

COMMON POSITION (EC) No 15/2002**adopted by the Council on 19 December 2001****with a view to adopting Directive 2002/.../EC of the European Parliament and of the Council of ... establishing a Community vessel traffic monitoring and information system and repealing Council Directive 93/75/EEC**

(2002/C 58 E/03)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF
THE EUROPEAN UNION,

Having regard to the Treaty establishing the European
Community, and in particular Article 80(2) thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the Economic and Social
Committee ⁽²⁾,

Having regard to the opinion of the Committee of the
Regions ⁽³⁾,

Acting in accordance with the procedure indicated in Article
251 of the Treaty ⁽⁴⁾,

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) Council Directive 93/75/EEC of 13 September 1993 concerning minimum requirements for vessels bound for or leaving Community ports and carrying dangerous or polluting goods ⁽⁵⁾ 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. That 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 C 120 E, 24.4.2001, p. 67.

⁽²⁾ OJ C 221, 7.8.2001, p. 45.

⁽³⁾ OJ C 357, 14.12.2001, p. 1.

⁽⁴⁾ Opinion of the European Parliament of 14 June 2001 (not yet published in the Official Journal), Council Common Position of 19 December 2001 and Decision of the European Parliament of ... (not yet published in the Official Journal).

⁽⁵⁾ OJ L 247, 5.10.1993, p. 19. Directive as last amended by Commission Directive 98/74/EC (OJ L 276, 13.10.1998, p. 7).

(3) The Council resolution of 8 June 1993 on a common policy on safe seas ⁽⁶⁾ agreed that the main objectives of Community action included the adoption of a fuller information system.

(4) Setting up a Community vessel traffic monitoring and information system should help to prevent accidents and pollution at sea and to minimise their impact on the marine and coastal 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 ships comply with the reporting requirements in force under these systems.

(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 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 should be made compulsory on board ships making national or international voyages which call at Community ports. The data provided by a VDR system can be used both after an accident to investigate its causes and preventively to learn the necessary lessons from such situations. Member States should encourage the use of such data for both purposes.

⁽⁶⁾ OJ C 271, 7.10.1993, p. 1.

- (8) Member States should ensure that the coastal stations of the competent authorities have available, in addition to appropriate technical equipment, sufficient and properly qualified staff.
- (9) Accurate knowledge of dangerous or polluting goods being carried on board ships and of other relevant safety information, such as information relating 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' ports must notify this information to the competent authorities or port authorities of those Member States.
- (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, whenever practicable, electronically to the competent authority or port authority concerned. 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 two or more States, of which at least one is a Member State, from the reporting requirement for each voyage.
- (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 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. Such appropriate measures could be measures provided for by port State control activities.
- (13) Member States need to guard against the threats to maritime safety, to the safety of individuals and to the marine and coastal environment created by incidents, accidents or certain other situations at sea and by the presence of polluting slicks or packages drifting at sea. To this end, masters of ships sailing within Member States' search and rescue region/exclusive economic zone or equivalent, should report such occurrences to the coastal authorities, supplying all appropriate information. In the light of their specific situation, Member States should be given flexibility in choosing which of the abovementioned geographical areas should be covered by the reporting obligation.
- (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) Where a Member State considers, upon a sea state and weather forecast provided by a qualified meteorological information service, that exceptionally bad weather and sea conditions are creating a serious threat for the safety of human life or of pollution, it may take any appropriate measures, which might include a prohibition to leave port, until the situation returns to normal. In case of a possible risk to safety or of pollution, it may recommend ships not to leave the ports. If the master chooses to leave the port, he/she does so in any case under his/her own responsibility.
- (16) Non-availability of a place of refuge may have serious consequences in the event of an accident at sea. Member States should therefore draw up plans whereby ships in distress may, if the situation so requires, be given refuge in the best conditions possible.
- (17) A framework for cooperation between the Member States and the Commission needs to be established to enhance the implementation of the monitoring and information system for maritime traffic, with proper communication links being established between the competent 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 this Directive. The Member States and the Commission should also endeavour to cooperate with third countries to achieve these objectives.
- (18) The effectiveness of this Directive depends greatly on the Member States enforcing its implementation strictly. To this end, Member States must regularly carry out appropriate inspections or any other action required to ensure that the communication links established to meet the requirements of this Directive are operating satisfactorily. A system of sanctions should also be introduced to ensure that the parties concerned comply with the reporting and equipment-carrying requirements laid down by this Directive.
- (19) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ⁽¹⁾.

⁽¹⁾ OJ L 184, 17.7.1999, p. 23 (corrigendum in OJ L 269, 19.10.1999, p. 45).

(20) Certain provisions of this Directive may be amended by that procedure so as to take account of the development of Community and international instruments and of experience gained in implementing this Directive, insofar as such amendments do not broaden the scope of the Directive. A useful tool for the Commission to evaluate the experience gained in implementing the Directive is an adequate reporting by Member States on such implementation.

(21) The provisions of Directive 93/75/EEC are significantly reinforced, extended and amended by this Directive. Accordingly, Directive 93/75/EEC should be repealed.

(22) Since the objectives of the proposed action, namely the enhancing of the safety and efficiency of maritime traffic, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the proposed action, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Purpose

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, 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.

Member States shall monitor and take all necessary and appropriate measures to ensure that the masters, operators or agents of ships, as well as shippers or owners of dangerous or polluting goods carried on board such ships, comply with the requirements under this Directive.

Article 2

Scope

1. This Directive applies to ships of 300 gross tonnage and upwards, unless stated otherwise.
2. This Directive shall not apply to:
 - (a) warships, naval auxiliaries and other ships owned or operated by a Member State and used for non-commercial public service;
 - (b) fishing vessels, traditional ships and recreational craft with a length of less than 45 metres;

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

Article 3

Definitions

For the purpose of this Directive:

- (a) *Relevant international instruments* means the following instruments:
 - MARPOL means the International Convention for the Prevention of Pollution from Ships, 1973 and the 1978 Protocol thereto,
 - 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,
 - SAR Convention means the International Convention on Maritime Search and Rescue, 1979,
 - 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';

- (b) *Operator* means the owner or manager of a ship;
- (c) *Agent* means any person mandated or authorised to supply information on behalf of the operator of the ship;
- (d) *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;
- (e) *Company* means a company within the meaning of Regulation 1(2) of Chapter IX of the SOLAS Convention;
- (f) *Ship* means any sea-going vessel or craft;
- (g) *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;
- (h) *Polluting goods* means:
- oils as defined in Annex I to the MARPOL Convention,
 - noxious liquid substances as defined in Annex II to the MARPOL Convention,
 - harmful substances as defined in Annex III to the MARPOL Convention;
- (i) *Cargo transport unit* means a road freight vehicle, a railway freight wagon, a freight container, a road tank vehicle, a railway wagon, or portable tank;
- (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;
- (k) *Competent authorities* means the authorities and organisations designated by Member States to receive and pass on information reported pursuant to this Directive;
- (l) *Port authority* means the competent authority or body designated by Member States for each port to receive and pass on information reported pursuant to this Directive;
- (m) *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;
- (n) *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;
- (o) *Vessel traffic service (VTS)* means a service designed to improve the safety and efficiency of vessel traffic and to protect the environment, which has the capability to interact with the traffic and to respond to traffic situations developing in the VTS area;
- (p) *Ship's routing system* means any system of one or more routes or routing measures aimed at reducing the risk of casualties; it includes traffic separation schemes, two-way routes, recommended tracks, areas to be avoided, inshore traffic zones, roundabouts, precautionary areas and deep-water routes;
- (q) *Traditional ships* means all kinds of historical ships and their replicas including those designed to encourage and promote traditional skills and seamanship, that together serve as living cultural monuments, operated according to traditional principles of seamanship and technique;
- (r) *Casualty* means a casualty within the meaning of the IMO Code for the investigation of marine casualties and incidents.

TITLE I

SHIP REPORTING AND MONITORING

Article 4

Notification prior to entry into ports of the Member States

1. The operator, agent or master of a ship bound for a port of a Member State shall notify the information in Annex I(1) to the port authority:

- (a) at least twenty-four hours in advance, or
- (b) at the latest, at the time the ship leaves the previous port, if the voyage time is less than twenty-four hours, or
- (c) if the port of call is not known or it is changed during the voyage, as soon as this information is available.

2. Ships coming from a port outside the Community and bound for a port of a Member State carrying dangerous or polluting goods, shall comply with the notification obligations of Article 13.

Article 5

Monitoring of ships entering the area of mandatory ship reporting systems

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 ship reporting system, adopted by the IMO according to Regulation 11 Chapter V of the SOLAS Convention 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).

2. When submitting a new mandatory ship reporting system to the IMO for adoption or a proposal to amend an existing reporting system, a Member State shall include in its proposal at least the information referred to in Annex I(4).

Article 6

Use of automatic identification systems

1. Any ship calling at a port of a Member State must, in accordance with the timetable set out in Annex II(I), be fitted with an AIS which meets the performance standards drawn up by the IMO.

2. Ships fitted 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.

Article 7

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 of the SOLAS Convention 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.

Article 8

Monitoring of the compliance of ships with vessel traffic services

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

- (a) ships entering the area of applicability of a 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;
- (b) ships flying the flag of a Member State or ships bound for a port of a Member State 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;
- (c) ships flying the flag of a third State and not bound for a port in a Member State 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.

Article 9

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

1. Member States shall take all necessary and appropriate measures to provide 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.

3. Member States shall ensure that the coastal stations in charge of monitoring the compliance with vessel traffic services and ships' routing systems have sufficient and properly qualified staff available, as well as appropriate means of communication and ship monitoring and that they operate in accordance with the relevant IMO guidelines.

Article 10

Voyage data recorder systems

1. Member States shall monitor and take all necessary and appropriate measures to ensure that ships calling at a port of a Member State are fitted with a voyage data recorder (VDR) system in accordance with the rules laid down in Annex II(II). Any exemptions granted to *ro-ro* ferries or high-speed passenger craft under Article 4(1)(d) of Council Directive 1999/35/EC of 29 April 1999 on a system of mandatory surveys for the safe operation of regular *ro-ro* ferry and high-speed passenger craft services ⁽¹⁾ shall terminate on . . . (*).

2. Data which have been collected from a VDR system shall be made available to the Member State concerned in the event of an investigation following a casualty occurring within the waters under the jurisdiction of a Member State. Member States shall ensure that such data are used in the investigation and are properly analysed. Member States shall ensure that the findings of the investigation are published as soon as possible after its conclusion.

Article 11

Casualty investigation

Without prejudice to Article 12 of Directive 1999/35/EC, Member States shall comply with the provisions of the IMO Code for the investigation of marine casualties and incidents when conducting any marine casualty or incident investigation involving a ship referred to in this Directive. Member States shall cooperate in the investigation of marine casualties and incidents involving ships flying their flag.

TITLE II

NOTIFICATION OF DANGEROUS OR POLLUTING GOODS ON BOARD SHIPS (Hazmat)

Article 12

Obligations on the shipper

No dangerous or polluting goods may be offered for carriage or taken on board any ship, irrespective of its size, in a port of a Member State unless a declaration has been delivered to the master or operator containing the information listed in Annex I(2).

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

⁽¹⁾ OJ L 138, 1.6.1999, p. 1.

(*) Date of entry into force of this Directive.

Article 13

Notification of dangerous or polluting goods carried on board

1. The operator, agent or master of a ship, irrespective of its size, carrying dangerous or polluting goods and leaving a port of a Member State shall, at the latest at the moment of departure, notify the information indicated in Annex I(3) to the competent authority designated by that Member State.

2. The operator, agent or master of a ship, irrespective of its size, carrying dangerous or polluting goods coming from a port located outside the Community and bound for a port of a Member State 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 or the location of the anchorage is known, if this information is unavailable at the moment of departure, notify the information indicated in Annex I(3) to the competent authority of the Member State in which the first port of destination or anchorage is located.

3. Member States may put in place a procedure authorising the operator, agent or master of a ship referred to in paragraphs 1 and 2 to notify the information listed in Annex I(3) to the port authority of the port of departure or destination in the Community, as appropriate.

The procedure put in place must ensure that the competent authority has access to the information indicated in Annex I(3) at all times should it be needed. To this end, the port authority concerned shall retain the information listed in Annex I(3) long enough for it to be usable in the event of an incident or accident 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 Annex I(3) to the port authority or the competent authority.

The information must be transferred electronically whenever practicable. The electronic message exchange must use the syntax and procedures set out in Annex III.

Article 14

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 I.

Communication systems set up pursuant to the first subparagraph must display the following features:

- (a) data exchange must be electronic and enable messages notified in accordance with Article 13 to be received and processed;
- (b) the system must allow information to be transmitted 24 hours a day;
- (c) each Member State must be able, upon request, to send information on the ship and the dangerous or polluting goods on board, without delay to the competent authority of another Member State.

Article 15

Exemptions

1. Member States may exempt scheduled services performed between ports located on their territory from the requirement laid down in Article 13 where the following conditions are met:

- (a) 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;
- (b) for each voyage performed, the information listed in Annex I(3) 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 13(4).

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

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

4. 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.

TITLE III

MONITORING OF HAZARDOUS SHIPS AND INTERVENTION IN THE EVENT OF INCIDENTS AND ACCIDENTS AT SEA

Article 16

Transmission of information concerning certain ships

1. Ships meeting the criteria set out below shall be considered to be ships posing a potential hazard to shipping or a threat to maritime safety, the safety of individuals or the environment:

- (a) ships which, in the course of their voyage:
 - have been involved in incidents or accidents at sea as referred to in Article 17, or
 - have failed to comply with the notification and reporting requirements imposed by this Directive, or
 - have failed to comply with the applicable rules in ships' routing systems and VTS placed under the responsibility of a Member State;

(b) ships in respect of which there is proof or presumptive evidence of deliberate discharges of oil, or other infringements of the MARPOL Convention, in waters under the jurisdiction of a Member State;

(c) ships which have been refused access to ports of the Member States or which have been the subject of a report or notification by a Member State in accordance with Annex I(1) to Council Directive 95/21/EC of 19 June 1995 concerning the enforcement, in respect of shipping using Community ports and sailing in the waters under the jurisdiction of the Member States, of international standards for ship safety, pollution prevention and shipboard living and working conditions (port State control) ⁽¹⁾.

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. Member States shall ensure that the information communicated to them under paragraph 2 is transmitted to the relevant port authorities and/or any other authority designated by the Member State. Within the limits of their available staff capacity, Member States shall carry out any appropriate inspection or verification in their ports either on their own initiative or at the request of another Member State, without prejudice to any port State control obligation. They shall inform all Member States concerned of the results of the action they take.

⁽¹⁾ OJ L 157, 7.7.1995, p. 1. Directive as last amended by Commission Directive 1999/97/EC (OJ L 331, 23.12.1999, p. 67).

*Article 17***Reporting of incidents and accidents at sea**

1. Without prejudice to international law and with a view to preventing or mitigating any significant threat to maritime safety, the safety of individuals or the environment, Member States shall monitor and take all appropriate measures to ensure that the master of a ship sailing within their search and rescue region, exclusive economic zone or equivalent, immediately reports to the coastal station responsible for that geographical area:

- (a) 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;
- (b) 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 electrical generating system, navigation equipment or communications equipment;
- (c) 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;
- (d) any slick of polluting materials and containers or packages seen drifting at sea.

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 and polluting goods carried on board, the number of persons aboard, details of the incident and any relevant information referred to in IMO Resolution A.851(20).

*Article 18***Measures in the event of exceptionally bad weather**

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) a ship's departure can create a risk threat 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 do not, however, prejudice the decision of the master on the basis of his/her professional judgement corresponding to the SOLAS Convention.

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.

*Article 19***Measures relating to incidents or accidents at sea**

1. In the event of incidents or accidents at sea as referred to in Article 17, Member States shall take all appropriate measures, consistent with international law, where necessary to ensure the safety of shipping and of persons and to protect the marine and coastal environment.

Annex IV sets out a non-exhaustive list of measures available to Member States pursuant to this Article.

2. The operator, the master of the ship and the owner of the dangerous or polluting goods carried on board must, in accordance with national and international law, 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, in accordance with that Code, inform the company of any incident or accident, as referred to in Article 17(1), 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.

*Article 20***Places of refuge**

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. The plans may contain provisions to make tugs and ship repair facilities available.

Plans for accommodating ships in distress shall be made available upon demand. Member States shall inform the Commission of the measures taken pursuant to the first subparagraph.

*Article 21***Information of the parties concerned**

1. The competent coastal station of the Member State concerned shall, as necessary, broadcast within the relevant areas, any incident or accident notified under Article 17(1) and information with regard to any ship that poses a threat to maritime safety, the safety of individuals or the environment.

2. Competent authorities holding information notified in accordance with Articles 13 and 17 shall make adequate arrangements to provide such information at any time upon request for safety reasons by the competent authority of another Member State.

3. Any Member State the competent authorities of which 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 the appropriate measures to inform any interested Member 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 17.

TITLE IV

ACCOMPANYING MEASURES

*Article 22***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 this Directive.

3. Member States shall send the Commission a list of the authorities and stations they designate pursuant to paragraph 1, as well as any updating thereof.

*Article 23***Cooperation between Member States and the Commission**

Member States and the Commission shall cooperate in 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;
- (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, and harmonising and, as far as possible, streamlining the reports required from ships en route;
- (c) extending the cover of and/or updating the Community vessel traffic monitoring and information system with a view to enhanced identification and monitoring of ships. To this end, the Member States and the Commission shall work together to put in place, where necessary, mandatory reporting systems, mandatory vessel traffic services and appropriate ships' routing systems, with a view to submitting them to the IMO for approval;
- (d) drawing up, if appropriate, concerted plans to accommodate ships in distress.

*Article 24***Confidentiality of information**

Member States shall, in accordance with their national legislation, take the necessary measures to ensure the confidentiality of information sent to them pursuant to this Directive.

*Article 25***Monitoring the implementation of this Directive and sanctions**

1. Member States shall carry out regular inspections and any other action required to check the functioning of the shore-based telematic systems set up to meet the requirements of this 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 13 and 15.

2. Member States shall lay down a system of sanctions for the breach of national provisions adopted pursuant to this Directive and shall take all the measures necessary to ensure that those sanctions are applied. The sanctions thus provided shall be effective, proportionate and dissuasive.

3. 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 16 and 19 and to paragraph 2 of this Article.

4. Where a Member State finds, on the occasion of an incident or accident at sea referred to in Article 19, that the company has not been able to establish and maintain a link with the ship or with the coastal stations concerned, it shall so inform the State which issued the ISM document of compliance and associated safety management certificate, 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 safety management system of a company established in a Member State, the Member State, which issued the document of compliance or safety management certificate to the ship, shall immediately take the necessary measures against the company concerned with the view to having the document of compliance and the associated safety management certificate withdrawn.

Article 26

Evaluation

1. Member States must report to the Commission by ... (*) on the progress in implementing this Directive and, in particular, the provisions of Articles 9, 10, 18, 20 and 23. Member States must report to the Commission by 31 December 2009 on the full implementation of the Directive.

2. On the basis of the reports referred to in paragraph 1, the Commission shall report to the European Parliament and the Council six months thereafter on the implementation of this Directive. In its reports, the Commission shall ascertain whether and to what extent the provisions of this Directive as implemented by the Member States are helping to increase the safety and efficiency of maritime transport and prevent pollution by ships.

FINAL PROVISIONS

Article 27

Amendment procedure

1. The definitions in Article 3, the references to Community and IMO instruments and the Annexes may be amended in accordance with the procedure laid down in Article 28(2) in order to bring them into line with Community or international law which have been adopted, amended or brought into force, insofar as such amendments do not broaden the scope of this Directive.

2. Furthermore, Annexes I, III and IV may be amended in accordance with the procedure laid down in Article 28(2), in the light of experience gained with this Directive, insofar as such amendments do not broaden the scope of this Directive.

Article 28

Committee procedure

1. The Commission shall be assisted by a Committee.
2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at three months.

3. The Committee shall adopt its rules of procedure.

Article 29

1. Member States shall adopt the laws, regulations and administrative provisions necessary to comply with this Directive by ... (**) 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.

2. Member States shall notify to the Commission the provisions of their national legislation which they adopted in the field governed by this Directive.

Article 30

Council Directive 93/75/EEC is hereby repealed as from ... (**).

Article 31

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

Article 32

This Directive is addressed to the Member States.

Done at ...

For the European Parliament
The President

For the Council
The President

(*) Three years from the date referred to in Article 29(1).

(**) 18 months after the entry into force of this Directive.

ANNEX I

LIST OF INFORMATION TO BE NOTIFIED**1. Information to be notified in accordance with Article 4 — General information**

- (a) Ship identification (name, call sign, IMO identification number or MMSI number)
- (b) Port of destination
- (c) 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
- (d) Total number of persons on board.

2. Information to be notified in accordance with Article 12 — Cargo information

- (a) 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 needed for INF cargoes as defined in Regulation VII/14.2, the quantities of such goods and, if they are being carried in cargo transport units other than tanks, the identification number thereof
- (b) Address from which detailed information on the cargo may be obtained.

3. Information to be notified in accordance with Article 13*A. General information*

- (a) Ship identification (name, call sign, IMO identification number or MMSI number)
- (b) Port of destination
- (c) For a ship leaving a port in a Member State: estimated time of departure from the port of departure or pilot station, as required by the competent authority, and estimated time of arrival at the port of destination
- (d) For a ship coming from a port located outside the Community and bound for a port in a Member State: estimated time of arrival at the port of destination or pilot station, as required by the competent authority
- (e) Total number of persons on board.

B. Cargo information

- (a) 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 cargo transport units other than tanks, the identification number thereof
- (b) 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
- (c) Address from which detailed information on the cargo may be obtained.

4. Information referred to in Article 5:

- A. Ship identification (name, call sign, IMO identification number or MMSI number),
- B. Date and time,
- C. or D. Position in latitude and longitude or true bearing and distance in nautical miles from a clearly identified landmark,
- E. Course,

-
- F. Speed,
 - I. Port destination and estimated time of arrival,
 - P. Cargo and, if dangerous goods present on board, quantity and IMO class,
 - T. Address for the communication of cargo information,
 - W. Total number of persons on board,
 - X. Various information:
 - characteristics and estimated quantity of bunker fuel, for ships carrying more than 5 000 tons of bunker fuel,
 - navigational status.
5. The master of the ship must forthwith inform the competent authority or port authority concerned of any change to the information notified pursuant to this Annex.
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ANNEX II

PRESCRIPTIONS APPLICABLE TO ON-BOARD EQUIPMENT

I. AUTOMATIC IDENTIFICATION SYSTEMS (AIS)

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 of a Member State of the Community are subject to the carrying requirement laid down in Article 6.

2. Ships built prior to 1 July 2002

Passenger ships, irrespective of size, and all ships of 300 gross tonnage and upwards built prior to 1 July 2002 which call at a port of a Member State of the Community are subject to the carrying requirement laid down in Article 6 according to the following timetable:

- (a) passenger ships: not later than 1 July 2003;
- (b) tankers: not later than the first survey for safety equipment after 1 July 2003;
- (c) ships, other than passenger ships and tankers, of 50 000 gross tonnage and upwards: not later than 1 July 2004;
- (d) 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;
- (e) 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;
- (f) 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.

Member States may exempt passenger ships below 300 gross tonnage engaged in domestic trade from the application of the requirements concerning AIS laid down in this Annex.

II. VOYAGE DATA RECORDER (VDR) SYSTEMS

1. 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):

- (a) passenger ships built on or after 1 July 2002, not later than ... (*);
- (b) *ro-ro* passenger ships built before 1 July 2002, not later than the first survey on or after 1 July 2002;
- (c) passenger ships other than *ro-ro* passenger ships, built before 1 July 2002, not later than 1 January 2004;
- (d) ships other than passenger ships, of 3 000 gross tonnage and upwards, built on or after 1 July 2002, not later than ... (*).

2. 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:

- (a) 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;
- (b) cargo ships 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.

3. 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 of 17 March 1998 on safety rules and standards for passenger ships⁽¹⁾ from the voyage data recorder requirements laid down in this Directive.

(*) Date of entry into force of this Directive.

(1) OJ L 144, 15.5.1998, p. 1.

ANNEX III

ELECTRONIC MESSAGES

1. Member States shall develop and maintain the necessary infrastructure to enable transmission, reception and conversion of data between systems using XML or Edifact syntax, based on Internet or X.400 communication facilities.
2. The Commission shall develop and maintain, in consultation with the Member States, an 'interface control document' which describes the system facilities in terms of the message scenario, the message functions and the relation between the messages. The message timing and performance shall be detailed, as well as data interchange protocols and parameters. The interface control document shall further specify the data content of the required message functions and describe those messages.
3. These procedures and infrastructure should incorporate, whenever practicable, reporting and information exchange obligations resulting from other directives, such as Directive 2000/59/EC of the European Parliament and of the Council of 27 November 2000 on port reception facilities for ship-generated waste and cargo residues ⁽¹⁾.

⁽¹⁾ OJ L 332, 28.12.2000, p. 81.

ANNEX IV

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

(pursuant to Article 19(1))

Where, following an incident or circumstance of the type described in Article 17 affecting a ship, 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*:

- (a) 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;
 - (b) give official notice to the master of the ship to put an end to the threat to the environment or maritime safety;
 - (c) 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;
 - (d) instruct the master to put in at a place of refuge in the event of imminent peril, or cause the ship to be piloted or towed.
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STATEMENT OF THE COUNCIL'S REASONS

I. INTRODUCTION

Within the framework of the co-decision procedure (Article 251/EC), on 28 June 2001 the Council agreed on a general approach to the Directive concerning the monitoring of maritime traffic ⁽¹⁾. Following examination of the results of the first reading by the European Parliament on 14 June 2001 ⁽²⁾ and legal/linguistic revision, the Council adopted the common position on 19 December 2001.

This Directive is to be seen against the background of the second Commission communication on maritime safety following the sinking of the 'Erika'. Its purpose is to help improve maritime safety and to reduce the possible environmental consequences of an accident at sea. Achieving these objectives involves extending the declaration obligations on vessels before entering Member States' waters, the use of EDI (electronic data interchanges) and the automatic vessel identification system (AIS system), increased cooperation among Member States and closer monitoring of vessels presenting a specific risk to maritime safety and the environment.

In reaching its position, the Council took account of the Opinion of the European Parliament at first reading, the Opinion of the Economic and Social Committee ⁽³⁾, that of the Committee of the Regions ⁽⁴⁾ and the Commission's modified proposal ⁽⁵⁾.

II. ANALYSIS OF THE COMMON POSITION

The Council's approach on the Commission proposal is based on considerations similar to those underlined by the Commission and the Parliament. To improve maritime safety and prevent pollution of seas and coastal areas, a more comprehensive mandatory reporting system is called for involving exchanges of information between competent authorities on the movements of ships carrying dangerous or polluting goods. Equipment such as the system for the automatic identification of ships (AIS) and the voyage data recording system (VDR) should be made compulsory on board ships calling at Community ports.

This approach also involves the possibility of advising vessels not to leave port or take other appropriate measures should meteorological conditions present a risk to human life or of pollution. There are also plans to make available places of refuge for ships in distress.

Finally, the Council has adopted the principles of information exchange and of increased transparency as well as the introduction of a system of monitoring and of penalties in the event of non-compliance with the provisions of the Directive.

The purpose of the Council's amendments to the Commission proposal is to clarify Member States' obligations and to improve the response of national authorities to accidents and potentially dangerous situations. This involves, in particular, measures to detect and prevent pollution by ships.

⁽¹⁾ Commission proposal: OJ C 120 E of 24.4.2001, p. 67.

⁽²⁾ 9786/01 CODEC 580 MAR 38 ENV 321, not yet published in the Official Journal.

⁽³⁾ OJ C 221, 7.8.2001, p. 45.

⁽⁴⁾ OJ C 357, 14.12.2001, p. 1.

⁽⁵⁾ OJ C 362 E, 18.12.2001, p. 255.

III. AMENDMENTS BY THE EUROPEAN PARLIAMENT

The present common position adopted by the Council takes full account of the position expressed by the European Parliament at first reading. The Council's approach therefore incorporates the main features of the amendments adopted by the European Parliament. In practical terms, these features are as follows:

- the obligation for any ship calling at a port of a Member State to be fitted with an AIS system (Article 6),
- the exchange of information obtained in the context of ships' routing systems (Articles 7 and 9),
- definition of the detailed arrangements for accommodation of ships in distress taking into account the work of the IMO on the subject (Article 20),
- the need for an evaluation of the Directive's application within a reasonable period after its entry into force and for the Commission to submit a full report to the European Parliament and the Council (Article 26).

The Council adopted a different text from the one proposed by the Commission regarding measures in the event of exceptionally bad weather (Article 18). It nevertheless considered principles similar to those defined by the Parliament, namely:

- respect for the decision-making autonomy of the master of the ship once he has been duly informed of weather conditions,
- the possibility for Member States to make recommendations or take other appropriate measures without prejudice, however, to the final decision of the master,
- the use of weather forecasts provided by a qualified meteorological information service and recognised as the basis for recommendations or other appropriate measures.

Regarding the question of ships being fitted with a voyage data recorder system ('black box') (Article 10), the Council still believes that a solution should be sought as far as possible in the wider context of the IMO. However, it also feels that the Union should be able to introduce autonomous legislation if the work of the IMO does not progress satisfactorily. It therefore introduced the obligation for all vessels to be fitted with a VDR system, including existing cargo ships, either according to a timetable to be defined in the context of the IMO or on dates prior to 1 January 2008 (depending on the category of vessel) in the absence of a decision from the IMO. To help prevent such accidents the Council agreed with the European Parliament in requiring that data collected by such VDR systems be used in investigations following accidents at sea and subsequently published.

The Council has, however, chosen to agree with the Commission which was unable to accept the European Parliament's amendments re:

- specific measures for the Baltic Sea,
- the obligation to equip protected areas and elements concerning the cost of accommodating ships in distress,
- the indication of bunker capacity,
- the obligation to provide a report from classification societies to coastal stations operating a mandatory reporting system,
- the indication of the 'ice' classification of the ship,
- advance dates for entry into force of the obligation for ships to be fitted with automatic identification systems (AIS).

Finally the Council introduced other amendments into the text of the Directive in line with the approach outlined in Part II of this document to make the Directive more clear.

These amendments concern *inter alia*

- the specific obligation on Member States to monitor and to take all necessary and appropriate measures to ensure that the requirements of the Directive are met by all those involved in maritime transport (Article 1),
 - the differentiation between and clarification of provisions on the different sets of equipment: automatic identification systems (AIS) (Article 6), ships' routing systems (Article 7), vessel traffic services (VTS) (Article 8), voyage data recorder systems (VDR) (Article 10),
 - the clarification of information obligations on ships considered as posing a potential hazard to shipping or a threat to maritime safety, the safety of individuals or the environment (Article 16),
 - respect for the subsidiarity principle with reference to sanctions applicable in the event of breach of national provisions adopted pursuant to this Directive (Article 25).
-