

Official Journal

of the European Communities

English edition

Legislation

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⁽¹⁾ Text with EEA relevance

EN

Acts whose titles are printed in light type are those relating to day-to-day management of agricultural matters, and are generally valid for a limited period.

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I

(Acts whose publication is obligatory)

REGULATION (EC) No 1406/2002 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 27 June 2002
establishing a European Maritime Safety Agency
(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission ⁽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 referred to in Article 251 of the Treaty ⁽⁴⁾,

Whereas:

- (1) A large number of legislative measures have been adopted in the Community in order to enhance safety and prevent pollution in maritime transport. In order to be effective, such legislation must be applied in a proper and uniform manner throughout the Community. This will ensure a level playing field, reduce the distortion of competition resulting from the economic advantages enjoyed by non-complying ships and will reward the serious maritime players.
- (2) Certain tasks currently done at Community or national level could be executed by a specialised expert body. Indeed, there is a need for technical and scientific support and a high level of stable expertise to properly apply the Community legislation in the fields of maritime safety and ship pollution prevention, to

monitor its implementation and to evaluate the effectiveness of the measures in place. There is a need therefore, within the Community's existing institutional structure and balance of powers, to establish a European Maritime Safety Agency ('the Agency').

- (3) In general terms, the Agency should represent the technical body providing the Community with the necessary means to act effectively to enhance overall maritime safety and ship pollution prevention rules. The Agency should assist the Commission in the continuous process of updating and developing Community legislation in the field of maritime safety and prevention of pollution by ships and should provide the necessary support to ensure the convergent and effective implementation of such legislation throughout the Community by assisting the Commission in performing the tasks assigned to the latter by existing and future Community legislation on maritime safety and ship pollution prevention.

- (4) For the proper achievement of the purposes for which the Agency is established, it is appropriate that the Agency carries out a number of other important tasks aimed at enhancing maritime safety and ship pollution prevention in the waters of the Member States. In this respect, the Agency should work with Member States to organise appropriate training activities on port State control and flag State related issues and to provide technical assistance related to the implementation of Community legislation. It should facilitate cooperation between the Member States and the Commission as provided for in Directive 2002/59/EC of the European Parliament and of the Council of 27 June 2002 establishing a Community vessel traffic monitoring and information system and repealing Council Directive 93/75/EEC ⁽⁵⁾, namely by developing and operating any information system necessary for the objectives of that Directive, and in the activities concerning the investigations related to serious maritime accidents. It

⁽¹⁾ OJ C 120 E, 24.4.2001, p. 83 and OJ C 103 E, 30.4.2002, p. 184.

⁽²⁾ OJ C 221, 7.8.2001, p. 64.

⁽³⁾ OJ C 357, 14.12.2001, p. 1.

⁽⁴⁾ Opinion of the European Parliament of 14 June 2001 (OJ C 53 E, 28.2.2002, p. 312), Council Common Position of 7 March 2002 (OJ C 119 E, 22.5.2002, p. 27) and Decision of the European Parliament of 12 June 2002 (not yet published in the Official Journal) and Council Decision of 25 June 2002.

⁽⁵⁾ See page 10 of this Official Journal.

should provide the Commission and the Member States with objective, reliable and comparable information and data on maritime safety and on ship pollution prevention to enable them to take any necessary initiatives to enhance the measures in place and to evaluate their effectiveness. It should place the Community maritime safety know-how at the disposal of the States applying for accession. It should be open to the participation of these States and to other third countries which have concluded agreements with the Community whereby they adopt and implement Community legislation in the field of maritime safety and prevention of pollution by ships.

- (5) The Agency should favour the establishment of better cooperation between the Member States and should develop and disseminate best practices in the Community. This in turn should contribute to enhancing the overall maritime safety system in the Community as well as reducing the risk of maritime accidents, marine pollution and the loss of human lives at sea.
- (6) In order properly to carry out the tasks entrusted to the Agency, it is appropriate that its officials carry out visits to the Member States in order to monitor the overall functioning of the Community maritime safety and ship pollution prevention system. The visits should be carried out in accordance with a policy to be established by the Agency's Administrative Board and should be facilitated by the authorities of the Member States.
- (7) The Agency should apply the relevant Community legislation concerning public access to documents and the protection of individuals with regard to the processing of personal data. It should give the public and any interested party objective, reliable and easily understandable information with regard to its work.
- (8) For the contractual liability of the Agency, which is governed by the law applicable to the contracts concluded by the Agency, the Court of Justice should have jurisdiction to give judgment pursuant to any arbitration clause contained in the contract. The Court of Justice should also have jurisdiction in disputes relating to compensation for any damage arising from the non-contractual liability of the Agency.
- (9) In order to effectively ensure the accomplishment of the functions of the Agency, the Member States and the Commission should be represented on an Administrative Board entrusted with the necessary powers to establish the budget, verify its execution, adopt the appropriate financial rules, establish

transparent working procedures for decision making by the Agency, approve its work programme, examine requests for technical assistance from Member States, define a policy for visits to the Member States and appoint the Executive Director. In the light of the highly technical and scientific mission and tasks of the Agency, it is appropriate for the Administrative Board to consist of one representative of each Member State and four representatives of the Commission, being members with a high level of expertise. In order further to ensure the highest level of expertise and experience in the Administrative Board and with a view to involving the sectors most closely concerned in the tasks of the Agency, the Commission should nominate independent professionals from these sectors as board members without the right to vote, on the basis of their personal merit and experience in the field of maritime safety and prevention of pollution by ships and not as representatives of particular professional organisations.

- (10) The good functioning of the Agency requires that its Executive Director be appointed on the grounds of merit and documented administrative and managerial skills, as well as competence and experience relevant for maritime safety and prevention of pollution by ships and that he/she performs his/her duties with complete independence and flexibility as to the organisation of the internal functioning of the Agency. To this end, the Executive Director should prepare and take all necessary steps to ensure the proper accomplishment of the working programme of the Agency, should prepare each year a draft general report to be submitted to the Administrative Board, should draw up estimates of the revenues and expenditure of the Agency and should implement the budget.
- (11) In order to guarantee the full autonomy and independence of the Agency, it is considered necessary to grant it an autonomous budget whose revenue comes essentially from a contribution from the Community.
- (12) Over the past years, as more decentralised agencies have been created, the budgetary authority has looked to improve transparency and control over the management of the Community funding allocated to them, in particular concerning the budgetisation of the fees, financial control, power of discharge, pension scheme contributions and the internal budgetary procedure (code of conduct). In a similar way, Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF) ⁽¹⁾ should apply without restriction to the Agency, which should accede to the Interinstitutional Agreement of 25 May 1999 between the European Parliament, the Council of the European Union and the Commission of

⁽¹⁾ OJ L 136, 31.5.1999, p. 1.

the European Communities concerning internal investigations by the European Anti-Fraud Office (OLAF) ⁽¹⁾.

- (13) Within five years from the date of the Agency having taken up its responsibilities, the Administrative Board should commission an independent external evaluation in order to assess the impact of this Regulation, the Agency and its working practices on establishing a high level of maritime safety and prevention of pollution by ships,

HAVE ADOPTED THIS REGULATION:

CHAPTER I

OBJECTIVES AND TASKS

Article 1

Objectives

1. This Regulation establishes a European Maritime Safety Agency (the Agency) for the purpose of ensuring a high, uniform and effective level of maritime safety and prevention of pollution by ships within the Community.

2. The Agency shall provide the Member States and the Commission with the technical and scientific assistance needed and with a high level of expertise, in order to help them to apply Community legislation properly in the field of maritime safety and prevention of pollution by ships, to monitor its implementation and to evaluate the effectiveness of the measures in place.

Article 2

Tasks

In order to ensure that the objectives set out in Article 1 are met in the appropriate manner, the Agency shall perform the following tasks:

- (a) it shall assist the Commission, where appropriate, in the preparatory works for updating and developing Community legislation in the field of maritime safety and prevention of pollution by ships, in particular in line with the development of international legislation in that field. That task shall include the analysis of research projects carried out in the field of maritime safety and prevention of pollution by ships;

- (b) it shall assist the Commission in the effective implementation of Community legislation on maritime safety and prevention of pollution by ships throughout the Community. In particular, the Agency shall:

- (i) monitor the overall functioning of the Community port State control regime, which may include visits to the Member States, and suggest to the Commission any possible improvements in that field;
- (ii) provide the Commission with the technical assistance necessary to take part in the work of the technical bodies of the Paris Memorandum of Understanding on port State control;
- (iii) assist the Commission in the performance of any task assigned to the Commission by existing and future Community legislation on maritime safety and ship pollution prevention, notably legislation applicable to classification societies, the safety of passenger ships, as well as that applicable to the safety, training, certification and watchkeeping of ships' crews;

- (c) it shall work with the Member States to:

- (i) organise, where appropriate, relevant training activities in fields which are the responsibility of the port State and flag State;
- (ii) develop technical solutions and provide technical assistance related to the implementation of Community legislation;

- (d) it shall facilitate cooperation between the Member States and the Commission in the field covered by Directive 2002/59/EC. In particular the Agency shall:

- (i) promote cooperation between riparian States in the shipping areas concerned in the fields covered by that Directive;

- (ii) develop and operate any information system necessary for attaining the objectives of that Directive;

- (e) it shall facilitate cooperation between the Member States and the Commission in the development, with due regard to the different legal systems in the Member States, of a common methodology for investigating maritime accidents according to agreed international principles, in the provision of the support of the Member States in activities concerning investigations related to serious maritime accidents, and in the carrying out of an analysis of existing accident investigation reports;

⁽¹⁾ OJ L 136, 31.5.1999, p. 15.

- (f) it shall provide the Commission and the Member States with objective, reliable and comparable information and data on maritime safety and on pollution by ships to enable them to take the necessary steps to improve maritime safety and prevention of pollution by ships and to evaluate the effectiveness of existing measures. Such tasks shall include the collection, recording and evaluation of technical data in the fields of maritime safety and maritime traffic, as well as in the field of marine pollution, both accidental and deliberate, the systematic exploitation of existing databases, including their cross-fertilisation, and, where appropriate, the development of additional databases. On the basis of the data collected, the Agency shall assist the Commission in the publication, every six months, of information relating to ships that have been refused access to Community ports pursuant 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⁾. The Agency will also assist the Commission and the Member States in their activities to improve the identification and pursuit of ships making unlawful discharges;
- (g) in the course of negotiations with States applying for accession the Agency may provide technical assistance as regards the implementation of Community legislation in the field of maritime safety and prevention of pollution by ships. That task shall be coordinated with the existing regional cooperation programmes and shall include, where appropriate, the organisation of relevant training activities.

Article 3

Visits to Member States

1. In order to perform the tasks entrusted to it, the Agency may carry out visits to the Member States in accordance with the policy defined by the Administrative Board. The national authorities of the Member States shall facilitate the work of the Agency's staff.
2. The Agency shall inform the Member State concerned of the planned visit, the names of the delegated officials, and the date on which the visit starts. The Agency officials delegated to carry out such visits shall do so on presentation of a decision from the Executive Director of the Agency specifying the purpose and the aims of their mission.
3. At the end of each visit, the Agency shall draw up a report and send it to the Commission and to the Member State concerned.

⁽¹⁾ OJ L 157, 7.7.1995, p. 1. Directive as last amended by Directive 2001/106/EC of the European Parliament and of the Council (OJ L 19, 22.1.2002, p. 17).

Article 4

Transparency and protection of information

1. The Agency shall apply the principles of Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents ⁽²⁾, when handling applications for access to documents held by it.
2. The Agency may communicate on its own initiative in the fields within its mission. It shall ensure in particular that the public and any interested party are rapidly given objective, reliable and easily understandable information with regard to its work.
3. The Administrative Board shall lay down the necessary internal rules for the application of paragraphs 1 and 2.
4. The information collected in accordance with this Regulation by the Commission and the Agency shall be subject to Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data ⁽³⁾.

CHAPTER II

INTERNAL STRUCTURE AND FUNCTIONING

Article 5

Legal status, regional centres

1. The Agency shall be a body of the Community. It shall have legal personality.
2. In each of the Member States, the Agency shall enjoy the most extensive legal capacity accorded to legal persons under their laws. It may in particular, acquire or dispose of movable and immovable property and may be a party to legal proceedings.
3. At the request of the Commission, the Administrative Board may decide, with the agreement of the Member States concerned, to establish the regional centres necessary in order to carry out tasks related to the monitoring of navigation and maritime traffic, as provided for in Directive 2002/59/EC.
4. The Agency shall be represented by its Executive Director.

⁽²⁾ OJ L 145, 31.5.2001, p. 43.

⁽³⁾ OJ L 8, 12.1.2001, p. 1.

*Article 6***Staff**

1. The Staff Regulations of officials of the European Communities, the Conditions of employment of other servants of the European Communities and the rules adopted jointly by the institutions of the European Communities for the purposes of the application of those Staff Regulations and conditions of Employment shall apply to the staff of the Agency. The Administrative Board, in agreement with the Commission, shall adopt the necessary detailed rules of application.

2. Without prejudice to Article 16, the powers conferred on the appointing authority by the Staff Regulations and the Conditions of employment of other servants shall be exercised by the Agency in respect of its own staff.

3. The Agency's staff shall consist of officials assigned or seconded by the Commission or Member States on a temporary basis and of other servants recruited by the Agency as necessary to carry out its tasks.

*Article 7***Privileges and immunities**

The Protocol on the Privileges and Immunities of the European Communities shall apply to the Agency and to its staff.

*Article 8***Liability**

1. The contractual liability of the Agency shall be governed by the law applicable to the contract in question.

2. The Court of Justice shall have jurisdiction to give judgment pursuant to any arbitration clause contained in a contract concluded by the Agency.

3. In the case of non-contractual liability, the Agency shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by its departments or by its servants in the performance of their duties.

4. The Court of Justice shall have jurisdiction in disputes relating to the compensation for damage referred to in paragraph 3.

5. The personal liability of its servants towards the Agency shall be governed by the provisions laid down in the Staff Regulations or Conditions of employment applicable to them.

*Article 9***Languages**

1. The provisions laid down in Regulation No 1 of 15 April 1958 determining the languages to be used in the European Economic Community ⁽¹⁾ shall apply to the Agency.

2. The translation services required for the functioning of the Agency shall be provided by the Translation Centre of the bodies of the European Union.

*Article 10***Creation and powers of the Administrative Board**

1. An Administrative Board is hereby set up.

2. The Administrative Board shall:

(a) appoint the Executive Director pursuant to Article 16;

(b) adopt, by 30 April each year, the general report of the Agency for the previous year and forward it to the Member States, the European Parliament, the Council and the Commission;

(c) examine, in the framework of the preparation of the work programme, requests from Member States for technical assistance, as referred to in Article 2(c)(ii);

(d) adopt, by 31 October each year, and taking the opinion of the Commission into account, the work programme of the Agency for the coming year and forward it to the Member States, the European Parliament, the Council and the Commission;

This work programme shall be adopted without prejudice to the annual Community budgetary procedure. In case the Commission expresses, within 15 days from the date of adoption of the work programme its disagreement with the said programme, the Administrative Board shall re-examine the programme and adopt it, possibly amended, within a period of two months, in second reading either with a two-thirds majority, including the Commission representatives, or by unanimity of the representatives of the Member States;

⁽¹⁾ OJ 17, 6.10.1958, p. 385/58. Regulation as last amended by the 1994 Act of Accession.

- (e) adopt the final budget of the Agency before the beginning of the financial year, adjusting it, where necessary, according to the Community contribution and any other revenue of the Agency;
- (f) establish procedures for decision-making by the Executive Director;
- (g) define a policy for the visits to be carried out pursuant to Article 3;
- (h) perform its duties in relation to the Agency's budget pursuant to Articles 18, 19 and 21;
- (i) exercise disciplinary authority over the Executive Director and the heads of unit referred to in Article 15(3);
- (j) establish its rules of procedure.

Article 11

Composition of the Administrative Board

1. The Administrative Board shall be composed of one representative of each Member State and four representatives of the Commission, as well as of four professionals from the sectors most concerned, nominated by the Commission, without the right to vote.

Board members shall be appointed on the basis of their degree of relevant experience and expertise in the field of maritime safety and prevention of pollution by ships.

2. Each Member State and the Commission shall appoint their members of the Administrative Board as well as an alternate who will represent the member in his/her absence.

3. The duration of the term of office shall be five years. The term of office may be renewed once.

4. When appropriate, the participation of representatives of third countries and the conditions thereof shall be established in the arrangements referred to in Article 17(2).

Article 12

Chairmanship of the Administrative Board

1. The Administrative Board shall elect a Chairperson and a Deputy-Chairperson from among its members. The Deputy Chairperson shall automatically take the place of the Chairperson if he/she is prevented from attending to his/her duties.

2. The terms of office of the Chairperson and Deputy Chairperson shall be three years and shall expire when they cease to be members of the Administrative Board. The terms of office shall be renewable once.

Article 13

Meetings

1. The meetings of the Administrative Board shall be convened by its Chairperson.

2. The Executive Director of the Agency shall take part in the deliberations.

3. The Administrative Board shall hold an ordinary meeting twice a year. In addition, it shall meet on the initiative of the Chairperson or at the request of the Commission or of one-third of the Member States.

4. When there is a matter of confidentiality or conflict of interest, the Administrative Board may decide to examine specific items of its agenda without the presence of the members nominated in their capacity as professionals from the sectors most concerned. Detailed rules for the application of this provision may be laid down in the rules of procedure.

5. The Administrative Board may invite any person whose opinion can be of interest to attend its meetings as an observer.

6. The members of the Administrative Board may, subject to the provisions of its rules of procedure, be assisted by advisers or experts.

7. The secretariat for the Administrative Board shall be provided by the Agency.

Article 14

Voting

1. The Administrative Board shall take its decisions by a two-thirds majority of all members with the right to vote.

2. Each member shall have one vote. The Executive Director of the Agency shall not vote.

In the absence of a member, his/her alternate shall be entitled to exercise his/her right to vote.

3. The rules of procedure shall establish the more detailed voting arrangements, in particular, the conditions for a member to act on behalf of another member.

Article 15

Duties and powers of the Executive Director

1. The Agency shall be managed by its Executive Director, who shall be completely independent in the performance of his/her duties, without prejudice to the respective competencies of the Commission and the Administrative Board.

2. The Executive Director shall have the following duties and powers:

- (a) he/she shall prepare the work programme and submit it to the Administrative Board after consultation of the Commission. He/she shall take the necessary steps for its implementation. He/she shall respond to any requests for assistance from the Commission or from a Member State in accordance with Article 10(2)(c);
- (b) he/she shall decide to carry out the visits provided for in Article 3, after consultation of the Commission and following the policy established by the Administrative Board according to Article 10(2)(g);
- (c) he/she shall take all necessary steps, including the adoption of internal administrative instructions and the publication of notices, to ensure the functioning of the Agency in accordance with the provisions of this Regulation;
- (d) he/she shall organise an effective monitoring system in order to be able to compare the Agency's achievements with its operational objectives. On this basis the Executive Director shall prepare a draft general report each year and submit it to the Administrative Board. He/she shall establish regular evaluation procedures that meet recognised professional standards;
- (e) he/she shall exercise, in respect of the staff, the powers laid down in Article 6(2);
- (f) he/she shall draw up estimates of the Agency's revenue and expenditure, in accordance with Article 18, and shall implement the budget in accordance with Article 19.

3. The Executive Director may be assisted by one or more Heads of Unit. If the Executive Director is absent or indisposed, one of the heads of unit shall take his place.

Article 16

Appointment of the Executive Director

1. The Executive Director of the Agency shall be appointed by the Administrative Board on the grounds of merit and documented administrative and managerial skills, as well as competence and experience relevant for maritime safety and prevention of pollution by ships. The Administrative Board shall take its decision by a four-fifths majority of all members with the right to vote. The Commission may propose a candidate or candidates.

Power to dismiss the Executive Director shall lie with the Administrative Board, according to the same procedure.

2. The term of office of the Executive Director shall be five years. This term of office is renewable once.

Article 17

Participation of third countries

1. The Agency shall be open to the participation of third countries, which have entered into agreements with the European Community, whereby they have adopted and are applying Community law in the field of maritime safety and prevention of pollution by ships.

2. Under the relevant provisions of these agreements, arrangements will be developed which shall, *inter alia*, specify the nature and the extent of the detailed rules for the participation by these countries in the work of the Agency, including provisions on financial contributions and staff.

CHAPTER III

FINANCIAL REQUIREMENTS

Article 18

Budget

1. The Agency's revenues shall consist of:
 - (a) a contribution from the Community;
 - (b) possible contributions from any third country which participates in the work of the Agency in accordance with Article 17;
 - (c) charges for publications, training and/or any other services provided by the Agency.
2. The Agency's expenditure shall cover staff and administrative, infrastructure and operational expenses.
3. The Executive Director shall draw up an estimate of the Agency's revenues and expenditure for the following financial year and shall forward it to the Administrative Board together with an establishment plan.

4. Revenue and expenditure shall be in balance.

5. The Administrative Board shall each year, by 30 April at the latest, adopt the draft budget, accompanied by the preliminary work programme, and forward them to the Commission and to the third countries which participate in the work of the Agency in accordance with Article 17.

On the basis of that draft budget, the Commission shall establish the relevant estimates in the preliminary draft general budget of the European Union, which it shall put before the Council pursuant to Article 272 of the Treaty. The scope of the approved budget outlook of the Community for the coming years has to be observed.

6. After the adoption of the general budget of the European Union, the Administrative Board shall adopt the Agency's budget and final work programme, adjusting them where necessary to the Community contribution. It shall forward them without delay to the Commission, to the budgetary authority and to the third countries which participate in the work of the Agency.

Article 19

Implementation and control of the budget

1. The Executive Director shall implement the Agency's budget.

2. Control of commitment, payment of all expenditure and control of the existence and recovery of all Agency revenue shall be carried out by the Financial Controller of the Commission.

3. By 31 March each year at the latest, the Executive Director shall submit to the Commission, the Administrative Board and the Court of Auditors the detailed accounts of all revenue and expenditure from the previous year.

The Court of Auditors shall examine these accounts in accordance with Article 248 of the Treaty. They shall publish a report on the Agency's activities each year.

4. The European Parliament shall, on a recommendation from the Administrative Board, give a discharge to the Executive Director of the Agency in respect of the implementation of the budget.

Article 20

Combating fraud

1. In order to combat fraud, corruption and other unlawful activities, the provisions of Regulation (EC) No 1073/1999 shall apply without restriction to the Agency.

2. The Agency shall accede to the Interinstitutional Agreement of 25 May 1999 concerning internal investigations by OLAF and shall issue, without delay, the appropriate provisions applicable to all of its staff.

3. The decisions concerning funding and the implementing agreements and instruments resulting from them shall explicitly stipulate that the Court of Auditors and OLAF may carry out, if necessary, on-the-spot checks of the recipients of the Agency's funding and the agents responsible for allocating it.

Article 21

Financial provisions

The Administrative Board, having received the agreement of the Commission and the opinion of the Court of Auditors, shall adopt the Agency's Financial Regulation. This Financial Regulation shall in particular specify the procedure to be used for drawing up and implementing the Agency's budget, in accordance with Article 142 of the Financial Regulation of 21 December 1977 applicable to the general budget of the European Communities ⁽¹⁾.

CHAPTER IV

FINAL PROVISIONS

Article 22

Evaluation

1. Within five years from the date of the Agency having taken up its responsibilities, the Administrative Board shall commission an independent external evaluation on the implementation of this Regulation. The Commission shall make available to the Agency any information the latter considers relevant to that evaluation.

2. The evaluation shall assess the impact of this Regulation, the Agency and its working practices on establishing a high level of maritime safety and prevention of pollution by ships. The Administrative Board shall issue specific terms of reference in agreement with the Commission, following consultations with the parties involved.

3. The Administrative Board shall receive the evaluation and issue recommendations regarding changes to this Regulation, the Agency and its working practices to the Commission. Both the evaluation findings and recommendations shall be forwarded by the Commission to the European Parliament and the Council and shall be made public.

Article 23

Start of the Agency's activities

The Agency shall be operational within twelve months of the entry into force of this Regulation.

Article 24

Entry into force

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

⁽¹⁾ OJ L 356, 31.12.1977, p. 1. Regulation as last amended by Regulation (EC, ECSC, Euratom) No 762/2001 (OJ L 111, 20.4.2001, p. 1).

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Luxembourg, 27 June 2002.

For the European Parliament

The President

P. COX

For the Council

The President

M. ARIAS CAÑETE

DIRECTIVE 2002/59/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**of 27 June 2002****establishing a Community vessel traffic monitoring and information system and repealing Council Directive 93/75/EEC**

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.

- (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

⁽¹⁾ OJ C 120 E, 24.4.2001, p. 67 and OJ C 362 E, 18.12.2001, p. 255.

⁽²⁾ OJ C 221, 7.8.2001, p. 54.

⁽³⁾ OJ C 357, 14.12.2001, p. 1.

⁽⁴⁾ Opinion of the European Parliament of 14 June 2001 (OJ C 53 E, 28.2.2002, p. 304), Council Common Position of 19 December 2001 (OJ C 58 E, 5.3.2002, p. 14) and Decision of the European Parliament of 10 April 2002 (not yet published in the Official Journal). Council Decision of 25 June 2002.

⁽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).

⁽⁶⁾ OJ C 271, 7.10.1993, p. 1.

- 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.
- (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 competent authority designated by a Member State considers, upon a sea state and weather forecast provided by a qualified meteorological information service, that exceptionally bad weather or sea conditions are creating a serious threat for the safety of human life or of pollution, it should inform the master of a ship, which intends to enter or leave the port, of the situation and may take any other appropriate measures. Without prejudice to the duty of assistance to ships in distress, these might include a prohibition to enter or to leave port, until the situation returns to normal. In the event of a possible risk to safety or of pollution and taking into account the specific situation in the port concerned, the competent authority may recommend ships not to leave the port. If the master chooses to leave the port, he/she does so in any case under his/her own responsibility and should state the reasons for his/her decision.
- (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 their ports or any other sheltered area in the best conditions possible. Where necessary and feasible, these plans should include the provision of adequate means and facilities for assistance, salvage and pollution response. Ports accommodating a ship in distress should be able to rely on prompt compensation for any costs and damage involved in this operation. The Commission should therefore examine the possibilities for introducing an adequate system of compensation for ports in the Community accommodating a ship in distress and the feasibility of requiring a ship coming to a Community port to be adequately insured.
- (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⁾.
- (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, in so far 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;

⁽¹⁾ OJ L 184, 17.7.1999, p. 23.

- 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 5 August 2002.

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.

⁽¹⁾ OJ L 138, 1.6.1999, p. 1.

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.

*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.

or notification by a Member State in accordance with Annex I-1 to Council Directive 95/21/EC of 19 June 1995 on port State control of shipping ⁽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.

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

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.

⁽¹⁾ OJ L 157, 7.7.1995, p. 1. Directive as last amended by Directive 2001/106/EC of the European Parliament and of the Council (OJ L 19, 22.1.2002, p. 17).

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. Where the competent authorities designated by Member States consider, in the event of exceptionally bad weather or sea conditions, that there is a serious threat of pollution of their shipping areas or coastal zones, or of the shipping areas or coastal zones of other States, or that the safety of human life is in danger:

- (a) they should, where possible, fully inform the master of a ship which is in the port area concerned, and intends to enter or leave that port, of the sea state and weather conditions and, when relevant and possible, of the danger they may present to his/her ship, the cargo, the crew and the passengers;
- (b) they may take, without prejudice to the duty of assistance to ships in distress and in accordance with Article 20, any other appropriate measures, which may include a recommendation or a prohibition either for a particular ship or for ships in general to enter or leave the port in the areas affected, until it has been established that there is no longer a risk to human life and/or to the environment;
- (c) they shall take appropriate measures to limit as much as possible or, if necessary, prohibit the bunkering of ships in their territorial waters.

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. Where the decision taken by the master of the ship is not in accordance with the measures referred to under paragraph 1, he/she shall inform the competent authorities of the reasons for his/her decision.

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. Where the Member State considers it necessary and feasible, the plans must contain arrangements for the provision of adequate means and facilities for assistance, salvage and pollution response.

Plans for accommodating ships in distress shall be made available upon demand. Member States shall inform the Commission by 5 February 2004 of the measures taken in application of the first paragraph.

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 5 February 2007 on the progress in implementing this Directive and, in particular, the provisions of Articles 9, 10, 18, 20, 22, 23 and 25. 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 to 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.

3. The Commission shall examine the need for, and feasibility of, measures at Community level aimed at facilitating the recovery of, or compensation for, costs and damage incurred for the accommodation of ships in distress, including appropriate requirements for insurance or other financial security

The Commission shall report to the European Parliament and to the Council by 5 February 2007 the results of such examination.

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, in so far 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 5 February 2004 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 5 February 2004.

Article 31

Done at Luxembourg, 27 June 2002.

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

*For the European Parliament**For the Council**Article 32**The President**The President*

P. COX

M. ARIAS CAÑETE

This Directive is addressed to the Member States.

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,

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- 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 or, as regards ships engaged in international voyages, any earlier date decided within the framework of the IMO;
- (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 or, as regards ships engaged in international voyages, any earlier date decided upon within the framework of the IMO;
- (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 or, as regards ships engaged in international voyages, any earlier date decided upon within the framework of the IMO.

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 1 July 2002;
- (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 5 August 2002.

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.

⁽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 movement 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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