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REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL

Report assessing the implementation and the impact of the measures taken according to Directive 2002/59/EC establishing a Community vessel traffic monitoring and information system

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1. INTRODUCTION

The aim of 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[1] is to establish within the Community a vessel traffic monitoring and information system with a view to enhance the safety and efficiency of maritime traffic, improve the response of authorities to incidents, accidents or potentially dangerous situations at sea, including search and rescue operations and contribute to better prevention and detection of pollution by ships.

To this end, the Directive provides for several new requirements in the field of vessel traffic monitoring and information management, taking into account international rules for ships reporting systems, vessel traffic services and the technological progress in the field of identification and monitoring of ships.

To enhance the establishment of an EU-wide vessel traffic monitoring and information system, the Directive sets obligations to establish a framework of cooperation between Member States and the Commission.

To ensure the availability of a place of refuge for ships in distress, the Directive establishes an obligation on Member States to draw up plans for the accommodation of such ships.

The Directive applies in general to ships of 300 gross tonnage and upwards and to bunkers above 5 000 tons on board ships. All ships calling at ports within the European Union, ships entering areas of mandatory ship reporting systems adopted by IMO and operated by Member States, and ships involved in incident and accidents within the search and rescue region/exclusive economic zone or equivalent of a Member State fall within the scope of the Directive.

The effectiveness of the Directive depends on the implementation and enforcement actions by the Member States and the Commission. In this context, Article 26(1) imposes an obligation on Member States to report to the Commission on the progress in implementing the Directive and in particular, the provisions of Articles 9, 10, 18, 20, 22, 23, 25 by 5 February 2007 and on the full implementation of the Directive by 31 December 2009. Article 26(2) provides that the Commission reports to the European Parliament and to the Council on the implementation of the Directive[2] with a view in particular to ascertaining to what extent the Directive is

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[1] OJ L 208, 5.8.2002, p.10
[2] Directive 2002/59/EC has been amended by Directive 2009/17/EC of the European Parliament and of the Council of 23 April 2009 amending Directive 2002/59/EC establishing a Community vessel traffic monitoring and information system (OJ L 131, 28.5.2009, p. 101). These amendments have been taken into account when need be in the present report.

helping to increase the safety and efficiency of maritime transport and prevent pollution at sea. The Commission shall do so on the basis of the above-mentioned reports from Member States.

This report assesses the implementation of the Directive and the impact of the measures taken.

2. METHOD OF THE EVALUATION

The implementation of the Directive by Member States consists of both legal and technical implementation. Legal implementation is achieved through formal transposition of the Directive and enforcement of the ensuing national legislation. Technical implementation consists of building up and operating the necessary shore-based infrastructure for the receiving and exchanging of data.

Besides the actions taken by the Member States, the Directive has been implemented at EU level by setting up an information system called SafeSeaNet. The system has been developed by the Commission in close cooperation with the Member States and the European Maritime Safety Agency (EMSA)[3] within the framework of the SafeSeaNet Group.

EMSA operates and monitors the performance and data quality of the central SafeSeaNet system on a 24 hour-a-day basis. Problems requiring immediate actions are communicated to Member States without delay. Issues related to the dataflow in general are reported via quarterly data quality reports to the Member States. These reports are useful tools in assessing the technical implementation of the Directive in Member States as they give an overview of the data flow from the national systems to the central SafeSeaNet system and of the data exchange through SafeSeaNet.

Since 2009 EMSA has undertaken a programme of inspections on behalf of the Commission to assess the implementation of the Directive in Member States. While the inspections programme is ongoing, in December 2010, eight inspections have been completed and reported on to the Commission by EMSA. EMSA's inspection reports provide more detailed information on administrative, procedural and operational elements of the implementation measures in Member States. Since the inspection results concern only a part of the Member States, the findings will be reflected only on a general level in this report.

The evaluation of the implementation of Directive 2002/59/EC in this report is based on the Member States reports on the full implementation of the Directive. In assessing the actual data exchange between the Member States, the EMSA quarterly reports on the SafeSeaNet data quality have been used.

3. IMPLEMENTATION OF THE DIRECTIVE

The implementation of the Directive and the technical development of the Community vessels traffic monitoring and information system began almost from scratch and have therefore been done step by step since the adoption of the Directive in 2002. Transposition of the Directive

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[3]   Regulation (EC) No 1406/2002 of the European Parliament and of the Council of 27 June 2002 establishing a European Maritime Safety Agency, (OJ L 208, 5.8.2002, p.1) as amended.

into national legislation was the first step, which Member States were obliged to complete by 5 February 2004.

The second step was the building up of shore-based installation for the implementation of the Directive by the end of 2007 so that data exchange between the national systems was operational at the latest one year after that, by the end of 2008.

For the purpose of evaluating the ongoing implementation measures, Member States were obliged to report to the Commission on progress in implementing the Directive by 5 February 2007.

Finally, Member States were required to report on the full implementation of the Directive by 31 December 2009.

3.1. Transposition into national legislation

Most Member States notified that the transposition of the Directive into national legislation had been completed in time, by 5 February 2004 or a few weeks later. However some delay did occur in some of them and the last notification by a Member State was received only in December 2005.

On the basis of the notifications by Member States, the Commission launched a few non-conformity infringement procedures. All these procedures are now closed, the last one in 2008.

3.2. Reports on the implementation by the Member States

The Commission launched a questionnaire to assist Member States in reporting on the progress in implementing the Directive and in particular the provisions of Articles 9, 10, 18, 20, 22, 23 and 25. The purpose of these progress reports was to ensure that the Member States had put in place by the end of 2007 all necessary equipment and shore-based installations for implementing the Directive and that the equipment for relaying information to and exchanging it between the national systems was operational at the latest one year after that.

Most Member States responded in time to the questionnaire. Some infringement procedures had to be opened, but all were later closed, the last one in 2009.

The reports on the full implementation of the Directive were submitted by three Member States in due time, by 31 December 2009. Most Member States sent their reports by mid June 2010. The last reports were received in September 2010.

The reports from some Member States provide only quite general information and the Commission has sent letters to those Member States requesting more detailed information.

3.3. Cooperation in developing the technical infrastructure and standards

Proper implementation of the Directive is possible only through efficient electronic data collection and exchange between Member States. To achieve this, the Directive imposes an obligation on both the Member States and the Commission to cooperate in developing telematic links between coastal stations with a view to exchanging data on ship movements, port calls and cargo.

The process of the development and establishment of the Community Vessel Traffic Monitoring System (SafeSeaNet) has been carried out within the framework of the SafeSeaNet Group, consisting of Member States experts. Initially, this Group was chaired by the Commission. Since 2004 the Group has been chaired by EMSA and it has developed a full set of documentation, technical specifications and operational procedures for the purpose of setting up the EU-wide SafeSeaNet system.

The SafeSeaNet system consists of national systems and the central SafeSeaNet operated by EMSA. All these systems have been built and are operated in accordance with the technical specifications and procedures agreed in the SafeSeaNet Group.

The work done for the development of SafeSeaNet and the experience gained in operating it was taken into account when the 3rd Maritime Safety package was drafted. In the framework of the 3rd maritime safety package Directive 2002/59/EC was amended by Directive 2009/17/EC, which gives a clear legal status to SafeSeaNet and sets general technical requirements for the system. The amendment also provides rules for the management, operation, development and maintenance of SafeSeaNet. The Commission is responsible for the management, development and oversight of the SafeSeaNet system at policy level, in cooperation with Member States. EMSA is responsible for the technical implementation of the system in cooperation with Member States and the Commission.

For the management of SafeSeaNet, the Commission established the High Level Steering Group on SafeSeaNet[4] on 31 July 2009 by Decision 2009/584/EC. The Group is composed of representatives of Member States and the Commission, while EMSA has a permanent observer status and actively contributes to the work of the Group.

4. KEY ISSUES IN IMPLEMENTING THE DIRECTIVE

Key issues in the implementation of the Directive are the transposition and enforcement of the ships' notification obligations, the administrative and technical infrastructure for receiving these notifications and for monitoring vessel traffic by technical means (like Automatic Identification System (AIS)), the setting up and operation of SafeSeaNet and the ability of the authorities to intervene in the events of accidents and incidents.

4.1. Notifications by ships

Notification obligations serve the purpose of identifying ships entering ports within the EU, tracking dangerous and polluting goods on board ships and providing immediate information on accidents, incidents and other dangerous situations at sea for the rescue and response authorities of Member States.

Prior to entry into a port notification

A prior to entry into a port notification serves the purpose of identification of the ship. It contains general information on the ship (name, identification number, port of destination, estimated time of arrival and departure and number of persons on board) and has to be given to the port Authority by the operator, agent or master of a ship bound for a port of a Member State, as a main rule, at least 24 hours in advance (Article 4).

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[4]   OJ L 201, 1.8.2009, p.63

<u>Notification of dangerous and polluting goods</u>

Dangerous or polluting goods (Hazmat) taken on board or carried on board a ship bound for a port of a Member State must be notified by the operator, agent or master of a ship to the competent authority (Article 13). Information on technical details of the dangerous or polluting goods offered for carriage or taken on board any ship in the EU has to be given by the shipper of the cargo to the master or operator of the ship before the cargo is taken onboard (Article 12). As a result of these notifications, information on hazardous cargoes on ships is available in the system for rescue and response authorities.

<u>Reporting of incidents and accidents at sea</u>

Obligation to ship masters to report accidents and incidents (e.g. collision, shifting of cargo, failures in steering gear, threat of discharge of polluting products into the sea) gives early warnings to the search and rescue and response authorities of coastal Member States and supports the readiness to activate rescue and response measures (Article 17).

<u>Conclusion on notifications by ships</u>

All Member States have transposed the reporting obligation into national legislation. It can be concluded that the legislation regarding notification obligations is in place and serves the purposes for which it was conceived.

Regarding the reporting of incidents and accidents at sea, it appears from EMSA's SafeSeaNet data quality report that Member States do not report all incidents and that they have some difficulties in identifying what report they should send. There also seems to be technical problems in reporting incidents electronically as other, non electronic means, like telephone facsimile, are still used.

4.2. Monitoring of ships movements and hazardous ships

The main tools in monitoring ship movements are the shore-based installations for receiving and utilising the information received by the Automatic Identification System (AIS) on board the ships and by mandatory ships' reporting systems and Vessel Traffic Services (VTS) operated by the Member States.

<u>Automatic Identification System (AIS)</u>

Radio signals sent by an AIS system onboard a ship can normally be detected within 60 – 80 km distance from the sending station. For this reason the AIS system is widely used also for monitoring ships from shore based stations even though it originally was made mandatory as navigational equipment for the purpose of preventing collisions.

Member States are obliged to set up shore-based installations for receiving and utilising the information received by AIS (Article 9). These installations had to be completed by the end of 2007 and national systems for relaying the information to and exchange between the national systems had to be operational one year after that.

All coastal Member States have reported implementation of Article 9.

<u>Mandatory Ships Reporting Systems</u>

Mandatory Ship Reporting Systems serve the purpose of identifying, routing and assisting ships with information. Member States are obliged to monitor and ensure that all ships entering a mandatory ship reporting system (MRS) adopted by the IMO and operated by one or more Member States, comply with the system. Member States and the Commission are obliged to work together to put in place, where necessary, mandatory reporting systems with a view to submitting a proposal to the IMO for approval (Article 5).

Mandatory Reporting Systems, referred to in Article 5, are currently operated by 13 coastal Member States. All these Members States have reported implementation of the obligations of Article 5. Six Member States operate the Western European Tanker Reporting System (WETREP), which is a mandatory reporting system for tankers carrying heavy oil, bitumen and tar adopted by the IMO in December 2004. These Member States have expressed doubts on the obligation of exchanging the WETREP data through SafeSeaNet with other Member States and so far this data is not available in SafeSeaNet. Several meetings have taken place between these Member States and the Commission/EMSA and it seems that a practical solution should soon be found so that WETREP data could be exchanged through SafeSeaNet. The Commission is closely monitoring the situation.

Information on ships posing a potential hazard

For preventing accidents and incidents, one of the key issues is the ability to identify and monitor ships posing a risk and the ability from public authorities to act, e.g. by restricting the movement of such ships. For this purpose, criteria for ships posing a potential hazard to shipping are defined in the Directive (Article 16). Ships involved in an incident or accident at sea, ships failing to comply with notification, reporting, ships' routing or VTS rules and ships involved in deliberate discharges of oil or in other infringements of the MARPOL Convention are considered to pose a potential hazard. Member States are obliged to transmit information on such ships to the relevant authorities in other Member States.

All coastal Member States have reported that they comply with this obligation.

4.3.   Community vessel traffic monitoring system, SafeSeaNet

The implementation of the Directive has led to the development of SafeSeaNet, the unique EU-wide tool for the data exchange pursuant to the Directive. The system is a very good example of cooperation between the Commission, Member States and EMSA.

As mentioned above the SafeSeaNet system is composed of a network of national SafeSeaNet systems in Member States and a central SafeSeaNet system, hosted by EMSA, acting as a nodal point. The system enables the receipt, storage, retrieval and exchange of data for the purpose of maritime safety, port and maritime security, marine environment protection and for the efficiency of maritime traffic and maritime transport.

EMSA's Maritime Support Services play a central role in the oversight and monitoring of the performance and data quality of the system in cooperation with the competent authorities of the Member States.

SafeSeaNet provides information on individual ships and a general or local image on vessel traffic in the European waters.

Information on a ship includes ship's name and identification, position, status (underway/in port), ship's type and dimensions, time of departure and arrival in port, hazardous cargo

details and details of incidents the ship has been involved in. This information is stored into the system so that it is possible to track the full position history of a ship afterwards.

The SafeSeaNet vessels traffic image (the graphical interface put in place by EMSA) shows the current position of all ships in EU waters on a single screen. By using the zoom facility of the system it is possible to obtain the image of a single port or sea area. It is also possible to display only certain types of ships, e.g. tankers or ships carrying hazardous goods. By using the IMO number of a ship, it is possible to consistently track movements of an individual ship in the EU waters.

4.4. Intervention in the events of accidents and incidents at sea and places of refuge

In the event of incidents or accidents, Member States are obliged to take appropriate measures to ensure the safety of shipping and persons, and to protect the marine and coastal environment (Article 19). These measures can include restrictions on ships' movements, an official notice to the master of the ship to put an end to a threat to maritime safety or to the environment, boarding the ships with an evaluation team to assess the situation and assist or instruct the master to put it at a place of refuge.

For the purpose of being able to assist ships in distress, Member States are obliged (Article 20) to draw up plans to accommodate, in waters under their jurisdiction, ships in distress and make these plans available upon demand.

The accident of the tanker PRESTIGE occurred in November 2002, only a few months after the Directive had entered into force. The accident was directly related to the "places of refuge" issues and led to Council Conclusions[5] urging Member States to accelerate the drawing up of plans to accommodate ships in distress to places of refuge. As a result of this, the plans on places of refuge were submitted to the Commission by 1 July 2003 instead of by 5 February 2004 as required by the Directive.

On behalf of the Commission, EMSA carried out a desk-top assessment of the national plans. The Commission supported by EMSA, visited Member States to evaluate the operational procedures and collect relevant information omitted from the original plans.

Following the enlargement of the EU, an information update on the implementing and operational measures was carried out in 2005 and 2006 by EMSA on behalf of the Commission.

The conclusion was globally positive and indicated that Member States had legally transposed and implemented the requirements on places of refuge. However, some points of concern were raised over the speed and also independence of decision making, this being due to the split responsibilities in certain Member States, the absence of formalised cooperation in many of the EU's neighbouring coastal States and the gaps in the existing compensation mechanisms. These concerns were addressed when the Directive was revised, in the context of the 3rd maritime safety package, through the new Articles 20, 20a, 20b and 20c.

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[5]   Conclusions of the Transport, Telecommunications and Energy Council, Brussels, 5 – 6 December 2002 on the identification of places of refuge

The Commission submitted to the European Parliament and Council in April 2005 the study on potential measures at Community level aimed at facilitating the recovery of, and compensation for, costs and damage incurred for the accommodation of ships in distress.

The main conclusion of the study is that the liability and compensation rules should not have the effect of discouraging the accommodation of ships in distress by entailing sizable financial risks for the coastal State. The existing legal framework does not adequately live up to this standard.

The rapid ratification of the existing IMO pollution liability conventions, in particular the HNS Convention, by all coastal Member States was pointed out as a method which would be both effective and coherent with current EU policy.

The question of the places of refuge will be further evaluated by the Commission in the context of the implementation of the new provisions of the Directive mentioned above and more particularly of the national plans for the accommodation of ships in need of assistance drawn up by Member States. Under the new Article 20d of the Directive, the Commission shall report to the European Parliament and the Council by end 2011 on the existing mechanisms within Member States for the compensation of potential economic loss suffered by a port or a body as a result of accommodating a ship in need of assistance.

5. CONCLUSIONS

5.1. Outcome of the implementing actions

The implementation of the Directive and the development of the Community vessel traffic monitoring system began in 2002. It has required a lot of legislative and technical work and substantial financial resources at Member States and EU level. As a result of this work, the Directive is transposed into the national legislations and the Community vessel traffic monitoring and information system SafeSeaNet is fully established and operational.

The Member States reports on the full implementation of the Directive and the available EMSA inspection reports support a general impression of the Directive being substantially implemented. Minor legal, technical and operational shortcomings and findings pointed out in the reports will be addressed by the Commission in due course.

The SafeSeaNet system gives participating countries rapid access to all important information on the movements of ships in European waters, on dangerous or polluting cargoes on board, such as oil or chemical products and on ships posing potential risk to the safety of shipping and the environment. All 22 coastal Member States as well as Norway and Iceland are connected through their national systems to the central SafeSeaNet system.

According to the EMSA data quality report there are still some technical problems in the electronic data exchange and other means, such as telephone facsimile still being used for sending some types of reports. Out of the 22 coastal Member States, 10 were transmitting all five required report types (port call, hazmat, ship position (AIS), Mandatory Ship Reporting (MRS) notifications and incident reports) electronically to SafeSeaNet in the period January-June 2010. Most of the 12 Member States that did not report fully, were failing to transmit incident reports.

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The performance of SafeSeaNet is addressed both in the SafeSeaNet High Level Steering Group and in the relevant EMSA expert group with the aim to solve the few remaining shortcomings. The full electronic data exchange had to be in place by 30 November 2010, in line with the transposition date of Directive 2009/17/EC, amending Directive 2002/59/EC and the Commission is currently evaluating the situation with the assistance of EMSA.

5.2. Impact on maritime safety, efficiency of maritime transport and pollution prevention

The real time information on ships and hazardous cargoes in European waters through SafeSeaNet has improved the capabilities for decision making by, the cooperation between and the rescue and response ability by the Member States relevant authorities.

In several Member States the tasks related to the implementation of the Directive are dealt with by more than one authority. In general the competent authorities are Maritime Administrations, Ports, Coastguard and Environment Authorities. Member States report that the implementation of the Directive has increased cooperation and information exchange between these national authorities.

The obligations to notify information to other Members States and to build shore based installations for receiving AIS information has led to improved cooperation of authorities at regional level, e.g. in the framework of regional AIS servers.

According to the EMSA Maritime Accident Review 2009, the number of accidents in EU waters has significantly decreased. The number of vessels involved in accidents in EU waters was 626 in 2009 compared to 726 in 2007. The number of seafarers who lost their lives also decreased from 82 in 2007 to 52 in 2009. No major oil spill has occurred in the last 7 years.

5.3. Future developments

The implementation of the third Maritime Safety Package will further improve the monitoring of vessel traffic in European waters and the data exchange and cooperation between maritime authorities. The package incorporates international requirements on the use of long-range identification and tracking of ships (LRIT), as well as the European LRIT Data Centre in the EU legislation and introduces the use of AIS on the fishing vessels. At the same time technical developments are opening up new possibilities to further develop the monitoring systems. The data exchange pursuant to the third Maritime Safety Package, especially Directive 2009/17/EC and Directive 2009/16/EC of the European Parliament and of the Council of 23 April 2009 on port State control[6] will have a significant impact on SafeSeaNet. Further evolution of SafeSeaNet will make the data exchange more effective and offer possibilities for even more comprehensive monitoring activities and cooperation between authorities. A concrete example of this evolution is the "Blue Belt" concept and the associated pilot project, supported by the Transport Council of December 2010, which aims at facilitating intra–EU shipping minimising administrative formalities. Core element in this concept is the use of the existing maritime transport monitoring capabilities, notably SafeSeaNet.

In the framework of the EU Maritime Transport Policy the e-Maritime initiative aims at using advanced information and communication systems to support working and doing business in

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[6]   OJ L 131, 28.5.2009, p. 57

the maritime sector. It will focus on promoting interoperability of systems used by maritime authorities, ports and industry. The e-Maritime initiative will build on existing systems; the most central of these is SafeSeaNet.

The integrated maritime surveillance initiative in the framework of the Integrated Maritime Policy aims at creating a common information sharing environment by interlinking user communities, including the military. In this cross-sectoral initiative, SafeSeaNet will have a key role by providing data from the maritime transport sector.