

Maritime safety: establishing a Community vessel traffic monitoring and information system

2005/0239(COD) - 30/11/2012 - Follow-up document

The Commission presents a report on liability and compensation for financial damages sustained by places of refuge when accommodating a ship in need of assistance.

Legal framework and purpose of the report: the Commission decided in 2005 to present a modification to the legal framework on reception of ships in need of assistance to places of refuge as initially set up by Directive 2002/59/EC establishing a Community vessel traffic monitoring and information system. The Commission proposed the introduction of an obligation to receive ships in need of assistance if, following an assessment, this appears to be the best course of action with a view to protecting human safety and the environment.

Having regard to specific concerns about the costs ports would have to assume when providing refuge to vessels in need of assistance the amended text of Directive 2002/59/EC requires the Commission to examine existing compensation mechanisms in MS for potential economic losses suffered by places of refuge when accommodating a ship, and to report on the results of this exercise to the European Parliament and the Council.

Before its amendment in 2009, Directive 2002/59/EC established an obligation for the Commission to report on the implementation by Member States of appropriate plans for places of refuge. The Commission had asked the European Maritime Safety Agency (EMSA) to produce relevant information also on the mechanisms of liability and compensation applicable in case of reception of a ship in a place of refuge. The data collected by EMSA formed the basis for the Commission's report in 2005 and provided additional input during the inter-institutional discussions for the third maritime safety package, in particular for Directive 2009/17/EC.

Directive 2002/59/EC has been amended by Directive 2009/17/EC, and following the adoption of the latter, the Commission has received additional, up-to-date, information from EMSA, focusing mainly on the applicable international instruments and the reinforced EU law framework pertaining to liability and compensation for damages to places of refuge. The Commission has also designated an external consultant to undertake a study on the liability and compensation mechanisms available under national law in EU Member States.

It is on the basis of this input that **the need for an additional mechanism of liability and compensation for the damages suffered by a place of refuge following reception of a vessel in need of assistance is assessed in this report.** The question of insurance of ships is also considered in this context, in view of the recent entry into force of Directive 2009/20/EC on the insurance of shipowners for maritime claims, and the latest amendments to the liability limits introduced under the International Convention for Limitation of Liability in Maritime Claims (LLMC Convention 1976), as amended by the 1996 Protocol, in the international plane.

Conclusions and recommendations: in light of the Commission's analysis, it concludes that there are **three layers of applicable law to the issue of liability and compensation for damages sustained by places of refuge, which are complementary.** The Commission sets out some recommendations for better implementation of the existing framework.

1. International framework: international conventions adopted to date on the subject of liability in the area of maritime transport offer a system of rules ensuring the applicability of liability mechanisms that are satisfactory in the areas covered by these conventions, and also pertinent in the context of reception of a ship in a place of refuge.

Member States have endorsed in Council in 2008 a strict commitment to ratify all relevant international instruments for the complete international system of rules relating to maritime safety – addressing also damages to places of refuge – to enter into force. The Commission has reminded Member States of this commitment on several occasions. For these purposes, an up-to-date table on the status of ratification of pertinent international conventions, including EU Member States, is published by the IMO.

Recommendations for better implementation:

- with regard to **limitation of liability for maritime claims**, Member States should ratify the 1996 Protocol to the LLMC Convention. In order to avoid the risk of reduction of payable compensation following application of these limits, the latter should be regularly updated, as has been done recently at IMO;
- it would also be advisable that all Member State parties or prospective parties to the LLMC Convention **exclude** from the scope of application, **the costs of removing wrecks within their territorial waters, including damages to places of refuge**. This will mean that there cannot be a liability limit for such damages. Such exclusion is possible under the Nairobi Wreck Removal Convention;
- it could be useful to obtain all relevant clarifications at the IMO level in order to confirm that reception of a vessel in a place of refuge can, in principle, be considered a **preventive measure**, as this would ensure applicability of some international conventions (e.g. CLC-IOPC, Bunker Oil) to this issue.
- another possible improvement of the current system would be the **clarification, at the IMO level, of the notion of 'pure economic losses'** for which compensation can be excluded, in order to achieve a coherent approach to this matter, bearing in mind that these may not have a sufficiently direct causal link with the damaging act;
- lastly, a **general compulsory liability insurance requirement**, including third party liability, in line with the current practice of P&I Clubs, should be created at the international level, following up on earlier discussions at the IMO on this subject.

2. EU framework: apart from Directive 2002/59/EC (amended by Directive 2009/17/EC), EU law regulates, indirectly, the issue of liability and damages for losses sustained by places of refuge when accommodating a vessel in distress in two legal instruments: (i) Directive 2004/35/EC on environmental liability with regard to the prevention and remedying of environmental damage and (ii) Directive 2009/20/EC on the insurance of shipowners for maritime claims.

The existing EU legislation on this issue adds to the international conventions a particularly strict approach to liability for environmental damage, and an obligation to have sufficient insurance cover or other financial guarantee for every vessel entering EU waters – without exceptions. This regime also protects places of refuge as it addresses the most 'sensitive' aspects of their operation.

Albeit not relevant for the purposes of the report, the Commission states that **enhancing cooperation and communication between Member States in order to facilitate decision-making in cases of ships in need of assistance** can form a potential improvement to the general framework on places of refuge.

3. National framework: cases where national law will apply instead of the international and EU framework are limited to: (a) non-ratification by the State concerned of the relevant international instrument; (b) non-entry into force of the relevant international convention; (c) the exemptions to and limitation of liability that are established above under international and EU law; and (d) type of damages to places of refuge not covered by international and EU law.

For the remaining cases that rely solely on national laws, the study carried out on behalf of the Commission shows that in the majority of Member States, **damages to places of refuge are sufficiently covered by rules of reparation**, which – in some cases – go as far as ensuring systematic compensation for any potential damages.

The few differences that exist in regimes of compensation among Member States do not threaten the uniform application of the Directive in respect of reception of vessels in places of refuge. Hence, these are not sufficient to justify the creation of a new regime specific to one category of operators.

Recommendations: Member States, in their national laws, should continue to carefully consider and define the risks that places of refuge must assume as part of their normal operation, as it is the case with other economic operators.