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MEETING DOCUMENT

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| From: | General Secretariat of the Council |
| To: | Working Party on Shipping |
| N° Cion doc.: | 10115/23 + ADD 1-3 |
| 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 - Comments by Sweden |

Delegations will find attached comments by Sweden on the above proposal.



SWEDEN – Initial comments on the proposal for a Directive amending Directive 2009/18/EC on accident investigation (ST 10115/23)

The analysis of the proposal is still ongoing and Sweden therefore maintains a scrutiny reservation. The following comments refer to the document ST 10115/23 (“the proposal”) and should be seen as preliminary. As a general outset, Sweden welcomes the objectives of the maritime package and the proposals contained therein, and deems that, properly implemented, they will contribute to improving maritime safety and the protection of the environment, modernize the regulatory framework and strengthen compliance. At the same time, the administrative burdens and costs must be proportionate to the added value and be cost-effective. In addition, the independence of the investigating authority must be secured.

Article 1

Sweden can support the proposal.

Article 2.2 (b) and Article 5.2

Sweden can support the proposal (i.e. the Commission’s proposal in ST 10115/23 – we do not support any addition of text related to pleasure craft in Article 5).

Rationale: the amendment clarifies that the important factor is whether the boats are used commercially. This change is much welcomed as the wording in the current directive is very difficult to apply. Sweden is open to further drafting in article 2.2 and/or the recital if needed to clarify that the scope is not expanded.

Article 2.2 (d) and Article 5.2

Sweden can support the proposal.

Rationale: In our view, the proposal is a balanced compromise which means, firstly, that the obligation to investigate only covers very serious maritime accidents and, secondly, that in those cases a preliminary assessment must be made and if it does not lead to the initiation of an investigation, this decision must be justified. With the proposal, accidents

in the fishing boat segment will better captured in statistics and there will be an incentive to investigate even if it will not be mandatory, but a preliminary assessment will suffice. The proposal is proportionate and involves a high level of ambition but with the maintenance of a high degree of flexibility.

Article 3

Sweden can support the proposal. This includes the proposal to link a “fatal injury” with 30 days, and the deletion of “serious casualty”.

Rationale: The term "serious casualty" was taken out from the IMO Code and the directive should be aligned. It means that the obligation to carry out preliminary assessments of serious maritime accidents disappears (Article 5), however national law can be more extensive.

Article 4

Sweden can support the proposal, which we find is a good clarification. (We have not had time to consider the Presidency’s possible proposal for a new 4.3 but see that it needs a thorough legal analysis.)

Article 5

Sweden can support the proposal.

Rationale:

- *Article 5.2 – (see under Article 2.2(b), Article 2.2(d) and Article 3 above)*
- *Article 5.6 - The concept “directly in connection with the operations of a ship” has previously been somewhat difficult to interpret and clarification has been requested by many. Accidents during loading and unloading at the quay have been considered covered by the obligation to investigate in some MS but not in others. The proposal gives a good clarification. It has been agreed as best practice by the PCF.*
- *Article 5.8 – We do not see any problems with the proposal. It could be mentioned that the wording (“it becomes known or is suspected”) is similar to that of civil aviation in Article 12.2 in regulation (EU) No 996/2010 EU as well as the IMO Code. We wonder however if the numbering referenced in the directive (3, 3 bis, 3ter, 3quarter) should be aligned with the numbering in the Convention (a, b, c, d, e etc.) for the sake of clarity?*

Article 7

At this stage, but not pre-empting the ongoing analysis, Sweden does not have problems with the proposal in its current wording.

(Following a comment from another MS, we can mention that we do not have any issues with the wording “substantially interested Member State”, which is the definition throughout the Directive. In our view, it would be confusing to introduce other concepts here, such as “Member States involved”).)

Article 8.1

Sweden can support the proposal. (We have not had time to consider the Presidency’s possible future proposal for additions to the text, but will most likely have serious concerns with such additions – especially the suggested final sentence “When the investigation authority...additional means and resources”).)

Rationale: The introduction of a clarification that safety investigation authorities should have “sufficient means and financial resources” is reasonable, especially given the “top-up” nature of EMSA’s support offered according to Article 17a.

Article 8.7

Sweden can support the proposal to require a quality management system. Sweden is as an outset not entirely against the requirement for the system to be certified, but needs to await further analysis before taking a position in that regard. In the meantime, Sweden would like to ask for further information on how the QMS could be certified, without risking undermining the investigative authority's independent position.

Rationale:

(In Sweden, the investigation authority has a quality management system but it is not certified.)

Among the arguments for requiring a QMS, it can be mentioned that it should lead to a better structure and systematics as well as an increased uniformity in the investigation activities in many MS.

There are however a number of issues that need to be analysed and clarified within the respective MS. Several MS have joint accident investigation authorities, and it should then be made clear whether the QMS and certification should cover the entire authority or only the shipping-related activities. Most accident investigation agencies are small and relatively uncomplex in terms of organization and operations. This means that the QMS can probably be made relatively uncomplicated.

The costs involved for small authorities to introduce a QMS if there is not one before, can be burdensome. The cost of the annual external audit is considered to be relatively low. The

QMS is likely to lead to efficiency improvements which, over time, could exceed the costs for building, managing and auditing the quality management system.

In our view, the issue is whether the QMS could be certified, without the risk of undermining the investigative authority's independent position. It is important to choose a certification body that does not operate as a classification society/ RO since such companies may in some cases appear in accident investigations, which could lead to the independence of the accident investigation authority being called into question. In our experience from the flag state area, this has worked out well. However, for an investigative authority, which works across all sectors of society and investigates many different types of accidents, it might be difficult to predict possible future connections regardless of which certification body is chosen. Further analysis is therefore required, and Sweden would welcome further information or best practice on this issue.

Article 14

Sweden can support the proposal.

Article 17

Sweden can support the proposal in the sense that more authorities should be able to report. Regarding the possibility for the Commission to report to EMCIP, Sweden needs additional time for analysis. In the meantime, it would be helpful if the Commission would provide further information about what their reporting would imply (a possibility for the MS to correctly encode, or an obligation to investigate?).

Article 17 a

Sweden can support the direction of the proposal, however it is important to keep the reservation that support is to be given only upon request and only if there is no conflict of interest is maintained.

Rationale: It is important that investigations can continue to be conducted independently in relation to EMSA.

Article 2 of the Amending Directive

Sweden suggests a transposition time of at least 24 months, preferably 36 months.

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