

Dissemination of AIS Data – Trinity House Position

1. Introduction

There is no primary or secondary legislation in the UK which specifically allows Trinity House to distribute AIS data. Similarly, there is no legislation which prohibits the distribution of such information. In English law a person is free to act as he sees fit and take part in what activity he likes where such activity is not prohibited or controlled by law.

Because the data involved is very unlikely to be personal, there are very unlikely to be restrictions under such legislation as the UK Data Protection Act or Freedom of Information Act (FOI). Although the FOI does not apply to Trinity House, it does apply to other bodies, which handle AIS data in the UK.

There is however legislation which relates to the dissemination of AIS and other information in the UK and provided below is a brief overview of the key elements. This paper also covers relevant EU law in this area.

2. Relevant UK Legislation

2.1 Merchant Shipping (Vessel Traffic Monitoring and Reporting Requirements) Regulations 2004

The disclosure of information gathered as a result of vessel traffic monitoring in England and Wales is governed by the Merchant Shipping (Vessel Traffic Monitoring and Reporting Requirements) Regulations 2004 (the “Regulations”), a statutory instrument under the Merchant Shipping Act 1995 (the “Act”). The Regulations implement the European Directive 2002/59/EC (*Establishing a Community Vessel Traffic Monitoring and Information System*) the 2002 Directive”. S. 8 and 9 of the Regulation refer to the installation and operation of AIS systems at sea.

S.16(1) of the Regulations states that neither the UK Maritime and Coastguard Agency (MCA) nor any UK port authority may disclose any information which has been made “under or for the purposes of the 2002 Directive or the Regulations, unless the disclosure is made with lawful justification”.

A disclosure of information is made with lawful justification only if, and to the extent that:

- (a) the disclosure is made for the purposes of, and is necessary for, the performance of any obligation under the Directive and the Regulations;
- (b) the disclosure is made with the consent of the person to whom, or to whose business, property or other assets, the information relates;
- (c) the disclosure is made for the purposes of any proceedings, whether criminal or civil; or
- (d) having regard to the rights and freedoms or legitimate interests of any person, the disclosure is necessary in the public interest.

The information to which this Regulation refers is clearly wider than mere AIS data and includes a considerable amount of information gathered from the operation of VTS, the movement of ships in and out of UK ports, and the reporting of accidents and incidents

at sea. Trinity House is not covered by this Regulation as it does not specifically gather such information and neither is it an “authority” as set out in the Regulations. This prohibition does not therefore apply to Trinity House. However, depending on the information to be provided by the MCA, then that authority might have to be careful to avoid being in breach of this rule.

2.2 Wireless Telegraphy Act 2006

The long-standing UK Wireless Telegraphy Act 1949 was repealed in 2007 by the Wireless Telegraphy Act 2006. The 2006 Act does not include an equivalent to s5 of the 1949 Act, which related to misleading messages and interception and disclosure of messages. However s95 (1) provides a definition of “broadcast” which would appear to exclude AIS data from any potential broadcasting offences in any event:

S95 (1) “broadcast” means a broadcast by wireless telegraphy of sounds or visual images intended for general reception (whether or not the sounds or images are actually received by anyone), but does not include a broadcast consisting in a message or signal sent in connection with navigation or for the purpose of securing safety.

2.3 Communications Act 2003

The UK Office of Communications (Ofcom) is responsible for the use of the civil radio spectrum in the United Kingdom. The regulations governing maritime radio are, in general, derived from the International Telecommunication Union (ITU) Radio Regulations, the relevant EU Directives and the Wireless Telegraphy Act 1949, as amended. The UK Communications Act 2003 makes it an offence to install or use radio transmission equipment without a valid licence and this includes AIS. However, we see no regulations in the information provided by OFCOM that there are prohibitions on the use or distribution of such information. If such prohibition existed, then it would be unlawful for such information to be provided on internet sites such as AIS Live. No such prohibition exists.

3. Applicable European Law

Directive 2009/17/EC (“the 2009 Directive”) was passed on 23 April 2009 and amended the 2002 Directive in a number of relevant respects.

Article 9 of the 2002 Directive remains in force, stating that Member States shall:

- (a) take all necessary and appropriate measures to provide themselves gradually, with appropriate equipment and shore-based installations for receiving and utilising the AIS information; and
- (b) ensure that the appropriate equipment for relaying the information to, and exchanging it between, the national systems of Member States shall be operational at the latest one year after it has been established in such Member State for the purposes of implementing the Directive; and
- (c) ensure that the coastal stations in charge of monitoring the compliance with vessel traffic services and ships' routing systems have sufficient and properly qualified staff available, as well as appropriate means of communication and ship monitoring and that they operate in accordance with the relevant IMO guidelines.

However, sharing of information is addressed more explicitly in the 2009 Directive. The recitals in particular help to explain the purpose behind the provisions contained in the 2009 Directive. Recital 3 to the 2009 Directive states that:

“Under this Directive Member States that are coastal States should be able to exchange information, which they gather in the course of maritime traffic monitoring missions, which they carry out in their areas of competence. The Community maritime information exchange system ‘SafeSeaNet’, developed by the Commission in agreement with the Member States, comprises, on the one hand, a data exchange network and, on the other hand, a standardisation of the main information available on ships and their cargo (advance notice and reporting). It thus makes it possible to locate at source and communicate to any authority accurate and up-to-date information on ships in European waters, their movements and their dangerous or polluting cargoes, as well as marine incidents”.

The Recitals make particular reference to AIS improving the possibility of monitoring ships carrying dangerous or polluting goods and that AIS have accordingly been integrated into the enacting terms of the Directive.

Recital 23 states that: *“In accordance with Directive 2002/59/EC, Member States and the Commission have made substantial progress towards harmonising electronic data exchange, in particular as regards the transport of dangerous or polluting goods. SafeSeaNet, in development since 2002, should now be established as the reference network at Community level. SafeSeaNet should aim at reducing administrative burdens and costs for industry and the Member States. It should also aim at facilitating the uniform implementation, where appropriate, of international reporting and notification rules.”*

It is to be noted however that participation in SafeSeaNet is by EU and European Economic Area (EEA) countries only.

Importantly Recital 26 also notes that *“Publication of AIS and LRIT data transmitted by ships should not create a risk to safety, security or the protection of the environment”.*

Clearly the recitals cited above are merely explanatory but are a useful interpretative aid regarding the changes made by the 2009 Directive.

The 2009 Directive inserts Article 22a “SafeSeaNet” into the 2002 Directive. Article 22a (1) requires Member States to establish maritime information management systems, at national or local level to process the information referred to in the 2002 Directive.

This therefore includes AIS information, and Article 22a (2) states that, *“the systems set up pursuant to paragraph 1 shall allow the information gathered to be used operationally, and shall satisfy, in particular the conditions laid down in Article 14”.* Article 14 essentially requires Member States to set up communication systems which enable electronic data exchange and 24 hour transmission of this information.

Article 22a(3) states that *“To guarantee an effective exchange of the information referred to in this Directive, Member States shall ensure that national or local systems set up to gather, process and preserve that information can be interconnected with SafeSeaNet. The Commission shall ensure that SafeSeaNet is operational on a 24 hour-a-day basis.”*

A new Annex III lays down a description of and the principles of SafeSeaNet. Paragraph 1 of Annex III describes the concept of SafeSeaNet as being to enable *“the receipt, storage, retrieval and exchange of information for the purposes of maritime safety, port and maritime security, marine environment protection and the efficiency of maritime traffic and maritime transport”*. Essentially under Annex III paragraph 2 Member States are required to establish and maintain a national SafeSeaNet system allowing for the exchange of maritime information between authorised users under the responsibility of a national competent authority. In order to address security concerns there is a new Article. This specifically requires the Commission to investigate possible network and information security problems and propose appropriate amendments to Annex III for improving the security of the network.

Member States are required to bring into force the laws, regulations and administrative provisions necessary to comply with the 2009 Directive by 30 November 2010.

The 2009 Directive does not directly restrict the sharing of such information with other national authorities. On the basis of the provisions implemented by the 2009 Directive, the aim is to facilitate the sharing of information including AIS data. As far as I am aware no implementing legislation has yet been passed in this regard in the UK. The UK Department of Transport has however stated that the 2009 Directive will be transposed by 1 December 2010.

In summary the more recent Directive facilitates AIS data sharing through a central mechanism, albeit participation in SafeSeaNet is by EU and EEA countries only.

Jon Price
Legal & Risk Manager
Trinity House