

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)

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)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 80(2) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee<sup>(1)</sup>,

Having regard to the opinion of the Committee of the Regions<sup>(2)</sup>,

Acting in accordance with the procedure laid down in Article 251 of the Treaty, in the light of the joint text approved by the Conciliation Committee on 3 February 2009<sup>(3)</sup>,

Whereas:

- (1) A high general level of safety should be maintained in maritime transport in Europe and every effort should be made to reduce the number of marine casualties and incidents.
- (2) The expeditious holding of technical investigations into marine casualties improves maritime safety, as it helps to prevent the recurrence of such casualties resulting in loss of life, loss of ships and pollution of the marine environment.
- (3) The European Parliament, in its resolution of 21 April 2004 on improving safety at sea<sup>(4)</sup>, has urged the Commission to present a proposal for a directive on investigating shipping accidents.
- (4) Article 2 of the United Nations Convention on the Law of the Sea of 10 December 1982 (hereinafter referred to as UNCLOS) establishes the right of coastal States to investigate the cause of any marine casualty occurring within their territorial seas which might pose a risk to life or to the environment, involve the coastal State's search and rescue authorities, or otherwise affect the coastal State.

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- (5) Article 94 of UNCLOS establishes that flag States are to cause an inquiry to be held, by or before a suitably qualified person or persons, into certain casualties or incidents of navigation on the high seas.
- (6) Regulation I/21 of International Convention for the Safety of Life at Sea of 1 November 1974 (hereinafter referred to as SOLAS 74), the International Convention of Load Lines of 5 April 1966 and the International Convention for the Prevention of Pollution from Ships of 2 November 1973 lay down the responsibilities of flag States to conduct casualty investigations and to supply the International Maritime Organisation (IMO) with relevant findings.
- (7) The Code for the Implementation of Mandatory IMO Instruments annexed to Resolution A.996(25) of the IMO Assembly of 29 November 2007 recalls the obligation of flag States to ensure that marine safety investigations are conducted by suitably qualified investigators, competent in matters relating to marine casualties and incidents. That Code further requires flag States to be prepared to provide qualified investigators for that purpose, irrespective of the location of the casualty or incident.
- (8) Account should be taken of the Code for the Investigation of Marine Casualties and Incidents annexed to Resolution A.849(20) of the IMO Assembly of 27 November 1997 (hereinafter referred to as the IMO Code for the Investigation of Marine Casualties and Incidents), which provides for implementation of a common approach to the safety investigation of marine casualties and incidents and for cooperation between States in identifying the contributing factors leading to marine casualties and incidents. Account should also be taken of Resolution A.861(20) of the IMO Assembly of 27 November 1997 and Resolution MSC.163(78) of the IMO Maritime Safety Committee of 17 May 2004, which provide a definition of voyage data recorders.
- (9) Seafarers are recognised as a special category of worker and, given the global nature of the shipping industry and the different jurisdictions with which they may be brought into contact, need special protection, especially in relation to contacts with public authorities. In the interests of increased maritime safety, seafarers should be able to rely on fair treatment in the event of a maritime accident. Their human rights and dignity should be preserved at all times and all safety investigations should be conducted in a fair and expeditious manner. To that end, Member States should, in accordance with their national legislation, further take into account the relevant provisions of the IMO guidelines on the fair treatment of seafarers in the event of a maritime accident.
- (10) Member States, acting in the framework of their legal systems, should protect witness statements following an accident and prevent them from being used for purposes other than safety investigations, with the objective of avoiding any discriminatory or retaliatory measures being taken against witnesses because of their participation in the investigations.
- (11) Council Directive 1999/35/EC of 29 April 1999 on a system of mandatory surveys for the safe operation of regular ro-ro ferry and high-speed passenger craft services<sup>(5)</sup> requires Member States to define, in the framework of their respective legal systems, a legal status that will enable them and any other substantially interested Member State

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- to participate, to cooperate in, or, where provided for under the IMO Code for the Investigation of Marine Casualties and Incidents, to conduct any marine casualty or incident investigation involving a ro-ro ferry or high-speed passenger craft.
- (12) Directive 2002/59/EC of the European Parliament and of the Council of 27 June 2002 establishing a Community vessel traffic monitoring and information system<sup>(6)</sup> requires Member States to comply with the IMO Code for the Investigation of Marine Casualties and Incidents and ensure that the findings of the accident investigations are published as soon as possible after its conclusion.
- (13) Conducting safety investigations into casualties and incidents involving seagoing vessels, or other vessels in ports or other restricted maritime areas, in an unbiased manner is of paramount importance in order to effectively establish the circumstances and causes of such casualties or incidents. Such investigations should therefore be carried out by qualified investigators under the control of an independent body or entity endowed with the necessary powers in order to avoid any conflict of interest.
- (14) Member States should, in compliance with their legislation as regards the powers of the authorities responsible for the judicial inquiry and in collaboration with those authorities, where appropriate, ensure that those responsible for the technical inquiry are allowed to carry out their tasks under the best possible conditions.
- (15) This Directive should be without prejudice to Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data<sup>(7)</sup>.
- (16) Member States should ensure that their legal systems enable them and any other substantially interested Member States to participate or cooperate in, or conduct, accident investigations on the basis of the provisions of the IMO Code for the Investigation of Marine Casualties and Incidents.
- (17) In principle, each marine casualty or incident should 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 States. In exceptional duly justified cases involving two or more Member States in connection with the flag of the ship concerned, the location of the casualty or the nationality of the victims, parallel investigations could be conducted.
- (18) A Member State may delegate to another Member State the task of leading a marine casualty or incident safety investigation (hereinafter referred to as safety investigation) or specific tasks of such investigation, if mutually agreed.
- (19) Member States should make every effort not to charge for costs for assistance requested in the framework of safety investigations involving two or more Member States. Where assistance is requested from a Member State that is not involved in the safety investigation, Member States should agree on the reimbursement of costs incurred.
- (20) Under Regulation V/20 of SOLAS 74, passenger ships and ships other than passenger ships of 3 000 gross tonnage and upwards constructed on or after 1 July 2002 must carry voyage data recorders to assist in accident investigations. Given its importance

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in the formulation of a policy to prevent shipping accidents, such equipment should be systematically required on board ships making national or international voyages which call at Community ports.

- (21) The data provided by a voyage data recording system, as well as by other electronic devices, can be used both retrospectively after a marine casualty or incident to investigate its causes and preventively to gain experience of the circumstances capable of leading to such events. Member States should ensure that such data, when available, are properly used for both purposes.
- (22) Regulation (EC) No 1406/2002 of the European Parliament and of the Council<sup>(8)</sup> requires the European Maritime Safety Agency (hereinafter referred to as the Agency) to work with the Member States to develop technical solutions and provide technical assistance related to the implementation of Community legislation. In the field of accident investigation, the Agency has the specific task of facilitating cooperation between the Member States and the Commission in the development, with due regard to the different legal systems in the Member States, of a common methodology for investigating maritime accidents according to agreed international principles.
- (23) In accordance with Regulation (EC) No 1406/2002, the Agency facilitates cooperation in the provision of support given by the Member States in activities concerning investigations, and in analysing existing accident investigation reports.
- (24) Any relevant lessons drawn from accident investigations should be taken into account in the development or modification of a common methodology for investigating marine casualties and incidents.
- (25) The safety recommendations resulting from a safety investigation should be duly taken into account by the Member States and the Community.
- (26) Since the aim of the technical safety investigation is the prevention of marine casualties and incidents, the conclusions and the safety recommendations should in no circumstances determine liability or apportion blame.
- (27) Since the objective of this Directive, namely to improve maritime safety in the Community and thereby reduce the risk of future marine casualties, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or the effects of the action, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.
- (28) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission<sup>(9)</sup>.
- (29) In particular, the Commission should be empowered to amend this Directive in order to apply subsequent amendments to the international conventions, protocols, codes and resolutions related thereto and to adopt or modify the common methodology for investigating marine casualties and incidents. Since those measures are of general

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scope and are designed to amend non-essential elements of this Directive, inter alia, by supplementing it with new non-essential elements, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.

- (30) In accordance with point 34 of the Interinstitutional Agreement on better law-making<sup>(10)</sup>, Member States are encouraged to draw up, for themselves and in the interests of the Community, their own tables illustrating, as far as possible, the correlation between this Directive and the transposition measures, and to make them public,

HAVE ADOPTED THIS DIRECTIVE:

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- (1) [OJ C 318, 23.12.2006, p. 195.](#)
- (2) [OJ C 229, 22.9.2006, p. 38.](#)
- (3) Opinion of the European Parliament of 25 April 2007 ([OJ C 74 E, 30.3.2008, p. 546](#)), Council Common Position of 6 June 2008 ([OJ C 184 E, 22.7.2008, p. 23](#)), Position of the European Parliament of 24 September 2008 (not yet published in the Official Journal), Council Decision of 26 February 2009 and Legislative Resolution of the European Parliament of 11 March 2009 (not yet published in the Official Journal).
- (4) [OJ C 104 E, 30.4.2004, p. 730.](#)
- (5) [OJ L 138, 1.6.1999, p. 1.](#)
- (6) [OJ L 208, 5.8.2002, p. 10.](#)
- (7) [OJ L 281, 23.11.1995, p. 31.](#)
- (8) [OJ L 208, 5.8.2002, p. 1.](#)
- (9) [OJ L 184, 17.7.1999, p. 23.](#)
- (10) [OJ C 321, 31.12.2003, p. 1.](#)