



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 16 May 2007

**Interinstitutional File:
2005/0240 (COD)**

9549/07

LIMITE

**MAR 38
ENV 261
CODEC 521**

REPORT

from : Shipping Working Party

to : Permanent Representatives Committee

No. Cion prop. : 6436/06 MAR 16 ENV 97 CODEC 155

No. prev. doc. : 9409/07 MAR 36 ENV 245 CODEC 498

Subject : *Preparation of the Council meeting (Transport, Telecommunication and Energy)
on 6, 7 and 8 June 2007)*

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

- *Political agreement*

Introduction

1. On 15 February 2006, the Commission transmitted to the Council the abovementioned proposal (Doc. 6436/06) which forms part of the third maritime safety package. The objective of this proposal is to establish clear Community-wide guidelines for technical safety investigations to be carried out following maritime casualties and incidents. Member States shall ensure under the proposed Directive that such safety investigations do not aim at determining civil or criminal liability, but at identifying the circumstances and causes of maritime casualties or incidents in order to draw all possible lessons from them. The text of the proposal takes in particular account of the provisions of the IMO Code for the Investigation of Marine Casualties and Incidents and its ongoing revision.

2. The Economic and Social Committee delivered its opinion on 13 September 2006 ¹. The Committee of the Regions delivered its opinion on 15 June 2006 ².
3. On 25 April 2007, the European Parliament adopted its opinion in first reading on this proposal, containing 23 amendments (Doc. 8724/07).

Work undertaken within the Council bodies

4. Work on this proposal was initiated under German Presidency on 9 February 2007. The examination of this proposal included the impact assessment on the Directive. The text as it currently stands appears in the Annex ³ to this report.

In the framework of its discussions, the Shipping Working Party examined the European Parliament's opinion in first reading ⁴ on 7 and 15 May 2007. Five amendments correspond to the main thrust of the Council text as currently discussed and their principle could be reflected in the text of the Council draft political agreement. The remaining amendments, however, are not compatible with the positions expressed by Member States resulting in the draft political agreement as annexed and are therefore not acceptable.

All delegations and the CION have a general scrutiny reservation. DK, FR, MT and UK have a Parliamentary scrutiny reservation. ES and IT have a linguistic reservation.

¹ CESE 1177/2006.

² OJ C 229 of 22.9.2006, p. 38.

³ Changes compared to documents 9409/07 are highlighted in **bold** and ~~strikethrough~~.

⁴ A comparative table has been circulated in Wdoc. 2007/60.

Main outstanding issues:

5. Safety investigations and criminal investigations (Articles 4, 7 and 8) (footnote 17 on page 11, footnote 22 on page 14 and footnote 24 on page 16 of the Annex)

The objective of the Directive is to allow for independent safety investigations determining the circumstances and causes of the accident concerned without apportioning blame or liability. AT has major concerns on several provisions of the Directive that could result in difficulties in conducting criminal investigations, given the fact that its internal legal system provides for a priority of criminal investigations. AT requested to explicitly establish in Article 4 that safety and criminal investigations shall not obstruct each other, and to provide that the competences of investigators defined in Article 8 can only be set without prejudice to the principles of Article 4.

6. Independence of investigative body (Article 8) (footnote 23 on page 15 of the Annex)

In order to effectively determine the causes and circumstances of marine casualties and incidents, it is of the utmost importance that the body responsible for conducting the investigation is impartial and decides independently whether or not to open a safety investigation and how to carry it out. Article 8 establishes the requirements for such an investigative body, which needs a permanent structure, as reduced as it might be, and a minimum of functional and organisational independence in order to be free of any conflict of interests in performing its tasks. Two delegations (EE and EL), however, maintained a reservation on this provision, while several others (CY, CZ, IT, LT, MT and SI) still had a scrutiny reservation.

7. Deletion of the obligation to investigate serious casualties (Articles 3 and 5) (footnote 15 on page 10, footnote 18 on page 12 and footnote 19 on page 13 of the Annex)

During the discussions in the Working Party, all delegations agreed, with a view to avoiding unproportionate administrative burden, to limit the obligation to conduct a safety investigation to very serious marine casualties or incidents as defined in the IMO Code for the Investigation of Marine Casualties and Incidents, while leaving the decision whether to investigate other marine casualties or incidents, including serious ones, to the judgement of the investigative body. CION opposed this restriction.

8. Scope of the Directive (Article 3) (footnote 14 on page 9 of the Annex)

According to Article 3 of the draft Directive, fishing vessels of less than 24 metres are excluded from its scope. Arguing that 80% of all marine accidents concern fishing vessels of less than 24m, DK, supported by LT and SE, requested to extend the scope of the Directive to smaller fishing vessels of at least 12m or, as a compromise, of at least 15m, as suggested by ES and NL. CION could support this compromise solution (exclusion of fishing vessels of less than 15m).

Other Issues

9. Besides the abovementioned points, other issues need examination by the Committee. They have been identified in the footnotes to the Annex.

Conclusions

10. Against this background, COREPER is invited to take note of the draft political agreement as set out in the Annex and to settle the outstanding issues with a view to allowing the Council to adopt it at its session on 6-8 June 2007.

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
(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 Commission¹,

Having regard to the opinion of the European Economic and Social Committee²,

Having regard to the opinion of the Committee of the Regions³,

Acting in accordance with the procedure laid down in Article 251 of the Treaty⁴,

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.

¹ OJ C [...], [...], p. [...].

² OJ C [...], [...], p. [...].

³ OJ C [...], [...], p. [...].

⁴ OJ C [...], [...], p. [...].

- (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 ⁵ on improving safety at sea, 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 1982 (UNCLOS) ⁶ 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.
- (5) Article 94 of UNCLOS establishes that flag States shall 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) The International Convention for the Safety of Life at Sea, 1974 (SOLAS regulation I/21), the International Convention of Load Lines, 1966 and the International Convention for the Prevention of Pollution from Ships, 1973 lay down the responsibilities of flag States to conduct casualty investigations and to supply the International Maritime Organisation (IMO) with relevant findings.

⁵ 2003-2235 (INI).

⁶ Final Act of the Third United Nations Conference on the Law of the Sea 1973-1982, Class Nr. 341.45 L 412 1997.

- (7) The [draft] Code for the implementation of Mandatory IMO Instruments⁷ 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. The 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 adopted in November 1997 by IMO Assembly Resolution A.849, 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 IMO Resolutions A.861(20) and MSC.163(78), which provide a definition of “voyage data recorders”.
- (8a) While conducting safety investigations of marine casualties and incidents, Member States should take into account the IMO/ILO "Guidelines on fair treatment of seafarers in the event of a maritime accident" (Resolution A. 987 (24)) or any other recommendations or instruments relating to the human factor adopted by relevant international organisations, as far as they are applicable to technical safety investigations.

⁷ Version IMO FSI 13/WP.3 of 9 March 2005.

- (9) 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 ⁸ requires Member States to define, in the framework of their respective internal legal systems, a legal status that will enable them and any other substantially interested Member State to participate, to cooperate in, or where provided for under the Code for the investigation of marine casualties, to conduct any marine casualty or incident investigation involving a ro-ro ferry or high-speed passenger craft.
- (10) 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 and repealing Council Directive 93/75/EEC ⁹ 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.
- (11) Conducting a **safety** investigation of casualties and incidents involving seagoing vessels, or other vessels in port or other restricted maritime areas, in an unbiased manner is of paramount importance for effectively establishing the circumstances and causes of such casualty or incident. Such an investigation should therefore be carried out by qualified investigators under the control of an independent body or entity in order to avoid any conflict of interest.
- (11a) Member States should, in compliance with their legislation ~~in force~~ as regards the powers of the authorities responsible for the judicial inquiry and, ~~where appropriate~~, 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.

⁸ OJ L 138, 1.6.1999, p. 1. Directive as amended by Directive 2002/84/EC (OJ L 24, 29.11.2002, p. 53).

⁹ OJ L 208, 5.8.2002, p. 10.

- (12) Member States should ensure that their internal 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**.
- (12a) A Member State may delegate to another Member State the task of leading a marine casualty or incident safety investigation (**hereinafter: “safety investigation”**) or specific tasks of it, if mutually agreed.
- (12b) Member States should make every effort not to charge the costs for assistance requested in the framework of safety investigations involving two or more Member States. **In cases 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.**
- (13) Under SOLAS regulation V/20, 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 (VDRs) to assist in accident investigations. Given its importance 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.
- (14) The data provided by a VDR 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, is properly used for both purposes.

- (15) [...]
- (16) Regulation (EC) No 1406/2002 of the European Parliament and of the Council ¹⁰ requires the European Maritime Safety Agency (hereinafter: “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.
- (17) According to Regulation (EC) No 1406/2002, the Agency must facilitate cooperation in the provision of the support of the Member States in activities concerning investigations ~~related to serious maritime accidents~~, and in the carrying out of an analysis of existing accident investigation reports.
- (18) The safety recommendations resulting from a ~~casualty or incident~~ safety investigation should be duly taken into account by the Member States.

¹⁰ OJ L 208, 5.8.2002, p. 1. Regulation as last amended by Regulation (EC) No. 724/2004, (OJ L 129, 29.4.2004, p. 1).

- (19) Since the aim of the technical **safety** investigation is the prevention of marine casualties and incidents in the future, the conclusions and the safety recommendations should **in no circumstances apportion blame or liability** ~~not be used to determine liability or apportion blame.~~
- (20) Since the objectives of the action to be taken, namely to improve marine 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 those objectives.
- (21) 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 to the Commission ¹¹,
- (21a) In accordance with point 34 of the Interinstitutional Agreement on better law-making ¹², 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. ¹³

HAVE ADOPTED THIS DIRECTIVE:

¹¹ OJ L 184, 17.7.1999, p. 23.

¹² OJ C 321, 31.12.2003, p. 1.

¹³ Cion: reservation.

Article 1
Subject-matter

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.

Investigations under this Directive shall not be concerned with determining liability or apportioning blame. However, the Member States shall ensure that the investigative body is not refraining from fully reporting the causes of the 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; or
 - (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 24 metres ¹⁴;
 - (e) fixed offshore drilling units.

Article 3
Definitions

For the purposes of this Directive:

1. 'IMO Code' means the Code for the Investigation of Marine Casualties and Incidents adopted by the International Maritime Organisation through Assembly Resolution A.849 of 27 November 1997 in its up-to-date version.

¹⁴ DK, supported by LT and SE, requested to reduce the limit set in this provision. Originally aiming at 12m, DK could agree to set the limit to 15m, as suggested by ES and NL and which is positively considered by Cion.

2. The following terms shall be understood in accordance with the definitions contained in the IMO Code:
 - (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. [...] ¹⁵
4. 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.
5. ‘Voyage data recorder’ (VDR) shall be understood in accordance with the definition contained in IMO Resolutions A.861 (20) and MSC.163 (78).

¹⁵ Cion: reservation on the deletion of the obligation to conduct investigations on serious casualties throughout the Directive and, consequently, reservation on the deletion of the definition of "serious casualty" through a reference to IMO MSC-MEPC.3/Circular 1.

6. 'Safety recommendation' means any proposal made by either of the following:
- (a) the investigative body of the State conducting, or leading, the ~~marine casualty or incident~~ 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.

Article 4

Status of safety investigations

1. Member States shall define, in accordance with their respective internal legal systems¹⁶, the legal status of the **safety** investigation in such a way that ~~safety~~ **such** investigations can be carried out as effectively and rapidly as possible.

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

- (a) independent from 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.¹⁷

¹⁶ CLS considers this specification as superfluous wherever it appears in the draft Directive.

¹⁷ AT: reservation on this Article. Taking into account their legal systems, this delegation would prefer to have a clear reference indicating that priority will be given to criminal investigations. As a compromise, AT suggested the following wording for Article 4 (1): " Member States shall ensure... that [...] a) **safety investigations are** independent from criminal or other parallel investigations held to determine liability or apportion blame; and b) **mutual obstruction as well as** unduly [...] **suspension or delay** [...] of such investigations **is avoided.**" Further to this addition, AT requested a reference to Article 4 in Article 8, see footnote 25.

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 ~~marine casualty or incident~~ 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 objectives of this Directive.

Article 5

Obligation to investigate

1. Every Member State shall ensure that a **safety** investigation is carried out by the investigative body referred to in Article 8 after ¹⁸ very serious marine casualties:
 - (a) involving a ship flying its flag, irrespective of the location of the casualty; or
 - (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.

¹⁸ Cion: reservation on the deletion of the obligation to investigate serious casualties.

2. In addition ¹⁹, the investigative body shall decide whether or not a safety investigation of any other marine casualty or incident shall be undertaken.

In its decision, it shall take into account the seriousness of the 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 the 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 objectives of this Directive, and with a view to preventing future casualties and incidents.
4. [Safety investigations shall follow the principles of the common methodology for investigating marine casualties and incidents developed pursuant to Article 2(e) of Regulation (EC) No. 1406/2002 and make use of the guidelines annexed **to the common methodology** ~~thereto~~. The adoption or modification of such methodology for the purposes of this Directive shall be decided in accordance with the procedure laid down in Article 18(2).] ^{20 21}
5. A safety investigation shall be started as promptly as is practicable after the marine casualty or incident occurs.

¹⁹ Cion: reservation on deletion that implies no obligation to investigate serious casualties.

²⁰ UK suggested the following wording for this paragraph: " Safety investigations shall follow... Regulation (EC) No. 1406/2002 [...]. The adoption ..." (rest unchanged; addition of new subparagraph:) "**The Commission and the Member States shall develop guidelines on processes and best practice in safety investigations to be used in implementing the common methodology. These guidelines shall be updated periodically to take account of experience gained in the conduct of safety investigations.**"

²¹ This paragraph will have to be adapted in the light of discussions concerning the methodology and the proposals expected from the Commission concerning the application of the new comitology procedure.

Article 6

Obligation to notify

A Member State shall require, in the framework of its national 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. Member States shall avoid conducting parallel safety investigations into the same marine casualty or incident. They shall abstain from any measure which could **unduly preclude, suspend or delay** ~~jeopardise~~ the conduct of a safety investigation falling within the scope of this Directive. ²²

In cases of safety investigations involving two or more Member States, the Member States concerned shall 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.

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.

²² AT: reservation to this paragraph.

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 ~~marine casualty or incident~~ 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 waters the accident or incident occurs or, if occurring in other waters, by the last Member State visited by the 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 ~~marine casualty or incident~~ safety investigations are conducted under the responsibility of an impartial permanent investigative body or entity (hereinafter referred to as “investigative body”), 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** ~~perform the task entrusted to it in functional and organisational independence~~ of any party whose interests could conflict with ~~the~~ **this task entrusted to it.** ²³

²³ EE, EL: reservation. CY, CZ, IT, LT, MT, SI: scrutiny reservation.

2. The investigative body shall ensure that individual investigators have a working knowledge 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 marine safety, in particular for prevention purposes, in so far as these activities do not affect its independence or entail responsibility in regulatory, administrative or standardisation matters.
4. ²⁴ 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 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 voyage data recorder (VDR) data, pertaining to a ship, voyage, cargo, crew or any other person, object, condition or circumstance;

²⁴ AT: reservation. This delegation suggested the following addition to this subparagraph: "Member States, acting in the framework of their respective legal systems **and without prejudice to Article 4**, shall ensure...". This addition is linked to the wording of Article 4 suggested by AT, see footnote 18.

- (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 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

Member States, acting in the framework of their respective 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 State determines that the interest in their disclosure outweighs the adverse domestic and international impact that such action may have on that **safety** investigation or on any future investigations:

- (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) medical or private information regarding persons involved in the casualty or incident.

25

~~2. Records referred to in paragraph 1 provided by another Member State shall only be disclosed with its consent.~~

²⁵ FI suggested the addition of the following subparagraph: "**Records referred to in 1(a) and (b) above may nevertheless be made available for purposes other than the safety investigation if it is apparent that such action would not have an adverse domestic or international impact on ongoing investigations or on any future investigations.**"

Article 10

Permanent cooperation framework

1. Member States shall, in close cooperation with the Commission, establish a permanent cooperation framework enabling their respective ~~marine casualty or incident safety~~ investigative bodies to cooperate among themselves to the extent necessary to attain the objectives of this Directive.
2. The rules of procedure of the permanent cooperation framework and the organisation arrangements required thereof shall be decided in accordance with the procedure referred to in Article 18(2).
3. Within the permanent cooperation framework, the investigative bodies in the Member States shall agree, in particular, 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 voyage data recorders 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) 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;
- (f) organise, where appropriate, relevant training activities for individual investigators;
- (g) promote cooperation with the investigative bodies or entities of third countries and with the international maritime accidents investigation organisations in the fields covered by this Directive;
- (h) provide investigative bodies conducting **safety** investigations with any pertinent information.

Article 11

Costs

1. In cases of safety investigations involving two or more Member States, the respective activities shall be free of charge.
2. In cases assistance is requested from 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 ~~the~~ **safety** investigations ~~of marine casualties~~.
2. Substantially interested third countries shall, by mutual agreement, be allowed to join a safety investigation led by a Member State under the terms of 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 of the conduct and reporting requirements of ~~marine casualty or incident~~ safety investigations under this Directive. If 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.

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 achieve the following:

- (a) to save all information from charts, log books, electronic and magnetic recording and video tapes, including information from voyage data recorders and other electronic devices relating to the period preceding, during and after an accident;
- (b) to prevent the overwriting or other alteration of such information;

- (c) to prevent interference with any other equipment which might reasonably be considered pertinent to the **safety** investigation of the accident;
- (d) to collect and preserve all evidence expeditiously for the purposes of the ~~marine casualty or incident~~ safety investigations.

Article 14

Accident reports

1. ~~Marine casualty or incident~~ Safety investigations carried out under the terms of 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 marine casualty and whose findings 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 available to the public within 12 months from the day 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 from 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 observations of the Commission on final reports for improving the editorial quality in the way most conducive to achieving the objectives 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.
3. A safety recommendation shall in no circumstances apportion blame or liability for a casualty.

Article 16

Early alert system

Without prejudice of its right to give an early alert, the investigative body of a Member State shall, at any stage of a ~~marine casualty~~ **safety** investigation ~~or of an incident 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 to the Commission 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 ~~marine casualty or incident~~ safety investigations in accordance with the EMCIP database scheme.
4. The Commission and the Member States shall develop the database scheme and a **method** ~~common methodology providing for the~~ **for data notification in the appropriate** timescale ~~and the procedures concerning notification and data analysis.~~

*Article 18*²⁶

Committee

1. The Commission shall be assisted by the Committee on Safe Seas and the Prevention of Pollution from Ships (COSS) instituted by Article 3 of Regulation (EC) No 2099/2002 of the European Parliament and the Council²⁷.
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. The Committee shall adopt its Rules of procedure.

²⁶ This provision will have to be adapted in the light of future discussions on the application of the new comitology procedure.

²⁷ OJ L 324, 29.11.2002, p. 1.

Article 19

Amending powers

The Commission may update definitions in this Directive, and the references made to Community acts and to IMO instruments, in accordance with the procedure referred to in Article 18(2) 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.

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

Amendments to the IMO Code may be excluded from the scope of this Directive pursuant to Article 5 of Regulation (EC) No 2099/2002²⁸.

Article 20

Additional measures

Nothing contained in this Directive shall prevent a Member State from taking additional measures which are not covered by this Directive, provided that such measures do not infringe this Directive or in any way adversely affect its attainment.

Article 21

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.

²⁸ OJ L 324, 29.11.2002, p. 1.

Article 22

Amendments to existing acts

1. Article 12 of Directive 1999/35/EC is deleted.
2. Article 11 of Directive 2002/59/EC is deleted.

Article 23

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [...] ²⁹ at the latest. ³⁰

When Member States adopt those provisions, 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.

²⁹ [24 months after the date of entry into force of the Directive]

³⁰ Cion: reservation on the deletion of the references to the correlation table.

Article 24

Entry into force

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

Article 25

Addressees

This Directive is addressed to the Member States.

Done at Brussels, [...]

For the European Parliament

The President

[...]

For the Council

The President

[...]

Safety investigation report ~~format and~~ content

Foreword

This identifies the sole objective of the safety investigation, that a safety recommendation shall in no case create a presumption of liability or blame, and that the report has not been written, in terms of content and style, with the intention of it being used in legal proceedings. *(The report should make no reference to witness evidence nor link anyone who is referred to in the report to a person who has given evidence during the course of the **safety** investigation.)*

1. Summary

This part outlines the basic facts of the marine casualty or incident: what, when, where and how it happened; and states whether any deaths, injuries, damage to the ship, cargo, third parties or environment occurred as a result.

2. Factual information

This part includes a number of discrete sections, providing sufficient information that the investigating body interprets to be factual, substantiate the analysis and ease understanding.

These sections include, in particular, the following information:

2.1 Ship particulars

Ship flag/register,
Ship identification,
Ship main characteristics,
Ownership and management,
Construction details,
Minimum safe manning,
Authorised cargo.

2.2 Voyage particulars

Ports of call,
Type of voyage,
Cargo information,
Manning.

2.3 Marine casualty or incident information

Type of marine casualty or incident,
Date and time,
Position and location of the marine casualty or incident,
External and internal environment,
Ship operation and voyage segment,
Place on board,
Human factors data,
Consequences (to people, ship, cargo, environment, other).

2.4 Shore authority involvement and emergency response

Who was involved,

Means used,

Speed of response,

Actions taken,

Results achieved.

~~The above mentioned data will be used to populate the relevant fields of the European database for marine casualties EMCIP.~~

3. Narrative

This part reconstructs the marine casualty or incident through a sequence of events, in a chronological order leading up to, during and following the marine casualty or incident and the involvement of each actor (i.e. person, material, environment, equipment or external agent). The period covered by the narrative depends on the timing of those particular accidental events that directly contributed to the marine casualty or incident. This part also includes any relevant details of the **safety** investigation conducted, including the results of examinations or tests.

4. Analysis

This part includes a number of discrete sections, providing an analysis of each accidental event, with comments relating to the results of any relevant examinations or tests conducted during the course of the **safety** investigation and to any safety action that might already have been taken to prevent future marine casualties.

These sections should cover issues such as:

- accidental event context and environment,
- human erroneous actions and omissions, events involving hazardous material, environmental effects, equipment failures, and external influences,
- contributing factors involving person related functions, shipboard operations, shore management or regulatory influence.

The analysis and comment enable the report to reach logical conclusions, establishing all of the contributing factors, including those with risks for which existing defences aimed at preventing an accidental event, and/or those aimed at eliminating or reducing its consequences, are assessed to be either inadequate or missing.

5. Conclusions

This part consolidates the established contributing factors and missing or inadequate defences (material, functional, symbolic or procedural) for which safety actions should be developed to prevent future marine casualties.

6. Safety recommendations

When appropriate, this part of the report contains safety recommendations derived from the analysis and conclusions and related to particular subject areas, such as legislation, design, procedures, inspection, management, health and safety at work, training, repair work, maintenance, shore assistance and emergency response.

The safety recommendations are addressed to those that are best-placed to implement them, such as ship owners, managers, recognised organisations, maritime authorities, vessel traffic services, emergency bodies, international maritime organisations and European institutions, with the aim of preventing future marine casualties.

This part also includes any interim safety recommendations that may have been made or any ~~follow-up~~ safety **actions measure** taken during the course of the safety investigation.

7. Appendices

When appropriate, the following non-exhaustive list of information is attached to the report in paper and/or electronic form:

- photographs, moving images, audio recordings, charts, drawings,
- applicable standards,
- technical terms and abbreviations used,
- special safety studies,
- miscellaneous information.

MARINE CASUALTY OR INCIDENT NOTIFICATION DATA

(Part of the European Marine Casualty Information Platform)

01. Member State responsible / contact person
02. Member State investigator
03. Member State role
04. Coastal state affected
05. Number of substantially interested states
06. Substantially interested states
07. Notification entity
08. Time of the notification
09. Date of the notification
10. Name of the ship

11. IMO number/ distinctive letters
12. Ship flag
13. Type of marine casualty or incident
14. Type of ship
15. Date of the marine casualty or incident
16. Time of the marine casualty or incident
17. Position - Latitude
18. Position - Longitude
19. Location of the marine casualty or incident
20. Port of departure
21. Port of destination
22. Traffic separation scheme

23. Voyage segment
24. Ship operation
25. Place on board
26. Lives lost:
- Crew
 - Passengers
 - Other
27. Serious injuries:
- Crew
 - Passengers
 - Other
28. Pollution
29. Ship damage
30. Cargo damage
31. Other damage
32. Brief description of the marine casualty or incident

Note: Underlined numbers mean that data should be provided for each ship if more than one is involved in the marine casualty or incident.