

# The Third Maritime Safety Package - EU port authority perspective

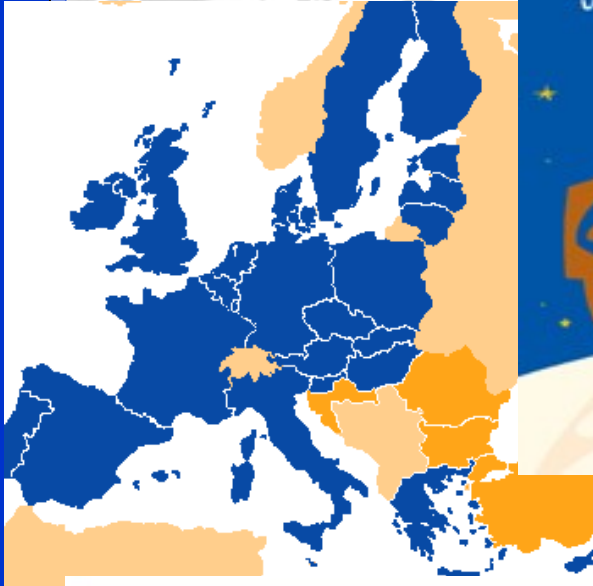


Port Net Seminar - Antwerp, 1 March 2007  
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# Summary

1. Introduction to EU law making and the Third Maritime Safety Package
3. Vessel Traffic Monitoring Directive
5. Port State Control Directive

# Introduction to EU law making



- Since 1 May 2004:  
25 Member States
- 453 million inhabitants
- +/- 800 ports handling  
3,5 billion tonnes and  
350 million passengers  
annually
- Seaports handle almost  
all external trade and  
half of EU's internal  
trade



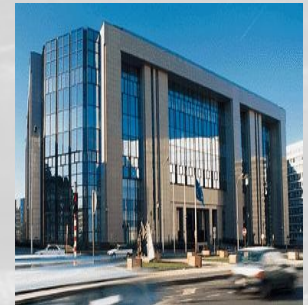
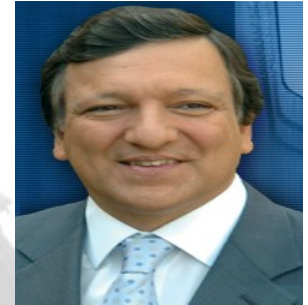
# Introduction to EU law making

**Joint decision making (eg. co-decision procedure) demands European law**

European Commission (Brussels):  
*25 Commissioners from each Member State;  
makes legislative proposals*

European Parliament (Strasbourg):  
*732 MEP's directly elected by the EU citizens:  
vote over legislative proposals*

Council of the EU (Brussels):  
*Ministers of the Member States:  
vote over legislative proposals*





# Introduction to EU law making

## Legal Basis:

*Treaty on the European Union*

*Treaty on the European Communities*

## Art 2 EC Treaty:

*The Community shall establish a common market and an economic and monetary union and shall promote throughout the Community a harmonious, balanced and sustainable development of economic activities*

## Art 3 EC Treaty:

*The EU shall establish a 'common transport policy'*

## Art 71 EC Treaty:

*EU lays down:*

- *Common rules applicable to international transport to or from the territory of a Member State*
- *Common rules to fight transnational terrorist risk effectively*

## Result:

*Security legislation in all 25 Member States and for all 800 EU ports.*



# 1. Introduction to Third Maritime Safety Package (I)

## Background

After ERIKA accident in December 1999 and Prestige accident in November 2002, the EU introduced legislation aimed at improving maritime safety and prevention of accidental pollution by ships.

Positive results so far are due to establishment in the EU of defence against substandard ships, control of ships in European ports and better reporting.

Such defensive arrangements represent considerable cost for the port and coastal state administrations, even though the main responsibility for applying the security rules rests with the shipowners and flag states.

However, port authorities have public obligation to enhance maritime safety

And port authorities also benefit from increased safety.

# 1. Introduction to Third Maritime Safety Package (II)

## Background

Despite reduction of maritime accidents, threats relating to failure to comply with safety standards remain.

Therefore the European Commission proposed seven proposals intended to supplement the European rules concerning maritime safety and improve efficiency of existing measures.

The Third Maritime Safety Package takes account of the experience acquired in implementing the Community legislation on maritime safety (the ERIKA I and II packages and the measures adopted following the prestige accident)

But also the concerns expressed on several occasions by the European Parliament, the European Council and the ministers of transport.



# 1. Introduction to Third Maritime Safety Package (III)

## The seven proposals:

1. A proposal for a Directive on the conformity requirements of flag states;
2. Amendment of the Directive on classification societies;
3. **Amendment of the Port State Control Directive;**
4. **Amendment of the Traffic Monitoring Directive;**
5. A proposal for a Directive on accident investigations;
8. A Regulation on liability and compensation for damage of passengers in the event of maritime accidents;
9. A Directive on the extra-contractual liability of shipowners





# 1. Introduction to Third Maritime Safety Package (IV)

## Legislative procedure

- Vote in Transport Committee (TRAN) of European Parliament: 27 February 2007;
- Vote in Plenary of the European Parliament 24/04/2007
- Council political agreement on common position: 1st reading 06/06/2007
- Continued treatment as one package?

## 2. Vessel Traffic Monitoring Directive



To accommodate ...

... or not to accommodate ?

## 2. Vessel Traffic Monitoring Directive



More efficient reporting

...or increased bureaucracy?



## 2. Vessel Traffic Monitoring Directive

### 2.1 Accommodating a ship in distress

Conflict between two old principles :

- right of ships in distress to seek refuge
- right of self-protection of any sovereign state and port

Port authorities look after many interests :

- safety of ship and crew
- safety of its own environment, people and economy

A balanced approach is needed

## of Maritime & Transport Law and ESPO (University of Antwerp, 11 December 2003)



- Accidents give negative publicity to maritime transport which, overall, is a safe mode of transport
- Risk assessment and independent technical expertise are central elements in the accommodation of a ship in distress
- Efficient procedures must be established including overriding competence of a neutral authority
- There is a need to complete the existing legal framework to cover compensation and liability of ports

## 2. Vessel Traffic Monitoring Directive

### 2.1 Accomodating a ship in distress

- Guidance for the competent authorities on shore and for the master of the ship;
- Final decision should be based on risk-analysis and be taken on a case-by-case basis, depending on local circumstances;
- Common framework for all parties involved to ensure complementary efforts



## 2. Vessel Traffic Monitoring Directive

### 2.2 Accommodation plans

#### **National plans must contain:**

- Designation of strategic places of refuge
- Procedures and arrangements for accommodation

#### **Five basic principles:**

- A seaport is not always the best «place» of refuge
- Selection must be based on objective criteria
- Cooperation between coastal states is essential
- A place of refuge must be adequately equipped
- Plans include emergency response procedures

## 2. Vessel Traffic Monitoring Directive

### 2.3 Clear chain of command

- Someone has to be in charge taking decisions in the heat of the moment;
- Command should take advice from all relevant players;
- Pressures should be anticipated.



## 2. Vessel Traffic Monitoring Directive

### 2.4 Desired elements of the compensation regime

A port should have the right :

- To be compensated for the costs related to the accommodation of a ship in distress;
- To be promptly compensated for any damage caused by a ship in distress.

Several studies confirm that existing international compensation regimes are insufficient



# Study University of Oslo

(On behalf of EMSA – October 2004)



- Current regime for liability and compensation of pollution damage is unsatisfactory
- Entry into force HNS Convention would mean significant improvement
- Additional measures are feasible (options):
  - additional entry requirements for ships
  - specific insurance requirements
  - legislation to reduce exposure for coastal State liability
  - “back-up” fund financed by the maritime industry

## 2. Vessel Traffic Monitoring Directive

### 2.4 Desired elements of the compensation regime

#### **Desidered elements according to ESPO:**

- Recovery of costs related to the operation of salvage;
- Compensation for the damage incurred;
- Simple procedures which enable a prompt compensation;
- Ship should demonstrate it is adequately insured

# 2. Vessel Traffic Monitoring Directive

## 2.5 Development of a legal framework

### European context:

- Existing Directive 2002/59 establishing a Community vessel traffic monitoring and information system
- Third Maritime Safety Package = proposal for an amended vessel traffic monitoring and information system





## 2. Vessel Traffic Monitoring Directive

### 2.6 Relevant provisions Third Maritime Safety Package

Proposal of the Commission for a Directive amending Traffic Monitoring Directive introduces new articles on places of refuge:

- Art. 20: Establishment of independent competent authority
- Art. 20a: Plans for accommodation of ships in distress
- Art. 20b: Financial guarantees



# 2. Vessel Traffic Monitoring Directive

## 2.7 Legislative process

Parliament adopted the following amendments in TRAN committee:

Every 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:

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

Member States shall ensure the reimbursement of costs and potential economic damage suffered by a port as a result of the decision taken pursuant to paragraph 2 if such costs or damage are not reimbursed within a reasonable time by the owner or operator of the ship pursuant to Directive XX/XXXX/EC on the civil liability and financial guarantees of shipowners and the existing international compensation mechanisms.

# 2. Vessel Traffic Monitoring Directive

## 2.7 Legislative process

Parliament adopted the following amendments in TRAN committee:

- A further focus on the functioning of SafeSeaNet;
- A further focus on the use of AIS for fishing ships.

### Next steps

- Vote in Plenary session of the Parliament April 2007
- Political agreement in the Council: June 2007



# 3. Port state control

## 3.1 What is port state control?

Generally two major enforcement systems ensuring commercial vessel compliance with applicable regulations, laws and conventions:

- Flag State Control
- Port State Control

### **Flag State Control:**

- Government under which the vessel operates exercises control over the vessel to ensure compliance;
- This control extends to anywhere in the world in which the vessel Operates.



# 3. Port state control

## 3.1 What is port state control?

### Port State Control:

- When the vessels operate internationally, an additional control in the form of Port State Control is added.
- Port State Control is where the government of the foreign port exercises control over the vessel to ensure compliance with applicable domestic and international requirements to ensure safety of the port, environment and personnel.
- For vessels operating under a foreign flag entering a port, Port State Control becomes the primary means of marine safety enforcement.
- Recognition of the failure of some Flag States to properly exercise control led to an international emphasis on Port State Control.
- International rules on port state control under the Paris Memorandum of Understanding

# 3. Port state control

## 3.2 Directive on port state control in force

**Directive 2001/106/EC concerning the enforcement, in respect of shipping using Community ports and sailing in the waters under the jurisdiction of the Member States, of international standards for ship safety, pollution prevention and shipboard living and working conditions (port State control)**

- In the EU this is harmonized by Community legislation: Port State Control Directive;
- Framework of the Paris MoU applicable to all EU Member States;
- Port State Control is a task for national authorities of the Member States;
- In principle no direct competence for port authorities;
- However, port authorities and pilots inform Port State Control in case of defects identified during normal duties.

# 3. Port state control

## 3.3 Proposal for a Directive

### **Proposal of the Commission for a revised Directive on Port State Control (Third maritime safety package):**

- Help to reduce drastically substandard shipping in the waters under the jurisdiction of the Member States;
- Recast the directive to improve clarity following many amendments over the last decade and to reinforce and improve the effectiveness and improve the effectiveness of Port State Control;
- In depth reform of the Port State Control regime, replacing the current requirement for Member States to inspect 25% of vessels.

# 3. Port state control

## 3.4 Legislative process

### **Adopted amendments by Transport Committee of the European Parliament relevant for port authorities:**

- Obligation for port state control to also inform port authorities about their findings;
- Scope of the Directive (port state control) enlarged to anchorages;
- Obligation for port authorities (and pilots) to report defects to port state control (when performing their normal duties).

### **Next steps:**

- Vote in Plenary session of the Parliament April 2007
- Political agreement in the Council: June 2007



SAFE H(E)AVENS

**Final aim of the Third Maritime Safety Package?**

# Thank you for your attention

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## Welcome to the ESPO website

ESPO represents the seaports of the Member States of the European Union and has observer members from several other European countries.

The European Union simply cannot function without its seaports. Almost all of the Community's external trade and almost half of its internal trade enters or leaves through the more than 1200 seaports existing in the 20 maritime Member States of the EU.

Without seaports, the European Union would not exist as an economic world power. Without seaports, there would be no internal market.

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## Port Tracker

