

Maritime Safety – main texts of the acquis

Screening HR/TK

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0.

General

- Fairly recent acquis (10 years): first wave of basic texts mid-90s, 2nd batch following the *Erika* and *Prestige* accidents;
- Based in international law (“received” and strengthened, better enforcement as added value);
- Still expanding, connection to quality shipping – reference to the III Package on Maritime Safety, adopted by the Commission in November 2005, currently discussed in Council and Parliament.

1.

Classification societies

(Directive 94/57/EC)

- General content: the Directive establishes common measures to be followed by the MS and the organisations concerned with the inspection, survey and certification of ships for compliance with international conventions on maritime safety and prevention of marine pollution;
- 1st key obligation: (Article 3): MS shall ensure that their competent administrations can assure an appropriate enforcement of the international provisions on inspection and survey of ships and issue of certificates. To this purpose, they will follow IMO Resolution

A.847(20) on guidelines to assist Flag States in the implementation of IMO instruments; note that this obligation is “administrative capacity oriented”;

- 2nd key obligation: (Article 3): when tasks relating to the issue/renewal of certificates or performance of surveys/inspections are delegated to classification societies these must be recognised organisations;

- Process for recognition: (Article 4): request by MS; assessment carried out by the Commission (assisted by EMSA) and MS submitting the request; Commission decision; possibility of limited recognition if quantitative requirements (number of vessels, surveyors) are not met (valid 3 years, only for MS having required the recognition);

- Currently, full recognition: 10 SC: LR, BV, DNV, GL, RINA, ABS, RM (Russia), CCS (China), KRS, NK; limited recognition: Rinave, HRS and (pending) PRS; Accession countries are asked to have their views known to the Commission on their intention to have new CS recognised;

- (Article 6): Also note that the working relationship between aMS and the RO acting on their behalf must be formalised by a written and non discriminatory agreement (or equivalent legal arrangement) containing at least a series of provisions as detailed in the directive;

- Note also (Article 9) the possibility for withdrawal of the recognition by the Commission (if RO no longer fulfils the requested criteria or fails to meet the safety and pollution prevention performance records (data from Paris MOU or similar) and the possibility for suspension (one year) of the recognition (Article 10);

- Finally, note MS obligation to monitor (biennial basis) RO (Article 11).

2.

Port State Control (Directive 95/21/EC)

- Purpose: increase compliance with International and Community legislation on maritime safety, protection of maritime environment and living and working conditions on board ships of all flags through the establishment of common criteria for control of ships by Port State and harmonising procedures for detention and inspection;
- (Article 4): Obligation to maintain appropriate national maritime administrations with the requisite number of staff, in particular qualified inspectors for the inspection of ships: an “administrative (quantitative and qualitative) capacity obligation”;
- (Article 5(1)): Obligation to inspect at least 25% of the average (3 most recent years) annual number of individual ships entering MS ports;
- (Article 5(2): Mandatory inspections for ships with a target factor over 50 in the Sirenac information system (if non inspected for at least one month); rules for ship selection (Annex I); for ships under certain conditions, MS must refrain from inspection provided the ship has been inspected in the previous 6 months;
- (◦ The inspection implies checking certificates and documents and the overall condition of the ship (engine room, accommodations, hygienic conditions); if clear grounds for believing that convention requirements are not met, a more detailed inspection is to be performed;)
- (Article 7): Certain types of ships (gas, chemical tankers over 10 years ...) are liable to an expanded inspection; the inspection is mandatory for ships with a target factor of 7 or more after a period of 12 months since the last expanded inspection; for the performance of

these inspections it is important that a set of information is notified before arrival (failure should be sanctioned).

- Admissible rate of mandatory inspections (Art. 5) and mandatory expanded inspections (Art. 7) non performed (operational reasons): 5%;
- Access refusal (Art. 7b): Paris MOU black list + detention more than twice in previous 2 years or very high risk or high risk in the black list + detained more than once in previous 3 years (annex XI B 2 for the lifting of the refusal of access); access refusal (11(4)) if non compliance with conditions determined by competent authority (or not calling to designated repair yard), safe *force majeure*;
- Article 12: professional profile of inspectors: qualitative criteria in Annex VII of the directive; non conflict of interests (port, classification societies); inspector identity card;
- Article 16: re-inspection costs after detention to be borne by the shipowner or operator;
- Article 19a: sanctions (proportionate, effective and dissuasive): the time lost during the detention is not in itself sufficient.

3.

Vessel traffic monitoring and information system (Directive 2002/59/EC)

- Purpose: establish a Community VTMIS in order to enhance the safety and efficiency of maritime traffic (response to accidents, including Search and Rescue) and improve the prevention and detection of pollution by ships; this Directive entails considerable implementation work as MS must take all necessary steps to ensure that masters, operators, agents, shippers and owners of dangerous

goods comply with the Directive; a common network for the transmission of the information has been created (SafeSeaNet);

◦ Scope: in general to ships of 300 gross tonnage and upwards; not to (among others) fishing vessels, traditional ships and recreational craft with a length of less than 45 meters;

◦ Ship reporting and monitoring: obligation for operator/ agent/ master to notify general information (Art. 4); for MS to ensure that all ships entering a mandatory ship reporting system comply with the system (Art 5); for ships to be fitted with an Automatic Identification System (Art. 6); for MS to ensure use of ship's routing system (Art. 7) and compliance with vessel traffic services (Art 8). MS must build up shore-based installations and install the necessary equipment for receiving and utilising the AIS info; these stations must be sufficiently staffed (qualified staff); for ships to be fitted with a voyage data recorder (VDR) (Article 10);

◦ Hazmat (notification of dangerous and polluting goods): a declaration must be made by the master or the operator for shipment offered to carriage (Art. 12); at the latest upon departure, DPG must be notified to the competent authority of the MS of the port of destination (Art. 13); these obligations are applicable to all ships (irrespective of size); exemptions are possible for scheduled services (Art. 15);

◦ Monitoring of hazardous ships and interventions in the event of incidents or accidents: obligation to communicate info on hazardous ships between coastal stations of MS (Art. 16); obligation on the master of the ship to report all accidents and incidents at sea to relevant coastal station (Art. 17); places of refuge (Art 20): MS must draw up plans to accommodate ships in distress, containing procedures (operational and environmental constraints) to ensure that ships may immediately go to a place of refuge (following authorisation by the competent authority);

- Again, proportionate, effective, dissuasive sanctions must be provided for breach of national measures adopted pursuant to the Directive (Art. 25).

4. Environment

4.1 Port Reception Facilities (Directive 2000/59/EC)

- Purpose: to reduce discharges of SGW and CR at sea, through improved availability of PRF. Linkage to Directive on “penal sanctions”;
- Definitions: broad definitions of ports (all ports, including fishing ports and marinas) and ships;
- Main obligation: ensure the availability of PRF adequate to meet the needs of ships normally using the port;
- Plans: A waste reception and handling plan must be established, approved and implemented for each and every port of the country (consultation); entails considerable administrative burden;
- Obligation to notify (the amount and type of waste before arriving at the port of call);
- Obligation to deliver (the waste, except if there is sufficient dedicated storage capacity on board for all SGW accumulated + to be accumulated until the port of delivery);

- Fee system: costs must be borne by ships and the system must provide no incentive for ships to discharge at sea; ALL ships must contribute significantly (minimum 30% of total costs – Commission declaration) irrespective of delivery;
- Possibility of exemptions: scheduled traffic with frequent and regular port calls + evidence of arrangement;
- Sanctions: MS must set up a system of effective, proportionate and dissuasive sanctions for the violation of the rules of the Directive.

4.2

Penal Sanctions (Ship-source pollution) (Directive 2005/35/EC)

- Objective: to ensure that persons responsible for discharges are subject to adequate penalties (protection of the marine environment);
- Articles 8 and 4: Any person (including the master, the owner, the operator, the charterer of a ship, the classification society... who has been found to have caused or contributed to illegal pollution intentionally, recklessly or by serious negligence ... will be subject to effective, proportionate and dissuasive sanctions, which may include criminal or administrative sanctions (the framework Decision which complements the Directive sets out that the most serious cases are regarded as criminal offences subject to criminal penalties).

4.3

Double hull (Regulation (EC) n° 417/2002)

- The objective of the regulation (Article 1) is (1) to establish an accelerated phasing-in scheme for double-hulls or equivalent design

requirements of Marpol 73/78 Convention to single hull oil tankers and (2) to ban the transport to or from ports of the MS of heavy grades of oil in single hull oil tankers; these rules (calendar for phasing in of double hulls and prohibition of carriage of heavy grades in single hulls) are set out in Art. 4.

4.4

TBT

(Regulation (EC) 782/2003)

- The purpose of the regulation is to reduce or eliminate the adverse effects on marine environment and human health of organotin compounds used on ships flying the flag of or operating under the authority of a MS and on ships sailing to or from MS ports ;
- Art 4 contains a prohibition of use or re-use of organotin compounds on ships (MS flag or under its authority); Art. 5 refers to the prohibition of bearing of such organotin compounds (possibility of coating forming a barrier to such compounds leaching from the underlying non compliant anti-fouling system; (Convention not yet in force).

5.

Standards for ships,

equipment and procedures

5.1

Passenger ships

(Directive 98/18/EC)

- Purpose: to introduce a uniform level of safety for passenger ships and high speed craft engaged on domestic voyages (port(s) in the same MS);

- Art 4: Classes (A, B, C, D) of ships according to the sea area in which they operate (different rules applicable); obligation for MS to establish and update and inform the Commission on the list of sea areas;
- Key rule: both new and existing passenger ships and high speed passenger craft engaged on domestic voyages must comply with safety rules laid down in the directive (extensive annexes);
- Possibility for MS to issue additional safety requirements (specific local circumstances), equivalents (at least as effective) and exemptions (if certain operating conditions such as smaller significant wave height, restricted year period, restricted trip duration, proximity of rescue services, voyages only during daylight). In all cases Commission to be notified previously; (Art. 7); MS may also adopt safeguard measures (operation suspended or additional measures to ship complying with the Directive): Commission also to be informed;
- Penalties (effective, proportionate, dissuasive) to be adopted by MS (Art. 13).

5.2

Fishing vessels

(Directive 97/70/EC)

- Purpose: to set safety standards for seagoing fishing vessels of 24 meters in length and over, both new and (insofar as the Annex to the Torremolinos Protocol applies, existing which fly the flag of a MS or operate in the internal waters or territorial sea of a MS or land their catch in a port of a MS (Art. 1);
- Art 3 – general rule (MS to ensure application of the Torremolinos Protocol); Art 4 – possibility for specific requirements, equivalents and exemptions to be laid down by MS (obligation to notify the Commission); Penalties (Art 11).

5.3

Marine equipment (Directive 96/98/EC)

- Mere reference: internal market/maritime safety border: objective: to ensure the uniform application of the relevant international instruments relating to equipment to be placed on board ships for which safety certificates are issued by or on behalf of MS and to ensure free movement of such equipment within the Community;
- General rule: (equipment to comply with requirements of the Directive: Art 4; not go into detail of the system (conformity assessment procedures, marks...); just notice Commission must be informed of designated “notified bodies”

5.4

Bulk carriers (Directive 2001/96/EC)

- Mere reference: Aim: to establish harmonised suitability requirements for bulk carriers and terminals and harmonised procedures for co-operation and communication between them;

6.

Training of seafarers (Directive 2001/25/EC)

(...)

7. Others

7.1 EMSA (Regulation (EC) n° 1406/2002)

(...)

7.2 Note on III Package on maritime safety

A III package on maritime safety was adopted by the Commission in November 2005 and is currently under discussion at the European Parliament and in the Council. It comprises seven proposals on issues as diverse as Flag State responsibility, accident investigation and receiving the Athens Convention 2002 (on compensation to be paid to passengers in case of accident at sea) in Community Law. Discussions have progressed further on proposed amendments to directives on VTMIS and PSC, but it is still too early to indicate what specific innovations will be introduced to the current regimes.