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*****II**

DRAFT RECOMMENDATION FOR SECOND READING

on the Council common position for adopting a directive of the European Parliament and of the Council amending Directive 2002/59/EC establishing a Community vessel traffic monitoring and information system (5719/3/2008 – C6-0225/2008 – 2005/0239(COD))

Committee on Transport and Tourism

Rapporteur: Dirk Sterckx

Symbols for procedures

- * Consultation procedure
majority of the votes cast
- **I Cooperation procedure (first reading)
majority of the votes cast
- **II Cooperation procedure (second reading)
majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend the common position
- *** Assent procedure
majority of Parliament's component Members except in cases covered by Articles 105, 107, 161 and 300 of the EC Treaty and Article 7 of the EU Treaty
- ***I Codecision procedure (first reading)
majority of the votes cast
- ***II Codecision procedure (second reading)
majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend the common position
- ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the Commission.)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. In the case of amending acts, passages in an existing provision that the Commission has left unchanged, but that Parliament wishes to amend, are highlighted in **bold**. Any deletions that Parliament wishes to make in passages of this kind are indicated thus: [...]. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). Suggested corrections of this kind are subject to the agreement of the departments concerned.

CONTENTS

	Page
DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION	5
EXPLANATORY STATEMENT	51
PROCEDURE.....	55

DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the common position adopted by the Council with a view to the adoption of a directive of the European Parliament and of the Council amending Directive 2002/59/EC establishing a Community vessel traffic monitoring and information system (5719/3/2008 – C6-0225/2008 – 2005/0239(COD))

(Codecision procedure: second reading)

The European Parliament,

- having regard to the Council common position (5719/3/2008 – C6-0225/2008),
 - having regard to its position at first reading¹ on the Commission proposal to Parliament and the Council (COM(2005)0589),
 - having regard to the communication from the Commission (COM(2008)0310), concerning the common position adopted by the Council,
 - having regard to Article 251(2) of the EC Treaty,
 - having regard to Rule 62 of its Rules of Procedure,
 - having regard to the recommendation for second reading of the Committee on Transport and Tourism (A6-0334/2008),
1. Approves the common position as amended by Parliament;
 2. Instructs its President to forward its position to the Council and Commission.

Amendment 1

Council common position – amending act

Recital 6

Council common position

(6) The automatic ship identification systems (AIS – Automatic Identification System) referred to in the International Convention for the Safety of Life at Sea of 1 November 1974 make it possible not only to improve the possibilities of monitoring these ships but above all to make them safer in close navigation situations. AIS have accordingly been

Amendment

(6) The automatic ship identification systems (AIS – Automatic Identification System) referred to in the International Convention for the Safety of Life at Sea of 1 November 1974 make it possible not only to improve the possibilities of monitoring these ships but above all to make them safer in close navigation situations. AIS have accordingly been

¹ Texts adopted, 25.4.2007, P6_TA(2007)0146.

integrated into the enacting terms of Directive 2002/59/EC. Considering the large number of collisions involving fishing vessels that have clearly not been seen by merchant ships or which have not seen the merchant ships around them, extension of that measure to include fishing vessels with a length of more than 15 metres is very much to be desired. In the framework of the European Fisheries Fund, financial assistance may be provided for the fitting on board of fishing vessels of safety equipment such as AIS.

integrated into the enacting terms of Directive 2002/59/EC. Considering the large number of collisions involving fishing vessels that have clearly not been seen by merchant ships or which have not seen the merchant ships around them, extension of that measure to include fishing vessels with a length of more than 15 metres is very much to be desired. In the framework of the European Fisheries Fund, financial assistance may be provided for the fitting on board of fishing vessels of safety equipment such as AIS. ***The International Maritime Organisation (IMO) has recognised that the publication for commercial purposes on the worldwide web or elsewhere of AIS data transmitted by ships could be detrimental to the safety and security of ships and port facilities and has urged its member governments, subject to the provisions of their national laws, to discourage those who make available AIS data to others for publication on the worldwide web or elsewhere from doing so. In addition, the availability of AIS information on ships' routes and cargoes should not be detrimental to fair competition between actors in the shipping industry.***

Justification

Amendment 1 (EP, first reading). The text speaks for itself.

Amendment 2

Council common position – amending act Recital 8

Council common position

(8) It would be useful to study what synergies might be possible between AIS and the positioning and communication systems used in the context of the common fisheries policy, such as the satellite-based vessel monitoring system.

Amendment

(8) From surveys carried out on behalf of the Commission, it clearly emerges that it is neither useful nor feasible to incorporate AIS in the positioning and communications systems used for the purposes of the common fisheries policy.

For this purpose, the Commission, in cooperation with the Member States, should study the feasibility and determine the detailed rules for integrating AIS with the positioning and communication systems used in the context of the common fisheries policy. Investigation of the possibilities of integrating these systems should take account of the needs and requirements of controlling fishing fleets, particularly as regards the security and confidentiality of the data transmitted.

Justification

Recital 8 needs to be updated. Research into the incorporation of AIS and the 'blue box' for the purposes of the Community fisheries policy has already been carried out by the EMSA (Study into synergies between AIS and the positioning and communication system used in the context of the common fisheries policy(VMS)). The study concludes that the advantages of incorporating both systems are heavily outweighed by the disadvantages (cost, the amount of time necessary to develop an integrated system, uncertainty regarding the results ...).

Amendment 3

**Council common position – amending act
Recital 8 a (new)**

Council common position

Amendment

(8a) Under Directive 2002/59/EC, a Member State which so requests is entitled to seek information from another Member State regarding a ship and the hazardous or pollutant cargo carried by it. It should be pointed out that this does not mean requests by one Member State to another but that such information can only be requested for reasons of maritime safety, maritime security or maritime environmental protection.

Justification

Your rapporteur divided Amendment 64 (EP, first reading) into a recital and article (see Amendment 28).

Amendment 4

Council common position – amending act Recital 10

Council common position

(10) In accordance with Directive 2002/59/EC, it seems necessary, in relation to the risks posed by exceptionally bad weather, to take into account the potential danger to shipping from ice formation. Therefore, where a competent authority designated by a Member State considers, on the basis of an ice forecast provided by a qualified meteorological information service, that the sailing conditions are creating a serious threat to the safety of human life or a serious threat of pollution, it should so inform the masters of the ships present in its area of competence or intending to enter or leave the port or ports in the area concerned. The authority concerned should be able to take any appropriate steps to ensure the safety of human life at sea and to protect the environment.

Amendment

(10) In accordance with Directive 2002/59/EC, it seems necessary, in relation to the risks posed by exceptionally bad weather, to take into account the potential danger to shipping from ice formation. Therefore, where a competent authority designated by a Member State considers, on the basis of an ice forecast provided by a qualified meteorological information service, that the sailing conditions are creating a serious threat to the safety of human life or a serious threat of pollution, it should so inform the masters of the ships present in its area of competence or intending to enter or leave the port or ports in the area concerned. The authority concerned should be able to take any appropriate steps to ensure the safety of human life at sea and to protect the environment. ***In accordance with SOLAS 74, chapter II-1, Part A-1, Regulation 3.1, Member States are responsible for ensuring that ships flying their flag are designed, constructed and maintained in compliance with the structural, mechanical and electrical requirements of classification societies recognised by administrations. Therefore, Member States should establish requirements for navigation on ice filled waters in accordance with those of organisations recognised under Directive 94/57/EC of 22 November 1994 on common rules and standards for ship inspection and survey organizations and for the relevant activities of maritime administrations¹ or equivalent national standards. Member States should have the possibility to verify that the necessary documentation on board provides evidence that the ship complies with strength and power***

requirements commensurate with the ice situation in the area concerned.

¹ OJ L 319, 12.12.1994, p. 20.

Justification

Amendment 4, (EP first reading – modified version) seeks to prevent discrepancies between different ice class conditions.

Amendment 5

Council common position – amending act Recital 11

Council common position

(11) Directive 2002/59/EC provides that Member States are to draw up plans to accommodate, if the situation so requires, ships in distress in their ports or in any other protected place in the best possible conditions, in order to limit the consequences of accidents at sea. However, taking into account the Guidelines on Places of Refuge for Ships in Need of Assistance annexed to Resolution A.949(23) of the International Maritime Organisation of 13 December 2003 (hereinafter referred to as “IMO Resolution A.949(23)”), which were adopted subsequently to Directive 2002/59/EC and refer to ships in need of assistance ***when safety of life is not involved***, rather than to ships in distress, that Directive should be amended accordingly.

Amendment

(11) Directive 2002/59/EC provides that Member States are to draw up plans to accommodate, if the situation so requires, ships in distress in their ports or in any other protected place in the best possible conditions, in order to limit the consequences of accidents at sea. However, taking into account the Guidelines on Places of Refuge for Ships in Need of Assistance annexed to Resolution A.949(23) of the International Maritime Organisation of 13 December 2003 (hereinafter referred to as “IMO Resolution A.949(23)”), which were adopted subsequently to Directive 2002/59/EC and refer to ships in need of assistance, rather than to ships in distress, that Directive should be amended accordingly. ***This directive will not depart from the rules applicable to rescue operations such as those laid down by the International Convention on Maritime Search and Rescue, where the safety of human life is at stake. This convention will hence continue to apply in full.***

Justification

Based on IMO guidelines concerning places of refuge for ships in need of assistance, the

Council wishes to replace the term ‘ships in distress’ with ‘ship in need of assistance’ in this directive. Your rapporteur can agree with this, but wishes to clarify the link with the SAR Convention. The Council’s formulation implies that saving human lives is of little consequence. The IMO guidelines, however, seek to make it clear that rescuing human lives is of top priority but that the provisions of the SAR Convention (1979) apply.

Amendment 6

Council common position – amending act Recital 13 a (new)

Council common position

Amendment

(13a) In order to obtain the full cooperation and trust of ships’ masters and crew, it needs to be ensured that those masters and crew can rely on good and fair treatment from the competent authorities of the Member State concerned. To that end, it is desirable that Member States, in accordance with their national legislation, apply the IMO guidelines on the fair treatment of crews in case of accidents at sea .

Justification

Amendment 10 (EP first reading – slightly modified). The increasing tendency to regard ships’ crews as criminals is not conducive to the safety of shipping. Ships’ masters frequently refrain from seeking assistance in order to avoid arrest, sometimes endeavouring to reach the territorial waters of a ‘more lenient’ coastal state, thereby possibly increasing the risk of damage to their vessels and of a maritime disaster. The guidelines adopted by the IMO are a step in the right direction.

Amendment 7

Council common position – amending act Recital 14

Council common position

Amendment

(14) When a ship is in need of assistance, a decision may have to be taken as regards the accommodation of that ship in a place of refuge. To this end, ***the authority concerned*** should make a preliminary

(14) When a ship is in need of assistance, a decision may have to be taken as regards the accommodation of that ship in a place of refuge. ***This is particularly important in the event of a situation of distress at sea,***

evaluation of the situation on the basis of the information contained in the relevant plan for accommodation of ships in a place of refuge.

that is to say a situation that could give rise to loss of a vessel or an environmental or navigational hazard. In all such cases it is necessary to be able to call on an independent authority in each Member State or region, depending on the internal structure of a Member State, having the necessary powers and expertise to take any necessary decisions, to assist the vessel in distress with a view to protecting human lives and the environment and minimising economic damage. It is desirable that the competent authorities should be permanent in nature. In particular, the authority should be empowered to take an independent decision as regards the accommodation of a ship in distress in a place of refuge. To this end, *it* should make a preliminary evaluation of the situation on the basis of the information contained in the relevant plan for accommodation of ships in a place of refuge.

Justification

Amendment 5 (EP first reading – slightly modified). This amendment clarifies which authority is empowered to accommodate ships needing assistance.

Amendment 8

Council common position – amending act Recital 15

Council common position

(15) Plans for accommodating ships in need of assistance should describe precisely the decision-making chain with regard to alerting and dealing with the situations in question. The authorities concerned and their remits should be clearly described, as should the means of communication between the parties involved. The applicable procedures should ensure that an appropriate decision can be taken quickly on the basis of expertise and

Amendment

(15) Plans for accommodating ships in need of assistance should describe precisely the decision-making chain with regard to alerting and dealing with the situations in question. The authorities concerned and their remits should be clearly described, as should the means of communication between the parties involved. The applicable procedures should ensure that an appropriate decision can be taken quickly on the basis of *specific*

adequate information available to the competent authority.

maritime expertise in handling incidents where serious harmful consequences can be expected and adequate information available to the competent authority.

Justification

Amendment 6 (EP, first reading).

Amendment 9

**Council common position – amending act
Recital 17 b (new)**

Council common position

Amendment

(17b) The absence of financial guarantees or insurance does not exonerate a Member State from its obligation to assist a ship in distress and to accommodate it in a place of refuge if by doing so it can reduce the risks to the crew and the environment. Though the competent authorities may verify whether the ship is covered by insurance or some other financial guarantee permitting appropriate compensation for costs and damages associated with its accommodation in a place of refuge, the act of requesting this information must not delay the rescue operation.

Justification

Amendment 8 (EP, first reading). The Council has omitted both the amendments of the EP and the proposals of the Commission regarding financial guarantees. Your rapporteur has reinstated them here. The amendment seeks to emphasise that the absence of insurance does not in itself exonerate the Member State from its duty to accommodate a ship in distress. An uninsured ship in difficulties off a European coast and threatened with disaster must be accommodated like any other ship.

Amendment 10

Council common position – amending act Recital 17 c (new)

Council common position

Amendment

(17c) Ports which accommodate a ship needing assistance must be able to rely on prompt reimbursement in respect of costs and any damage arising from the operation. To that end, it is important that the provisions of not only Directive 2007/.../EC of the European Parliament and of the Council of ...[on the civil liability and financial guarantees of shipowners] and the International Oil Pollution Compensation Funds, but also the International Convention of 1996 on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea (the ‘HNS’ Convention), the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (the Bunker Oil Convention) and the Wreck Removal Convention (the Wreck Convention) of 2007 be applied. Member States must therefore ratify these conventions as soon as possible. In exceptional cases Member States shall ensure the reimbursement of costs and economic damage suffered by a port as a result of accommodating a ship, particularly if such costs and economic damage are not covered by the financial guarantees of the shipowners and other existing compensation mechanisms.

Justification

A port which accommodates a ship in distress may receive compensation for some of the damage suffered under the HNS Convention (1996, ratified by only three Member States), the Bunker Convention (ratified by 12 Member States), the IOPC Fund and the recently approved Wreck Convention. Even if these conventions are applied, however, certain economic losses (resulting for example from occupation of a quay or restricted access to the port) are not recovered. In such cases the Member State in question should intervene as a stop-gap to compensate those who have suffered damage and may subsequently recover the amount in

question from those responsible.

Amendment 11

Council common position – amending act Recital 19

Council common position

(19) In accordance with Directive 2002/59/EC, Member States and the Commission have made substantial progress towards harmonising electronic data exchange, in particular as regards the transport of dangerous or polluting goods. SafeSeaNet, in development since 2002, should now be established as the reference network at Community level.

Amendment

(19) In accordance with Directive 2002/59/EC, Member States and the Commission have made substantial progress towards harmonising electronic data exchange, in particular as regards the transport of dangerous or polluting goods. SafeSeaNet, in development since 2002, should now be established as the reference network at Community level. ***It is important to ensure that it does not result in increased administrative or cost burdens for industry, that there is harmonisation with international rules and that confidentiality in relation to any possible commercial implications is taken into account.***

Justification

Amendment 12 (EP, first reading). SafeSeaNet is an important step forward but it is essential to ensure commercial confidentiality and conformity with international rules as well as to avoid excessive burdens for the industry.

Amendment 12

Council common position – amending act Recital 20

Council common position

(20) The progress made in the new technologies and in particular in their space applications, such as ***beacon-based*** ship monitoring systems, imaging systems or ***Global Navigation Satellite System (GNSS)***, now makes it possible to extend traffic monitoring further offshore and

Amendment

(20) The progress made in the new technologies and in particular in their space applications, such as ***satellite-based*** ship monitoring systems, imaging systems or ***Galileo***, now makes it possible to extend traffic monitoring further offshore and thereby to ensure better coverage of

thereby to ensure better coverage of European waters, *including by Long Range Identification and Tracking (LRIT) systems. There will have to be full cooperation within the Community on this work if these tools are to become an integral part of the vessel traffic monitoring and information system established by Directive 2002/59/EC.*

European waters. *Furthermore, the IMO has amended the SOLAS Convention for Maritime Safety and Security and Maritime Environment Purposes with a view to developing systems for global long-range identification and tracking of ships (LRIT). In accordance with the architecture approved by the IMO which provides for the possibility of setting up regional LRIT data centres and taking into account the experience gained from the SafeSeaNet project, a LRIT European Data Centre should be set up for the collection and management of LRIT information. In order to retrieve LRIT data, Member States will need to be connected to the LRIT European data centre.*

Justification

Amendment 13 (EP, first reading).

Amendment 13

**Council common position – amending act
Recital 20 a (new)**

Council common position

Amendment

(20a) In order to enable cost saving and avoid unnecessary fitting of equipment on board ships sailing in maritime areas within the coverage of AIS monitoring stations, AIS data should be integrated into the LRIT system. To this end, Member States and the Commission should take any appropriate initiatives, in particular within the IMO.

Justification

The amendment relates to amendment 14(EP, first reading), but takes more account of the actual situation. There is no point in making the fitting of LRIT systems compulsory on vessels which navigate only within areas fully covered by the AIS.

Amendment 14

Council common position – amending act Recital 22 a (new)

Council common position

Amendment

(22a) Information gathered pursuant to this directive may only be disseminated and used to prevent situations which threaten the safety of human life at sea and the protection of the marine environment. It is therefore desirable that the Commission, in cooperation with European Network and Information Security Agency, investigate how to tackle any network and information security problems.

Justification

Amendment 15 (EP, first reading – modified). The provisions concerning AIS and SafeSeaNet will give rise to a considerable number of confidentiality issues for those affected who fear that the information transmitted via these networks is not sufficiently protected against commercial abuse and espionage. Your rapporteur wishes for the Commission to examine this problem further.

Amendment 15

Council common position – amending act Recital 25 b (new)

Council common position

Amendment

(25b) 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. In particular, the Commission should be empowered to amend Annexes I, III and IV in the light of experience gained, lay down requirements for regarding the fitting of LRIT equipment on board ships sailing within the coverage of AIS fixed-

based stations of Member States lay down policy rules and principles governing access to information in the LRIT European Data Centre and amend the definitions, references or annexes so as to bring them into line with Community or international law. Since such measures are of a general nature amending non-essential parts of the directive they must be adopted in accordance with regulatory procedures with scrutiny provided for in Article 5a of Decision 1999/468/EC.

Justification

Amendment 57 (EP, first reading); reference to new regulatory procedure with scrutiny.

Amendment 16

**Council common position – amending act
Recital 28**

Council common position

Amendment

(28) In accordance with point 34 of the Interinstitutional Agreement on better law-making, Member States are encouraged to draw up, for themselves and in the interests of the Community, their own tables illustrating, as far as possible, the correlation between this Directive and the transposition measures, and to make them public.

deleted

Justification

As originally proposed by the Commission, there should be an obligation for Member States to draw up correspondence tables, which indicate exactly by which provisions each of the requirements laid down in the Directive are transposed into national legislation. These tables are necessary to enable the Commission to verify thoroughly whether the Directive is correctly transposed and implemented by the Member States.

Amendment 17

Council common position – amending act
Article 1 – point -1 (new)
Directive 2002/59/EC
Title

Council common position

Amendment

(-1) The title is replaced by the following:

“Directive 2002/59/EC of the European Parliament and of the Council of 27 June 2002 establishing a Community vessel monitoring and information system and rules governing ship owners’ civil liability and financial guarantee and repealing Council Directive 93/75/EEC”

Justification

The Commission proposals concerning the Community traffic-monitoring system and ship owners’ civil liability are two of the constituent parts of the ‘Third Maritime Safety Package’ and they constitute a set of interconnected proposals.

Pursuant to Rule 62(2) of Parliament’s Rules of Procedure, the purpose of this amendment is to take into account in particular a new legal situation which has arisen since first reading – namely, the judgment issued by the European Court of Justice on 24 June 2008 in Case C-188-07.

Amendment 18

Council common position – amending act
Article 1 – point -2 (new)
Directive 2002/59/EC
Article 1 – paragraph 1

Council common position

Amendment

(-2) In Article 1, paragraph 1 is replaced by the following:

“The purpose of this Directive is to establish in the Community a vessel traffic monitoring and information system with a view to enhancing the safety and efficiency of maritime traffic, port and maritime security, improving the response of authorities to incidents, accidents or potentially dangerous situations at sea,

***including search and rescue operations,
and contributing to better prevention and
detection of pollution by ships.”***

Justification

Amendment 16 (EP, first reading).

Amendment 19

Council common position – amending act

Article 1 – point -3 (new)

Directive 2002/59/EC

Article 1 – subparagraph 1 a (new)

Council common position

Amendment

***(-3) In Article 1 the following
subparagraph is added after the first
subparagraph:***

***“This Directive shall also lay down rules
applicable to certain aspects of the
obligations on operators in the maritime-
transport chain as regards civil liability
and shall introduce suitable financial
protection for seafarers in the event of
abandonment.”***

Justification

The Commission proposals concerning the Community traffic-monitoring system and ship owners’ civil liability are two of the constituent parts of the ‘Third Maritime Safety Package’ and they constitute a set of interconnected proposals.

Pursuant to Rule 62(2) of Parliament’s Rules of Procedure, the purpose of this amendment is to take into account in particular a new legal situation which has arisen since first reading – namely, the judgment issued by the European Court of Justice on 24 June 2008 in Case C-188-07.

Amendment 20

Council common position – amending act

Article 1 – point -1 a (new)

Directive 2002/59/EC

Article 2 – paragraph 1

Council common position

Amendment

(-1a) In Article 2, paragraph 1 is replaced by the following text:

“1. This Directive shall apply:

– to ships of 300 gross tonnage and upwards (unless otherwise stated) and

– pursuant to international law, to maritime areas under the Member States’ jurisdiction.”

Justification

The Commission proposals concerning the Community traffic-monitoring system and ship owners’ civil liability are two of the constituent parts of the ‘Third Maritime Safety Package’ and they constitute a set of interconnected proposals.

Pursuant to Rule 62(2) of Parliament’s Rules of Procedure, the purpose of this amendment is to take into account in particular a new legal situation which has arisen since first reading – namely, the judgment issued by the European Court of Justice on 24 June 2008 in Case C-188-07.

Amendment 21

Council common position – amending act

Article 1 – point 1 a (new)

Directive 2002/59/EC

Article 2 – paragraph 2 – point c

Council common position

Amendment

(1a) In Article 2, paragraph 2, letter (c) shall be replaced by the following:

“(c) ships’ stores and equipment for use on board ships.”

Justification

Amendment 62 (EP, first reading). Bunker fuels up to 5000 tonnes must also be included in the scope of this Directive.

Amendment 22

Council common position – amending act

Article 1 – point 2 a) i a) (new)

Directive 2002/59/EC

Article 3 – point a – indent (new)

Council common position

Amendment

(ia) the following indent is inserted after the fourth indent:

“– ‘1996 Convention’ means the summary of the 1976 Convention on Limitation of Liability for Maritime Claims as adopted by the International Maritime Organisation and as amended by the 1996 protocol;”

Justification

The Commission proposals concerning the Community traffic-monitoring system and ship owners’ civil liability are two of the constituent parts of the ‘Third Maritime Safety Package’ and they constitute a set of interconnected proposals.

Pursuant to Rule 62(2) of Parliament’s Rules of Procedure, the purpose of this amendment is to take into account in particular a new legal situation which has arisen since first reading – namely, the judgment issued by the European Court of Justice on 24 June 2008 in Case C-188-07.

Amendment 23

Council common position – amending act

Article 1 – point 2 a) i b) (new)

Directive 2002/59/EC

Article 3 – point a – indent (new)

Council common position

Amendment

(ib) In Article 3(a) the following indent is inserted:

“– ‘IMO Resolution A 930(22)’ means the resolution of the International Maritime Organisation’s Assembly and the International Labour Office’s Governing Body entitled ‘Guidelines on provision of financial security in case of abandonment

of seafarers’.”

Justification

The Commission proposals concerning the Community traffic-monitoring system and ship owners’ civil liability are two of the constituent parts of the ‘Third Maritime Safety Package’ and they constitute a set of interconnected proposals.

Pursuant to Rule 62(2) of Parliament’s Rules of Procedure, the purpose of this amendment is to take into account in particular a new legal situation which has arisen since first reading – namely, the judgment issued by the European Court of Justice on 24 June 2008 in Case C-188-07.

Amendment 24

Council common position – amending act

Article 1 – point 2 – point (a) – point (ii)

Directive 2002/59/EC

Article 3 – point (a) – indent (new)

Council common position

Amendment

In Article 3(a) the following new indent is added:

“– Resolution LEG. 3(91) of the IMO Legal Committee of 27 April 2006 on the adoption of Guidelines on the fair treatment of seafarers in the event of a maritime accident;”

Justification

Amendment 18 (EP, first reading) (updated). The growing tendency to treat ships’ crews as criminals is not conducive to ships’ safety. In order to avoid arrest, ships’ masters frequently refrain from seeking assistance, possibly causing greater damage to the ship and increasing the risk of a maritime disaster. The guidelines adopted by the IMO are a step in the right direction.

Amendment 25

Council common position – amending act

Article 1 – point 2 b a) (new)

Directive 2002/59/EC

Article 3 – point k a (new)

(ba) the following point is inserted:

“(ka) ‘ship owner’ means the owner of the ship or any other organisation or person (such as the manager, the agent or the bareboat charterer) on whom the ship owner has conferred responsibility for operation of the ship and who, on assuming such responsibility, has agreed to take over all the duties and responsibilities involved;”

Justification

The Commission proposals concerning the Community traffic-monitoring system and ship owners’ civil liability are two of the constituent parts of the ‘Third Maritime Safety Package’ and they constitute a set of interconnected proposals.

Pursuant to Rule 62(2) of Parliament’s Rules of Procedure, the purpose of this amendment is to take into account in particular a new legal situation which has arisen since first reading – namely, the judgment issued by the European Court of Justice on 24 June 2008 in Case C-188-07.

Amendment 26

Council common position – amending act

Article 1 – point 2

Directive 2002/59/EC

Article 3 – point (v)

(v) ‘ship in need of assistance’ means a ship in a situation ***apart from one requiring rescue of persons on board***, that could give rise to the loss of the ship or an environmental or navigational hazard;

(v) ‘ship in need of assistance’ means a ship in a situation that could give rise to the loss of the ship or an environmental or navigational hazard. ***The rescue of persons on board is, where necessary, governed by the ASAR Convention, which takes precedence over the provisions of this directive.***

Justification

The Council has introduced this new definition of ‘ship in need of assistance’ based on IMO

guidelines concerning places of refuge for ships needing assistance which use this wording. Your rapporteur can agree but considers that the formulation chosen by the Council is somewhat unfortunate creating the impression that the rescue of persons on board is unimportant. In fact, the intention is to make it clear that the rescue of persons on board is primarily governed by the Search and Rescue Convention (1979).

Amendment 27

Council common position – amending act

Article 1 – point 2 c)

Directive 2002/59/EC

Article 3 – point v a (new)

Council common position

Amendment

(va) ‘civil liability’ for the purposes of the 1996 Convention means the liability by virtue of which a third party to the maritime-transport operation responsible for the damage caused is entitled to make a claim subject to limitation under Article 2 of that Convention, with the exception of claims covered by Regulation (EC) No .../2008 of the European Parliament and of the Council [on the liability of passenger carriers by sea or by inland waterway in the event of accident];

Justification

The Commission proposals concerning the Community traffic-monitoring system and ship owners’ civil liability are two of the constituent parts of the ‘Third Maritime Safety Package’ and they constitute a set of interconnected proposals.

Pursuant to Rule 62(2) of Parliament’s Rules of Procedure, the purpose of this amendment is to take into account in particular a new legal situation which has arisen since first reading – namely, the judgment issued by the European Court of Justice on 24 June 2008 in Case C-188-07.

Amendment 28

Council common position – amending act

Article 1 – point 2 – point c

Directive 2002/59/EC

Article 3 – point u a (new)

Council common position

Amendment

(ua) ‘LRIT’ means a system that automatically transmits long range identification and tracking information in accordance with Regulation 19 Chapter V of the SOLAS Convention for maritime safety and security and maritime environmental purposes.

Justification

Amendment 20 (EP, first reading).

Amendment 29

Council common position – amending act

Article 1 point 2 a (new)

Directive 2002/59/EC

Article 4 a (new)

Council common position

Amendment

(2a) After point 2 a new point 2aa is added as follows:

2aa. The following article is inserted:

“Article 4a

Exemptions

1. Member States may exempt scheduled services performed between ports located on their territory from the requirement laid down in Article 4 provided the following conditions have been 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(1) 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, that information can be sent to the competent authority electronically, in accordance with Article 4(1);

(c) any deviations to the estimated time of arrival at the port of destination or pilot station, of six hours or more shall be notified to the port of arrival in accordance with Article 4;

(d) exemptions shall only be granted to individual vessels on a specific service;

(e) a service shall not be regarded as a scheduled service unless it is intended to be operated for a minimum of one month;

(f) exemptions from the requirements laid down in Article 4 shall be limited to voyages of up to 12 hours' scheduled duration.

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 an exemption under this Article, as well as any updating of that list."

Justification

Article 4 of the Directive places a requirement on vessels bound for a port of a Member State to notify the information contained in Annex I(1) of the Directive to a port prior to arrival in that port. The burden created by this requirement on vessels operating on scheduled services within a Member State is unreasonable. The obligation on port authorities to upload prior notification of entry into ports by vessels operating on scheduled services into a Member State's national vessel traffic monitoring system for onward transmission to the Community system, SafeSeaNet, is unreasonable.

Amendment 30

Council common position – amending act

Article 1 – point 3 a (new)

Directive 2002/59/EC

Article 6 b (new)

Council common position

Amendment

(3a) The following Article 6b is inserted:

“Article 6b

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

1. Any ship engaged in international voyages calling at a port of a Member State shall be fitted with an LRIT system in accordance with Regulation 19 Chapter V of the SOLAS Convention and the performance standards and functional requirements adopted by the IMO.

The Commission shall lay down, in cooperation with the Member States, the modalities and requirements for the fitting of LRIT equipment on board ships sailing in waters within the coverage of AIS fixed-based stations of Member States, in accordance with the regulatory procedure with scrutiny referred to in Article 28(2), and submit to the IMO any appropriate measures.

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

The LRIT European Data Centre shall be a component of the European maritime information and exchange system, SafeSeaNet. Costs related to modifications of national elements of SafeSeaNet so as to include LRIT information shall be borne by Member States.

Member States shall establish and maintain a connection to the LRIT European Data Centre.

3. The Commission shall determine the policy and principles for access to information held in the LRIT European Data Centre in accordance with the regulatory procedure with scrutiny referred to in Article 28(2)."

Justification

Retabling of Amendment 59(EP, first reading) with a number of modifications to take account of recent developments. The objective is to reflect in Community legislation the progress made regarding LRIT systems within the IMO.

Amendment 31

Council common position – amending act

Article 1 – point 4

Directive 2002/59/EC

Article 12 – paragraph 1 – introductory wording

Council common position

*No dangerous or polluting goods **shall be offered** for carriage **or taken on board any ship** irrespective of its size in the port of a Member State **unless** a declaration **has been delivered to the master or operator** containing the following information:*

Amendment

***Shippers offering** dangerous or polluting goods for carriage in the port of a Member State **shall deliver to the master or operator of the ship** irrespective of its size **before the goods are taken on board** a declaration containing the following information:*

Justification

Amendment 25 (EP, first reading). It is important to make it clear that the shipper is primarily responsible for providing accurate information to the master or operator concerning the consignment.

Amendment 32

Council common position – amending act

Article 1 – point 4

Directive 2002/59/EC

Article 12 – paragraph 1 – point (b)

Council common position

(b) for the substances referred to in Annex I to the MARPOL Convention, the safety data sheet detailing the physico-chemical characteristics of the products, including their viscosity expressed in cSt at 50°C and their density at 15°C;

Amendment

(b) for the substances referred to in Annex I to the MARPOL Convention, the safety data sheet detailing the physico-chemical characteristics of the products (***where applicable***), including their viscosity expressed in cSt at 50°C and their density at 15°C ***and the other data contained in the safety data sheet in accordance with IMO resolution MSC. 150 (77)***;

Justification

Amendment 26 (EP, first reading – slightly modified). It is desirable to ensure that the data complies with what has been agreed with the IMO in this connection.

Amendment 33

Council common position – amending act

Article 1 – point 4

Directive 2002/59/EC

Article 12 – paragraph 1 a (new)

Council common position

Amendment

After letter (c) a new paragraph 1a is inserted as follows:

“1a. Vessels coming from a port outside the Community and heading for a port of a Member State or an anchorage in the territorial waters of a Member State which have dangerous or polluting substances on board must be in possession of a declaration by the shipper containing the following information:

(a) the information listed in Annex I

section 3;

(b) the information required under paragraph 1(b) and (c) of this article.”

Justification

Amendment 27(EP, first reading). The shipper must provide the master or operator of a vessel with a data sheet setting out the physico-chemical properties and viscosity of the mineral oils he is to transport. Consultations with the sector show that this information is highly relevant in the event of a problem with the ship. Your rapporteur therefore considers that vessels coming from outside the Community and heading for a European port should also be in possession of this information.

Amendment 34

Council common position – amending act

Article 1 – point 4

Directive 2002/59/EC

Article 12 – paragraph 1 – final wording

Council common position

Amendment

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 accordance with ***the first paragraph***.

The final words of Article 12(1) shall be made into a separate paragraph 1b and amended as follows:

It shall be the duty ***and responsibility*** of the shipper to ensure that the shipment offered for carriage is indeed the one declared in accordance with ***paragraphs 1 and 1a***.

Justification

Amendment 28 (EP, first reading). It must also be made clear that the operator or master cannot be made responsible if the shipper gives an ‘inadequate description’ of the shipment and provides wrong or misleading information. The last indent should be made a separate paragraph of Article 12, given that it refers to two previous paragraphs.

Amendment 35

Council common position – amending act

Article 1 – point 4 a (new)

Directive 2002/59/EC

Article 14 – paragraph 2 – letter (c)

(4a) Article 14, paragraph 2, letter (c) is replaced by:

“(c) each Member State must be able, upon request, to send SafeSeaNet information on the ship and on the dangerous or polluting goods on board without delay to the national and local competent authorities of another Member State if strictly needed for reasons of maritime safety, security or the protection of the maritime environment.”

Justification

Amendment 64 (EP, first reading – slightly modified). The scope of this article in Directive 2002/59/EC as it now stands is unclear. In this amendment, your rapporteur is seeking to make it clear that that a vessel is not required to provide information systematically and that this is only necessary in given situations. See also Amendment 3 in this connection.

Amendment 36

Council common position – amending act

Article 1 – point 5

Directive 2002/59/EC

Article 16 – paragraph 1 – point (d)

Council common position

(d) ships which have failed to notify, or do not have, insurance certificates or financial guarantees pursuant to ***any Community legislation*** and international rules;

Amendment

(d) ships which have failed to notify, or do not have, insurance certificates or financial guarantees pursuant to ***this Directive*** and international rules;

Justification

The Council omitted the reference to the above proposal for a directive COM(2005)0593 and COM(2007)0674 since it did not support the proposal. Given that the European Parliament is seeking the adoption of this Directive, it is desirable to keep a reference thereto in the text.

Amendment 37

Council common position – amending act

Article 1 – point 6

Directive 2002/59/EC

Article 18 a – paragraph 1 – point (b)

Council common position

(b) they may, without prejudice to the duty of assistance to ships in need of assistance and other obligations flowing from relevant international rules, request that a ship which is in the area concerned and intends to enter or leave a port or terminal or to leave an anchorage area, satisfy the strength and power requirements commensurate with the ice situation in the area concerned.

Amendment

(b) they may, without prejudice to the duty of assistance to ships in need of assistance and other obligations flowing from relevant international rules, request that a ship which is in the area concerned and intends to enter or leave a port or terminal or to leave an anchorage area, ***can document that it satisfies*** the strength and power requirements commensurate with the ice situation in the area concerned.

Justification

Amendment 30 (EP, first reading). Authorities should not be allowed to ban ships from entering or leaving ports, etc. on grounds of arbitrary judgment. Documentation should be sufficient to ensure this.

Amendment 38

Council common position – amending act

Article 1 – point 7

Directive 2002/59/EC

Article 19 – paragraph 3 a (new)

Council common position

Amendment

In Article 19, paragraph 3a is added:

“3a. In accordance with their national law, Member States shall respect the IMO guidelines on the fair treatment of seafarers in the event of a maritime accident in particular regarding the master and crew of a ship in need of assistance in the waters under their jurisdiction.”

Justification

Amendment 35 (EP, first reading – slightly modified). These guidelines were drawn up in response to a growing tendency to treat ships' masters and crews as criminal. The masters of both the Erica and the Prestige were arrested without any proof of wrongdoing. The fear of arrest sometimes leaves the master of a ship in the event of an accident at sea to bring his damaged ship into the waters of another Member State, thereby risking greater damage to the ship.

Amendment 39

Council common position – amending act

Article 1 – point 7 a (new)

Directive 2002/59/EC

Article 19 a (new)

Council common position

Amendment

(7a) The following Article 19a is added:

“Article 19a

Competent authority for accommodation of ships in need of assistance

1. Each Member State shall designate a competent authority which has the required expertise and is independent in that it has the power, at the time of the rescue operation, to take decisions on its own initiative concerning the accommodation of ships in distress with a view to:

- the protection of human lives,***
- coastal protection,***
- the protection of the marine environment***
- safety at sea,***
- minimising economic damage.***

2. The authority referred to in paragraph 1 shall assume responsibility for the execution of the plans referred to in Article 20a.

3. The authority referred to in paragraph 1 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) come aboard or send an evaluation team aboard the ship to assess the damage in the ship and the degree of risk, help the master to remedy the situation and keep the competent coastal station informed;

(d) call on and deploy rescue workers itself where necessary;

(e) cause the ship to be piloted or towed."

Justification

Amendments 31, 32 and 33 (EP, first reading). This amendment seeks to make it clear the extent to which the competent authority needs to be independent and what its other tasks are over and above the decision to accommodate a ship in a place of refuge. Many of the tasks are set out in a non-exhaustive list in Annex IV of the current monitoring Directive 2002/59/EC. Your rapporteur considers it desirable that this list be incorporated into this article.

Amendment 40

Council common position – amending act

Article 1 – point 8

Directive 2002/59/EC

Article 20 – paragraph 1

Council common position

1. *The acceptance or refusal of a ship in need of assistance in a place of refuge shall be* the subject of a prior assessment of the situation carried out on the basis of the plan referred to in Article 20a ***and a decision taken by a competent authority.***

Amendment

1. *The authority referred to in Article 19a shall decide on the acceptance of a ship in a place of refuge. This authority shall ensure that ships in emergency situations* shall be the subject of a prior assessment of the situation carried out on the basis of the plan referred to in Article 20a ***and shall be admitted to a place of refuge in cases where this makes it possible to reduce or avoid the concomitant risks.***

Justification

Your rapporteur takes the view that ships should be admitted to a place of refuge wherever it is possible to limit damage as a result. However in certain limited cases – for example if there is a danger of explosion – the consequences of this would be far less serious for humans and the environment if it occurred out at sea than if it occurred in a place of refuge. Therefore we cannot automatically assume that a place of refuge is the best solution.

Amendment 41

Council common position – amending act

Article 1 – point 9

Directive 2004/49/EC

Article 20 a – paragraph 1

Council common position

1. Member States shall draw up plans for responding to threats presented by ships in need of assistance in the waters under their jurisdiction;

Amendment

1. Member States shall draw up plans for responding to threats presented by ships in need of assistance in the waters under their jurisdiction ***and for securing the accommodation of ships and the protection of human lives;***

Justification

Amendment 36 (EP, first reading).

Amendment 42

Council common position – amending act

Article 1 – point 9

Directive 2002/59/EC

Article 20 a – paragraph 2 – point (c)

Council common position

(c) information on the coastline of the Member States, ***which will assist the assessment of a ship in need of assistance in a*** place of refuge, including the description of environmental, economic and social factors and natural conditions;

Amendment

(c) information on the coastline of Member States ***and all elements facilitating a swift assessment and a rapid decision regarding the choice of*** place of refuge ***for a ship in need of assistance***, including the description of environmental, economic and social factors and natural conditions;

Justification

The Council has changed the Commission's text. In this amendment your rapporteur is seeking to clarify the text. The coastline must be clearly and analytically mapped in order to facilitate a rapid choice of place of refuge in practice. Information concerning the coastline is in itself insufficient.

Amendment 43

Council common position – amending act

Article 1 – point 9

Directive 2002/59/EC

Article 20 a – paragraph 3 – subparagraph 1

Council common position

3. Member States shall publish the name of the competent authority referred to in **Article 20(1)** and of the authorities appointed for receiving and handling alerts.

Amendment

3. Member States shall publish the name of the competent authority referred to in **Article 19a** and of the authorities appointed for receiving and handling alerts **and contact addresses**.

Justification

This amendment partially reinstates the Commission's original text and is consistent with Amendment 32.

Amendment 44

Council common position – amending act

Article 1 – point 9 a (new)

Directive 2002/59/EC

Article 20 b (new)

Council common position

Amendment

(9a) The following article is inserted:

“Article 20b

Liability and financial-guarantee regime

Member States shall determine the regime of civil liability for ship owners and shall ensure that the right of ship owners to limit their liability is governed by all provisions of the 1996 Convention.

Each Member State shall take the necessary measures to ensure that every owner of a ship flying its flag provides a financial guarantee for civil liability in accordance with the ceiling laid down in the 1996 Convention.

Each Member State shall take the necessary measures to ensure that every owner of a ship flying the flag of a third country provides a financial guarantee in accordance with the provisions of the first paragraph as soon as that ship enters its exclusive economic area or equivalent area. The financial guarantee shall be valid for at least three months from the date it is required.”

Justification

The Commission proposals concerning the Community traffic-monitoring system and ship owners’ civil liability are two of the constituent parts of the ‘Third Maritime Safety Package’ and they constitute a set of interconnected proposals.

Pursuant to Rule 62(2) of Parliament’s Rules of Procedure, the purpose of this amendment is to take into account in particular a new legal situation which has arisen since first reading – namely, the judgment issued by the European Court of Justice on 24 June 2008 in Case C-188-07.

Amendment 45

Council common position – amending act

Article 1 – point 9 b (new)

Directive 2002/59/EC

Article 20 c (new)

Council common position

Amendment

(9b) The following article is inserted:

“Article 20c

***Financial guarantee in case of
abandonment of seafarers***

Each Member State shall take the necessary measures to ensure that every owner of a ship flying its flag provides a financial guarantee to protect the

seafarers employed or engaged on board the ship in case of abandonment, in accordance with IMO Resolution A 930(22).

Each Member State shall take the necessary measures to ensure that every owner of a ship flying the flag of a third country provides a financial guarantee in accordance with the provisions of the first paragraph, as soon as that ship enters a port or an offshore terminal under its jurisdiction or drops anchor in an area under its jurisdiction.

The Member States shall ensure that the system of financial guarantee in case of abandonment of seafarers is accessible, in accordance with IMO Resolution A 930(22)."

Justification

The Commission proposals concerning the Community traffic-monitoring system and ship owners' civil liability are two of the constituent parts of the 'Third Maritime Safety Package' and they constitute a set of interconnected proposals.

Pursuant to Rule 62(2) of Parliament's Rules of Procedure, the purpose of this amendment is to take into account in particular a new legal situation which has arisen since first reading – namely, the judgment issued by the European Court of Justice on 24 June 2008 in Case C-188-07.

Amendment 46

Council common position – amending act

Article 1 – point 9 c (new)

Directive 2002/59/EC

Article 20 d (new)

Council common position

Amendment

(9c) the following Article is inserted:

“Article 20d

Financial-guarantee certificates

1. The existence of the financial guarantee referred to in Articles 20b and 20c and the validity thereof shall be

proved by one of more certificates.

2. Certificates shall be issued by the competent authorities of the Member States once they are sure that the ship owner complies with the requirements laid down in this Directive. When issuing certificates, competent authorities shall also consider whether a guarantor has business operations in the EU. When a ship is registered in a Member State, the certificates shall be issued or certified by the competent authority of the State in which the ship is registered. When a ship is registered in a third country, the certificates may be issued or certified by the competent authority of any Member State.

3. The conditions for the issue and the validity of the certificates, in particular the criteria and conditions for issue, as well as the measures concerning the providers of the financial guarantees, shall be determined by the Commission. Those measures, which are designed to amend the non-essential elements of this Directive (inter alia by supplementing it), shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 28(2).

4. The certificates shall include the following information:

- (a) name of ship and registry port;*
- (b) owner's name and principal place of business;*
- (c) type of guarantee;*
- (d) name and principal place of business of insurer or other person granting the guarantee and, where appropriate, the place of business where the insurance or guarantee is established;*
- (e) the period of validity of the certificate, which shall not exceed the period of validity of the insurance or guarantee.*

5. The certificates shall be drawn up in the official language(s) of the issuing Member State. If the language used is neither English nor French, the text shall include a translation into one of these languages.”

Justification

The Commission proposals concerning the Community traffic-monitoring system and ship owners' civil liability are two of the constituent parts of the 'Third Maritime Safety Package' and they constitute a set of interconnected proposals.

Pursuant to Rule 62(2) of Parliament's Rules of Procedure, the purpose of this amendment is to take into account in particular a new legal situation which has arisen since first reading – namely, the judgment issued by the European Court of Justice on 24 June 2008 in Case C-188-07.

Amendment 47

Council common position – amending act

Article 1 – point 9 d (new)

Directive 2002/59/EC

Article 20 e (new)

Council common position

Amendment

(9d) The following Article is inserted:

“Article 20e

Notification of the financial-guarantee certificate

1. The certificate shall be carried on board the ship and a copy shall be deposited with the authority which keeps the record of the ship's registry or, if the ship is not registered in a Member State, with the authority of the State which issued or certified the certificate. The authority concerned shall forward a copy of the certification file to the Community Office provided for in Article 20i, so that the latter includes it in the register.

2. The operator, agent or captain of a ship entering the exclusive economic area or equivalent area of a Member State in the

cases set out in Article 20b shall notify the authorities of that Member State that a financial-guarantee certificate is being carried on board.

3. The operator, agent or captain of a ship bound for a port or offshore terminal under the jurisdiction of a Member State or which wishes to drop anchor in an area under the jurisdiction of a Member State in the cases set out in Article 20c shall notify the authorities of that Member State that a financial– guarantee certificate is being carried on board.

4. The competent authorities of the Member States shall be able to share the information provided for in paragraph 1 through the SafeSeaNet Community platform for maritime-data exchange.”

Justification

The Commission proposals concerning the Community traffic-monitoring system and ship owners’ civil liability are two of the constituent parts of the ‘Third Maritime Safety Package’ and they constitute a set of interconnected proposals.

Pursuant to Rule 62(2) of Parliament’s Rules of Procedure, the purpose of this amendment is to take into account in particular a new legal situation which has arisen since first reading – namely, the judgment issued by the European Court of Justice on 24 June 2008 in Case C-188-07.

Amendment 48

Council common position – amending act

Article 1 – point 9 e (new)

Directive 2002/59/EC

Article 20 f (new)

Council common position

Amendment

(9e) The following Article is inserted:

“Article 20f

Penalties

Member States shall ensure compliance with the rules set out in this Directive and shall lay down penalties for infringement

of those rules. The penalties shall be effective, proportionate and dissuasive.”

Justification

The Commission proposals concerning the Community traffic-monitoring system and ship owners’ civil liability are two of the constituent parts of the ‘Third Maritime Safety Package’ and they constitute a set of interconnected proposals.

Pursuant to Rule 62(2) of Parliament’s Rules of Procedure, the purpose of this amendment is to take into account in particular a new legal situation which has arisen since first reading – namely, the judgment issued by the European Court of Justice on 24 June 2008 in Case C-188-07.

Amendment 49

Council common position – amending act

Article 1 – point 9 f (new)

Directive 2002/59/EC

Article 20 g (new)

Council common position

Amendment

(9f) The following Article is inserted:

“Article 20g

Mutual recognition by Member States of financial-guarantee certificates

Each Member State shall recognise certificates issued or certified by another Member State under Article 20d for all purposes of this Directive and shall consider them as having the same value as certificates which it issued or certified itself, even when the ship is not registered in a Member State.

A Member State may at any time request an exchange of views with the issuing or certifying State, should it believe that the insurer or guarantor named on the certificate is not financially capable of meeting the obligations imposed under this Directive.”

Justification

The Commission proposals concerning the Community traffic-monitoring system and ship owners' civil liability are two of the constituent parts of the 'Third Maritime Safety Package' and they constitute a set of interconnected proposals.

Pursuant to Rule 62(2) of Parliament's Rules of Procedure, the purpose of this amendment is to take into account in particular a new legal situation which has arisen since first reading – namely, the judgment issued by the European Court of Justice on 24 June 2008 in Case C-188-07.

Amendment 50

Council common position – amending act

Article 1 – point 9 g (new)

Directive 2002/59/EC

Article 20 h (new)

Council common position

Amendment

(9g) The following Article is inserted:

“Article 20h

Direct action against the provider of the financial guarantee for civil liability

Any requests for compensation for damage caused by the ship may be addressed directly to the provider of the financial guarantee for civil liability covering the owner's civil liability.

The provider of the financial guarantee may rely on the means of defence which the owner himself would be entitled to invoke, with the exception of those based on the owner declaring bankruptcy or going into liquidation.

The provider of the financial guarantee may also rely on the fact that the damage was the result of intentional fault on the part of the owner. However, it may not rely on any of the means of defence which it could have invoked in an action brought against it by the owner.

The provider of the financial guarantee may, in all cases, require the owner to be

joined in the proceedings.”

Justification

The Commission proposals concerning the Community traffic-monitoring system and ship owners' civil liability are two of the constituent parts of the 'Third Maritime Safety Package' and they constitute a set of interconnected proposals.

Pursuant to Rule 62(2) of Parliament's Rules of Procedure, the purpose of this amendment is to take into account in particular a new legal situation which has arisen since first reading – namely, the judgment issued by the European Court of Justice on 24 June 2008 in Case C-188-07.

Amendment 51

Council common position – amending act

Article 1 – point 9 h (new)

Directive 2002/59/EC

Article 20 i (new)

Council common position

Amendment

(9h) The following Article is inserted:

“Article 20i

Community Office

A Community Office shall be established which shall be responsible for keeping a full register of certificates issued, monitoring and updating their validity, and checking the existence of financial guarantees registered by third countries.”

Justification

The Commission proposals concerning the Community traffic-monitoring system and ship owners' civil liability are two of the constituent parts of the 'Third Maritime Safety Package' and they constitute a set of interconnected proposals.

Pursuant to Rule 62(2) of Parliament's Rules of Procedure, the purpose of this amendment is to take into account in particular a new legal situation which has arisen since first reading – namely, the judgment issued by the European Court of Justice on 24 June 2008 in Case C-188-07.

Amendment 52

Council common position – amending act

Article 1 – point 9 a (new)

Directive 2002/59/EC

Article 20 j (new)

Council common position

Amendment

(9a) The following Article 20j, paragraphs 1 and 2 shall be inserted as follows:

“Article 20j

Financial security and compensation

1. The absence of an insurance certificate or financial guarantee shall not exonerate the Member State from the preliminary assessment and decision referred to in Article 20 and is not in itself sufficient reason for a Member State to refuse to accommodate a ship in a place of refuge.

2. Without prejudice to paragraph 1, when accommodating a ship in a place of refuge, the Member State may request the ship’s operator, agent or master to present a insurance certificate or financial guarantee within the meaning of this Directive, covering his liability for damage caused by the ship. The act of requesting the certificate shall not lead to a delay in accommodating the ship in distress.”

Justification

Amendments 39 and 40 (EP, first reading). The Council had entirely omitted Article 20 b concerning financial guarantees and Parliament’s amendments thereto. Your rapporteur has retabled Article 20 and stresses that the absence of insurance must not mean that a ship in distress does not receive assistance or shelter. A Member State may request a certificate or proof of insurance in order to complete its documentation but this must not delay the rescue operations, the saving of human lives and the avoidance of an environmental disaster.

Amendment 53

Council common position – amending act

Article 1 – point 9 b (new)

Directive 2002/59/EC

Article 20 k (new)

Council common position

Amendment

(9a) The following Article 20k, paragraph 3 shall be added as follows:

“Article 20k

3. Member States shall ensure the reimbursement of costs and potential economic damage suffered by a port as a result of a decision taken pursuant to Article 20(1) if such costs or damage are not reimbursed within a reasonable time by the owner or operator of the ship pursuant to this Directive and the existing financial compensation mechanisms.”

Justification

Amendment 41(EP, first reading). Your rapporteur is retabling Article 20 b as amended by Parliament in first reading. The accommodation of a ship may lead to damage and costs for a port. Parliament has on several occasions sought for a compensation scheme for ports and places of refuge. The existing funds and conventions (most of which have not yet taken effect) do not in most cases compensate for the financial losses of a port. Your rapporteur calls for a compensation scheme to cover these exceptional cases.

Amendment 54

Council common position – amending act

Article 1 – point 10

Directive 2002/59/EC

Article 22 a – paragraph 3

Council common position

Amendment

3. To guarantee an effective exchange of the information referred to in this Directive, Member States shall ensure that the national or local systems set up to gather, process and preserve that information can be interconnected with

3. To guarantee an effective exchange of the information referred to in this Directive, Member States shall ensure that the national or local systems set up to gather, process and preserve that information can be interconnected with

SafeSeaNet. The Commission shall ensure that SafeSeaNet is operational on a 24 hours-a-day basis.

SafeSeaNet. The Commission shall ensure that SafeSeaNet is operational on a 24 hours-a-day basis. ***The basic principles of SafeSeaNet are laid down in Annex 3.***

Justification

Amendment 58 (EP, first reading – modified version). On reflection it appears preferable not to amend the definition of SafeSeaNet (see Amendment 58) but Article 22 a. The principles of SafeSeaNet can be incorporated in Annex III, which should be drawn up in consultation with the Commission.

Amendment 55

Council common position – amending act

Article 1 – point 10

Directive 2002/59/EC

Article 22a – paragraph 3 a (new)

Council common position

Amendment

In Article 22a a new paragraph 3a is added as follows:

“Paragraph 3a

Where operating within regional agreements or in the framework of cross-border interregional or transnational projects, Member States shall ensure that information systems or networks developed comply with the requirements of this directive and are compatible and connected to the European maritime information and management system SafeSeaNet.”

Justification

Amendment 42 (EP, first reading).

Amendment 56

Council common position – amending act

Article 1– point 12 a (new)

Directive 2002/59/EC

Article 24 – paragraph 1 a (new) and 1 b (new)

(12a) In Article 24, the following paragraphs 1a and 1b are added:

“1a. Member States shall, in accordance with their national legislation, verify that the publication of AIS and LRIT data transmitted by ships does not create a risk to safety, security and or the protection of the environment, or which would affect competition between ship operators. In particular, they shall not authorise the public dissemination of information concerning the details of the cargo or of the persons on board, unless the master or the operator of the vessel has agreed to such use.

1b. The Commission shall investigate possible network and information security problems which may be associated with the measures provided for under this Directive, and in particular Articles 6, 6a, 14 and 22a thereof and propose any appropriate amendment to Annex (III) for improving the security of the network.”

Justification

Amendments 66 and 49 (EP, first reading – modified). This directive, and in particular its provisions concerning AIS and SafeSeaNet, give rise to a considerable number of confidentiality issues for those involved, who fear that the information transmitted via these networks is not sufficiently protected against commercial abuse and espionage. It is important that Member States take the necessary measures to prevent abuse.

Amendment 57

Council common position – amending act

Article 1 – point 12 b (new)

Directive 2002/59/EC

Article 27

Article 27 is replaced by:

“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 regulatory procedure with scrutiny 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, in so far as such amendments do not broaden the scope of this Directive.

2. In addition, Annexes I, III and IV of this directive may be amended in the light of experience in accordance with the regulatory procedure with scrutiny laid down in Article 28(2) provided that such amendments do not involve any extension of the scope of this Directive.”

Justification

Amendment of the annexes in the light of experience gained should be done under the new scrutiny procedure so that Parliament can object if it considers this to be necessary.

Amendment 58

Common position of the Council – amending act

Article 1 – point 13 a (new)

Directive 2002/59/EC

Annex I – paragraph 4 – indent X

Common position of the Council

Amendment

In Annex I, paragraph X under point 4 shall be replaced by:

“– X. Miscellaneous:

– characteristics and estimated quantity of bunker fuel for all vessels carrying it,

– navigation status”.

Amendment 59

Common position of the Council – amending act Article 2 – point 1

Common position of the Council

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive **by** ... they shall **forthwith** communicate to the Commission the text of those measures.

Amendment

1. The Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive **on at the latest twelve months from the date of entry into force**. They shall communicate to the Commission the text of those measures **together with the table showing how the provisions correspond to this directive**.

Justification

As originally proposed by the Commission, there should be an obligation for Members States to draw up correspondence tables, which indicate exactly by which provisions each of the requirements laid down in the Directive are transposed into national legislation. These tables are necessary to enable the Commission to verify thoroughly whether the Directive is correctly transposed and implemented by the Member States.

EXPLANATORY STATEMENT

Introduction

The disasters of the Erika (December 1999) and Prestige (November 2002) painfully highlighted the inadequacy of European policy and the Member State's approach in the event of a disaster at sea.

Consequently the Commission, the Council and the European Parliament have worked hard over the past few years to strengthen policy on safety at sea. In less than three years two packages of measures have been adopted.

On 23 November 2005 the Commission approved a third packet of seven measures, of which the monitoring directive review is one. A brief summary of what preceded is now given to clarify the importance of reviewing the monitoring directive.

The first Monitoring Directive (2002) arose as a consequence of the oil tanker Erika off the French coast. Given that the Erika had encountered problems with being accommodated in the port of refuge, the Commission developed a European policy on ports of refuge and a system to improve the monitoring of ships travelling along our coasts.

In the debate on the monitoring system your rapporteur argued *firstly* for compulsory insurance for ships, *secondly* for a compensation system for the reimbursement of costs and any damage caused to a port accommodating a ship in distress. At that time it seemed premature to propose legislative measures on this topic. It was decided, however, to consider both proposals. On 27 June 2002, under the Spanish Presidency, the directive was finally adopted. The Member States were required to transpose the measures by February 2004.

Hardly six months after the Council had given its approval to this legal framework for the accommodation of ships in distress, the Prestige disaster occurred (November 2002). In spite of the legal framework which had just been approved, the Spanish authorities ordered the ship out to sea: 77 000 tonnes of crude oil escaped to pollute mainly Spanish coasts.

As a result of this environmental disaster, the Member States decided to bring forward the submission dates for plans for the accommodation of ships in distress. The European Parliament decided to set up a temporary committee on improving safety at sea (MARE). The result of this was a resolution of 21 April, 2004 in which Parliament called for:

- the existing rules governing the accommodation of ships in distress to be fully implemented by all Member States;
- a clear decision-making and command structure for dealing with maritime emergencies and an independent authority having the powers of expertise to take the necessary decisions, in particular as regards to the selection and mandatory assignment of an emergency mooring or port to be set up;
- the Commission to submit proposals for financial compensation for places of refuge;
- an investigation into the scope of introducing mandatory insurance for vessels in European waters.

On 23 November 2005 the **Commission** approved the **proposal** amending directive 2009/59/EC, taking account of the calls made by the European Parliament Council and Commission and the various interested parties on several points:

- tightening policy on the accommodation of ships in distress;
- designation by the Member States of an independent competent authority for the accommodation of ships in distress;
- measures to be taken in the presence of ice;
- treatment of uninsured ships;
- the development of Safe Sea Net, a European system for the exchange of maritime information.

It also made a number of new proposals:

- use of AIS to be made compulsory for fishing vessels longer than 15 metres;
- tightening of the shipper's obligation to provide information.

On first reading the European Parliament fully endorsed the Commission proposal. Parliament's amendments merely sought to clarify the Commission's proposal and highlight a number of principles more clearly. In particular:

- the independence of experts and the tasks of the authorities responsible for the accommodation of ships in distress;
- implementation of IMO guidelines for the fair treatment of master and crews should accidents occur;
- accommodation of uninsured ships in places of refuge: ships without insurance are suspect vessels. However the fact that the ship is not insured is not a reason to refuse it refuge;
- information which must be provided by the shipper for every vessel entering a European harbour. It is the task and responsibility of the shipper to provide accurate information;
- compensation for ports and places of refuge in cases where this is not covered by existing international conventions;
- confidentiality requirements in respect of AIS and SafeSeaNet information, need for further investigation to provide better protection against wrongful use of data.

On one point, the European Parliament sought greater flexibility, that is to say the installation of AIS on fishing vessels. Parliament did not wish for vessels of less than 24 metres to be equipped with AIS and sought a more flexible timetable and guarantees regarding the confidentiality and use of AIS data for reasons other than safety.

Assessment of Council's common position

At the Transport Council of 8 to 9 June 2006 the Council adopted a general approach with regard to its proposal containing all the elements forming part of the Council's present common position.

The European Parliament adopted its opinion on first reading on 25 April 2007. In other

words, at no time did the Council take account of Parliament's views, and it shows. In fact, the Council has adopted only five of Parliament's amendments.

Proposals by your rapporteur on second reading

Your rapporteur takes the firm view that the original Commission proposal together with Parliament's amendments on first reading, forms a good basis for further improving European policy regarding the accommodation of vessels in distress. Given that the Council has not considered Parliament's views on first reading and has, in addition, abandoned a number of Commission proposals, your rapporteur recommends an almost full return to the status quo regarding Parliament's position on first reading.

– Designation of an independent competent authority

The designation of an independent competent authority for the accommodation of vessels in distress has always been something to which Parliament has always attached great importance with the full support of the Commission. The successive disasters and near-disasters show that much time is often wasted because it was not clear who was responsible for what or because those competent to take a decision had to call on the expertise of a team which often had to be set up on an ad hoc basis.

The Council's own provisions on this matter are vague and would result in practically no improvement in practice.

The amendments proposed by your rapporteur do not require the Member State to abandon totally their internal structure. They seek to ensure that the competent authority has the necessary independent (maritime) expertise to be able to decide independently should an incident occur on the best course of action to avoid a disaster or contain the consequences thereof as far as possible.

– The concept of a ship in need of assistance as opposed to a ship in distress

The Commission, supported by the European Parliament, used the expression 'ship in distress'. Basing itself on IMO guidelines for the accommodation of ships in need of assistance, the Council used the expression 'ship in need of assistance'. Your rapporteur can agree with the Council but is dissatisfied with the Council's definition, which appears to disregard the importance of human lives in accommodating ships in difficulties. The link with the Search and Rescue Convention of 1979 (SAR) concerning the rescue of human lives must be clarified.

– Fair treatment of masters and crews in the event of an accident

Your rapporteur calls for the implementation by the Member States of IMO guidelines concerning the fair treatment of ships' crews. The Council does not mention this. The trend towards treating ships' crews as criminals is not conducive to safety at sea. For fear of arrest, masters often postpone calling for help, thus wasting valuable time.

– Consequences of absence of an insurance certificate or financial guarantee

The absence of evidence of financial security must be a factor in the assessment and decision on accommodating a ship in distress. Naturally a problem arises if a ship in distress does not have (adequate) insurance. However, it is not desirable that only insured vessels should be accommodated in a place of refuge.

The Council decided to simply abandon Article 20 b of the Commission proposal and omit all references to the directive on the financial responsibility of shipowners (COM(2005)0593 and COM(2007)0674, Savary report).

– Compensation schemes for places of refuge and ports

In exceptional cases, the accommodation of a ship may give rise to damage and costs for the port in question which are not covered by existing funds or conventions. Parliament has repeatedly called in recent years for a compensation scheme to be devised for such cases. A compensation arrangement might help to reduce any resistance of ports to providing refuge.

– Introduction of automatic identification system for fishing vessels

On first reading, Parliament called for a less stringent timetable for fishing vessels, a proposal which the Council did not accept. This is one of the few points where the Council's proposals are more stringent than those of Parliament. Your rapporteur agrees with the Council. The AIS is clearly of value to small fishing vessels, in particular since this is the category of vessel frequently involved in collisions with fatal consequences for the crew.

Conclusion

Despite the fact that accommodating a ship in difficulties was one of the main problems in the case of both the Erika and the Prestige, the Council refuses to provide a clear definition of the authority competent to make decisions in case of disaster. Your rapporteur calls on the Member States once more to show the necessary political courage to take a further step forward regarding European maritime safety policy. Let us not wait until we are forced to do so by another shipping disaster.

PROCEDURE

Title	Community vessel traffic monitoring and information system		
References	05719/3/2008 – C6-0225/2008 – 2005/0239(COD)		
Date of Parliament’s first reading – P number	25.4.2007	T6-0146/2007	
Commission proposal	COM(2005)0589 – C6-0004/2006		
Date receipt of common position announced in plenary	19.6.2008		
Committee responsible Date announced in plenary	TRAN 19.6.2008		
Rapporteur Date appointed	Dirk Sterckx 24.6.2008		
Discussed in committee	14.7.2008	25.8.2008	4.9.2008
Date adopted	4.9.2008		
Result of final vote	+: 40 –: 0 0: 0		
Members present for the final vote	Gabriele Albertini, Etelka Barsi-Pataky, Paolo Costa, Michael Cramer, Luis de Grandes Pascual, Arūnas Degutis, Petr Duchoň, Saïd El Khadraoui, Robert Evans, Emanuel Jardim Fernandes, Francesco Ferrari, Brigitte Fouré, Mathieu Grosch, Georg Jarzembowski, Stanisław Jałowiecki, Timothy Kirkhope, Dieter-Lebrecht Koch, Jaromír Kohlíček, Sepp Kustatscher, Jörg Leichtfried, Bogusław Liberadzki, Marian-Jean Marinescu, Erik Meijer, Reinhard Rack, Gilles Savary, Brian Simpson, Renate Sommer, Dirk Sterckx, Ulrich Stockmann, Silvia-Adriana Țicău, Yannick Vaugrenard, Roberts Zīle		
Substitutes present for the final vote	Luigi Cocilovo, Zita Gurmai, Lily Jacobs, Anne E. Jensen, Rosa Miguélez Ramos, Vladimír Remek, Dominique Vlasto, Corien Wortmann-Kool		
Date tabled	9.9.2008		