

Directive 2002/59/EC of the European Parliament and of the Council of 27 June 2002 establishing a Community vessel traffic monitoring and information system and repealing Council Directive 93/75/EEC

TITLE III

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

*Article 16*

**Transmission of information concerning certain ships**

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

- a ships which, in the course of their voyage:
  - have been involved in incidents or accidents at sea as referred to in Article 17; or
  - have failed to comply with the notification and reporting requirements imposed by this Directive; or
  - have failed to comply with the applicable rules in ships' routing systems and VTS placed under the responsibility of a Member State;
- b ships in respect of which there is proof or presumptive evidence of deliberate discharges of oil or other infringements of the MARPOL Convention in waters under the jurisdiction of a Member State;
- c ships which have been refused access to ports of the Member States or which have been the subject of a report or notification by a Member State in accordance with Annex I-1 to Council Directive 95/21/EC of 19 June 1995 on port State control of shipping<sup>(1)</sup>[<sup>F1</sup>];
- [<sup>F2</sup>d ships which have failed to notify, or do not have, insurance certificates or financial guarantees pursuant to any Community legislation and international rules;
- e ships which have been reported by pilots or port authorities as having apparent anomalies which may prejudice their safe navigation or create a risk for the environment.]

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

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

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#### **Textual Amendments**

- F1** Substituted 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 \(Text with EEA relevance\)](#).
- F2** Inserted 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 \(Text with EEA relevance\)](#).

### *Article 17*

#### **Reporting of incidents and accidents at sea**

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

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

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

### *Article 18*

#### **Measures in the event of exceptionally bad weather**

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

- a they should, where possible, fully inform the master of a ship which is in the port area concerned, and intends to enter or leave that port, of the sea state and weather conditions and, when relevant and possible, of the danger they may present to his/her ship, the cargo, the crew and the passengers;
- b they may take, without prejudice to the duty of assistance to ships in distress and in accordance with Article 20, any other appropriate measures, which may include a recommendation or a prohibition either for a particular ship or for ships in general to

enter or leave the port in the areas affected, until it has been established that there is no longer a risk to human life and/or to the environment;

- c they shall take appropriate measures to limit as much as possible or, if necessary, prohibit the bunkering of ships in their territorial waters.

2 The master shall inform the company of the appropriate measures or recommendations referred to under paragraph 1. These do not however prejudice the decision of the master on the basis of his/her professional judgement corresponding to the SOLAS Convention. Where the decision taken by the master of the ship is not in accordance with the measures referred to under paragraph 1, he/she shall inform the competent authorities of the reasons for his/her decision.

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

### *F<sup>2</sup>Article 18a*

#### **Measures in the event of risks posed by the presence of ice**

1 Where the competent authorities consider, in view of ice conditions, that there is a serious threat to the safety of human life at sea or to the protection of their shipping areas or coastal zones, or of the shipping areas or coastal zones of other States:

- a they shall supply the master of a ship which is in their area of competence, or intends to enter or leave one of their ports, with appropriate information on the ice conditions, the recommended routes and the icebreaking services in their area of competence;
- 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 document that it satisfies the strength and power requirements commensurate with the ice situation in the area concerned.

2 The measures taken pursuant to paragraph 1 shall be based, as regards the data concerning the ice conditions, upon ice and weather forecasts provided by a qualified meteorological information service recognised by the Member State.]

#### **Textual Amendments**

- F2** Inserted 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 \(Text with EEA relevance\)](#).

### *Article 19*

#### **Measures relating to incidents or accidents at sea**

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

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

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

[<sup>F2</sup>To this end they shall communicate to the competent national authorities, on request, the information referred to in Article 12.]

3 The master of a ship to which the provisions of the ISM Code are applicable shall, in accordance with that Code, inform the company of any incident or accident, as referred to in Article 17(1), which occurs at sea. As soon as it has been informed of such a situation, the company must contact the competent coastal station and place itself at its disposal as necessary.

[<sup>F24</sup> In accordance with their national law, Member States shall take into account the relevant provisions of the IMO guidelines on the fair treatment of seafarers in the event of a maritime accident in the waters under their jurisdiction.]

#### Textual Amendments

- F2** Inserted 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 \(Text with EEA relevance\)](#).

### *[<sup>F1</sup>Article 20*

#### **Competent authority for the accommodation of ships in need of assistance**

1 Member States shall designate one or more competent authorities which have the required expertise and the power, at the time of the operation, to take independent decisions on their own initiative concerning the accommodation of ships in need of assistance.

2 The authority or authorities referred to in paragraph 1 may, as appropriate and in particular in the event of a threat to maritime safety and protection of the environment, take any of the measures included in the list set out in Annex IV, which is non-exhaustive.

3 The authority or authorities referred to in paragraph 1 shall meet regularly to exchange expertise and improve measures taken pursuant to this Article. They may meet at any time on account of specific circumstances.]

#### Textual Amendments

- F1** Substituted 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 \(Text with EEA relevance\)](#).

### *[<sup>F2</sup>Article 20a*

#### **Plans for the accommodation of ships in need of assistance**

1 Member States shall draw up plans for the accommodation of ships in order to respond to threats presented by ships in need of assistance in the waters under their jurisdiction, including, where applicable, threats to human life and the environment. The authority or

authorities referred to in Article 20(1) shall participate in drawing up and carrying out those plans.

2 The plans referred to in paragraph 1 shall be prepared after consultation of the parties concerned, on the basis of IMO Resolutions A.949(23) and A.950(23), and shall contain at least the following:

- a the identity of the authority or authorities responsible for receiving and handling alerts;
- b the identity of the competent authority for assessing the situation and taking a decision on acceptance or refusal of a ship in need of assistance in the place of refuge selected;
- c information on the coastline of Member States and all elements facilitating a prior assessment and rapid decision regarding the place of refuge for a ship, including a description of environmental, economic and social factors and natural conditions;
- d the assessment procedures for acceptance or refusal of a ship in need of assistance in a place of refuge;
- e the resources and installations suitable for assistance, rescue and combating pollution;
- f procedures for international coordination and decision-making;
- g the financial guarantee and liability procedures in place for ships accommodated in a place of refuge.

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

Member States shall communicate on request the relevant information concerning plans to neighbouring Member States.

In implementing the procedures provided for in the plans for accommodating ships in need of assistance, Member States shall ensure that relevant information is made available to the parties involved in the operations.

If requested by Member States, those receiving information in accordance with the second and third subparagraphs shall be bound by an obligation of confidentiality.

4 Member States shall inform the Commission by 30 November 2010 of the measures taken in application of this Article.

#### **Textual Amendments**

- F2** Inserted 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 \(Text with EEA relevance\)](#).

### *Article 20b*

#### **Decision on the accommodation of ships**

The authority or authorities referred to in Article 20(1) shall decide on the acceptance of a ship in a place of refuge following a prior assessment of the situation carried out on the basis of the plans referred to in Article 20a. The authority or authorities shall ensure that ships are admitted to a place of refuge if they consider such an accommodation the best course of action for the purposes of the protection of human life or the environment.

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#### Textual Amendments

- F2** Inserted 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 \(Text with EEA relevance\)](#).

### Article 20c

#### Financial security and compensation

1 The absence of an insurance certificate within the meaning of Article 6 of Directive 2009/20/EC of the European Parliament and of the Council of 23 April 2009 on the insurance of shipowners for maritime claims<sup>(2)</sup> shall not exonerate a Member State from the preliminary assessment and decision referred to in Article 20b, and shall not in itself be considered 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, a Member State may request the ship's operator, agent or master to present a insurance certificate within the meaning of Article 6 of Directive 2009/20/EC. The act of requesting the certificate shall not lead to a delay in accommodating the ship.

#### Textual Amendments

- F2** Inserted 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 \(Text with EEA relevance\)](#).

### Article 20d

#### Examination by the Commission

The Commission shall examine existing mechanisms within Member States for the compensation of potential economic loss suffered by a port or a body as a result of a decision taken pursuant to Article 20(1). It shall, on the basis of that examination, put forward and evaluate different policy options. By 31 December 2011, the Commission shall report to the European Parliament and to the Council on the results of the examination.]

#### Textual Amendments

- F2** Inserted 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 \(Text with EEA relevance\)](#).

## Article 21

### Information of the parties concerned

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

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

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

Each Member State shall make the necessary arrangements to use fully the reports which ships are required to transmit to them pursuant to Article 17.

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- (1) [OJ L 157, 7.7.1995, p. 1](#). Directive as last amended by Directive 2001/106/EC of the European Parliament and of the Council ([OJ L 19, 22.1.2002, p. 17](#)).
- (2) [<sup>F2</sup>[OJ L 131, 28.5.2009, p. 128](#)]

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**Textual Amendments**

- F2** Inserted 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 \(Text with EEA relevance\)](#).