Investigation of accidents in the maritime transport sector

2005/0240(COD) - 23/04/2009 - Final act

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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