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Subject:	COMMISSION STAFF WORKING DOCUMENT Union submission to the International Maritime Organization's 109th Maritime Safety Committee proposing a new output for a review of the Casualty Investigation Code

Delegations will find attached document SWD(2024) 182 final.

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COMMISSION STAFF WORKING DOCUMENT

Union submission to the International Maritime Organization's 109th Maritime Safety Committee proposing a new output for a review of the Casualty Investigation Code

Union submission to the International Maritime Organization's 109th Maritime Safety Committee proposing a new output for a review of the Casualty Investigation Code

Purpose

This Staff Working Document contains a draft submission to the International Maritime Organization's (IMO) 109th Maritime Safety Committee (MSC 109). The IMO has scheduled MSC 109 from 2 to 6 December 2024. The document has been drafted by Australia and the EU Member States and the European Commission have been asked to co-sponsor it.

The draft submission proposes the establishment of a new output for the review of the Casualty Investigation Code and associated guidelines. At its 9th session, the Sub-Committee on Implementation of IMO Instruments invited interested Member States and international organizations to submit proposals for a new output for a comprehensive and holistic review of the Casualty Investigation Code to the Maritime Safety Committee. This followed strong support for such a review as proposed in III 9/4/8 (Australia et al) which outlined historical issues related to the implementation of the Code and previous proposals to amend it to improve the quality and timeliness of marine safety investigation reports.

EU Competence

Directive 2009/18/EC¹ lays down provisions governing the investigation of accidents in the maritime transport sector and refers to and takes into account the Code for the Investigation of Marine Casualties and Incidents (Resolution A.849(20) of the IMO Assembly of 27 November 1997) in its up-to-date version. This Code was eventually replaced by the Code of the International Standards and Recommended Practices for a Safety Investigation into a Marine Casualty or Marine Incident (Casualty Investigation Code) adopted through resolution MSC.255(84) on 16 May 2008.

In light of all of the above, the present draft Union submission falls under EU exclusive competence, pursuant to article 3(2) TFEU as it concerns the review of the Casualty Investigation Code, which, once adopted, risks affecting or altering Union legislation and in particular Directive 2009/18/EC.² This Staff Working Document is presented to establish an EU position on the matter and to transmit the document to the IMO prior to the required deadline of 30 August 2024.

¹ OJ L 131, 28.5.2009, p. 114.

² An EU position under Article 218(9) TFEU is to be established in due time should the IMO Maritime Safety Committee eventually be called upon to adopt an act having legal effects as regards the subject matter of the said draft Union submission. The concept of '*acts having legal effects*' includes acts that have legal effects by virtue of the rules of international law governing the body in question. It also includes instruments that do not have a binding effect under international law, but that are '*capable of decisively influencing the content of the legislation adopted by the EU legislature*' (Case C-399/12 Germany v Council (OIV), ECLI:EU:C:2014:2258, paragraphs 61-64). The present submission, however, does not produce legal effects and thus the procedure for Article 218(9) TFEU is not applied.

WORK PROGRAMME

Proposal for a review of the Casualty Investigation Code

Submitted by³ Austria, Belgium, Bulgaria, Croatia, Cyprus, Czechia, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands (Kingdom of the), Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the European Commission, acting jointly in the interest of the European Union

SUMMARY

Executive summary: At its 9th session, the Sub-Committee on Implementation of IMO Instruments invited interested Member States and international organizations to submit proposals for a new output for a comprehensive and holistic review of the Casualty Investigation Code to the Maritime Safety Committee. This followed strong support for such a review as proposed in III 9/4/8 (Australia et al) which outlined historical issues related to the implementation of the Code and previous proposals to amend it to improve the quality and timeliness of marine safety investigation reports. This document invites the Committee to approve a new output to review the Code and associated guidelines as soon as practicable.

Strategic direction, if applicable: SD 7

Output: 7.4

Action to be taken: Paragraph 39

Related documents: Resolution MSC.255(84), Resolution A.1075(28), FSI 15/7, Circular Letter No.3682, III 4/4, III 4/WP.4, III 7/4/5, III 7/4/8, III 7/INF.31, III 7/4/3, III 7/INF.42, MSC 104/15/16, MSC105/20, III 7/WP.3, III 8/WP.3, III 8/1, MSC 106/19, HTW 8/INF.3, III 9/4/5, III 9/4/8 and III 9/19.

Background

1. At its 9th session, the III Sub-Committee having considered documents III 9/4/5 and III 9/4/8 concluded that interested Member States and international organizations should submit proposals for a new output for a comprehensive and holistic review of the *Code of the International Standards and Recommended Practices for a Safety Investigation into a*

³ The submission has been prepared by Australia. So far, the following IMO Parties have agreed to co-sponsor this document: Bangladesh, Canada, New Zealand, Morocco, Norway, Philippines, Republic of Korea, Singapore, United Arab Emirates, BIMCO, ICS, IMarEST, INTERCARGO, InterManager, IUMI, OCIMF.

Marine Casualty or Marine Incident (Casualty Investigation Code or simply the Code) to the Maritime Safety Committee for its consideration.

2. The Code was adopted through resolution MSC.255(84) and took effect on 1 January 2010 as a mandatory Code under the SOLAS Convention. It is supplemented by the *Guidelines to Assist Investigators in the Implementation of the Casualty Investigation Code* (resolution A.1075(28)).
3. Chapter 1 of the Code details its objectives, which include providing 'a common approach' for conducting a marine safety investigation (MSI) that does 'not seek to apportion blame or determine liability'. The key objective of an MSI is to prevent future casualties by 'applying a consistent methodology and approach to enable a broad ranging investigation' that uncovers 'causal factors and safety risks' and provide reports to the Organization to enable the industry to address safety issues.
4. Since the Code became mandatory, a large and increasing number of Member State casualty investigation agencies (that is, MSI Authorities as defined in the Code) have applied it to conduct MSIs and submit investigation reports to the Organization. Achieving the Code's key objective noted in paragraph 2 relies on the quality of investigations and the timely submission of reports. However, both the quality and timeliness of investigations and reports have been the subject of issues raised with the Organization and among Member States for several years.

IMO's objectives

5. As a mandatory IMO instrument, the Code and its proposed review fall within the scope of the IMO's mission. In addition, the Code's key objective of preventing casualties by learning from investigations is directly linked to achieving the IMO's objectives for maritime safety and environment protection under the SOLAS and other Conventions.
6. The proposed review of the Code can contribute to the implementation of strategic directions 1, 6 and 7 (SD 1, SD 6 and SD 7). This review will aim to assess whether the Code contains current best practice and investigation standards to address the human element, improve implementation of the Code, and ensure regulatory effectiveness.

Need

7. The issues raised with respect to the quality and timeliness of investigations and reports noted in paragraph 4 have been recurrent themes in various proposals submitted to the Organization to amend the Code. Paragraphs 11 to 20 outline those proposals and the issues that they were intended to address.
8. The recurrent issues raised by industry indicate its concerns about achieving the Code's objectives. These issues have also been the subject of discussions among Member State casualty investigation agencies and between them through international fora and it has been recognised that the issues should be addressed. A comprehensive and holistic review of the Code will provide an opportunity to adequately address these issues in a holistic manner in addition to identifying potential improvements for the use and implementation of the Code.
9. Therefore, the co-sponsors believe that there is a compelling need to conduct the proposed review as soon as practicable to address the recurrent issues being raised and to contribute to achieving the IMO's objectives noted in paragraphs 5 and 6.

Analysis of the issue

10. The central issue is that the industry generally considers that the Code's provisions have not ensured the expected quality and timeliness of investigations and reports. While Member State casualty investigation agencies and investigators recognise this issue should be resolved by addressing the various proposals and concerns, which are outlined in the following paragraphs, they also recognise that the principles of the Code, including its objectives, are sound and enduring and must be retained.
11. In 2016, the Organization circulated Circular Letter No.3682 *Countries Survey Questionnaire* aimed at identifying 'potential problem areas' in carrying out and reporting on investigations into very serious marine casualties but this did not result in identifying any reasons for underreporting (III 9/4/8, paragraphs 4 to 6).
12. Subsequently, III 7/4/5 (BIMCO et al) noted that of 39 total losses of bulk carriers between 2010 and 2019, only 24 had had investigation reports made available in GISIS by January 2020. The co-sponsors of that paper noted that as there was no effective time limit in the Code for a MSI report to be made available, such a limit should be introduced by amending the Code (III 9/4/8, paragraph 8).
13. Similarly, III 7/4/3 (Secretariat) proposed amending the Code to introduce the notion of time to improve the reporting rate of MSIs by drawing on existing standards and practices in the Convention on International Civil Aviation and provided an analysis (III 7/INF.42) to highlight the need for a notion of time (III 9/4/8, paragraph 9).
14. Significant amendments to the Code were proposed in MSC 104/15/16 (Vanuatu et al) to mandate a root cause investigation to improve the quality of investigations. This proposal received in principle support from a majority of delegations at MSC 105, resulting in the Committee instructing the III Sub-Committee to assess the proposal (III 9/4/8, paragraph 10).
15. At its 8th session, the III Sub-Committee assessed the proposal to mandate a root cause investigation and recommended that it should not be approved for various reasons, including that amendments to the Code should be holistic. Consequently, the Committee, at its 106th session, endorsed the III Sub-Committee's recommendation (III 9/4/8, paragraphs 11 and 12).
16. Document HTW 8/INF.3 (IMLA) suggested refinement of human factor classification and follow-up consideration of intervention on human factors attributed to accidents for the successful implementation of the Code and associated guidelines (III 9/4/8, paragraph 13). The term 'human factor' in that document refers to the human element.
17. As noted in paragraphs 8 and 10, the recurrent proposals have been formally discussed among casualty investigation agencies for several years. These discussions have drawn on practical investigation experience to identify provisions of the Code where amendments could help address the issues raised, improve the Code from the user's perspective and support more effective implementation.
18. In 2023, III 9/4/5 (INTERCARGO et al) proposed amending the Code to mandate the provision of investigation status in GISIS within a defined period and the status to then be updated regularly to provide clarity on the progress of investigations (III 9/4/5, paragraph 14).
19. At the same time, III 9/4/8 (Australia et al) proposed a comprehensive and holistic review of the Code and associated guidelines to address the increasingly recurrent proposals about the quality and timeliness of investigations and reports (III 9/4/8, paragraphs 17 to 19).

20. The III Sub-Committee, at its 9th session, considered both III 9/4/5 and III 9/4/8 during the same discussion. In concluding that discussion, the Sub-Committee noted the strong support for a comprehensive and holistic review of the Code, acknowledged the concerns some delegations expressed for flexibility with respect to the timeframes for submission of reports and invited interested Member States and international organizations to submit proposals to MSC for a new output for a comprehensive and holistic review of the Code (III 9/9, paragraphs 4.9 and 4.10).
21. The co-sponsors of this document welcome the III Sub-Committee's invitation to submit a proposal to MSC for a new output to review of the Code and, accordingly, submit this proposal to address the central issue noted in paragraph 10 among other things.

Analysis of implications

22. The objectives of the Code and underlying principles are sound and enduring and will be the overriding consideration for the proposed review. Therefore, the review's findings and recommendations will be consistent with the Code's objectives and principles.
23. The proposed review of the Code should not result in any material legislative change for Member States that have ratified the SOLAS Convention. The review will aim to retain the Code as a high-level document to avoid any legislative burden.
24. When the Code became mandatory, the potential administrative burden and the cost to Member States in implementing it was implied and expected. The proposed review does not aim to change those expectations rather it will assess if the provisions of the Code and associated guidelines best ensure that it can be effectively implemented to achieve its objectives.
25. Notwithstanding paragraph 24, the proposed review will only be meaningful if past proposals to amend the Code are considered and addressed holistically.

Benefits

26. The proposed review of the Code is aimed at best ensuring that its key objective of preventing future casualties can be achieved. This objective is consistent with the IMO's objectives for maritime safety and environmental protection. Further, the review will assess if the Code contains current best practice and investigation standards to address the human element, improve implementation and ensure regulatory effectiveness so it is aligned to the implementation of SD 1, SD 6 and SD 7.
27. As the proposed review will address the recurrent industry concerns about the quality and timeliness of investigations and reports, it will contribute to improving confidence in the Code, Member State casualty investigations and the Organization.
28. In addition, the proposed review will provide an opportunity to identify potential improvements to the use and implementation of the Code by Member States, some of which will also address the issues raised by industry holistically and consistent with the Code's objectives and principles.
29. The proposed review can provide significant benefits for improving maritime safety and environment protection, so the time and effort to conduct it will be adequately justified.

Industry standards

30. Chapter 1 of the Code states that its objective is to provide a common approach for States to adopt in the conduct of marine safety investigations. Therefore, the Code and associated guidelines comprise the maritime industry's existing casualty investigation

standards. Since it became mandatory in 2010, there have been several proposals to amend the Code but there have been no amendments to it.

31. Similar standards exist in other industries and transport modes, including aviation. This is because those industries have adopted the same key safety investigation objectives and principles as are enshrined in the Code, that is, to prevent future casualties through broad ranging investigations that do not seek to apportion blame or determine liability.
32. The proposed new output for a comprehensive and holistic review of the Code and associated guidelines is the first such proposal. Essentially, the review will assess if the Code is fit for purpose to best achieve its objectives.

Output

33. The proposed new work output is “Review of the *Code of the International Standards and Recommended Practices for a Safety Investigation into a Marine Casualty or Marine Incident* (resolution MSC.255(84)) – the Casualty Investigation Code, and the associated *Guidelines to Assist Investigators in the Implementation of the Casualty Investigation Code* (resolution A.1075(28))”.
34. It is proposed that a comprehensive and holistic review of the Casualty Investigation Code and associated guidelines, consistent with the overriding consideration noted in paragraph 22, be conducted. This broad scope is intended to ensure a proper assessment of whether the provisions and guidance in these instruments are current, appropriate and adequate for the effective implementation of the Code and to achieve its objectives.
35. The proposed review is expected to be completed within a biennium because some preliminary work has been done. A working group comprising casualty investigators from several Member States and lead by Australia reviewed the Code in 2022, which should assist with early completion of the proposed review. In addition, Member States and international organizations, between them, should have the capability, diversity and resources to conduct the review.

Human element

36. The completed *Checklist for Considering and Addressing the Human Element* (MSC-MEPC.1/Circ.5/Rev.5) is included in annex 1.

Urgency

37. The co-sponsors of this paper believe that there is an increasingly urgent need to address the recurrent issues about the quality and timeliness of investigations and reports that are being raised by industry. The proposed review can address these issues in a holistic manner in addition to determining if the Code remains fit for intended purpose and should be conducted as soon as practicable.
38. The new work output is requested to be for the 2024-2025 biennium for two sessions with a target completion date of 2026.

Action required

39. The Committee is requested to approve the proposed new output for a comprehensive and holistic review of the Code and associated guidelines in paragraph 33, with the scope outlined in paragraphs 34 to 35.

ANNEX 1

Checklist for Considering and Addressing the Human Element

	1 Question	2 Yes/ No	3 IMO References	4 Considerations	5 Instructions
	Workload		<i>Other relevant references may be added</i> <i>Strike out references that are not relevant</i>	<i>If answer to question is "yes" identify considerations. If answer is "no" make proper justification</i>	<i>Identify how human element considerations should be addressed in the output</i>
1	Does the "output" affect workload?				
1.1	On board, especially in the already intensive phases of the voyage and port operations to:	No		<p>This proposal is for a new output for a review of the Casualty Investigation Code, not for a change to the Code or any other IMO instrument.</p> <p>As noted in paragraph 24 of the proposal, when the Code became mandatory in 2010, its impact on various areas, including the potential administrative burden and costs in its implementation, was implied and expected. This proposed new output does not aim to change those expectations.</p> <p>While the proposed review will assess if the Code contains current best practice and standards to address the human element, improve implementation and ensure regulatory effectiveness as noted in paragraph 26 of the proposal, any improvements and related potential changes to the Code identified are not known at this time so their potential impact cannot be assessed.</p>	Not applicable.

1.1.1	Operations including navigation, cargo and engineering	No		As above.	Not applicable.
1.1.2	Maintenance of the ships structure and its equipment	No		As above.	Not applicable.
1.1.3	Onboard administration in support of the ships' management systems	No		As above.	Not applicable.

	1 Question	2 Yes/ No	3 IMO References	4 Considerations	5 Instructions
1.1.4	Onboard administration related to regulation involving flag States, classification societies, port State and other bodies such as charterers and port authorities	No		As above.	Not applicable.
1.1.5	Increased workload or time pressure on personnel if involved in implementation of changes prior to the implementation date	No		As above.	Not applicable.
1.2	Ashore, in a manner that would affect the ships operation to:	No		<p>This proposal is for a new output for a review of the Casualty Investigation Code, not for a change to the Code or any other IMO instrument.</p> <p>As noted in paragraph 24 of the proposal, when the Code became mandatory in 2010, its impact on various areas, including the potential administrative burden and costs in its implementation, was implied and expected. This proposed new output does not aim to change those expectations.</p> <p>While the proposed review will assess if the Code contains current best practice and standards to address the human element, improve implementation and ensure regulatory effectiveness as noted in paragraph 26 of the proposal, any improvements and related potential changes to the Code identified are not</p>	Not applicable.

				known at this time so their potential impact cannot be assessed.	
1.2.1	Companies' administration	No		As above.	Not applicable.
1.2.2	Flag State, port State and classification societies administration such that certification and other processes are compromised or delayed	No		As above.	Not applicable.

	1 Question	2 Yes/ No	3 IMO References	4 Considerations	5 Instructions
	Decision-making		<p><i>Other relevant references may be added</i></p> <p><i>Strike out references that are not relevant</i></p>	<i>If answer to question is "yes" identify considerations. If answer is "no" make proper justification</i>	<i>Identify how human element considerations should be addressed in the output</i>
2	Does the "output" impact decision-making on board the ship?				
2.1	By confusion with existing requirements and regulations	No		<p>This proposal is for a new output for a review of the Casualty Investigation Code, not for a change to the Code or any other IMO instrument.</p> <p>As noted in paragraph 24 of the proposal, when the Code became mandatory in 2010, its impact on various areas, including the potential administrative burden and costs in its implementation, was implied and expected. This proposed new output does not aim to change those expectations. While the proposed review will assess if the Code contains current best practice and standards to address the human element, improve implementation and ensure regulatory effectiveness as noted in paragraph 26 of the proposal, any improvements and related potential changes to the Code identified are not known at this time so their potential impact cannot be assessed.</p>	Not applicable
2.2	By changing responsibilities as laid out in the ISM Code	No		As above.	Not applicable.
2.3	By creating complexity in its implementation and/or in the safety management systems	No		As above.	Not applicable.

2.4	By requiring increased mental effort, such as the need to find, transform and analyse data or result in the need to make judgements based on incomplete information	No		As above.	Not applicable.
2.5	By limiting the time available to establish situational awareness, decide, communicate (possibly across time zones) or check	No		As above.	Not applicable.
2.6	By increasing reliance on judgement and administrative controls to manage major risks such as oil spills and collisions	No		As above.	Not applicable.

	1 Question	2 Yes/ No	3 IMO References	4 Considerations	5 Instructions
	Living and Working Environment		Other relevant references may be added Strike out references that are not relevant	If answer to question is "yes" identify considerations. If answer is "no" make proper justification	Identify how human element considerations should be addressed in the output
3	Does the "output" affect the living and working environment?				
3.1	By interfering with existing arrangements for abandonment, fire-fighting and other emergency plans or procedures	No		This proposal is for a new output for a review of the Casualty Investigation Code, not for a change to the Code or any other IMO instrument. As noted in paragraph 24 of the proposal, when the Code became mandatory in 2010, its impact on various areas, including the potential administrative burden and costs in its implementation, was implied and expected. This proposed new output does not aim to change those expectations. While the proposed review will assess if the Code contains current best practice and standards to address the human element, improve implementation and ensure regulatory effectiveness as noted in paragraph 26 of the proposal, any improvements and related potential changes to the Code identified are not known at this time so their potential impact cannot be assessed.	Not applicable.

3.2	By introducing new materials that could create an explosion, fire, environmental or occupational health risk	No		As above.	Not applicable.
3.3	By introducing new high energy sources such as high-voltage, high pressure fluids	No		As above.	Not applicable.
3.4	By affecting access or egress and causing lack of ventilation in working spaces	No		As above.	Not applicable.
3.5	By affecting the habitability of accommodation spaces due to noise, vibration, temperatures, dust and other contaminants	No		As above.	Not applicable.

	1 Question	2 Yes/ No	3 IMO References	4 Considerations	5 Instructions
	Operation and Maintenance		<i>Other relevant references may be added</i> <i>Strike out references that are not relevant</i>	<i>If answer to question is "yes" identify considerations. If answer is "no" make proper justification</i>	<i>Identify how human element considerations should be addressed in the output</i>
4	Does the "output" affect the operation and maintenance of the ship, its structure or systems and equipment?				

	1 Question	2 Yes/ No	3 IMO References	4 Considerations	5 Instructions
4.1	By introducing equipment that the user may find difficult to operate or maintain or may be unreliable	No		<p>This proposal is for a new output for a review of the Casualty Investigation Code, not for a change to the Code or any other IMO instrument.</p> <p>As noted in paragraph 24 of the proposal, when the Code became mandatory in 2010, its impact on various areas, including the potential administrative burden and costs in its implementation, was implied and expected. This proposed new output does not aim to change those expectations. While the proposed review will assess if the Code contains current best practice and standards to address the human element, improve implementation and ensure regulatory effectiveness as noted in paragraph 26 of the proposal, any improvements and related potential changes to the Code identified are not known at this time so their potential impact cannot be assessed.</p>	Not applicable.
4.2	By introducing new and/or novel technology, or technology that changes the role of the person	No		As above.	Not applicable.
4.3	By introducing requirements for new competencies and roles	No		As above.	Not applicable.
4.4	By overloading existing infrastructure such as power generation and ventilation systems	No		As above.	Not applicable.
4.5	By poor integration with existing systems and controls	No		As above.	Not applicable.
4.6	By introducing new and unfamiliar operations/procedures	No		As above.	Not applicable.

4.7	By introducing new and unfamiliar operating interfaces?	No		As above.	Not applicable.
4.8	By introducing risks to the ship during any modifications required prior to the implementation date of the output	No		As above.	Not applicable.

	1 Question	2 Yes/ No	3 IMO References	4 Considerations	5 Instructions
	Measures to address the human element		Other relevant references may be added Strike out references that are not relevant	If answer to question is "yes" identify considerations. If answer is "no" make proper justification	Identify how human element considerations should be addressed in the output
5	Does the "output" require changes to:				
5.1	Training	No		This proposal is for a new output for a review of the Casualty Investigation Code, not for a change to the Code or any other IMO instrument. As noted in paragraph 24 of the proposal, when the Code became mandatory in 2010, its impact on various areas, including the potential administrative burden and costs in its implementation, was implied and expected. This proposed new output does not aim to change those expectations. While the proposed review will assess if the Code contains current best practice and standards to address the human element, improve implementation and ensure regulatory effectiveness as noted in paragraph 26 of the proposal, any improvements and related potential changes to the Code identified are not known at this time so their potential impact cannot be assessed.	Not applicable.

5.2	Practical skill development and competences	No		As above.	Not applicable.
5.3	Operating, management and/or maintenance procedures	No		As above.	Not applicable.
5.4	Information/manuals for operation and maintenance	No		As above.	Not applicable.
5.5	Spares outfit	No		As above.	Not applicable.
5.6	Occupational safety requirements including guarding and PPE	No		As above.	Not applicable.
5.7	Shore support	No		As above.	Not applicable.