

Directive 2009/18/EC of the European Parliament and of the Council of 23 April 2009 establishing the fundamental principles governing the investigation of accidents in the maritime transport sector and amending Council Directive 1999/35/EC and Directive 2002/59/EC of the European Parliament and of the Council (Text with EEA relevance)

Article 1

Subject matter

- 1 The purpose of this Directive is to improve maritime safety and the prevention of pollution by ships, and so reduce the risk of future marine casualties, by:
 - a facilitating the expeditious holding of safety investigations and proper analysis of marine casualties and incidents in order to determine their causes; and
 - b ensuring the timely and accurate reporting of safety investigations and proposals for remedial action.
- 2 Investigations under this Directive shall not be concerned with determining liability or apportioning blame. However, Member States shall ensure that the investigative body or entity (hereinafter referred to as the investigative body) is not refraining from fully reporting the causes of a marine casualty or incident because fault or liability may be inferred from the findings.

Article 2

Scope

- 1 This Directive shall apply to marine casualties and incidents that:
 - a involve ships flying the flag of one of the Member States;
 - b occur within Member States' territorial sea and internal waters as defined in UNCLOS;or
 - c involve other substantial interests of the Member States.
- 2 This Directive shall not apply to marine casualties and incidents involving only:
 - a ships of war and troop ships and other ships owned or operated by a Member State and used only on government non-commercial service;
 - b ships not propelled by mechanical means, wooden ships of primitive build, pleasure yachts and pleasure craft not engaged in trade, unless they are or will be crewed and carrying more than 12 passengers for commercial purposes;
 - c inland waterway vessels operating in inland waterways;
 - d fishing vessels with a length of less than 15 metres;
 - e fixed offshore drilling units.

Article 3

Definitions

For the purposes of this Directive:

1. 'IMO Code for the Investigation of Marine Casualties and Incidents' shall mean the Code for the Investigation of Marine Casualties and Incidents annexed to Resolution A.849(20) of the IMO Assembly of 27 November 1997, in its up-to-date version;
2. the following terms shall be understood in accordance with the definitions contained in the IMO Code for the Investigation of Marine Casualties and Incidents:
 - (a) 'marine casualty';
 - (b) 'very serious casualty';
 - (c) 'marine incident';
 - (d) 'marine casualty or incident safety investigation';
 - (e) 'lead investigating State';
 - (f) 'substantially interested State';
3. the term 'serious casualty' shall be understood in accordance with the updated definition contained in Circular MSC-MEPC.3/Circ.3 of the IMO Maritime Safety Committee and Marine Environment Protection Committee of 18 December 2008;
4. 'IMO guidelines on the fair treatment of seafarers in the event of a maritime accident' shall mean the guidelines as annexed to Resolution LEG.3(91) of the IMO Legal Committee of 27 April 2006 and as approved by the Governing Body of the International Labour Organisation in its 296th session of 12 to 16 June 2006;
5. the terms 'ro-ro ferry' and 'high-speed passenger craft' shall be understood in accordance with the definitions contained in Article 2 of Directive 1999/35/EC;
6. 'Voyage data recorder' (hereinafter referred to as 'VDR') shall be understood in accordance with the definition contained in Resolution A.861(20) of the IMO Assembly and Resolution MSC.163(78) of the IMO Maritime Safety Committee;
7. 'safety recommendation' shall mean any proposal made, including for the purposes of registration and control, by:
 - (a) the investigative body of the State conducting, or leading, the safety investigation on the basis of information derived from that investigation; or, where appropriate,
 - (b) the Commission, acting on the basis of an abstract data analysis and the results of safety investigations carried out.

Article 4

Status of safety investigations

1 Member States shall define, in accordance with their legal systems, the legal status of the safety investigation in such a way that such investigations can be carried out as effectively and rapidly as possible.

Member States shall ensure, in accordance with their legislation and, where appropriate, through collaboration with the authorities responsible for the judicial inquiry, that safety investigations are:

- a independent of criminal or other parallel investigations held to determine liability or apportion blame; and
- b not unduly precluded, suspended or delayed by reason of such investigations.

2 The rules to be established by the Member States shall include, in accordance with the permanent cooperation framework referred to in Article 10, provisions for allowing:

- a cooperation and mutual assistance in safety investigations led by other Member States, or the delegation to another Member State of the task of leading such an investigation in accordance with Article 7; and
- b coordination of the activities of their respective investigative bodies to the extent necessary to attain the objective of this Directive.

Article 5

Obligation to investigate

1 Each Member State shall ensure that a safety investigation is carried out by the investigative body referred to in Article 8 after very serious marine casualties:

- a involving a ship flying its flag, irrespective of the location of the casualty;
- b occurring within its territorial sea and internal waters as defined in UNCLOS, irrespective of the flag of the ship or ships involved in the casualty; or
- c involving a substantial interest of the Member State, irrespective of the location of the casualty and of the flag of the ship or ships involved.

2 In addition, in the case of serious casualties, the investigative body shall carry out a preliminary assessment in order to decide whether or not to undertake a safety investigation. Where the investigative body decides not to undertake a safety investigation, the reasons for that decision shall be recorded and notified in accordance with Article 17(3).

In the case of any other marine casualty or incident, the investigative body shall decide whether or not a safety investigation is to be undertaken.

In the decisions referred to in the first and second subparagraphs, the investigative body shall take into account the seriousness of the marine casualty or incident, the type of vessel and/or cargo involved, and the potential for the findings of the safety investigation to lead to the prevention of future casualties and incidents.

3 The scope and practical arrangements for the conduct of safety investigations shall be determined by the investigative body of the lead investigating Member State in cooperation with the equivalent bodies of the other substantially interested States, in such manner as appears to it most conducive to achieving the objective of this Directive, and with a view to preventing future casualties and incidents.

4 When carrying out safety investigations, the investigative body shall follow the common methodology for investigating marine casualties and incidents developed pursuant to Article 2(e) of Regulation (EC) No 1406/2002. Investigators may depart from that methodology in a specific case where this can be justified as necessary, in their professional judgement, and if needed to achieve the aims of the investigation. The Commission shall adopt or modify the methodology for the purposes of this Directive, taking into account any relevant lessons drawn from safety investigations.

That measure, designed to amend non-essential elements of this Directive, *inter alia*, by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 19(3).

5 A safety investigation shall be started as promptly as is practicable after the marine casualty or incident occurs and, in any event, no later than two months after its occurrence.

Article 6

Obligation to notify

A Member State shall require, in the framework of its legal system, that its investigative body be notified without delay, by the responsible authorities and/or by the parties involved, of the occurrence of all casualties and incidents falling within the scope of this Directive.

Article 7

Leading of, and participation in, safety investigations

1 In principle, each marine casualty or incident shall be subject to only one investigation carried out by a Member State or a lead investigating Member State with the participation of any other substantially interested Member State.

In cases of safety investigations involving two or more Member States, the Member States concerned shall therefore cooperate with a view to rapidly agreeing which of them is to be the lead investigating Member State. They shall make every effort to agree on the procedures to investigate. In the framework of this agreement, other substantially interested States shall have equal rights and access to witnesses and evidence as the Member State conducting the safety investigation. They shall also have the right to see their point of view taken into consideration by the lead investigating Member State.

The conduct of parallel safety investigations into the same marine casualty or incident shall be strictly limited to exceptional cases. In such cases, Member States shall notify the Commission of the reasons for conducting such parallel investigations. Member States conducting parallel safety investigations shall cooperate with each other. In particular, the investigative bodies involved shall exchange any pertinent information gathered in the course of their respective investigations, in particular in order to reach, as far as possible, shared conclusions.

Member States shall abstain from any measure which could unduly preclude, suspend or delay the conduct of a safety investigation falling within the scope of this Directive.

2 Notwithstanding paragraph 1, each Member State shall remain responsible for the safety investigation and coordination with other substantially interested Member States until such time as it is mutually agreed which of them is to be the lead investigating State.

3 Without prejudice to its obligations under this Directive and international law, a Member State may, on a case-by-case basis, delegate by mutual agreement to another Member State the task of leading a safety investigation or specific tasks for the conduct of such an investigation.

4 When a ro-ro ferry or high-speed passenger craft is involved in a marine casualty or incident, the safety investigation procedure shall be launched by the Member State in whose territorial sea or internal waters as defined in UNCLOS the accident or incident occurs or, if occurring in other waters, by the last Member State visited by that ferry or craft. That State shall remain responsible for the safety investigation and coordination with other substantially

interested Member States until it is mutually agreed which of them is to be the lead investigating State.

Article 8

Investigative bodies

1 Member States shall ensure that safety investigations are conducted under the responsibility of an impartial permanent investigative body, endowed with the necessary powers, and by suitably qualified investigators, competent in matters relating to marine casualties and incidents.

In order to carry out a safety investigation in an unbiased manner, the investigative body shall be independent in its organisation, legal structure and decision-making of any party whose interests could conflict with the task entrusted to it.

Landlocked Member States which have neither ships nor vessels flying their flag will identify an independent focal point to cooperate in the investigation pursuant to Article 5(1)(c).

2 The investigative body shall ensure that individual investigators have a working knowledge of, and practical experience in, those subject areas pertaining to their normal investigative duties. Additionally, the investigative body shall ensure ready access to appropriate expertise, as necessary.

3 The activities entrusted to the investigative body may be extended to the gathering and analysis of data relating to maritime safety, in particular for prevention purposes, insofar as these activities do not affect its independence or entail responsibility in regulatory, administrative or standardisation matters.

4 Member States, acting in the framework of their respective legal systems, shall ensure that the investigators of its investigative body, or of any other investigative body to which it has delegated the task of safety investigation, where appropriate in collaboration with the authorities responsible for the judicial inquiry, be provided with any information pertinent to the conduct of the safety investigation and therefore be authorised to:

- a have free access to any relevant area or casualty site as well as to any ship, wreck or structure including cargo, equipment or debris;
- b ensure immediate listing of evidence and controlled search for and removal of wreckage, debris or other components or substances for examination or analysis;
- c require examination or analysis of the items referred to in point (b), and have free access to the results of such examinations or analysis;
- d have free access to, copy and have use of any relevant information and recorded data, including VDR data, pertaining to a ship, voyage, cargo, crew or any other person, object, condition or circumstance;
- e have free access to the results of examinations of the bodies of victims or of tests made on samples taken from the bodies of victims;
- f require and have free access to the results of examinations of, or tests made on samples taken from, people involved in the operation of a ship or any other relevant person;
- g interview witnesses in the absence of any person whose interests could be considered as hampering the safety investigation;
- h obtain survey records and relevant information held by the flag State, the owners, classification societies or any other relevant party, whenever those parties or their representatives are established in the Member State;

- i call for the assistance of the relevant authorities in the respective States, including flag-State and port-State surveyors, coastguard officers, vessel traffic service operators, search and rescue teams, pilots or other port or maritime personnel.

5 The investigative body shall be enabled to respond immediately on being notified at any time of a casualty, and to obtain sufficient resources to carry out its functions independently. Its investigators shall be afforded status giving them the necessary guarantees of independence.

6 The investigating body may combine its tasks under this Directive with the work of investigating occurrences other than marine casualties on condition that such investigations do not endanger its independence.

Article 9

Confidentiality

Without prejudice to Directive 95/46/EC, Member States, acting in the framework of their legal systems, shall ensure that the following records are not made available for purposes other than the safety investigation, unless the competent authority in that Member State determines that there is an overriding public interest in the disclosure of:

- (a) all witness evidence and other statements, accounts and notes taken or received by the investigative body in the course of the safety investigation;
- (b) records revealing the identity of persons who have given evidence in the context of the safety investigation;
- (c) information relating to persons involved in a marine casualty or incident which is of a particularly sensitive and private nature, including information concerning their health.

Article 10

Permanent cooperation framework

1 Member States shall, in close cooperation with the Commission, establish a permanent cooperation framework enabling their respective investigative bodies to cooperate among themselves to the extent necessary to attain the objective of this Directive.

2 The rules of procedure of the permanent cooperation framework and the organisation arrangements required therefor shall be decided in accordance with the regulatory procedure referred to in Article 19(2).

3 Within the permanent cooperation framework, the investigative bodies in the Member States shall agree, in particular, upon the best modalities of cooperation in order to:

- a enable investigative bodies to share installations, facilities and equipment for the technical investigation of wreckage and ship's equipment and other objects relevant to the safety investigation, including the extraction and evaluation of information from VDRs and other electronic devices;
- b provide each other with the technical cooperation or expertise needed to undertake specific tasks;
- c acquire and share information relevant for analysing casualty data and making appropriate safety recommendations at Community level;

- d draw up common principles for the follow-up of safety recommendations and for the adaptation of investigative methods to the development of technical and scientific progress;
- e manage appropriately the early alerts referred to in Article 16;
- f establish confidentiality rules for the sharing, in the respect of national rules, of witness evidence and the processing of data and other records referred to in Article 9, including in relations with third countries;
- g organise, where appropriate, relevant training activities for individual investigators;
- h promote cooperation with the investigative bodies of third countries and with the international maritime accidents investigation organisations in the fields covered by this Directive;
- i provide investigative bodies conducting safety investigations with any pertinent information.

Article 11

Costs

- 1 Where safety investigations involve two or more Member States, the respective activities shall be free of charge.
- 2 Where assistance is requested of a Member State that is not involved in the safety investigation, Member States shall agree on the reimbursement of costs incurred.

Article 12

Cooperation with substantially interested third countries

- 1 Member States shall cooperate, to the maximum extent possible, with other substantially interested third countries in safety investigations.
- 2 Substantially interested third countries shall, by mutual agreement, be allowed to join a safety investigation led by a Member State under this Directive at any stage of the investigation.
- 3 The cooperation of a Member State in a safety investigation conducted by a substantially interested third country shall be without prejudice to the conduct and reporting requirements of safety investigations under this Directive. Where a substantially interested third country is leading a safety investigation involving one or more Member States, Member States may decide not to carry out a parallel safety investigation, provided that the safety investigation led by the third country is conducted in accordance with the IMO Code for the Investigation of Marine Casualties and Incidents.

Article 13

Preservation of evidence

Member States shall adopt measures to ensure that the parties concerned by casualties and incidents under the scope of this Directive make every effort to:

- (a) save all information from charts, log books, electronic and magnetic recording and video tapes, including information from VDRs and other electronic devices relating to the period preceding, during and after an accident;

- (b) prevent the overwriting or other alteration of such information;
- (c) prevent interference with any other equipment which might reasonably be considered pertinent to the safety investigation of the accident;
- (d) collect and preserve all evidence expeditiously for the purposes of the safety investigations.

Article 14

Accident reports

1 Safety investigations carried out under this Directive shall result in a published report presented in a format defined by the competent investigative body and in accordance with the relevant sections of Annex I.

Investigative bodies may decide that a safety investigation which does not concern a very serious or, as the case may be, a serious marine casualty and the findings of which do not have the potential to lead to the prevention of future casualties and incidents shall result in a simplified report to be published.

2 Investigative bodies shall make every effort to make the report referred to in paragraph 1, including its conclusions and any possible recommendations, available to the public, and especially to the maritime sector, within 12 months of the date of the casualty. If it is not possible to produce the final report within that time, an interim report shall be published within 12 months of the date of the casualty.

3 The investigative body of the lead investigating Member State shall send a copy of the final, simplified or interim report to the Commission. It shall take into account the possible technical observations of the Commission on final reports not affecting the substance of the findings for improving the quality of the report in the way most conducive to achieving the objective of this Directive.

Article 15

Safety recommendations

1 Member States shall ensure that safety recommendations made by the investigative bodies are duly taken into account by the addressees and, where appropriate, be given an adequate follow-up in accordance with Community and international law.

2 Where appropriate, an investigative body or the Commission shall make safety recommendations on the basis of an abstract data analysis and of the overall results of safety investigations carried out.

3 A safety recommendation shall in no circumstances determine liability or apportion blame for a casualty.

Article 16

Early alert system

Without prejudice to its right to give an early alert, the investigative body of a Member State shall, at any stage of a safety investigation, if it takes the view that urgent action is

needed at Community level to prevent the risk of new casualties, inform the Commission without delay of the need to give an early alert.

If necessary, the Commission shall issue a note of warning for the attention of the responsible authorities in all the other Member States, the shipping industry, and to any other relevant party.

Article 17

European database for marine casualties

1 Data on marine casualties and incidents shall be stored and analysed by means of a European electronic database to be set up by the Commission, which shall be known as the European Marine Casualty Information Platform (EMCIP).

2 Member States shall notify the Commission of the entitled authorities that will have access to the database.

3 The investigative bodies of the Member States shall notify the Commission on marine casualties and incidents in accordance with the format in Annex II. They shall also provide the Commission with data resulting from safety investigations in accordance with the EMCIP database scheme.

4 The Commission and the Member States shall develop the database scheme and a method for the notification of data within the appropriate timescale.

Article 18

Fair treatment of seafarers

In accordance with their national law, Member States shall take into account the relevant provisions of the IMO guidelines on the fair treatment of seafarers in the event of a maritime accident in the waters under their jurisdiction.

Article 19

Committee

1 The Commission shall be assisted by the Committee on Safe Seas and the Prevention of Pollution from Ships (COSS) established by Regulation (EC) No 2099/2002 of the European Parliament and the Council⁽¹⁾.

2 Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at two months.

3 Where reference is made to this paragraph, Article 5a(1) to (4) and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

Article 20

Amending powers

The Commission may update definitions in this Directive, and the references made to Community acts and to IMO instruments in order to bring them into line with Community or IMO measures which have entered into force, subject to observance of the limits of this Directive.

Those measures, designed to amend non-essential elements of this Directive, *inter alia*, by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 19(3).

Acting in accordance with the same procedure, the Commission may also amend the Annexes.

Amendments to the IMO Code for the Investigation of Marine Casualties and Incidents may be excluded from the scope of this Directive pursuant to Article 5 of Regulation (EC) No 2099/2002.

Article 21

Additional measures

Nothing contained in this Directive shall prevent a Member State from taking additional measures on maritime safety which are not covered by it, provided that such measures neither infringe this Directive nor in any way adversely affect the attainment of its objective, nor jeopardise the achievement of its objective.

Article 22

Penalties

Member States shall lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive.

Article 23

Implementation report

The Commission shall, every five years, submit a report to the European Parliament and the Council on the implementation of, and compliance with, this Directive, and, if necessary, propose further measures in the light of the recommendations set out therein.

Article 24

Amendments to existing acts

- 1 Article 12 of Directive 1999/35/EC shall be deleted.
- 2 Article 11 of Directive 2002/59/EC shall be deleted.

Article 25

Transposition

1 Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 17 June 2011.

When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2 Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 26

Entry into force

This Directive shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

Article 27

Addressees

This Directive is addressed to the Member States.

Done at Strasbourg, 23 April 2009.

For the European Parliament

The President

H.-G. PÖTTERING

For the Council

The President

P. NEČAS

Status: This is the original version (as it was originally adopted).

(1) OJ L 324, 29.11.2002, p. 1.