

# Investigation of accidents in the maritime transport sector

2005/0240(COD) - 06/06/2008 - Council position

The Council common position adopted unanimously, accepts in total, in part or in principle, 6 amendments adopted by the European Parliament at 1<sup>st</sup> 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.