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MEETING DOCUMENT

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 France

Delegations will find attached comments by **France** on the above proposal.

Paris, le 5 juillet 2023

NOTE DES AUTORITÉS FRANÇAISES

Objet : Commentaires écrits des autorités françaises à la suite du groupe Transport maritime du 27 juin sur la proposition de directive du Parlement européen et du Conseil modifiant la directive 2009/18/CE établissant les principes fondamentaux régissant les enquêtes sur les accidents dans le secteur des transports maritimes

Les autorités françaises prient la Présidence de bien vouloir trouver ci-dessous des commentaires écrits en complément de ceux formulés lors de la réunion du groupe Transport maritime du 27 juin 2023.

De façon liminaire, les autorités françaises rappellent soutenir globalement la proposition de révision de la directive notamment car elle intègre les dernières modifications des résolutions de l'Organisation maritime internationale.

Elles sont toutefois fermement opposées aux rédactions proposées par la Commission pour les articles 8 (autorités responsables des enquêtes de sécurité maritime), 17 (base européenne de données sur les accidents en mer) et 17bis (formation et soutien opérationnel). En particulier, les autorités françaises s'opposent à toute disposition :

- susceptible de remettre en cause l'impartialité et l'indépendance des autorités nationales d'enquête ;
- qui donnerait à la Commission, directement ou au travers de l'Agence européenne pour la sécurité maritime, la possibilité de suppléer les États membres dans leurs responsabilités, ou de se substituer à ces derniers, alors même qu'aucune justification n'est apportée.

Les autorités françaises demandent également la modification de la directive notamment aux articles 4 (statut des enquêtes de sécurité), 5 (obligations d'enquêter) et 7 (responsabilité de la conduite d'enquêtes de sécurité et participation à celles-ci) afin d'une part de renforcer les modalités de coopération entre autorités d'enquêtes et d'autre part de garantir la bonne association du cadre de coopération permanent prévu à l'article 10.

Les autorités françaises remercient la Présidence pour la bonne prise en compte, dans un premier projet de compromis transmis officieusement, de certaines propositions de modifications rédactionnelles qu'elles ont formulées lors de la réunion du groupe Transport maritime du 27 juin 2023, notamment aux articles 3 et 5.

Des évolutions sont encore attendues sur certains points du texte. Elles sont formulées ci-dessous.

Avant toute chose, les autorités françaises renouvellent fortement leur demande de modification de l'article 17a.

Article 17a (formation et soutien opérationnel) :

Les autorités françaises saluent l'évolution proposée par la Présidence mais renouvellent leur demande de modification du second paragraphe, estimant que le soutien possible de la Commission ne doit se limiter qu'à la seule fourniture de matériel technique ou d'équipement afin de garantir l'indépendance des autorités d'enquête :

« Upon request of the 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 safety investigations. Such support ~~include the provision of specialised analytical tools, softwares, materials, studies, as well as expertise~~ shall be limited to the provision of specialised analytical tools, softwares, materials and studies. »

Concernant les autres articles du texte.

Article 2 (champ d'application) :

Les autorités françaises proposent de compléter la rédaction proposée par la Présidence au paragraphe 2(b), dans un souci de clarification des types de navires qui peuvent être soumis à une enquête, afin de bien inclure les navires, quel que soit leur statut, dès lors que les passagers sont transportés à titre payant et qu'il existe un équipage rémunéré :

*« (b) ships not propelled by mechanical means, wooden ships of primitive build, pleasure yachts and pleasure craft unless they are **sailing boats or motor boats** used for commercial purposes **with a payed crew onboard** ; »*

Article 4 (statut des enquêtes de sécurité) :

Les autorités françaises remercient la Présidence pour l'ajout proposé mais renouvellent leur demandent sur les données afin d'harmoniser la coopération entre États membres et de bien distinguer l'enquête technique des investigations judiciaires. Elles demandent à ce titre la suppression de la référence à une décision judiciaire :

*« Data **collected**, such as witness statements, findings and expert reports, in the possession of the maritime safety investigation authorities may not be seized by any other authority not involved in the maritime **safety** investigation, ~~unless authorised by a court without their prior~~ **the consent of the maritime safety investigation authorities.** »*

Article 5 (obligation d'enquêter) :

Les autorités françaises ne peuvent pas soutenir la proposition de nouvelle rédaction du paragraphe 2 et se réfèrent à leur proposition alternative exprimée *supra* à l'article 2.

Elles notent par ailleurs la volonté de ne pas ajouter de charge aux autorités compétentes mais réitèrent leur souhait de vouloir restreindre le champ d'application de cette disposition aux seuls cas de décès, la rédaction actuelle « accident très grave » pouvant conduire à l'ouverture d'enquêtes sur de petites embarcations à quai sans personne à bord.

Article 6 (obligation de notification) :

Les autorités françaises remercient la Présidence de son intention de préciser la notion de « parties concernées ». Un considérant ne paraît en revanche pas suffisant ; les autorités françaises souhaitent spécifier les parties concernées dans l'article :

« *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 **such as ports, shipowners, ship captains and classification societies**, or both, of the occurrence of all casualties and incidents falling within the scope of this Directive.* »

Par ailleurs, elles proposent d'élargir l'obligation de notification aux presque-accidents affectant des installations de propulsion et de production d'énergie issues de sources décarbonées et à faible taux d'émission.

« ***The near miss affecting propulsion and energy production installations from carbon-free sources shall be notified.*** »

Article 7 (participation aux enquêtes de sécurité) :

Les autorités françaises remercient la Présidence pour la modification apportée à l'article 7.1 et demandent que cette modification soit également répercutée au paragraphe 1.a pour assurer la cohérence de l'article :

« *1a. During the conduct of the marine safety investigation, ~~substantially interested~~ Member States **involved** should 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 also be granted access to Government surveyors, coastguard officers, ship traffic service operators, pilots and other marine personnel of the substantially interested State.* »

Article 8 (autorités responsables des enquêtes de sécurité maritime) :

Les autorités françaises remercient la Présidence pour les modifications apportées à l'article 8. Elles souhaiteraient toutefois conserver le texte suivant dans le paragraphe :

« ***1. [...] with sufficient means and financial resources*** »

Article 14 (rapports sur les accidents) :

Les autorités françaises réitèrent leur souhait de réintégrer l'alinéa 2 du paragraphe 1 :

« ***Investigative bodies may decide that a safety investigation which does not concern a very serious or, as the case may be, a serious marine casualty and the findings of which do not have the potential to lead to the prevention of future casualties and incidents, shall result in a simplified report to be published.*** »

Article 17 (base européenne de données sur les accidents en mer) :

Les autorités françaises remercient la Présidence pour les modifications apportées. Elles préféreraient toutefois la formulation suivante en fin de paragraphe 3 :

« ***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 ~~may also report thereon to EMCIP only when the Competent National Authority has provided the authorisation to do so~~ notify to the Competent National Authority.*** »

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Les autorités françaises se tiennent à la disposition de la Présidence pour toute information complémentaire.



Courtesy translation

French authorities would like to draw Presidency's attention on the comments below, in addition to those made orally at the Working Party on Shipping on 27 June 2023.

As a preliminary remark, French authorities recall their overall support for the proposed revision of the Directive, particularly as it incorporates the latest amendments from the resolutions of the International Maritime Organisation.

However, they are firmly opposed to the wording proposed by the Commission for Articles 8 (authorities responsible for maritime safety investigations), 17 (European database on accidents at sea) and 17a (training and operational support). In particular, French authorities are opposed to any provision:

- which could put into question the impartiality and independence of the national investigation authorities;
- which would give the Commission, directly or through the European Maritime Safety Agency, the possibility of supplementing the Member States in their responsibilities, or of taking the place of the latter, even though no justification is being provided.

French authorities are also calling for the Directive to be amended, in particular its Articles 4 (status of safety investigations), 5 (obligations to investigate) and 7 (responsibility for conducting and participating in safety investigations) in order to, on the one hand, strengthen the arrangements for cooperation between investigating authorities and, on the other hand, ensure the proper association of the permanent cooperation framework provided for in Article 10.

French authorities would like to thank the Presidency for incorporating into a first draft compromise unofficially transmitted some of the drafting amendments proposed by the French authorities at the Working Party on Shipping on 27 June 2023, in particular Articles 3 and 5.

Changes are still expected on some points of the text, as set out below.

First of all, French authorities strongly reiterate their request to amend Article 17a.

Article 17a (training and operational support):

French authorities welcome the amendment made by the Presidency but reiterate their request to modify the second paragraph, considering that the possible Commission support should only be limited to the supply of technical material or equipment in order to guarantee the independence of the investigating authorities:

« Upon request of the 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 safety investigations. Such support ~~include the provision of specialised analytical tools, softwares, materials, studies, as well as expertise~~ shall be limited to the provision of specialised analytical tools, softwares, materials and studies. »

As regard the other Articles.

Article 2 (scope):

In paragraph 2(b), French authorities suggest to complete the Presidency's proposal in order to clarify the types of ships that may be subject to an investigation so as to include ships, whatever their status is, for which passengers are transported at a fee and for which there is a paid crew:

*« (b) ships not propelled by mechanical means, wooden ships of primitive build, pleasure yachts and pleasure craft unless they are **sailing boats or motor boats** used for commercial purposes **with a payed crew onboard** ; »*

Article 4 (status of safety investigations):

French authorities thank the Presidency for the suggested amendment but renew their request concerning the data in order to harmonise cooperation between Member States and to make a clear distinction between technical investigations and judicial investigations. Therefore, they ask for the deletion of the reference to any judicial decision:

« *Data **collected**, such as witness statements, findings and expert reports, in the possession of the maritime safety investigation authorities may not be seized by any other authority not involved in the maritime **safety** investigation, ~~unless authorised by a court without their prior~~ **the consent of the maritime safety investigation authorities.*** »

Article 5 (obligation to investigate):

French authorities cannot support the new wording proposed for paragraph 2 and refer to their alternative proposal expressed above in Article 2.

They also note the will not to include an additional burden on the competent authorities but French authorities reiterate their request to limit the scope of this provision to cases of death, as the current wording "very serious marine casualty" could lead to the opening of investigations for small boats at dockside with no one on board.

Article 6 (obligation to notify):

French authorities thank the Presidency for its intention to clarify the notion of "parties involved". However, a recital does not seem sufficient; French authorities would therefore like to specify which party it refers to in the article:

« *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 **such as ports, shipowners, ship captains and classification societies**, or both, of the occurrence of all casualties and incidents falling within the scope of this Directive.* »

In addition, they propose to extend the obligation to notify near-accidents affecting propulsion and energy production installations from decarbonized and low-emission sources.

« ***The near miss affecting propulsion and energy production installations from carbon-free sources shall be notified.*** »

Article 7 (participation in safety investigations):

French authorities thank the Presidency for the amendment made in Article 7.1 and request that the same amendment also be made in paragraph 1.a so as to ensure the consistency of the Article:

« *1a. During the conduct of the marine safety investigation, ~~substantially interested~~ Member States **involved** should 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 also be granted access to Government surveyors, coastguard officers, ship traffic service operators, pilots and other marine personnel of the substantially interested State.* »

Article 8 (authorities responsible for maritime safety investigations):

French authorities thank the Presidency for the amendments made in Article 8. However, they would like to keep the following text in the paragraph:

« 1. [...] **with sufficient means and financial resources** »

Article 14 (accident reports):

French authorities renew their request to reintegrate subparagraph 2 of paragraph 1:

« **Investigative bodies may decide that a safety investigation which does not concern a very serious or, as the case may be, a serious marine casualty and the findings of which do not have the potential to lead to the prevention of future casualties and incidents, shall result in a simplified report to be published.** »

Article 17 (European database on accidents at sea):

French authorities thank the Presidency for the changes made. They would rather suggest the following wording at the end of paragraph 3:

« *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 ~~may also report thereon to EMCIP only when the Competent National Authority has provided the authorisation to do so~~ **notify to the Competent National Authority.*** »

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French authorities are at the Presidency's disposal for any further information.