safety and preventing pollution by ships.

Article 22

Monitoring the implementation of the Directive and penalties

1. Member States shall, by means of regular checks and unannounced checks, check the functioning of the telematic systems set up to meet the requirements of the Directive, and in particular their capacity to meet the requirements of receiving or sending without delay, 24 hours a day, information notified pursuant to Articles 10 and 12.

2. Member States shall provide in their national law for financial penalties to be imposed on operators, agents, shippers, owners of cargo and masters of ships in the event of infringements of the provisions of this Directive.

The financial penalties referred to in the subparagraph above must be set at a level high enough to deter the person from committing or persisting in an infringement.

3. Without prejudice to the other measures needed to apply the Directive, the financial penalty arrangements introduced by Member States must apply *inter alia* to the following infringements of the Directive:

— failure to make prior announcement of entry into port as required by Article 4;

— failure to report to a mandatory reporting system as required by Article 5;

— violation of the applicable rules in a ships' routeing system or failure to comply with instructions given by a vessel traffic service designated by a Member State as required by Article 6;

— absence or malfunction of the shipborne automatic identification system or of the voyage data recorder referred to in Articles 7 and 8 respectively;

— failure to declare or incorrect declaration by the shipper under Article 9;

— violation of the applicable rules in a ships' routeing system or failure to comply with instructions given by a vessel traffic service designated by a Member State as required by Article 6 and 6a;

— absence or malfunction of the shipborne automatic identification system or of the voyage data recorder referred to in Articles 5a and 8 respectively;

Unchanged

INITIAL PROPOSAL

- violation of the notification requirements laid down in Articles 10 and 12;
- failure to report an incident, accident or situation at sea as required by Article 14;
- departure from a port in violation of Article 15;
- failure to cooperate with the national authorities to minimise the consequences of an accident at sea in accordance with Article 16.

4. Member States shall, without delay, inform the flag State and any other State concerned of measures taken in respect of ships not flying their flag pursuant to Articles 13 and 16 and to paragraph 2 of this Article.

5. Where a Member State finds, on the occasion of an accident or incident at sea referred to in Article 16, that the company has not been able to establish and maintain a link with the ship or with the operational authorities concerned, it shall so inform the State which issued the ISM certification, or on whose behalf it was issued.

Where the seriousness of the failure shows the existence of a major incidence of non-compliance in the functioning of the company's safety management system, the Member State which issued the certificate of compliance or safety management certificate to the ship shall immediately withdraw the ISM certification from the company concerned.

FINAL PROVISIONS

*Article 23***Amendment procedure**

The procedure laid down in Article 24 may be implemented in order:

- for the purposes of this Directive, to apply subsequent amendments which have entered into force in respect of the relevant international instruments referred to in Article 2(i),
- to amend the requirements and procedures laid down in the annexes in the light of experience gained with this Directive.

AMENDED PROPOSAL

*Article 22a***Evaluation**

The Commission will evaluate the implementation of the present Directive in accordance with the timetable and provisions laid down in Annex VI.

Unchanged

INITIAL PROPOSAL

AMENDED PROPOSAL

*Article 24***Regulatory committee**

1. The Commission shall be assisted by a committee composed of representatives of the Member States and chaired by a representative of the Commission.
2. Where reference is made to this paragraph, the regulatory procedure laid down in Article 5 of Decision 1999/468/EC shall apply, in compliance with Article 8 thereof.
3. The period provided for in Article 5(6) of Decision 1999/468/EC is set at three months.

Article 25

Member States shall adopt the laws, regulations and administrative provisions necessary to comply with this Directive by 1 July 2002 at the latest. They shall forthwith inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such a reference shall be laid down by Member States.

Article 26

Council Directive 93/75/EEC is hereby repealed twenty-four months after the adoption of this Directive.

Article 27

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

Article 28

This Directive is addressed to the Member States.

INITIAL PROPOSAL

AMENDED PROPOSAL

ANNEX I

INFORMATION NOTIFIED BY THE SHIPS REFERRED TO IN TITLE I

1. Information referred to in Article 5

Unchanged

- A — Ship identification (name, call sign, IMO identification number or MMSI number)
- C or D: Position
- G — Port of departure
- I — Port of destination and estimated time of arrival
- P — Cargo and, if dangerous goods present on board, quantity and IMO class
- W — Total number of persons on board
- X — Various information:
 - Address for the communication of cargo information,
 - Characteristics and estimated volume of bunker fuel, for ships carrying more than 5 000 tonnes of bunker fuel.

2. Information referred to in Article

2. Information referred to in Article 5a

- Ship identification (name, call sign, IMO identification number or MMSI number)
- Ship type
- Position, course, speed and navigational status
- Port of departure, port of destination and estimated time of arrival
- Presence on board of dangerous goods: yes/no
- If yes, address for the communication of cargo information

Unchanged

3. In the event of a change to the information notified pursuant to this Annex, the master of the ship must forthwith inform the coastal authority concerned thereof.
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INITIAL PROPOSAL

AMENDED PROPOSAL

ANNEX II

PRESCRIPTIONS APPLICABLE TO ON-BOARD EQUIPMENT

I. AUTOMATIC IDENTIFICATION SYSTEMS (AIS)

Unchanged

1. Ships built on or after 1 July 2002

Passenger ships, irrespective of size, and all ships of 300 gross tonnage and upwards built on or after 1 July 2002 which call at a port located in the Community are subject to the carrying requirement laid down in Article 7.

2. Ships built prior to 1 July 2002

Ships built prior to 1 July 2002 which call at a port located in the Community are subject to the carrying requirement laid down in Article 7 according to the following timetable:

- passenger ships: not later than 1 July 2003;
- tankers: not later than the first survey for safety equipment after 1 July 2003;
- ships, other than passenger ships and tankers, of 50 000 gross tonnage and upwards: not later than 1 July 2004;
- ships, other than passenger ships and tankers, of 10 000 gross tonnage and upwards but less than 50 000 gross tonnage: not later than 1 July 2005;
- ships, other than passenger ships and tankers, of 3 000 gross tonnage and upwards but less than 10 000 gross tonnage: not later than 1 July 2006;
- ships, other than passenger ships and tankers, of 300 gross tonnage and upwards but less than 3 000 gross tonnage: not later than 1 July 2007.

II. VOYAGE DATA RECORDER ('BLACK BOX')

Ships in the following classes must, inasmuch as they call at a port the Community, be fitted with a voyage data recorder meeting the performance standards of IMO Resolution A.861(20) and the testing standards set by Standard No 61996 of the International Electronics Commission (IEC):

- passenger ships built on or after 1 July 2002, not later than the date on which this Directive enters into force,
- passenger ships built before 1 July 2002, not later than 1 January 2004,

Ships in the following classes must, inasmuch as they call at a port of a Member State of the Community, be fitted with a voyage data recorder system meeting the performance standards of IMO Resolution A.861(20) and the testing standards set by Standard No 61996 of the International Electronics Commission (IEC):

- Unchanged
- ro-ro passenger ships built before 1 July 2002, not later than the first survey on or after 1 July 2002;
- passenger ships other than ro-ro passenger ships built before 1 July 2002, not later than 1 January 2004,

INITIAL PROPOSAL

AMENDED PROPOSAL

— ships, other than passenger ships, of 3 000 gross tonnage and upwards, built on or after 1 July 2002, not later than the date on which this Directive enters into force.

Unchanged

Ships in the following classes and built before 1 July 2002 must, inasmuch as they call at a port of a Member State of the Community, be fitted with a voyage data recorder system meeting the relevant IMO standards:

— cargo ships of 20 000 gross tonnage and upwards, not later than 1 January 2007,

— cargo ships of 20 000 gross tonnage and upwards, not later than the date fixed by the IMO, or, in the absence of a decision in IMO, not later than 1 January 2007,

— cargo ships of not later than 1 January 2008.

— cargo ships of of 3 000 gross tonnage and upwards but less than 20 000 gross tonnage, not later than the date fixed by the IMO, or, in the absence of a decision in IMO, not later than 1 January 2008.

Member States may exempt passenger ships engaged only in domestic voyages in sea areas other than those covered by Class A, as referred to in Article 4 of Council Directive 98/18/EC from the voyage data recorder requirements laid down in the present Directive.

INITIAL PROPOSAL

ANNEX III

INFORMATION TO BE NOTIFIED PURSUANT TO ARTICLE 10

1. Ship identification (name, call sign and, where appropriate, IMO identification number)
2. Port of destination
3. Time of departure of a ship leaving a port in a Member State (Article 10(1))
4. Estimated time of arrival at the port of destination or pilot station, as required by the competent authority, and estimated time of departure from that port (Article 10(2))
5. The correct technical names of the dangerous or polluting goods, the United Nations (UN) numbers where they exist, the IMO hazard classes in accordance with the IMDG, IBC and IGC Codes and, where appropriate, the class of the ship as defined by the INF Code, the quantities of such goods and their location on board and, if they are being carried in haulage units other than tanks, the identification numbers thereof
6. Confirmation that a list or manifest or appropriate loading plan giving details of the dangerous or polluting goods carried and of their location on the ship is on board
7. Address from which details of the cargo may be obtained

ANNEX IV

EDIFACT ELECTRONIC MESSAGES

The EDIFACT messages referred to in Article 10(4) are as follows:

- MOTREQ ('Vessel Data Request'): message sent where information is required concerning both a specific ship and the dangerous or polluting goods on board;
- APERAK ('Application Acknowledgement'): message indicating that data relating to the ship concerned are available and will be sent, or that they are not available;
- VESDEP ('Vessel Movement Data'): message giving detailed information regarding the voyage of the ship concerned;
- IFTDGN ('Hazardous Cargo Data'): message specifying the nature of the dangerous or polluting cargo being carried;
- BAPLIE ('Bayplan'): message supplying information on the location of goods on board the ship.

ANNEX V

MEASURES AVAILABLE TO MEMBER STATES IN THE EVENT OF A THREAT TO MARITIME SAFETY AND THE PROTECTION OF THE ENVIRONMENT

(pursuant to Article 16(1))

Where, following an incident or circumstance of the type described in Article 14 affecting a ship falling within the scope of this Directive, the competent authority of the Member State concerned deems, within the framework of international law, that it is necessary to avert, lessen or remove a serious and imminent threat to its coastline or related interests, the safety of other ships and their crews and passengers or of persons on shore or to protect the marine environment, that authority may, *inter alia*:

- restrict the movements of the ship or direct it to follow a specific course. This requirement does not affect the master's responsibility for the safe handling of his ship,
- give official notice to the master of the ship to put an end to the threat to the environment or maritime safety,
- send an evaluation team aboard the ship to assess the degree of risk, help the master to remedy the situation and keep the competent coastal station informed thereof,
- instruct the master to put in at a port of refuge in the event of imminent peril, or cause the ship to be piloted or towed.

AMENDED PROPOSAL

ANNEX VI

EVALUATION OF THE IMPLEMENTATION OF THE DIRECTIVE

1. In accordance with Article 22a, Member States shall provide the Commission with all necessary information to enable a proper evaluation of the Directive, within 6 months following a written request by the Commission.
2. On the basis of the information provided for in paragraph 1, the Commission shall report to the European Parliament and the Council on the implementation of the Directive, including an assessment of the efficiency of the Community ship reporting and information system. The report shall also include a description of possible measures at Community level, and if appropriate at international level, to improve or extend the Community ship reporting and information system. The report shall investigate, inter alia:
 - whether progress is needed or desirable on the internationally applicable standards and specifications of automatic identification systems as referred to in Article 5a, as well as their implementation, more particularly as regards AIS information and the range of communication,
 - whether the Member States have put in place the appropriate equipment and shore-based installations and are effectively capable of exchanging information as required by the Directive,
 - whether the measures provided for in Article 17 are adequate to guarantee the accommodation of ships in distress in the places of refuge designated by Member States, whether it should be appropriate to improve the network of places of refuge within the Community and whether there is a need for other measures to complement or strengthen the regime in place,
 - whether the relevant provisions of the Directive have been effectively applied during incidents or accidents at sea and have helped in improving the response of the authorities concerned, whether in these circumstances ships' operators and masters have complied with the requirements to establish and maintain a link and a proper cooperation with the shore-based authorities and the companies.
 - whether the inspections, checks and sanctions referred to in this Directive are applied in an effective and uniform manner throughout the Community.
3. The evaluation provided for in Paragraph 2 shall be carried out in accordance with the following calendar:
 1. Interim report:
 - (a) provision of information by the Member States to the Commission, in accordance with paragraph 1: at the latest three years from the date referred to in Article 25,
 - (b) interim report to the European Parliament and the Council: at the latest six months after having received the reports from the Member States in accordance with (a).
 2. Comprehensive report:
 - (a) provision of information by the Member States to the Commission, in accordance with paragraph 1: at the latest by 31 December 2009,
 - (b) comprehensive report to the European Parliament and the Council, together with draft measures to be taken, if appropriate: at the latest by 1 July 2010.