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## NOTE

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From:	General Secretariat of the Council
To:	Permanent Representatives Committee
No. prev. doc.:	ST 6018/24
No. Cion doc.:	ST 10115/23
Subject:	Proposal for a Directive of the European Parliament and of the Council amending Directive 2009/18/EC establishing the fundamental principles governing the investigation of accidents in the maritime transport sector – Analysis of the final compromise text with a view to agreement

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## I. INTRODUCTION

1. The Commission submitted the above-mentioned proposal to the European Parliament and to the Council on 1 June 2023 as a part of the Maritime Safety Package.
2. The proposal modifies the Directive establishing the fundamental principles governing the investigation of accidents in the maritime transport sector (Directive 2009/18/EC – “the Accident Investigation Directive”). The Commission presented its proposal to a) improve the protection of fishing vessels, their crew and the environment, b) clarify definitions and the legal text so that Member States’ accident investigation bodies investigate all accidents that need to be investigated in a timely and harmonised manner, c) enhance the capacity of accident investigation bodies (AIBs) to conduct (and report on) accident investigations in a timely, expert and independent manner and d) to update a number of definitions and

references to relevant EU legislation and IMO regulations in order to ensure clarity and consistency.

## II. STATE OF PLAY

3. The Council agreed on a general approach on 4 December 2023.
4. The European Parliament designated the Committee on Transport and Tourism (TRAN) as the responsible committee on this proposal and Ms Caroline Nagtegaal (Renew Europe, Netherlands) as rapporteur. It adopted its position and a mandate for negotiations in plenary on 13 December 2023.
5. The European Economic and Social Committee adopted its opinion on the proposal at the 581<sup>st</sup> plenary session, on 20 September 2023. The Committee of the Regions decided not to issue an opinion.
6. Under the Belgian Presidency, three technical meetings with the European Parliament took place between 11 and 24 January 2024. The Permanent Representatives Committee endorsed a compromise proposal and provided a mandate for trilogue negotiations on 7 February.
7. In a trilogue meeting on 13 February, the negotiators reached a provisional political agreement, on which the Permanent Representatives Committee was debriefed on 16 February.

## III. PREPARATIONS FOR THE TRILOGUE

8. The political agreement, reflected in the text annexed to this note, is based on the following key elements:
  - a) The Parliament agreed to the compromise proposal of the Council on the obligation to inform maritime security authorities if the accident investigation body *suspects* that an offence has been committed. The wording '*or is suspected*' was reintroduced in line 79, but the entire paragraph will only apply "in accordance with national law".
  - b) In respect to the conformity check (or 'non-regression' clause), the Presidency compromise was agreed by the Parliament, and a new article will be included in the

text, which follows the same approach as Article 4(3) of the Maritime Equipment Directive.

- c) In respect to the quality management systems (QMS) for investigation authorities, the Presidency succeeded to convince the Parliament that a mandatory QMS would bring a significant additional workload and administrative burden with limited added value. The general approach text will therefore be maintained. Further guidance for accident investigation authorities will be provided through the Permanent Cooperation Framework.
- d) Finally, the co-legislators agreed with a transposition deadline of 30 months, given the significant workload that is incumbent on Member States authorities to transpose four directives of the Maritime Safety Package in parallel, which would need legislative modifications for several pieces of national legislation.

The Presidency considers that the compromise of the political agreement is balanced and in line with the strategy for the negotiations and the mandate's direction (note ST 6018/24); changes agreed to the text in trilogue did not affect the overall balance.

#### IV. CONCLUSIONS

- 9. In view of the above, the Permanent Representatives Committee is invited to:
  - agree on the compromise text as set out in the annex to this note, subject to revision by the lawyer-linguists of both institutions;
  - confirm that, should the Parliament adopt its position at first reading, in accordance with Article 294(3) TFEU, as set out in the Annex (subject to legal-linguistic finalisation), the Council would approve, in accordance with Article 294(4) TFEU, the position of the European Parliament and the act would be adopted in the wording corresponding to the position of the European Parliament;
  - authorise the Presidency to send a letter to the Chair of the TRAN Committee to that effect.

2023/0164 (COD)

Proposal for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**  
**amending Directive 2009/18/EC establishing the fundamental principles governing the**  
**investigation of accidents in the maritime transport sector *and repealing Commission***  
***Regulation (EU) No 1286/2011***

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 100(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee<sup>2</sup>,

~~Having regard to the opinion of~~ **After consulting** the Committee of the Regions<sup>3</sup>,

Acting in accordance with the ordinary legislative procedure,

Whereas:

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<sup>1</sup> The text is compared to the Commission proposal through bold italics/ strikethrough.

<sup>2</sup> OJ C , , p. .

<sup>3</sup> OJ C , , p. .

- (1) Directive 2009/18/EC of the European Parliament and of the Council<sup>4</sup> establishes the fundamental principles governing the investigation of accidents in the maritime transport sector and provides for a system of safety investigations. Maritime accidents falling within the scope of that Directive are investigated by independent investigative bodies established in the Member States to improve maritime safety, as well as to protect the marine environment, ~~by learning from past accidents to prevent their reoccurrence in the future~~ ***in order to learn from the past with a view to preventing future casualties and incidents.***
- (2) Since the entry into force of Directive 2009/18/EC, there have been changes in the international regulatory environment and technological developments. Those changes and developments as well as the experience gained in the implementation of Directive 2009/18/EC should be taken into account.
- (2a) ***In this regard, the Union, in line with its international commitments related to protecting the marine environment, should continue exerting its leadership in a sector regulated both at European and international level.***
- (3) Directive 2009/18/EC refers to a number *of* legal texts adopted by the International Maritime Organization (IMO) which have been abrogated, amended or revised since its entry into force. ***For instance, that Directive refers to*** the ‘IMO Code for the Investigation of Marine Casualties and Incidents’ (IMO Resolution A.849(20) of 27 November 1997) which has been revoked by the ‘Code of the International Standards and Recommended Practices for a Safety Investigation into a Marine Casualty or Marine Incident (Casualty Investigation Code)’ (Resolution MSC. 255(84) of 16 May 2008) with Resolution A.1075(28) Guidelines to Assist Investigators in the Implementation of the Casualty Investigation Code– MSC.255(84)).
- (4) The IMO Casualty Investigation Code introduces new definitions, such as the definition of ‘marine safety investigation Authority’, while ~~others~~ ***other*** concepts are deleted, such as ‘serious casualty’. Those changes should be incorporated into Directive 2009/18/EC.
- (5) Directive 2009/18/EC also refers to ***the 2008*** IMO Circular ~~MSC/MEPC. 3/Circ.3 of 2008~~ ***MSC-MEPC.Circ.3*** which was superseded by Circular MSC-MEPC.-3/circ.4/rev.1

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<sup>4</sup> OJ L 131, 28.5.2009, p. 114

Reports on Marine Casualties and Incidents Revised Harmonized Reporting Procedures of 18 November 2014.

- (6) The IMO Guidelines to Assist Investigators in the Implementation of the Casualty Investigation Code (A.1075(28)) adopted on 4 December 2013 provide practical advice for the systematic investigation of marine casualties and incidents and allow the development of effective analysis and preventive action. ***They supersede the common methodology laid down in Commission Regulation (EU) No 1286/2011. As a result, those guidelines should be included in Directive 2009/18/EC and Commission Regulation (EU) No 1286/2011 should be repealed.***
- (7) Fishing vessels less than 15 metres in length are at present excluded from the scope of Directive 2009/18/EC, therefore the conduct of maritime accident investigations involving such fishing vessels is ~~non-systematic and non-harmonised~~ ***neither systematic nor harmonised***. Such vessels are more prone to capsizing and ***it is relatively common for members of the crew falling to fall overboard is relatively common***. Therefore, there is a need to protect those fishing vessels, their crew and the environment by introducing a preliminary assessment of very serious marine casualties involving fishing vessels less than 15 metres long to determine whether the authorities should open a safety investigation ***taking into account, inter alia, the evidence available as well as the potential for the findings of the safety investigation to lead to the prevention of future casualties and incidents. This measure is expected to have a significant positive impact on the number of lives saved at sea and injuries avoided, protecting in particular the lives and health of European fishers.***
- (7a) ***This Directive should not prevent Member States from setting up national rules to investigate marine casualties or incidents that involve any ship type carrying 12 passengers or less or engaging in other commercial purposes.***
- (8) Some definitions provided in Directive 2009/18/EC are not clear. The definition of the length of a fishing vessel should be ~~set out especially~~ ***specified, particularly*** when there is a distinction on the approach and the obligations of the marine safety investigation authorities based on the length of the fishing vessel.
- (9) The IMO Casualty ***Investigation*** Code refers ~~to an event~~ ***to an event*** or a sequence of events which has occurred ‘directly in connection with the operations of a ship’. This concept is the

subject of significant divergence and should be clarified. That divergence impacts on the actions of the accident investigation authorities particularly as regards accident in ports, the possibilities ~~of~~for joint investigations and the gathering of accident and investigation data.

- (10) The IMO Casualty *Investigation Code states*Code provides that when a very serious marine casualty occurs, ~~a~~the marine authority is obliged to carry out an investigation *safety investigation shall be conducted*. However, there is no guidance on the time within which a death has to take place following the accident so ~~that~~for the death ~~gives~~to give rise to a very serious marine casualty and therefore be investigated *requiring investigation*. Therefore Directive 2009/18/EC should provide such guidance.
- (10a) *Accident investigation authorities should make best efforts to make accident investigation reports and their recommendations accessible to those concerned, including victims and their families, before making them public.*
- (10b) *Given the importance of examining human factors in accident investigation, due consideration should be given in investigations to the working and living conditions on board and any impact that this may have had on the accident or incident being investigated.*
- (11) The available staff, as well as the operational resources of the Member States' marine safety investigation authorities vary distinctly, resulting in ineffective and inconsistent reporting on and investigation of marine casualties. Therefore, the Commission, with the assistance of the European Maritime Safety Agency (EMSA), should provide highly specialised analytical support ~~during an~~for individual investigations *investigations* (soft skills), as well as analytical tools and equipment (hardware). *Furthermore, cooperation and mutual assistance between Member States in safety investigations should continue to be encouraged and supported, particularly in view of new maritime safety challenges related to environmental, social, public health and labour issues.*
- (12) In light of what has been stated, EMSA should organise ~~trainings~~*regular training* on specific techniques and on new developments and technologies ~~which can~~*that could* be relevant for accident investigation in the future. Such training should focus, among ~~others~~*other things*, on renewable and low carbon fuels, which are particularly relevant in ~~view~~*the light* of the "Fit for 55 package", and automation, as well as on the General Data

Protection Regulation (GDPR) rules. *This will improve safety aboard those vessels and the health and safety of the seafarers and fishers working on them.*

- (12a) *The independence of the marine safety investigations must be ensured under all circumstances and all those involved in these investigations, including companies, institutions or agencies either public or private, should be free from any conflict of interest.*
- (13) ~~To improve the quality of accident investigations, the Member States should develop a quality management system (QMS) for the marine~~ *Member States should work together to ensure that investigations are conducted in a consistent manner and to help the safety authorities improve and enhance their safety investigation authorities capabilities.*
- (14a) *In order to adapt the Annexes to the evolution of international maritime law related to the investigation of accidents in the maritime transport sector, and to facilitate the knowledge gathering, sharing and reporting, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of Article 14(4), and Article 17(5) of this Directive. It is of particular importance that the Commission carries out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making\*. Notably, the Permanent Cooperation Framework established by this Directive should be involved in these consultations. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.*
- (15) In view of the full ~~monitoring~~ cycle of visits to Member States by EMSA to monitor the implementation of this Directive, the Commission should evaluate the implementation of this Directive no later than [~~ten~~ *five* years ~~after its~~ *from the* date of ~~entry into~~ *force* ~~transposition, as~~ referred to in Article 23}] and report to the European Parliament and the Council thereon. Member States should cooperate with the Commission to gather all the information necessary for the evaluation.

(16) In accordance with the principle of proportionality, it is necessary and appropriate for the achievement of the basic objective of improving the ~~Since the objectives of this Directive, namely to lay down rules on the investigation of accidents in the maritime transport sector in order to improve~~ maritime safety and the protection of ~~protect~~ the marine environment, to lay down rules on the investigation of accidents in the maritime transport. This Directive does not go beyond what is necessary in order to achieve the objectives pursued ~~cannot be sufficiently achieved by the Member States, but can rather, by reason of the scale and effects of the action, be better achieved at Union level, the Union may adopt measures~~, in accordance with ~~the principle of subsidiarity as set out in~~ Article 5(4)5 of the Treaty on European Union. ~~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.~~

(17) Directive 2009/18/EC should therefore be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

#### Article 1

#### Amendments to Directive 2009/18/EC

Directive 2009/18/EC is amended as follows:

(1) In Article 1, paragraph 2 is replaced by the following:

‘2. ~~The purpose of~~ investigations pursuant to this Directive shall not have the aim of determining ~~be to determine liability or apportion blame, so no fault or liability or apportioning blame. However,~~ **shall be inferred from the findings of these investigations.** Member States shall ensure that the marine safety investigation Authority ~~Authorities~~ (hereinafter referred to as the ‘investigation authority’) ~~does not refrain~~ **authorities’) are not prevented or restricted** from fully reporting the causes of a marine casualty or incident ~~because fault or liability may be inferred from the findings.~~’

(2) Article 2 (2) is amended as follows

(a) point (b) is replaced by the following:

~~‘(b) ships not propelled by mechanical means, wooden ships of primitive build, pleasure yachts and pleasure craft unless they are used for commercial purposes.’~~

(b) Point (d) is deleted

(3) Article 3 is replaced by the following:

‘ Article 3

Definitions

For the purposes of this Directive:

1. ‘IMO Casualty Investigation Code’ shall mean the Code of the International Standards and Recommended Practices for a Safety Investigation into *a* Marine Casualty or Marine Incident ~~annexed in~~ *Annex* to Resolution MSC.255(84) of the IMO Maritime Safety Committee, in its up-to-date version;
2. ‘IMO Guidelines to Assist Investigators in the Implementation of the Casualty Investigation Code’ shall mean the guidelines adopted in the IMO Assembly by Resolution A.1075(28) on 4 December 2013, *in their up-to-date version*;
3. the following terms shall be understood in accordance with the definitions contained in the IMO Casualty Investigation Code:
  - (a) ‘marine casualty’;
  - (b) ‘very serious marine casualty’;
  - (c) ‘marine incident’;
  - (d) ‘marine safety investigation’;
  - (e) ‘marine safety investigation Authority’;
  - (f) ‘marine safety investigating State’;

- (g) ‘substantially interested State’;
- (h) ‘serious injury’;
4. ‘IMO Guidelines on the Fair Treatment of Seafarers in the Event of a Maritime Accident’ shall mean the guidelines as ~~annexed~~ **in Annex** to Resolution LEG.3(91) of the IMO Legal Committee of 27 April 2006 ~~and~~ as approved by the Governing Body of the International Labour Organisation ~~in~~ **at** its 296th session of 12 to 16 June 2006;
5. the terms ‘ro-ro ~~ferry~~ **passenger ship**’ and ‘high-speed passenger craft’ shall be understood in accordance with the definitions contained in Article 2 of Directive (EU) 2017/2110<sup>5</sup>;
6. ‘Voyage data recorder’ (hereinafter referred to as ‘VDR’) **and simplified voyage data recorder (hereinafter referred to as ‘S-VDR’)** shall be understood in accordance with the definition contained in Resolution MSC.333(90) **and MSC. 163(78)** of the IMO Maritime Safety Committee in ~~its~~ **their** up-to-date ~~version~~ **versions, as supplemented by the relevant IMO performance standards depending on the date of installation on-board, without prejudice to Union legislation;**
7. ‘safety recommendation’ shall mean any proposal made, including for the purposes of registration and control, by:
- (a) the investigation authority of the State conducting, or leading, the 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 and the results of safety investigations carried out;

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<sup>5</sup> Directive (EU) 2017/2110 of the European Parliament and of the Council of 15 November 2017 on a system of inspections for the safe operation of ro-ro passenger ships and high-speed passenger craft in regular service and amending Directive 2009/16/EC and repealing Council Directive 1999/35/EC (OJ L 315, 30.11.2017, p. 61).

8. 'length of a fishing vessel' shall be understood in accordance with the definition contained in Article 2 of Regulation (EU) 2017/1130<sup>6</sup>;
9. 'fatal injury' means an injury which is sustained by a person in an accident, and which results in his or her death within 30 days of the date of the accident, *if the related information is available.*'

(4) Article 4 is amended as follows:

(a) in paragraph 1, point (a) is replaced by the following:

'(a) independent of criminal or other parallel investigations held to determine liability or to apportion blame and that investigation authorities are able to report on the results of a marine safety investigation without direction or interference from any persons, organisations or parties who may be affected by its outcome.'

(b) in paragraph 2, point (b) is replaced by the following:

'(b) coordination of the activities of their respective investigation authorities to the extent necessary to attain the objective of this Directive.'

(5) Article 5 is replaced by the following:

' Article 5

Obligation to investigate

1. Each Member State shall ensure that a safety investigation is carried out by the investigation authority referred to in Article 8 after *a* very serious marine ~~casualties~~*casualty*:

(a) involving a ship flying its flag, irrespective of the location of the casualty;

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<sup>6</sup> Regulation (EU) 2017/1130 of the European Parliament and of the Council of 14 June 2017 defining characteristics for fishing vessels (OJ L 169, 30.6.2017, p.1)

- (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.
2. In the case of a fishing vessel of less than 15 metres in length, the investigation authority shall ***without delay and no later than two months after its occurrence***, carry out a preliminary assessment of the very serious marine casualty to determine whether or not to conduct a safety investigation.

***In cases*** where the investigation authority decides not to undertake a safety investigation of a very serious marine casualty involving a fishing vessel of less than 15 metres, the reasons for that decision shall be recorded and notified in accordance with Article 17(3) ***without delay and no later than two months after its occurrence***.

3. In the decisions referred to in paragraph 2, the investigation authority shall take into account the evidence available as well as the potential for the findings of the safety investigation to lead to the prevention of future casualties and incidents. In the case of any other marine casualty or incident, the investigation authority shall decide whether or not to undertake a safety investigation.
4. The scope and practical arrangements for the conduct of safety investigations shall be determined by the investigation authority of the lead investigating Member State in cooperation with the equivalent authorities of the other substantially interested States, in ~~such~~***the*** manner as ~~appears to it~~***in which it believes*** most conducive to achieving the objective of this Directive, and with a view to preventing future casualties and incidents.
5. When carrying out safety investigations, the investigation authority shall follow the IMO Guidelines to Assist Investigators in the Implementation of the Casualty Investigation Code. Investigators may depart from these guidelines where this can be justified as necessary, in their professional judgement, to achieve the aims of the investigation. The Commission may ~~adapt the~~

~~guidelines~~**adopt recommendations** for the purposes of this Directive**implementation of these guidelines**, taking into account any relevant lessons drawn from safety investigations, **and after consulting the investigating authorities in connection** in accordance with the procedure referred to **permanent cooperation framework defined** in Article 19**10**.

6. When deciding ~~if~~**whether** a marine casualty or incident occurring alongside, moored or in dock, involving shore or port workers, occurred “directly in connection with the operations of a ship” and ~~is~~ therefore ~~is~~ subject to a safety investigation, ~~particular consideration~~**Member States shall, in accordance with their national law, give particular consideration** be given to the involvement and relevance of the ship’s structure, equipment, procedures, crew and ship management **in and** to the activity being undertaken.
7. A safety investigation shall be started without delay after the marine casualty or incident occurs and, in any event, no later than two months after its occurrence.
8. **In accordance with national law**, if in the course of a marine safety investigation it becomes known or is suspected that an offence ~~is~~**has been** committed under Articles 3, 3bis, 3ter or 3quarter of the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, 1988, **in its up-to-date version**, the investigation authority shall immediately inform the maritime security authorities of the Member State or Member States and of any third country concerned ~~are informed~~.

(6) Article 6 is replaced by the following:

‘ Article 6

Obligation to notify

A Member State shall require, in the framework of its legal system, that its investigation authority be notified without delay, by the responsible authorities and/or by the parties involved or both, of the occurrence of all casualties and incidents falling within the scope of this Directive.’

(7) Article 7 is amended as follows:

(a) in paragraph 1, the third subparagraph is replaced by the following:

‘ The conduct of parallel safety investigations into the same marine casualty or incident shall be strictly limited to exceptional cases. In such cases, Member States shall notify the Commission of the reasons for conducting such parallel investigations. Member States conducting parallel safety investigations shall cooperate with each other. In particular, the investigation authorities involved shall exchange any pertinent information gathered in the course of their respective investigations *in a timely manner*, in particular in order to reach, as far as possible, shared conclusions.’

(b) the following paragraph 1a is inserted:

‘1a. During the conduct of the marine safety investigation, substantially interested *Member* States ~~should~~*shall* assist to the extent practical, the marine safety investigating Member State(s) with access to relevant information for the marine safety investigation. The investigator or investigators carrying out a marine safety investigation ~~should~~*shall, if deemed necessary*, also be granted access to *information held by* Government surveyors, coastguard officers, ship traffic service operators, pilots and other marine personnel of the substantially interested State, *in accordance with its national law*.

(c) *paragraph 4 is replaced by the following:*

*4. When a ro-ro passenger ship 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 territorial sea or internal waters as defined in UNCLOS the accident or incident occurs or, if occurring in other waters, by the last Member State visited by that ro-ro passenger ship or high-speed passenger 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.'*

(8) Article 8 is replaced by the following:

‘ Article 8

Marine safety investigation Authorities

1. Member States shall ensure that marine safety investigations are conducted under the responsibility of an impartial, ***independent and*** permanent marine safety investigation Authority, endowed with the necessary powers, ***and*** with sufficient means and financial resources, and by suitably qualified investigators, competent in matters relating to marine casualties and incidents to ~~undertake marine safety investigations into marine casualties and marine incidents~~ ***comply with their obligations pursuant to this Directive.***

Neither the appropriate appointment of investigators with necessary specialist skills to form part of a marine safety investigation on a temporary basis, nor the use of consultants to provide expert advice on any aspect of a marine safety investigation are precluded.

In order to carry out a safety investigation in an unbiased manner, the ***marine safety*** investigation Authority shall be independent in its organisation, legal structure and decision-making of any party whose interests could conflict with the task entrusted to it.

Landlocked Member States which have neither ships nor vessels flying their flag ~~with~~ ***that fall under the scope of this Directive shall*** identify an independent focal point to cooperate in the ***safety*** investigation pursuant to Article 5(1)(c).

2. The ***marine safety*** investigation Authority shall ensure that individual investigators have a working knowledge of, and practical experience in, those subject areas pertaining to their normal investigative duties. Additionally, the ***marine safety*** investigation Authority shall ensure ready access to appropriate expertise, as necessary.

3. The activities entrusted to the *marine safety* investigation Authority may be extended to the gathering and analysis of data relating to maritime safety, in particular for prevention purposes, insofar as these activities do not affect its independence or entail responsibility in regulatory, administrative or standardisation matters.
4. Member States, acting in the framework of their respective legal systems, shall ensure that the investigators of its *marine safety* investigation Authority, or of any other *marine safety* investigation Authority to which it has delegated the task of marine safety investigation, where appropriate in collaboration with the authorities responsible for the judicial inquiry, be provided with any information *and technological means* pertinent to the conduct of the marine safety investigation and therefore be authorised to:
  - (a) have access to any relevant area or casualty site as well as to any ship, wreck or structure including cargo, equipment or debris;
  - (b) ensure *the* 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, *and be able to* copy and have use of any relevant information and recorded data, including VDR *or S-VDR* data, pertaining to a ship, vessel traffic service recordings, voyage, cargo, crew or any other person, object, condition or circumstance;
  - (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 as ~~hampering~~ **detrimental to** 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 *marine safety* investigation Authority 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 *marine safety* investigators shall be afforded status giving them the necessary guarantees of independence.

6. The *marine safety* investigation Authority 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.

7. ~~By [date of transposition]~~ Each Member State ~~shall~~ **may** develop, implement and maintain a quality management system for its ~~investigation authority~~. Such ~~quality management system shall be certified in accordance with the applicable international quality standards~~. *marine safety investigation Authority*

**7a. *The permanent cooperation framework shall draw up guidance and recommendations to ensure that that investigations are conducted in a consistent manner and to support marine safety investigation Authorities enhance their safety investigation capabilities and shall in this regard develop and implement a Peer review Programme.***

(9) ~~in Article 9 point (a)~~ is replaced by the following:

~~‘(a) all witness evidence and other statements, accounts and notes taken or received by the investigation authority in the course of the safety investigation;~~

## *Article 9*

### *Confidentiality*

- 1. Without prejudice to Regulation (EU) 2016/679, Member States, acting in the framework of their legal systems, shall ensure that the following records shall not be made available for purposes other than the marine safety investigation, unless the competent authority in that Member State determines that there is an overriding public interest in its disclosure, including the cases where it is concluded that the benefits of the disclosure outweigh the adverse domestic and international impact that such action may have on that or any future safety investigation:*
  - a) all statements taken from persons by the marine safety investigation Authority in the course of the marine safety investigation;*
  - b) records revealing the identity of persons who have given evidence in the context of the marine safety investigation;*
  - c) information collected by the marine safety investigation Authority, which is of a particularly sensitive and personal nature, including information concerning the health of individuals;*
  - d) material subsequently produced during the course of the marine safety investigation such as notes, drafts, opinions written by the marine safety investigators, opinions expressed in the analysis of information;*
  - e) information and evidence provided by marine safety investigators from other Member States or third countries in accordance with the international standards and recommended practices, where so requested by their marine safety investigation Authority;*
  - f) draft of interim, concise or final reports;*

- g) all communications between persons having been involved in the operation of the ship;*
  - h) written or electronic recordings and transcriptions of recordings from vessel traffic service, including their reports and results made for internal purposes*
- 2. Voyage data recorder and simplified data voyage recorder recordings from a marine safety investigation shall not be made available or used for purposes other than those of either the marine safety investigation or ship safety, except when such records are anonymised or disclosed under secure procedures.*
  - 3. For the purposes referred to in paragraph 1, only data that is strictly necessary may be disclosed.*
  - 4. Member States may decide to limit the cases in which such a decision of disclosure may be taken, while respecting Union law.’*

(10) Article 10 is amended as follows:

- (a) paragraph 1 is replaced by the following:

‘1. Member States shall, in close cooperation with the Commission, establish a permanent cooperation framework enabling their respective **marine safety** investigation authorities to cooperate ~~among themselves~~**with each other** to the extent necessary to attain the objective of this Directive.’

- (b) paragraph 3 is amended as follows:

- (a) the introductory paragraph and point (a) are replaced by the following:

‘3. Within the permanent cooperation framework, the **marine safety** investigation authorities in the Member States shall agree, in particular, upon the best modalities of cooperation in order to:’

- ‘(a) Enable **marine safety** investigation authorities to share installations, facilities and equipment for the technical investigation of wreckage and ship’s equipment and other objects relevant to the

safety investigations, including the extraction and evaluation of information from VDRs *or S-VDRs* and other electronic devices.’

(b) Points (h) and (i) are replaced by the following:

- ‘(h) promote cooperation with the *marine safety* investigation authorities of third countries and with the international maritime accidents investigation organisations in the fields covered by this Directive;
- (i) provide *marine safety* investigation authorities conducting *marine* safety investigations with any pertinent information.’

**(10a) Article 12 is amended as follows:**

**(a) Paragraph 3 is replaced by the following:**

- ‘3. The cooperation of a Member State in a marine safety investigation conducted by a substantially interested third country shall be without prejudice to the conduct and reporting requirements of marine safety investigations under this Directive. Where a substantially interested third country is leading a marine safety investigation involving one or more Member States, Member States may decide not to carry out a parallel marine safety investigation, provided that the marine safety investigation led by the third country is conducted in accordance with the IMO Code for the Investigation of Marine Casualties and Incidents. In such cases the provisions of Article 14 shall not be applicable to marine safety investigation authorities of the Member States.’**

**(10b) In Article 13, point (a) is replaced by the following:**

- ‘(a) save all information from charts, logbooks, electronic and magnetic recording and video tapes, including information from VDRs or S-VDRs and other electronic devices relating to the period preceding, during and after an accident;’**

(11) Article 14 is replaced by the following:

‘ Article 14

Accident reports

1. Safety investigations carried out under this Directive shall result in a published **accident** report presented in a format defined by the competent **marine safety** investigation authority and in accordance with the relevant sections of Annex I.  
**Marine safety investigation authorities may decide that a marine safety investigation shall result in a concise report to be published in the case that:**
  - a) **the safety investigation does not concern a very serious marine casualty; or**
  - b) **the marine casualty and the findings of which do not have the potential to lead to the prevention of future casualties and incidents.**
2. **Marine safety** investigation authorities shall make every effort to make the **accident** report referred to in paragraph 1, including its conclusions and any possible recommendations, available to the public, and especially to the maritime sector, within 12 months of the date of the casualty. If, **in the case of a very serious casualty**, it is not possible to produce the final **accident** report within that time, an interim **accident** report shall be published within 12 months of the date of the casualty.
3. The **marine safety** investigation Authority of the lead investigating Member State shall send a copy of the final or interim report to the Commission. The **marine safety** investigating authority shall take into account the possible technical observations of the Commission on final reports not affecting the substance of the findings for improving the quality of the **accident** report in the way most conducive to achieving the objective of this Directive.
4. **The Commission is empowered to adopt delegated acts, in accordance with Article 20, in order to amend the parts related to the factual information, narrative and analysis of Annex I.’**

(12) Article 15 is amended as follows:

- (a) paragraph 1 is replaced by the following:

‘1. Member States shall ensure that safety recommendations made by the *marine safety* investigation authorities are duly taken into account by the addressees, *in particular with a view to preventing future accidents*, and, where appropriate, are given an adequate follow-up in accordance with Union and international law.’

(b) paragraph 2 is replaced by the following:

‘2. Where appropriate, ~~neither a~~ *marine safety* investigation Authority or the Commission shall make safety recommendations on the basis of an abstract data analysis and of the overall results of *marine safety* investigations carried out.’

(13) in Article 16, first paragraph is replaced by the following:

‘ Without prejudice to its right to give an early alert, the *marine safety* investigation Authority of a Member State shall, at any stage of a *marine safety* investigation, if it takes the view that urgent action is needed at Union level to prevent the risk of new casualties, inform the Commission without delay of the need to give an early alert.’

(14) Article 17 is amended as follows:

(a) the following ~~new~~ paragraph ~~2a~~ is inserted:

‘2a. Member States shall notify ~~the Commission on~~ *EMCIP* all marine casualties and incidents in accordance with the format in Annex II *and, when a marine safety investigation is carried out, provide with data resulting from marine safety investigations in accordance with the EMCIP database scheme*. In the case of fishing vessels of less than 15 metres in length only the reporting of very serious marine casualties is required. *When very serious marine casualties involving fishing vessels of less than 15 metres are not investigated, the reasons for not doing so must be reported.*’

(b) paragraph 3 is replaced by the following:

‘3. The **marine safety** investigation authorities of the Member States shall notify all very serious marine casualties to EMCIP. The Member States may decide upon and nominate the competent national authority or authorities to report on all other marine casualties and incidents. When the Commission is aware of a marine casualty or incident, it shall ~~also report thereon to EMCIP~~ **inform the competent national authorities.**’

(c) **the following paragraph is inserted:**

‘5. **The Commission is empowered to adopt delegated acts in accordance with Article 20 to amend Annex II, concerning the information to be provided therein in order to take into account the modifications by the IMO to the IMO Casualty Investigation Code.**’

(15) the following new Article 17a is inserted:

‘ Article 17a

Training and operational support

1. The Commission, **with the assistance of EMSA and in cooperation with Member States** shall facilitate the development of capacities as well as the sharing of knowledge within and between the **marine safety** investigation authorities through the provision of **regular** training on new legal and technological developments, specific techniques and tools and technologies relating to ships, their equipment and operations, **according to the needs of Member States’ marine safety investigation authorities.**
2. Upon request of the **marine safety** investigation authorities of the Member States, and assuming that no conflict of interest arises, the Commission shall provide operational support to these Member States in the conduct of their **marine** safety investigations. Such support **may** include the provision of specialised analytical tools or equipment, as well as **specific** expertise, **as long as their independence is ensured.**

(16) Article 19 is replaced by the following:

‘ Article 19

Committee procedure

1. The Commission shall be assisted by the Committee on Safe Seas and the Prevention of Pollution from Ships (COSS) established by Regulation (EC) No 2099/2002 of the European Parliament and of the Council. That Committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.’

(17) ~~in Article 20 the fourth paragraph~~ is replaced by the following:

***Article 20***

***Exercise of the delegation***

1. ***The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.***
2. ***The power to adopt delegated acts referred to in Article 14(4), and Article 17(5) shall be conferred on the Commission for an indeterminate period of time from [date of entry into force of the basic legislative act].***
3. ***The delegation of power referred to in Article 14(4), and Article 17(5) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.***
4. ***Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.***
5. ***As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.***

6. *A delegated act adopted pursuant to Article 14(4), and Article 17(5) shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of two months of notification of that act to the European Parliament and to the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.'*

(17a) *the following new Article is inserted:*

‘ *Article 20a*

*Amendments to the IMO Casualty Investigation Code*

*The amendments to the IMO Casualty Investigation Code shall apply, without prejudice to the conformity checking procedure set out in Article 5 of Regulation (EC) No 2099/2002 of the European Parliament and of the Council.'*

(18) Article 23 is replaced by the following:

‘ Article 23

Implementation review

The Commission shall by [OP: Please insert a date: ~~ten~~**five** years from the date of ~~entry into force~~**transposition** of this amending Directive] submit a report to the European Parliament and the Council on the implementation of, and compliance with, this Directive, **and, if necessary, propose further measures in the light of the recommendations set out therein, taking into consideration the possibility for mandatory accident investigation for fishing vessels below 15 meters to be included in the scope of this Directive and the impact thereof on the workload of the marine safety investigation authorities.'**

(19) in Article 24, the following paragraph 3 is added:

- ‘3. Commission Regulation (EU) No 1286/2011 is repealed *with effect from the expiry of the transposition period of this Directive as defined in Article 2(1) of the Directive ... [insert the reference to the modifying Directive]*.

*(19a) in Annex I, Section 2.1 is replaced by the following:*

- ‘2.1. *Ship particulars Flag/register, Identification, Main characteristics, Ownership and management, Construction details, Minimum safe manning, Authorised cargo, In relation to fishing vessels the type of fisheries being carried out at the time of the accident.*’

*(19b) in Annex I, Section 2.3 is replaced by the following:*

- ‘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, For accidents and incidents involving shore or port workers the cargo being carried, Human factors data, Consequences (for people, ship, cargo, environment, other).*’

*(19c) in Annex II, point 30 is replaced by the following:*

- ‘30. *Cargo damage, including containers lost at sea.*’

## Article 2

### Transposition

1. Member States shall adopt and publish, by ~~by [OP: Please insert a date: one year from the date of entry into force of this amending~~ ***the laws, regulations and administrative provisions necessary to comply with this Directive]* ~~the laws, regulations and administrative provisions necessary to comply with~~ ***no later than 30 months after the entry into force of this Directive.*****

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such 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.

*Article 3*

**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 4*

**Addressees**

This Directive is addressed to the Member States.

Done at Brussels,

*For the European Parliament*

*The President*

*For the Council*

*The President*