

3rd maritime safety package general framework

Already with the adoption of the first two legislative packages on maritime safety, the EU delivered a strong message that substandard shipping would no longer be tolerated. In 2005 however it was clear to the Commission that much remained to be done and that one should not wait for the next catastrophe to happen. The Commission shared this point of view with the European Parliament, who had already invited the Commission to tackle a number of outstanding problems. In its Resolution on strengthening maritime safety, adopted on 27 April 2004 as a result of the work of the temporary committee on the strengthening of maritime safety (MARE) following the PRESTIGE accident.

This is how the third maritime safety package was born in November 2005, with the main objective to restore competitiveness to the sector while benefiting only those operators who respect safety standards, in particular by increasing pressure on owners of sub-standard ships.

Three years later, with the adoption of the eight measures proposed in the third maritime safety package, an important step has been achieved both on the improvement of the effectiveness of existing measures to prevent accidents and on the management of their consequences if the worse were to happen.

An ambitious approach at Council¹ leading to agreement on the third maritime safety package, combined with the broad support from the European Parliament across the inter-institutional process in order to preserve the key measures of the package proposed by the Commission clearly contributed to this success.

The Commission will be helped by the European Maritime Safety Agency (EMSA) for the implementation of the package.

The quality of European flags

In the first place, a new Directive has been adopted on the improvement in quality of European flags. The lack of regulation concerning the responsibilities of the flag State clearly represented a "missing link" in European legislation so far. As a major maritime power accounting for 25% of the world fleet, the European Union has to guarantee that all Member States effectively verify that international standards are upheld by ships sailing under their flag. This includes a mandatory audit plan of national maritime administrations and the certification of their quality management systems, as opposed to the international scheme which is implemented on a voluntary basis only. The Flag State Directive will not only strengthen the application of international rules of maritime safety, making them enforceable and ensuring a level playing field across the European Union but also improve the image of the European fleet and make it more attractive to professionals.

¹ French Presidency, 2008

Moreover, the Member States declared their firm commitment to become bound by the main international maritime safety conventions and to apply the International Maritime Organisation (IMO) Flag State Code, which gives a clear message to the international maritime community that Europe is ready to lead by example. Finally, Member States declared their commitment to further improve the quality and the performance of their maritime administrations, with the objective that all Member States flags be listed on the white list of the Paris Memorandum on Port State control by 2012 at the latest.

Classification Societies

The legislative texts on classification societies (a Directive and a Regulation) seek to achieve a radical improvement in the quality of the work undertaken by classification societies. In fact, these bodies represent a fundamental element of the maritime safety chain: better performing class means less room for sub-standard shipping at no additional cost for safety-conscious owners. Therefore, a specialised body will be set up in order to audit and certify the quality management systems of EU-recognised organisations, to which Member States can delegate the inspection and statutory certification of their ships. In addition, the recognition criteria will be made stricter and a system of financial penalties for those organisations that do not do their job properly will be established. If the shortcomings of a recognised organisation are such that safety is no longer guaranteed, their license will be withdrawn. Furthermore, recognised organisations will now be required to agree to mutual recognition of their certificates whenever they are issued on the basis of equivalent technical standards.

Port State control

It is of fundamental importance to reinforce the inspection of the ships that call at European ports. With the adoption of the new Directive, further step has been taken towards improving the effectiveness and quality of the visits and inspections carried out by the port State in European ports, while concentrating on the more dubious ships and alleviating the pressure on the high quality ships. This means to undertake a thorough reform of the port State control system, by requiring an inspection of all ships making a stopover in European ports. The current obligation for each Member State to inspect 25% of the ships calling its ports is replaced by an objective of 100% for the Community as a whole. These inspections will vary in frequency depending on the risk the ships pose: the most dangerous ships will thus be inspected every 6 months, while quality ships will be subject to less frequent inspections. The Directive also strengthens the Community's ability to push sub-standard ships out of European waters, making it possible to ban any categories of ships, inserting a minimum time limit for a ban and introducing a permanent ban for those ships, which continue to flout the rules.

Traffic monitoring – assisting ships in distress

The amendment to the existing Directive on traffic monitoring aims at being better equipped to assist ships in distress. This means defining a clear and precise legal framework on refuge zones, in order to guarantee an independent decision by the authority responsible for the designation of refuge zones and ensuring that the authorities possess the necessary elements for decision-making.

As regards the monitoring of ships in European waters, this new text aims to guarantee that all the Member States will be interconnected via SafeSeaNet, which is a data exchange platform between the national maritime administrations, in order to obtain a complete overview of the movements of dangerous or polluting cargos on ships sailing in European waters. It was also agreed to establish a European Union Long Range Identification and Tracking Data Centre in charge of processing the long-range identification and tracking information of ships. Finally, it is foreseen that a system of automatic identification be extended to fishing vessels over 15 meters , in order to reduce the risk of collisions at sea.

Accident investigation

We need to learn the lessons drawn from every major accident in order to prevent them happening again. The objective of the new Directive in this field is to set up a common European Union framework in order to guarantee the effectiveness, objectivity and transparency of enquiries following maritime accidents occurring in EU waters as well as involving EU flag ships or EU interests.

This concerns the harmonisation of technical enquiry procedures, which will be carried out according to a common methodology, in accordance with the IMO Code for the Investigation of Marine Casualties and Incidents. Accident investigations will be carried out independently of any judicial enquiries. An information and analysis system on accidents at sea will be established.

Protection of victims

Finally, the two remaining measures in this third package aim to protect the victims of marine casualties.

A new Regulation has been adopted to further protect passengers in the aftermath of an accident.

This Regulation introduces a set of modern rules on liability and insurance which will benefit passengers travelling on the main European and domestic maritime routes.

The objective of this Regulation is to give all passengers travelling in Europe by ship and the carriers themselves a harmonised legal framework setting out their rights and obligations in the event of an accident. The level of this harmonisation should aim to ensure not only fairer compensation for loss or damage, but also improved accident prevention.

The Regulation seeks to incorporate into Community law the 2002 Protocol to the 1974 Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea, adopted under the auspices of the IMO ("the Athens Convention"). The Athens Convention is a modern text setting out clearly the rights and obligations of passengers and carriers; it provides for a system of strict liability – 'liability without fault' – of the carrier in respect of loss or damage in the event of shipping incidents, lays down sufficiently high maximum compensation amounts, requires all carriers to take out an insurance policy and allows the complainant to claim compensation from the insurer directly.

The Regulation brings a number of adjustments. In particular, the Athens Convention is extended? to international maritime transport. The Regulation extends the scope to cover main cabotage lines (maritime transport within a single Member State) according to a certain timetable.

The adoption of a new Directive on the insurance of shipowners for maritime claims represents a major step in order to fix a minimum set of rules, as regards insurance of ship owners. It requires that all ships flying the flag of a Member State (throughout the world) and all ships entering a maritime area under the jurisdiction of a Member State have insurance cover. The cover must correspond to the ceilings set out in the Convention of IMO on the Limitation of Liability for Maritime Claims (1996 version). The proof of insurance will be provided by a commercial insurance certificate. Whether or not the ship is carrying an insurance certificate can be verified during an inspection under the Port State Control Directive. Where the ship is not carrying a certificate, it may be detained or even expelled, without prejudice to any financial penalties to be determined by each Member State.