

Council Directive 97/70/EC of 11 December 1997 setting up a harmonised safety regime for fishing vessels of 24 metres in length and over

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setting up a harmonised safety regime for fishing vessels of 24 metres in length and over

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 84(2) thereof,

Having regard to the proposal from the Commission⁽¹⁾,

Having regard to the opinion of the Economic and Social Committee⁽²⁾,

Acting in accordance with the procedure referred to in Article 189c of the Treaty⁽³⁾,

- (1) Whereas Community action in the sector of maritime transport should aim at the improvement of maritime safety;
- (2) Whereas the Torremolinos Protocol relating to the Torremolinos International Convention for the Safety of Fishing Vessels 1977, hereinafter referred to as the 'Torremolinos Protocol' was adopted on 2 April 1993;
- (3) Whereas the enforcement of this Protocol at Community level for fishing vessels flying the flag of a Member State or operating in the internal waters or territorial sea of a Member State or landing their catch in a port of a Member State will enhance the safety of such fishing vessels as various national legislations do not yet require the safety level established by the Protocol; whereas such a common safety level will, by harmonising the different and varying national safety requirements, ensure that competition will take place on an equal level for fishing vessels operating in the same area without compromising safety standards;
- (4) Whereas, in view, in particular, of the internal market dimension, action at Community level is the most effective way to establish a common safety level for fishing vessels throughout the Community;
- (5) Whereas a Council Directive is the appropriate legal instrument as it provides a framework for a uniform and compulsory application of the safety standards by Member States, while leaving to each Member State the choice of form and methods, that best fit its internal system;
- (6) Whereas several important chapters of the Torremolinos Protocol apply only to fishing vessels of 45 metres in length and over; whereas limiting the application of the Protocol at Community level only to such vessels would create a safety gap between the latter and smaller fishing vessels between 24 and 45 metres in length, and would therefore distort competition;

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- (7) Whereas Article 3(4) of that Protocol states that each Party shall determine which of its regulations for which the length limit is greater than 24 metres should apply, wholly or in part, to a fishing vessel of 24 metres in length or over but less than the prescribed length limit and entitled to fly a flag of that Party; whereas Article 3(5) of that Protocol states that Parties shall endeavour to establish uniform standards for these fishing vessels operating in the same region;
- (8) Whereas, in order to enhance safety and to avoid distortions of competition, the aim must be pursued of applying the safety rules of this Directive to all fishing vessels of 24 metres in length and over, operating in the fishing zones of the Community, irrespective of the flag they fly; whereas this must be achieved, for fishing vessels flying the flag of third States operating in the internal waters or territorial sea of a Member State or landing their catch in a port of a Member State, in accordance with the general rules of international law;
- (9) Whereas the relevant provisions of Council Directives adopted under the social policy of the Community must continue to apply;
- (10) Whereas Member States should, for all those reasons, apply to new and, where required, to existing fishing vessels of 45 metres in length and over the provisions of the Annex to the Torremolinos Protocol, taking account of the relevant provisions listed in Annex I to this Directive; whereas Member States should also apply the provisions of Chapters IV, V, VII and IX of the Annex to the Torremolinos Protocol, as adapted by Annex II to this Directive, to all new vessels of 24 metres in length and over but less than 45 metres flying their flag;
- (11) Whereas specific requirements, as set out in Annex III, can be justified for reasons relating to specific regional circumstances, such as geographical and climatic conditions; whereas such provisions have been developed for operation in the northern and southern zones, respectively;
- (12) Whereas, in order to further increase the level of safety, vessels flying the flag of a Member State should comply with the specific requirements set out in Annex IV;
- (13) Whereas fishing vessels flying the flag of third States should not be allowed to operate in the internal waters or territorial sea of a Member State or to land their catch in a Member State's port, and therefore compete with vessels flying the flag of a Member State, unless their flag State has certified that they comply with the technical provisions laid down in this Directive;
- (14) Whereas equipment complying with the requirements of Council Directive 96/98/EC of 20 December 1996 on marine equipment⁽⁴⁾, when installed on board fishing vessels should be automatically recognised to be in conformity with the specific provisions imposed on such equipment in this Directive, since the requirements of Directive 96/98/EC are at least equivalent to those of the Torremolinos Protocol and this Directive;
- (15) Whereas Member States could encounter local circumstances which justify the application of specific safety measures to all fishing vessels operating in certain areas; whereas they may also consider it appropriate to adopt exemptions from, or equivalent

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- requirements to, the provisions of the Annex to the Torremolinos Protocol; whereas they should be entitled to adopt such measures subject to control under the Committee procedure;
- (16) Whereas at present there are no uniform international technical standards for fishing vessels as regards their hull strength, main and auxiliary machinery and electrical and automatic plants; whereas such standards may be fixed according to the rules of recognised organisations or national administrations;
- (17) Whereas, for the control of the effective implementation and enforcement of this Directive, Member States should carry out surveys and issue a certificate of compliance to fishing vessels which comply with the specific requirements of this Directive;
- (18) Whereas, in order to ensure full application of this Directive, and in accordance with the procedure established in Article 4 of the Torremolinos Protocol, fishing vessels should be subject to port State control; whereas a Member State may undertake controls also on board fishing vessels of third countries which are not operating in the internal waters or territorial sea of a Member State nor landing their catch in the ports of a Member State, when they are in a port of that Member State, in order to verify that they comply with that Protocol, once it has entered into force;
- (19) Whereas it is necessary for a committee composed of the representatives of the Member States to assist the Commission in the effective application of this Directive; whereas the committee set up in Article 12 of Council Directive 93/75/EEC of 13 September 1993 concerning minimum requirements for vessels bound for or leaving Community ports and carrying dangerous or polluting goods⁽⁵⁾, can take on this task;
- (20) Whereas, in order to ensure a consistent implementation of this Directive, certain provisions may be adapted through this committee to take account of relevant developments at international level;
- (21) Whereas the International Maritime Organisation (IMO) should be informed of this Directive in accordance with the Torremolinos Protocol;
- (22) Whereas, in order to ensure full application of this Directive, Member States should lay down a system of penalties for breaching the national provisions adopted pursuant to this Directive,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Purpose

- 1 The purpose of this Directive is to lay down safety standards for seagoing fishing vessels of 24 metres in length and over, both new, and existing, in so far as the Annex to the Torremolinos Protocol applies to the latter, and
- flying the flag of a Member State and registered in the Community, or
 - operating in the internal waters or territorial sea of a Member State, or
 - landing their catch in the port of a Member State.

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Recreational craft engaged in non-commercial fishing are excluded from the scope of this Directive.

2 This Directive is without prejudice to the provisions of Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work⁽⁶⁾, its individual Directives and, in particular Council Directive 93/103/EC of 23 November 1993 concerning the minimum health and safety requirements for work on board fishing vessels (13th individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC)⁽⁷⁾.

Article 2

Definitions

For the purpose of this Directive:

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| 1. | ‘fishing vessel’
or
‘vessel’ | means any vessel equipped or used commercially for catching fish or other living resources of the sea; |
| 2. | ‘new fishing vessel’ | means a fishing vessel for which: <ul style="list-style-type: none"> (a) on or after 1 January 1999 the building or major conversion contract is placed; or (b) the building or major conversion contract has been placed before 1 January 1999, and which is delivered three years or more after that date; or (c) in the absence of a building contract, on or after 1 January 1999: <ul style="list-style-type: none"> — the keel is laid, or — construction identifiable with a specific ship begins, or — assembly has commenced comprising at least 50 tonnes or 1 % of the estimated mass of all structural material, whichever is less; |
| 3. | ‘existing fishing vessel’ | means a fishing vessel which is not a new fishing vessel; |
| 4. | ‘Torremolinos Protocol’ | means the Torremolinos Protocol relating to the Torremolinos International Convention for the Safety of Fishing Vessels, 1977, together with the amendments thereto; |
| 5. | ‘Certificate’ | means the certificate of compliance referred to in Article 6; |

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| 6. | ‘length’ | means, unless provided otherwise, 96 % of the total length on a waterline at 85 % of the least moulded depth measured from the keel line, or the length from the foreside of the stem to the axis of the rudder stock on that waterline, if that be greater. In vessels designed with rake of keel the waterline on which this length is measured shall be parallel to the designed waterline; |
| 7. | ‘operating’ | means catching or catching and processing fish or other living resources of the sea without prejudice to the right of innocent passage in the territorial sea and the freedom of navigation in the 200 mile exclusive economic zone; |
| 8. | ‘recognised organisation’ | means an organisation recognised in conformity with Article 4 of Council Directive 94/57/EC of 22 November 1994 on common rules and standards for ship inspection and survey organisations and for the relevant activities of maritime administrations ⁽⁸⁾ . |

Article 3

General requirements

1 Member States shall ensure that the provisions of the Annex to the Torremolinos Protocol are applied to the fishing vessels concerned flying their flag, unless Annex I to this Directive provides otherwise.

Unless provided otherwise in this Directive, existing fishing vessels shall comply with the relevant requirements of the Annex to the Torremolinos Protocol not later than 1 July 1999.

2 Member States shall ensure that those requirements in Chapters IV, V, VII and IX of the Annex to the Torremolinos Protocol which apply to vessels of 45 metres in length and over are also applied to new fishing vessels of 24 metres in length and over, flying their flag, unless Annex II to this Directive provides otherwise.

3 However, Member States shall ensure that vessels flying their flag operating in specific areas shall comply with the provisions for the relevant areas, as defined in Annex III.

4 Member States shall ensure that vessels flying their flag shall comply with the specific safety requirements laid down in Annex IV.

5 Member States shall prohibit fishing vessels flying the flag of a third country from operating in their internal waters or territorial sea or landing their catch in their ports unless they are certified by their flag State administration to comply with the requirements referred to in paragraphs 1, 2, 3 and 4 and in Article 5.

6 Marine equipment listed in Annex A.1 to Directive 96/98/EC and complying with the requirements of the latter, when placed on board a fishing vessel to comply with the provisions of this Directive, shall be automatically considered to be in conformity with such provisions, whether or not these provisions require that the equipment must be approved and subjected to tests to the satisfaction of the administration of the flag State.