




Procedure file

Basic information	
COD - Ordinary legislative procedure (ex-codecision procedure) Directive 2005/0240(COD)	Procedure completed
Investigation of accidents in the maritime transport sector Amending Directive 1999/35/EC 1998/0064(SYN) Amending Directive 2002/59/EC 2000/0325(COD)	
Subject 3.20.03.01 Maritime safety 3.70.10 Man-made disasters, industrial pollution and accidents	

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	CODE EP Delegation to Conciliation Committee		
	Former committee responsible		
	TRAN Transport and Tourism		
Council of the European Union	TRAN Transport and Tourism		
	Former committee for opinion		
	ENVI Environment, Public Health and Food Safety	The committee decided not to give an opinion.	
	Council configuration	Meeting	Date
	Justice and Home Affairs (JHA)	2927	26/02/2009
	Justice and Home Affairs (JHA)	2908	27/11/2008
	Transport, Telecommunications and Energy	2875	06/06/2008
	Transport, Telecommunications and Energy	2805	06/06/2007
European Commission	Commission DG	Commissioner	
	Energy and Transport	TAJANI Antonio	

Key events			
23/11/2005	Legislative proposal published	COM(2005)0590	Summary
16/02/2006	Committee referral announced in Parliament, 1st reading		
27/02/2007	Vote in committee, 1st reading		Summary
27/03/2007	Committee report tabled for plenary, 1st reading	A6-0079/2007	
24/04/2007	Debate in Parliament		
25/04/2007	Results of vote in Parliament		
25/04/2007	Decision by Parliament, 1st reading	T6-0147/2007	Summary
06/06/2008	Council position published	05721/5/2008	Summary
19/06/2008	Committee referral announced in		

	Parliament, 2nd reading		
04/09/2008	Vote in committee, 2nd reading		Summary
08/09/2008	Committee recommendation tabled for plenary, 2nd reading	A6-0332/2008	
23/09/2008	Debate in Parliament		
24/09/2008	Decision by Parliament, 2nd reading	T6-0444/2008	Summary
27/11/2008	Parliament's amendments rejected by Council		
08/12/2008	Formal meeting of Conciliation Committee		
03/02/2009	Final decision by Conciliation Committee		
03/02/2009	Joint text approved by Conciliation Committee co-chairs	03723/2008	
25/02/2009	Report tabled for plenary, 3rd reading	A6-0101/2009	
26/02/2009	Decision by Council, 3rd reading		
10/03/2009	Debate in Parliament		
11/03/2009	Decision by Parliament, 3rd reading	T6-0109/2009	Summary
22/04/2009	End of procedure in Parliament		
23/04/2009	Final act signed		
28/05/2009	Final act published in Official Journal		

Technical information

Procedure reference	2005/0240(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Directive
	Amending Directive 1999/35/EC 1998/0064(SYN) Amending Directive 2002/59/EC 2000/0325(COD)
Stage reached in procedure	Procedure completed
Committee dossier	CODE/6/67461

Documentation gateway

Legislative proposal	COM(2005)0590	23/11/2005	EC	Summary
Document attached to the procedure	SEC(2005)1515	23/11/2005	EC	Summary
Committee draft report	PE378.593	20/09/2006	EP	
Committee report tabled for plenary, 1st reading/single reading	A6-0079/2007	27/03/2007	EP	
Text adopted by Parliament, 1st reading/single reading	T6-0147/2007	25/04/2007	EP	Summary

Commission response to text adopted in plenary	SP(2007)2625/2	31/05/2007	EC	
Council position	05721/5/2008	06/06/2008	CSL	Summary
Commission communication on Council's position	COM(2008)0206	11/06/2008	EC	Summary
Committee draft report	PE408.017	26/06/2008	EP	
Committee recommendation tabled for plenary, 2nd reading	A6-0332/2008	08/09/2008	EP	
Text adopted by Parliament, 2nd reading	T6-0444/2008	24/09/2008	EP	Summary
Commission opinion on Parliament's position at 2nd reading	COM(2008)0827	08/12/2008	EC	Summary
Joint text approved by Conciliation Committee co-chairs	03723/2008	03/02/2009	CSL/EP	
Report tabled for plenary by Parliament delegation to Conciliation Committee, 3rd reading	A6-0101/2009	25/02/2009	EP	
Text adopted by Parliament, 3rd reading	T6-0109/2009	11/03/2009	EP	Summary
Draft final act	03723/2008/LEX	23/04/2009	CSL	
Follow-up document	SWD(2018)0233	16/05/2018	EC	

Additional information

National parliaments	IPEX
European Commission	EUR-Lex

Final act

[Directive 2009/18](#)
[OJ L 131 28.05.2009, p. 0114](#) Summary

Investigation of accidents in the maritime transport sector

COMMISSION'S IMPACT ASSESSMENT

For further information regarding the context of this issue, please refer to the summary of the Commission's proposal for a Directive of the European Parliament and of the Council establishing the fundamental principles governing the investigation of accidents in the maritime transport sector and amending Directives 1999/35/EC and 2002/59/EC - COM(2005)0590.

1- POLICY OPTIONS AND IMPACTS

The Commission considered four main policy options:

1.1- Option 1: maintaining the current status quo (?do nothing?): The first option is to discard any action at Community level in respect of marine casualty investigations. The ?no policy change? option would perpetuate the current situation. This would mean that none of the very serious problems in this field would be addressed.

1.2- Option 2: a non-legislative Community initiative encouraging the Member States to apply the recommendations in the IMO Code voluntarily: This policy option would consist of a Community proposal to foster, develop and sustain a cooperative relationship among national marine investigators for the purpose of improving and sharing of knowledge in a European forum. Such a proposal could be based on a ?Memorandum of Understanding? to be subscribed by the interested parties (voluntary cooperation agreement approach).

1.3- Option 3: a submission to the IMO from the 25 EU Member States to amend the international conventions in order to establish a formal obligation to carry out technical investigations following maritime incidents: The third option would be to propose a joint, unanimous position of all the EEA Member States and of the European Commission, for the purposes of promoting the amendment of the relevant instruments of the International Maritime Organisation. Such an amendment would aim, inter alia, to:

? introduce a number of amendments to the Code for the Investigation of Marine Casualties and Incidents,

? make the Code mandatory for all the nations in the world that are parties to the Safety of Life at Sea Convention (SOLAS).

This option would require discussion at the European Council with a view to obtaining the voluntary agreement of all the Member States to follow the position suggested by the Commission. Subsequently, it would require the support of a significant number of third countries at discussions within the International Maritime Organisation.

1.4- Option 4: developing clear guidelines at Community level on carrying out technical investigations and on feedback of experience following all serious maritime incidents: This would involve a proposal to the European Parliament and Council for the adoption, on the basis of Article 80(2) of the EC Treaty, of a new Directive introducing into Community law the principles governing the technical investigation of accidents in the maritime transport sector. This Directive would aim to complete the existing EU Maritime Safety Framework by ensuring that marine casualty investigations provide adequate and timely feedback for the adoption of corrective action, at the appropriate level, for preventing loss of life at sea and pollution of the marine environment.

CONCLUSION: Option 4 is the Commission's preferred option. This option may lead to the quickest results, with the EU providing for a legislative framework for effectively implementing the instruments existing at international level to ensure the speedy and independent investigation of serious and very serious marine casualties. The Directive would establish the minimum requirements that all the EEA Member States should respect in that regard.

IMPACTS

Direct impacts

In terms of main direct economic impact, the implementation of the measures envisaged in the Commission's proposal would require a budgetary and organisational effort from the Member States' administrations which would vary from one Member State to another. Clearly, Member States with a large registered fleet and/or with coastal regions with heavy maritime traffic and/or other interests in the shipping sector would be the most affected.

As to the likely direct impact on the industry, the measures required to achieve the aims of the proposal would be of no cost to the shipping industry. It is in the industry's interests that investigations are undertaken in a timely and thorough fashion. Furthermore, the proposal is not seen as an administrative burden for the industry as it would become a more effective and uniformly applied tool for accident investigation.

Indirect impacts

Economic impacts:

? Shipping industry: On the negative side, possible cost increases due to the introduction of corrective measures for preventing accidents (e.g. manning requirements, improved equipment or ship design specifications, etc.) could arise. On the positive side, there would be better vessel design, maintenance and operational requirements; wider and quicker notification of potential marine industry risk factors, enhanced cooperation between the industry and the investigating authorities, legal certainty about the scope and purposes of safety investigations, ability to share safety information for preventing the risk of similar accidents in other ships.

? Maritime Administrations: a negative impact for some Member States' and some third countries' flag administrations arising from the cost of building up an adequate investigative capacity. Positive impacts would include better performance in the prevention of accidents and incidents; improved knowledge for surveying accident-prone ships; enhanced cooperation with other Member States and with third countries; a uniform approach to casualty investigation based on internationally agreed principles; an understanding of underlying causal factors and a better appreciation of the effectiveness of existing safety provisions, i.e. better links between the causes of accidents and regulatory action.

Other economic impacts:

? Overall: An improved state of operation of the fleet serving the EU (and of the world-fleet as a whole);

? Better protection of commercial interests (shippers, insurers, ship finance, etc)

? A safety system adapted to the risks and needs of the 21st century maritime transport system;

? Huge savings in financial compensation for loss of lives and environmental damage.

Environmental impacts:

The system is designed to be effective in preventing the recurrence of marine environment catastrophes.

2- FOLLOW-UP

The Commission will monitor the effective implementation by the Member States of the administrative provisions necessary to comply with the proposed Directive. Member States would be under an obligation to communicate to the Commission the text of those provisions and a correlation table between those provisions and the Directive.

On a more operational level, the European Maritime Safety Agency is well placed to monitor the fulfilment of the obligations of the Member States in respect of the conduct of marine casualty investigations covered by the directive, the reporting requirements, issues related to methodology or proposals for corrective actions, at the appropriate level.

The reports and surveys of the International Maritime Organisation regarding performance of the Administrations in fulfilling the requirements of the IMO Code would also provide key information to monitor achievement of the expected results.

Investigation of accidents in the maritime transport sector

PURPOSE : to establish the basic principles which Member States should follow for technical investigations following maritime incidents and amending Directives 1999/35/EC and 2002/59/EC PROPOSED ACT : Directive of the European Parliament and of the Council.

CONTENT : the difficulties encountered when investigating the sinking of the Erika and the Prestige oil

tankers revealed the lack of clear guidelines at European level on how to carry out technical investigations and provide feedback to prevent the risk of serious maritime accidents. This represents a major gap which has been found in the EU's maritime safety legislation. The biggest concern in the international maritime sector is still the inability of some flag States to carry out investigations directly following maritime incidents. The States under whose flags most accidents happen seem to be those which carry out proportionally fewest investigations or at any rate which disseminate the least information about the findings of their investigations and draw fewest concrete conclusions from them, and the competent international bodies do nothing about this.

The main points of the proposal are as follows:

- the general objective of the proposal is to improve maritime safety and prevent future disasters. As in the aviation sector, the aim of technical investigations in the maritime area is not to determine, and far less to apportion civil or criminal liability, but to establish the circumstances and to research the causes of maritime incidents in order to draw all possible lessons from them and thereby improve maritime safety;
- the proposal was drawn up in compliance with the rules of international maritime law and in accordance with the definitions and recommendations in the IMO Code for the Investigation of Marine Accidents. It introduces into Community law the obligation for Member States to carry out technical investigations after maritime accidents and the obligation to report. The requires that a Member State's investigative body be notified without delay, by the responsible authorities and/or by the parties involved, of the occurrence of all casualties, incidents and distress alerts falling within the scope of the Directive;
- the proposal gives a status to technical investigations in the maritime area by expanding or creating specialised bodies. Member States must ensure that marine casualty or incident safety investigations are conducted under the responsibility of an impartial permanent investigative body or entity, to be known as 'the investigative body';
- the rules to be established by the Member States must include provisions for allowing cooperation and mutual assistance in marine casualty led by other Member States and coordination, in close cooperation with the Commission, of the activities of their respective investigative bodies.
- technical investigators will have investigative powers over third parties;
- there is a provision on provision on cooperation between Member States and third countries;
- Member States, in close cooperation with the Commission, must establish a permanent cooperation framework enabling their respective marine casualty or incident safety investigative bodies to cooperate among themselves and with the Commission to the extent necessary to attain the objectives of the Directive;
- the proposal also aims to ensure that evidence is preserved and to develop procedures for protecting, safeguarding and compiling the investigation reports and providing feedback;

Lastly, the proposal takes account of the role the European Maritime Safety Agency will play in this area in accordance with the provisions of Regulation 1406/2002/EC.

FINANCIAL IMPLICATIONS :

The amount of administrative expenditure not included in the reference amount and the cost of human resources amounts to EUR 324 000 over six years (EUR 54 000 per annum for an official working part time).

Investigation of accidents in the maritime transport sector

The committee adopted the report by Jaromir KOHLICEK (GUE/NGL, CZ) amending - under the 1st reading of the codecision procedure - the proposed directive establishing the fundamental principles governing the investigation of accidents in the maritime transport sector. The amendments were aimed at boosting the independence of permanent investigation bodies and distinguishing more clearly between technical and criminal investigations. The committee also highlighted the importance of rapid alert measures in case of accident or incident .

Among other recommendations, MEPs proposed introducing a new article requiring Member States to comply with the IMO guidelines on the fair treatment of seafarers in the event of a maritime accident. Lastly, they wanted the Commission to report to Parliament every three years on the degree of implementation and compliance with the directive, and set out any further steps felt to be necessary.

Investigation of accidents in the maritime transport sector

The European Parliament adopted a resolution drafted by Jaromir KOHLICEK (GUE/NGL, CZ) making several amendments to the proposal. The main ones are as follows:

- Parliament emphasised the need to ensure the independence of the body or entity carrying out the investigation;
- the Agency must, in the light of the results of the analyses of previous accidents, incorporate into the joint methodology any elements arising from the analyses which may be of interest for the prevention of new disasters and the improvement of maritime safety in the EU;
- the IMO guidelines on the fair treatment of seafarers in the event of a maritime accident counteract the risk of the criminalisation of the captain and the crew. They could give them more confidence in investigation methods, and should therefore be used by the Member States. Accordingly, Member States shall comply with the IMO guidelines on the fair treatment of seafarers in the event of a maritime accident;
- investigations under the Directive shall not be concerned with determining liability nor apportioning blame;
- the definition of "safety recommendation" was amended;

- Member States shall ensure that in the course of accident investigations, witnesses are protected from having their statements being obtained by third country authorities so as to prevent such statements or information from being used in criminal investigations in the countries in question;
- a safety investigation shall be started as promptly as is practicable after the marine casualty or incident occurs and no later than two months after its occurrence;
- should two or more Member States concerned not determine which Member State is to lead the investigation, they shall immediately implement a recommendation by the Commission on the matter, based on an opinion from the Agency;
- Parliament deleted a clause stating that information can only be made available for purposes other than the safety investigation if the appropriate judicial authority in that State determines that the advantage of disclosure outweighs the adverse impact on that investigation or on any future investigations;
- every three years, the Commission shall provide information to the European Parliament in the form of a report which shall set out the degree of implementation and compliance with the provisions of the Directive, as well as the further steps considered necessary in the light of the recommendations set out in the report;
- the Commission, acting with the assistance of the Agency, shall incorporate into the joint methodology the conclusions of the accident reports and the safety recommendations contained therein.

Investigation of accidents in the maritime transport sector

The Council common position adopted unanimously, accepts in total, in part or in principle, 6 amendments adopted by the European Parliament at 1st reading. 17 amendments were not incorporated in the common position.

The Council agrees with the objective and most of the main elements of the Commission proposal that provide an adequate mechanism for ensuring appropriate return of experience from accidents and incidents in order to prevent other casualties. The approach adopted by the Council required, however, some modifications of the text, in particular with a view to ensuring the independence and discretion powers of the investigative body.

Flexibility: the Council is of the view that, in coherence with the nature of the legal act, Member States, and in particular their respective investigative bodies, should retain certain flexibility and discretion related to carrying out safety investigations. Contrary to the original proposal that provided for mandatory safety investigations for very serious and serious marine casualties and incidents, the text agreed by the Council limits the obligation for safety investigations to very serious marine casualties or incidents and requires the investigative body in all other cases of marine casualties or incidents to decide whether or not to undertake a safety investigation, taking account in particular of the seriousness of the casualty or incident and the possible lessons to be learned. In addition, in the Council's view, there is no need to refer explicitly to distress alerts as a specific category of incidents that require safety investigations.

Independence: following the example of the railways sector, the Council deems it appropriate to emphasize that 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 in order to carry out safety investigations in an unbiased manner. It is to be understood that each Member State, in accordance with its own administrative organisation, sets up the investigative body as a public structure with the greatest possible autonomy in terms of internal functioning. This structure can be linked to a bigger entity like a ministry or administration, but will have to be regulated by provisions guaranteeing its independence, particularly from other administrative authorities likely to be interested in any maritime accident. For reasons of proportionality, Member States, which have neither ships nor vessels flying their flag, will identify an independent focal point to cooperate in safety investigations involving a substantial interest of that Member State.

Differentiate investigations: the Council agrees with the European Parliament that safety investigations have to be differentiated from criminal investigations or other proceedings aimed at determining liability and apportioning blame. The common position establishes that investigations under this Directive have no other aim than to determine the causes of casualties. At the same time, and in accordance with the IMO Code for the Investigation of Marine Casualties and Incidents, it stipulates that the investigative body should not refrain from full reporting to this effect because fault or liability may be inferred from the findings.

Scope: the Council includes in its common position small fishing vessels with a length of more than 15m, and not only vessels above 24m length as in the original proposal. This is done for reasons of consistency with the Council's common position on the draft Directive of the European Parliament and of the Council amending Directive 2002/59/EC establishing a Community vessel traffic monitoring and information system. According to this draft Directive, these vessels are obliged to be equipped with AIS (Automatic Identification System) to improve the possibilities of monitoring these ships and to make them safer in close navigation situations. They should, therefore, also be covered by the Directive concerning the investigation of accidents.

Methodology: the Council deems it appropriate to provide for more flexibility, while establishing the bases for a continuous exchange of experience. Compared to the original proposal, Member States have more leeway in implementing the principles of the common methodology that is developed with the assistance of the European Maritime Safety Agency and adopted in accordance with the regulatory procedure with scrutiny. At the same time, based on the experience gained in the conduct of safety investigations, the Commission and the Member States will develop guidelines on processes and best practices to be used in implementing the common methodology.

Investigation of accidents in the maritime transport sector

The common position, which was adopted unanimously, does not require any changes to the original proposal which the Commission could not accept.

The Commission expressed regret regarding the addition to Article 8(1) of provisions for landlocked Member States without a fleet, but it

should be noted that the local contact point which these States have to designate must be independent.

The Commission therefore recognises that the common position alters neither the aims nor the spirit of the proposal and is therefore able to accept it.

Amendments accepted by the Commission and incorporated in full or in part in the common position: the Commission is of the opinion that the amendment stating that the investigations provided for by the proposal are not aimed at determining liability or apportioning blame is acceptable. However, the Commission believes that it should be reworded so that the proposal preserves the principle whereby the authority responsible for the investigation should not refrain from disclosing all the causes by claiming that liability could be inferred from those findings. This is precisely what the new wording adopted by the Council suggests.

Amendments accepted by the Commission but not incorporated in the common position: they:

- state that the guidelines on the fair treatment of seafarers, adopted on 27/04/2006 by the IMO Legal Committee, should be taken into account;
- set out to further protect the confidentiality of evidence obtained during an investigation through cooperation with other Member States;
- specify the period within which the investigation must start and set out to guarantee the independence of the investigative bodies vis-à-vis the authorities responsible for judicial inquiries.

Amendments rejected by the Commission and not incorporated in the common position: these aim to:

- put the emphasis on the investigative bodies' resources but do away with their permanent nature;
- incorporate recommendations for preventing further accidents into the common methodology, which has to be adopted through the comitology procedure;
- explain the background to the recommendations which the Commission might make, state that EMSA is to provide assistance;
- introduce an unnecessary mechanism which is difficult to implement, to resolve conflicts between Member States when they are unable to agree which of them should be the lead investigating State;
- remove the possibility for the judicial authorities of Member States to be sent certain ? in principle, strictly confidential ? information (and in particular witness interviews) collected in the course of an investigation;
- oblige the Commission to report to the Parliament every 3 years on the state of implementation of the Directive.

Investigation of accidents in the maritime transport sector

The Committee on Transport and Tourism adopted a report drafted by Jaromír KOHLICEK (GUE/NGL, CZ) and recommended some amendments to the Council's common position for adopting a directive of the European Parliament and of the Council establishing the fundamental principles governing the investigation of accidents in the maritime transport sector and amending Directives 1999/35/EC and 2002/59/EC.

Several of these amendments are re-introduced from 1st reading and the main ones are as follows :

Distress alerts: these should remain within the scope of the Directive as originally proposed by the Commission.

Definitions: the terms "serious casualty" and "less serious casualty" shall be understood in accordance with the updated definitions contained in Circular 953 of the IMO Maritime Safety Committee. The committee stated that it is necessary to keep the definitions as proposed by the Commission since these terms are used in the Directive. It inserted a definition for 'distress alert'. The definition of 'safety recommendation was amended.' The Commission must take into account the results of the investigations carried out.

Common methodology: the Commission must take into account the conclusions of the accident reports and the safety recommendations contained therein when modifying the common methodology.

Serious accidents: safety investigations should be mandatory in the event of serious accidents (as well as very serious accidents) as proposed by the Commission. In addition to investigating serious and very serious casualties, the investigative body shall, having established the initial facts of the case, decide whether or not a safety investigation of a less serious casualty, marine incident or a distress alert shall be undertaken.

Safety investigation: 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.

Lead investigating Member State: in cases of serious and very serious casualties involving a substantial interest for two or more Member States, the Member States concerned shall rapidly agree which of them is to be the lead investigating Member State. Should the Member States concerned not be able to determine which Member State is to lead the investigation, the Commission shall take a decision on the matter based on an opinion of the Agency, which shall be immediately implemented. The Council's text had not given the Commission the deciding voice.

Functional independence of investigative body: the committee placed more emphasis on this and tightened up the wording in the Council's text. The investigative body shall be functionally independent of, in particular, the national authorities responsible for seaworthiness, certification, inspection, manning, safe navigation, maintenance, sea traffic control, port state control and operation of seaports, of bodies carrying out investigations for the purposes of establishing liability or law enforcement and, in general, of any other party whose interests could conflict with the task entrusted to it.

Member States should have an obligation to provide pertinent information to the investigative body as proposed by the Commission.

Non-disclosure of records: certain records must not be made available for purposes other than the safety investigation. Members deleted the Council's exceptions. Furthermore, Member States shall ensure that, witness statements and other information provided by witnesses in the course of safety investigations are not obtained by third country authorities, thus preventing such statements and information from being used in criminal investigations in such countries.

Fair treatment of seafarers: a new article states that in accordance with their national law, Member States shall apply the relevant provisions of

the IMO guidelines on the fair treatment of seafarers in the event of a maritime accident.

Report: every three years, the Commission shall send a report providing information to the European Parliament setting out the degree of implementation of, and compliance with, the provisions of this Directive, as well as any further steps considered necessary in the light of the recommendations set out in the report.

Transposition: Member States must communicate to the Commission the text of legislation transposing the Directive and a correlation table between those provisions and the Directive.

Investigation of accidents in the maritime transport sector

The European Parliament adopted a legislative resolution amending the Council's common position for adopting a directive of the European Parliament and of the Council establishing the fundamental principles governing the investigation of accidents in the maritime transport sector and amending Directives 1999/35/EC and 2002/59/EC. The recommendation for second reading (under the codecision procedure) was tabled for consideration in plenary by Jaromír KOHLICEK (GUE/NGL, CZ) on behalf of the Committee on Transport and Tourism.

Several of these amendments are re-introduced from 1st reading and the main ones are as follows :

Distress alerts: these should remain within the scope of the Directive as originally proposed by the Commission.

Definitions: the terms "serious casualty" and "less serious casualty" shall be understood in accordance with the updated definitions contained in Circular 953 of the IMO Maritime Safety Committee. Members inserted a definition for 'distress alert'. "Distress alert" means a signal given from a ship, or information from any source, indicating that a ship is, or that persons on or from a ship are, in distress at sea. The definition of 'safety recommendation was amended.' The Commission must take into account the results of investigations carried out.

Common methodology: the Commission must take into account the conclusions of the accident reports and the safety recommendations contained therein when modifying the common methodology.

Serious accidents: safety investigations should be mandatory in the event of serious accidents (as well as very serious accidents) as proposed by the Commission. In addition to investigating serious and very serious casualties, the investigative body shall, having established the initial facts of the case, decide whether or not a safety investigation of a less serious casualty, marine incident or a distress alert shall be undertaken. In its decision, the investigative body shall take into account the seriousness of the casualty or incident, the type of vessel and/or cargo involved in the distress alert, and any request from the search and rescue authorities.

Safety investigation: 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. Member States must ensure that safety investigations are independent of criminal or other parallel investigations held to determine liability or apportion blame and allow only the conclusions or recommendations resulting from investigations initiated under this Directive to be used in judicial investigations;

Lead investigating Member State: in cases of serious and very serious casualties involving a substantial interest for two or more Member States, the Member States concerned shall rapidly agree which of them is to be the lead investigating Member State. Should the Member States concerned not be able to determine which Member State is to lead the investigation, the Commission shall take a decision on the matter based on an opinion of the Agency, which shall be immediately implemented. The Council's text had not given the Commission the deciding voice.

Functional independence of investigative body: Parliament placed more emphasis on this and tightened up the wording in the Council's text. The investigative body shall be functionally independent of, in particular, the national authorities responsible for seaworthiness, certification, inspection, manning, safe navigation, maintenance, sea traffic control, port state control and operation of seaports, of bodies carrying out investigations for the purposes of establishing liability or law enforcement and, in general, of any other party whose interests could conflict with the task entrusted to it.

Parliament deleted Member States' obligation to provide pertinent information to the investigative body, which was contained in the Commission proposal. It inserted instead a clause stating that any Member State, the facilities or services of which have been, or would normally have been, used by a ship prior to a casualty or an incident, and which has information pertinent to the investigation, shall provide that information to the investigative body conducting the investigation.

Non-disclosure of records: certain records must not be made available for purposes other than the safety investigation. Members deleted the Council's exceptions. Furthermore, Member States shall ensure that, witness statements and other information provided by witnesses in the course of safety investigations are not obtained by third country authorities, thus preventing such statements and information from being used in criminal investigations in such countries.

Fair treatment of seafarers: a new article states that in accordance with their national law, Member States shall apply the relevant provisions of the IMO guidelines on the fair treatment of seafarers in the event of a maritime accident.

Report: every three years, the Commission shall send a report providing information to the European Parliament setting out the degree of implementation of, and compliance with, the provisions of this Directive, as well as any further steps considered necessary in the light of the recommendations set out in the report.

Transposition: Member States must communicate to the Commission the text of legislation transposing the Directive and a correlation table between those provisions and the Directive.

Investigation of accidents in the maritime transport sector

The Commission accepts in full 6 amendments to the common position, adopted by the European Parliament in first reading. It also accepts in part or in principle 7 other amendments by the European Parliament.

The Commission rejected amendments aimed at:

- reintroducing distress alerts within the scope of the Directive and at making investigations mandatory not only for very serious casualties but also for serious casualties;
- making a clear distinction between safety and other investigations, particularly criminal investigations;
- introducing into the Directive an arrangement involving the Commission whereby, in the event of a conflict between investigation bodies, one Member State would be appointed as the lead State for conducting an investigation;
- extending to serious casualties the instances in which the investigative body must produce a full report whereas in some cases, if no lessons can be drawn from the investigation, there would be justification for producing only a simplified report;
- enabling the Commission to make substantive changes to investigative reports, whereas the content of reports must be the responsibility of the investigative bodies alone;
- requiring the Commission to produce a report on the implementation of the Directive every three years, whereas there is no evidence anywhere that such a requirement would serve any purpose;
- obliging Member States to apply the provisions of the IMO Guidelines on fair treatment of seafarers in the event of a maritime accident.

Investigation of accidents in the maritime transport sector

The European Parliament adopted by 669 votes to 15, with 2 abstentions, under the third reading of the codecision procedure, a legislative resolution approving the joint text approved by the Conciliation Committee for a directive of the European Parliament and of the Council establishing the fundamental principles governing the investigation of accidents in the maritime transport sector and amending Directives 1999/35/EC and 2002/59/EC.

For details of the agreement, see the summary dated 08/12/2008.

Investigation of accidents in the maritime transport sector

PURPOSE: to improve maritime safety and the prevention of pollution by ships.

LEGISLATIVE ACT: Directive 2009/18/EC of the European Parliament and of the Council 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.

CONTENT: following conciliation between Parliament and Council and a third reading by the European Parliament, the Council adopted this Directive establishing fundamental principles governing the investigation of accidents in the maritime transport sector. The Directive establishes Community guidelines on technical investigations to be taken following maritime casualties and incidents. The Commission's original proposal was modified particularly to ensure the independence and discretionary powers of the investigative body. In addition, whilst the Commission had wanted mandatory safety investigations for very serious and serious marine casualties, Council and Parliament agreed that investigations are automatic only for very serious casualties. The text lays down that in principle every marine casualty or incident is the subject of a single investigation, carried out by one Member State, or by a Member State conducting the investigation with the participation of any other State with important interests at stake. The carrying out of parallel investigations into a single marine casualty is limited to exceptional cases and requires that the reasons for such parallel investigations be notified to the Commission and that the Member States carrying out parallel security investigations cooperate.

Objective: the purpose of the Directive is to improve maritime safety and the prevention of pollution by ships, and so reduce the risk of future marine casualties, by:

- facilitating the expeditious holding of safety investigations and proper analysis of marine casualties and incidents in order to determine their causes; and
- ensuring the timely and accurate reporting of safety investigations and proposals for remedial action.

Investigations will not be concerned with determining liability or apportioning blame. However, Member States shall must that 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.

Scope : the Directive does not apply to, inter alia, fishing vessels with a length of less than 15 metres;

Obligation to investigate: each Member State must ensure that a safety investigation is carried out by the investigative body after very serious marine casualties. This latter term is to be understood in accordance with the definitions contained in the IMO Code for the Investigation of Marine Casualties and Incidents. In addition, in the case of serious casualties, the investigative body will carry out a preliminary assessment in order to decide whether or not to undertake a safety investigation. Parliament rejected the idea of a simplified report following an investigation of a serious casualty. Where the investigative body decides not to undertake a safety investigation, the reasons for that decision shall be recorded and notified.

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

Leading of safety investigations: 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 must cooperate with a view to rapidly agreeing which of them is to be the lead investigating Member State, and make every effort to agree on the procedures to investigate. In the framework of this agreement, other substantially interested States will 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.

Investigative bodies: safety investigations must be 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.

Seafarers: the text notes that 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 must be preserved at all times and all safety investigations should be conducted in a fair and expeditious manner. To that end, Member States must, 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.

Confidentiality: without prejudice to Directive 95/46/EC, Member States must ensure that certain specified records, such as witness statements, 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.

European database for marine casualties: 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, the European Marine Casualty Information Platform (EMCIP).

This Directive is part of a series of measures, comprising the third maritime package, aiming to strengthen the security of maritime transport in Europe by improving accident prevention and investigations into accidents and by strengthening vessel quality control. (See also [COD/2005/0236](#), [COD/2005/0237](#), [COD/2005/0238](#), [COD/2005/0239](#), [COD/2005/0241](#) and [COD/2005/0242](#)).

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