



Brussels, 24 October 2024
(OR. en)

14748/24

Interinstitutional File:
2023/0164(COD)

CODEC 1971
TRANS 443
MAR 168
PECHE 414
OMI 93
PE 241

INFORMATION NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee/Council
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 - Outcome of the European Parliament's first reading and Corrigendum procedure (Strasbourg, 10 April 2024 and 22 October 2024)

I. INTRODUCTION

In accordance with the provisions of Article 294 of the TFEU and the Joint Declaration on practical arrangements for the co-decision procedure¹, a number of informal contacts have taken place between the Council, the European Parliament and the Commission with a view to reaching an agreement on this legislative file at first reading.

¹ OJ C 145, 30.6.2007, p.5.

This file was expected² to undergo the Corrigendum procedure³ in the European Parliament after adoption by the outgoing European Parliament of its position at first reading.

II. VOTES

At its sitting of 10 April 2024, the European Parliament adopted amendment 36 (without legal linguistic revision) to the Commission proposal and a legislative resolution, constituting the European Parliament's position at first reading. It reflects what had been provisionally agreed between the Institutions.

After finalisation of the adopted text by the legal linguists, the European Parliament approved on 22 October 2024 a corrigendum to the position adopted at first reading.

With this corrigendum, the Council should be able to approve the position of the European Parliament as set out in the Annex⁴ hereto, thus bringing to a close the first reading for both Institutions.

The act would then be adopted in the wording which corresponds to the European Parliament's position.

² 10819/24 + COR 1.

³ Rule 251, EP Rules of Procedure.

⁴ The text of the corrigendum is set out in the Annex. It is presented in the form of a consolidated text, where changes to the Commission's proposal are highlighted in bold and italics. The symbol "■" indicates deleted text.

P9_TA(2024)0200**Amending Directive 2009/18/EC establishing the fundamental principles governing the investigation of accidents in the maritime transport sector**

European Parliament legislative resolution of 10 April 2024 on the 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 (COM(2023)0270 – C9-0189/2023 – 2023/0164(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2023)0270),
- having regard to Article 294(2) and Article 100(2) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C9-0189/2023),
- having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
- having regard to the opinion of the European Economic and Social Committee of 20 September 2023¹,
- after consulting the Committee of the Regions,
- having regard to the provisional agreement approved by the committee responsible under Rule 74(4) of its Rules of Procedure and the undertaking given by the Council representative by letter of 28 February 2024 to approve Parliament's position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,
- having regard to Rule 59 of its Rules of Procedure,
- having regard to the opinion of the Committee on Fisheries,

¹ OJ C, C/2023/875, 8.12.2023, ELI: <http://data.europa.eu/eli/C/2023/875/oj>.

- having regard to the report of the Committee on Transport and Tourism (A9-0422/2023),
- 1. Adopts its position at first reading hereinafter set out;
- 2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
- 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Position of the European Parliament adopted at first reading on 10 April 2024 with a view to the adoption of Directive (EU) 2024/... 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 Committee⁶,

After consulting the Committee of the Regions **■** ,

Acting in accordance with the ordinary legislative procedure⁷,

⁶ OJ C, C/2023/875, 8.12.2023, ELI: <http://data.europa.eu/eli/C/2023/875/oj>.

⁷ Position of the European Parliament of 10 April 2024.

Whereas:

- (1) Directive 2009/18/EC of the European Parliament and of the Council⁸ establishes the fundamental principles governing the investigation of accidents in the maritime transport sector and provides for a system of marine safety investigations ('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, *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 that Directive, should be taken into account.

⁸ Directive 2009/18/EC of the European Parliament and of the Council of 23 April 2009 establishing the fundamental principles governing the investigation of accidents in the maritime transport sector and amending Council Directive 1999/35/EC and Directive 2002/59/EC of the European Parliament and of the Council (OJ L 131, 28.5.2009, p. 114).

- (3) *In that regard, the Union, in line with its international commitments related to protecting the marine environment, should continue exerting leadership in a sector that is regulated at both European and international levels.*
- (4) 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. *That Directive refers, for example, to* the IMO Code for the Investigation of Marine Casualties and Incidents adopted by 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 adopted by IMO resolution MSC.255(84) of 16 May 2008 ('IMO Casualty Investigation Code') and by the Guidelines to Assist Investigators in the Implementation of the Casualty Investigation Code adopted by IMO resolution A.1075(28) of 4 December 2013 ('IMO Guidelines to Assist Investigators in the Implementation of the Casualty Investigation Code').

- (5) The IMO Casualty Investigation Code introduces new definitions, such as the definition of ‘marine safety investigation authority’, while *other* concepts, such as that of ‘serious casualty’, are deleted. Those changes should be incorporated into Directive 2009/18/EC.
- (6) Directive 2009/18/EC also refers to IMO circular *MSC-MEPC.Circ.3* of 18 December 2008 – Reports on marine casualties and incidents, Revised harmonized reporting procedures, which was superseded by IMO circular MSC-MEPC. 3/circ.4/rev.1 of 18 November 2014.
- (7) The IMO Guidelines to Assist Investigators in the Implementation of the Casualty Investigation Code provide practical advice for the systematic investigation of marine casualties and incidents and allow the development of effective analysis and preventive action. *Those Guidelines supersede the common methodology laid down in Commission Regulation (EU) No 1286/2011⁹. As a result, they should be included in Directive 2009/18/EC, and Regulation (EU) No 1286/2011 should be repealed.*

⁹ *Commission Regulation (EU) No 1286/2011 of 9 December 2011 adopting a common methodology for investigating marine casualties and incidents developed pursuant to Article 5(4) of Directive 2009/18/EC of the European Parliament and of the Council (OJ L 328, 10.12.2011, p. 36).*

- (8) Fishing vessels of less than 15 metres in length are at present excluded from the scope of Directive 2009/18/EC. As a result, the conduct of safety investigations involving such fishing vessels is *neither systematic nor harmonised*. Such vessels are more prone to capsizing and *it is relatively common for* members of their crew *to fall* overboard **■** . Therefore, in order to protect such fishing vessels, their crew and the environment, it is necessary to provide for a preliminary assessment of very serious marine casualties involving such fishing vessels to determine whether the authorities are to 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 marine casualties and incidents. That measure is expected to have a significant positive impact in terms of the number of lives saved at sea and injuries avoided, protecting in particular the lives and health of European fishers.*
- (9) *Directive 2009/18/EC does not prevent Member States from laying down national rules to investigate marine casualties or incidents that involve any ship type carrying 12 passengers or less or engaging in other commercial purposes.*

- (10) Some definitions provided for in Directive 2009/18/EC are not clear. A definition of ‘length of a fishing vessel’ should be **introduced, in particular** for situations where there is a distinction in the approach and the obligations of the marine safety investigation authorities (‘safety investigation authorities’) on the basis of the length of the fishing vessel.
- (11) The IMO Casualty **Investigation Code** refers **to an event** or a sequence of events which has occurred ‘directly in connection with the operations of a ship’. That concept is the subject of significant divergence in interpretation and should be clarified. That divergence impacts on the actions of the safety investigation authorities in particular as regards accidents in ports, the possibilities **for** joint safety investigations, and the gathering of accident and investigation data.
- (12) The IMO Casualty **Investigation Code states** that when a very serious marine casualty occurs, **a safety investigation is to be conducted**. However, there is no guidance regarding the time period within which a death has to have taken place following the accident in order **for** that accident **to be considered to be** a very serious marine casualty **requiring safety investigation**. Therefore Directive 2009/18/EC should provide such guidance.

- (13) *The safety investigation authorities should make best efforts to make accident reports and their recommendations accessible to those concerned, including victims and their families, before making them public.*
- (14) *Given the importance of examining human factors in safety investigation, due consideration should be given in safety investigations to the working and living conditions on board and any impact that they may have had on the marine casualty or incident being investigated.*
- (15) The staff available to, and the operational resources of, the Member States' 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 (the 'Agency'), should provide highly specialised analytical support *for* individual safety *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, in particular in view of new maritime safety challenges related to environmental, social, public health and labour issues.*

- (16) The Agency should therefore organise **regular training** on specific techniques and on new developments and technologies **that could** be relevant for safety investigation in the future. Such training should focus, inter alia, on renewable and low carbon fuels, which are particularly relevant in **the light** of the **Fit for 55 package**, on automation, and on the rules concerning general data protection laid down in Regulation (EU) 2016/679 of the European Parliament and of the Council¹⁰. ***This will improve safety aboard vessels and the health and safety of the seafarers and fishers working on them.***
- (17) ***The independence of safety investigations should be ensured in all circumstances, and all those involved in those investigations, including any entities, institutions or agencies, whether public or private, should be free from any conflict of interest.***
- (18) ***Member States should work together to ensure that safety investigations are conducted in a consistent manner and to help the safety investigation authorities improve and enhance their safety investigation capabilities.***

¹⁰ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

- (19) *In order to adapt Directive 2009/18/EC to the evolution of international maritime law related to the safety investigation of accidents in the maritime transport sector, and to facilitate the gathering, sharing and reporting of knowledge, 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 amending the Annexes to that Directive. It is of particular importance that the Commission carry 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-Making¹¹. In particular, the permanent cooperation framework established by Directive 2009/18/EC should be involved in those 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.*

¹¹ *OJ L 123, 12.5.2016, p. 1.*

- (20) In view of the full **■** cycle of visits to Member States by the Agency to monitor the implementation of Directive 2009/18/EC, the Commission should evaluate the implementation of Directive 2009/18/EC no later than **five** years **from the** date of **transposition of this amending Directive** and report to the European Parliament and to the Council thereon. Member States should cooperate with the Commission to gather all the information necessary for that evaluation.
- (21) *Since the objectives of this Directive, namely to lay down rules on the safety investigation of accidents in the maritime transport sector in order to improve maritime safety and protect the marine environment, 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 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.*
- (22) 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. *Since the purpose of marine safety* investigations (‘safety investigations’) pursuant to this Directive is not *to determine liability or apportion blame, no fault or liability shall be inferred from the findings of those investigations*. Member States shall ensure that the marine safety investigation *authorities* (‘safety investigation *authorities*’) *are not prevented or hindered* from fully reporting the causes of a marine casualty or incident ■ .’;
- (2) in Article 2(2), point (d) is deleted;

- (3) Article 3 is replaced by the following:

‘Article 3

Definitions

For the purposes of this Directive, the following definitions apply:

- (1) ‘IMO Casualty Investigation Code’ means the Code of the International Standards and Recommended Practices for a Safety Investigation into *a* Marine Casualty or Marine Incident *in the Annex* to IMO resolution MSC.255(84) of the IMO Maritime Safety Committee of 16 May 2008, in its up-to-date version;
- (2) ‘IMO Guidelines to Assist Investigators in the Implementation of the Casualty Investigation Code’ means the guidelines in the Annex to IMO resolution A.1075(28) adopted by the IMO Assembly 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’ means the guidelines *in the Annex* to IMO resolution LEG.3(91) of the IMO Legal Committee of 27 April 2006 ■ as approved by the Governing Body of the International Labour Organisation *at* its 296th session of 12 to 16 June 2006, *in their up-to-date version*;

- (5) ‘ro-ro **passenger ship**’ means ‘ro-ro passenger ship’ as defined in Article 2, point (1), of Directive (EU) 2017/2110 of the European Parliament and of the Council*;
- (6) ‘high-speed passenger craft’ means ‘high-speed passenger craft’ as defined in Article 2, point (2), of Directive (EU) 2017/2110;
- (7) ‘voyage data recorder’ (‘VDR’) means ‘voyage data recorder’ as defined in point 4.1 of the Annex to IMO resolution MSC.333(90) of the IMO Maritime Safety Committee of 22 May 2012, in *its up-to-date version and as supplemented by the relevant IMO performance standards applicable on the date of installation on-board of that VDR, and without prejudice to Union law*;
- (8) ‘*simplified voyage data recorder*’ (‘S-VDR’) means ‘*simplified voyage data recorder*’ as defined in point 4.1 of the Annex to *IMO resolution MSC. 163(78)* of the IMO Maritime Safety Committee of 17 May 2004, in *its up-to-date version and as supplemented by the relevant IMO performance standards applicable on the date of installation on-board of that S-VDR, and without prejudice to Union law*;

- (9) ‘safety recommendation’ means any proposal made, including for the purposes of registration and control, by:
- (a) the safety investigation authority of the State conducting or leading the safety investigation on the basis of information derived from that investigation; or
 - (b) where appropriate, the Commission, acting on the basis of an abstract data analysis and the results of safety investigations carried out;
- (10) ‘length of a fishing vessel’ means ‘length of a fishing vessel’ within the meaning of Article 2 of Regulation (EU) 2017/1130 of the European Parliament and of the Council**;
- (11) ‘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*.

* 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).

** 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).’;

(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 safety investigation authorities are able to report on the results of safety investigations without direction or interference from any persons, organisations or parties who may be affected by the outcome of those safety investigations;’;

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

‘(b) coordination of the activities of their respective safety investigation authorities to the extent necessary to achieve the objective of this Directive.’;

(5) Articles 5 and 6 are replaced by the following:

‘Article 5

Obligation to investigate

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

2. In the case of a fishing vessel of less than 15 metres in length, the safety investigation authority shall ***without delay and no later than two months after the very serious marine casualty referred to in paragraph 1 of this Article***, carry out a preliminary assessment to determine whether to conduct a safety investigation. Where the safety investigation authority decides not to conduct such a safety investigation, the reasons for that decision shall ***without delay and no later than two months after the very serious marine casualty*** be recorded and notified in accordance with Article 17(3).
3. When deciding whether to conduct a safety investigation in accordance with paragraph 2, the safety 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 marine casualties and incidents.
4. In the case of any marine casualty or incident not covered by paragraph 1, 2 or 3, the safety investigation authority shall decide whether to conduct a safety investigation.

5. The scope and practical arrangements for the conduct of safety investigation shall be determined by the safety investigation authority of the lead investigating Member State in cooperation with the equivalent authorities of the other substantially interested States, in *a manner that the safety investigation authority of the lead investigating Member State believes will be* most conducive to achieving the objective of this Directive, and with a view to preventing future marine casualties and incidents.
6. When carrying out safety investigation, the safety investigation authority shall follow the IMO Guidelines to Assist Investigators in the Implementation of the Casualty Investigation Code. Investigators may depart from those guidelines where this can be justified as necessary, in their professional judgement, in order to achieve the aims of the safety investigation. The Commission may *adopt recommendations* for the *implementation of those guidelines*, taking into account any relevant lessons drawn from safety investigations, *and after consulting the safety investigation authorities in the context of the permanent cooperation framework referred to* in Article 10.

7. When deciding *whether* a marine casualty or incident occurring when a ship is alongside, moored or in dock, involving shore or port workers, occurred “directly in connection with the operations of a ship” and, therefore, *is* subject to a safety investigation, *Member States* shall, *in accordance with their national law, give particular consideration* to the involvement of the ship’s structure, equipment, procedures, crew and ship management *in and* their relevance to the activity being undertaken.
8. A safety investigation shall be started without delay after the occurrence of the marine casualty or incident, and, in any event, no later than two months thereafter.
9. *In accordance with national law*, if in the course of a safety investigation it becomes known or it is suspected that an offence *has been* committed under Articles 3, 3bis, 3ter or 3quater of the IMO Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation of 10 March 1988, *in its up-to-date version*, the safety investigation authority shall immediately inform the maritime security authorities of the Member State or Member States and of any third country concerned thereof■ .

Article 6

Obligation to notify

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

(6) 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 safety investigations. Member States conducting parallel safety investigations shall cooperate with each other. In particular, the safety investigation authorities involved shall exchange any pertinent information gathered in the course of their respective safety investigations *in a timely manner*, in particular in order to reach, as far as possible, shared conclusions.’;

(b) the following paragraph is inserted:

‘1a. During the conduct of the safety investigation, substantially interested **Member States** *shall* assist, to the extent practical, the marine safety investigating Member State or States with access to relevant information for the safety investigation. The investigator or investigators carrying out a safety investigation *shall, if it is considered to be 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 marine casualty or incident occurs. If the marine casualty or incident occurs in other waters, the safety investigation procedure shall be launched by the last Member State visited by that ro-ro passenger ship or high-speed passenger craft. The Member State that launched the safety investigation procedure shall remain responsible for the safety investigation and for the coordination with other substantially interested Member States until it is mutually agreed which of those Member States is to be the lead investigating Member State.*’;

(7) Articles 8 and 9 are replaced by the following:

‘Article 8

Safety investigation authority

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

Safety investigation authorities shall not be precluded from appointing on a temporary basis appropriate investigators with the necessary specialist skills to form part of a safety investigation, or from using consultants to provide it with expert advice on any aspect of a safety investigation.


In order to conduct a safety investigation in an unbiased manner, the ***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 *within the scope of this Directive shall* identify an independent body to serve as a focal point for cooperation on the *safety* investigation pursuant to Article 5(1), point (c).

2. The *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 *safety* investigation authority shall ensure ready access to appropriate expertise, as necessary.
3. The activities entrusted to the *safety* investigation authority may be extended to the gathering and analysis of data relating to maritime safety, in particular for prevention purposes, insofar as those 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 their *safety* investigation authority, or of any other *safety* investigation authority to which they have delegated the task of safety investigation, where appropriate in collaboration with the authorities responsible for the judicial inquiry, are provided with any information *and technological means* pertinent to the conduct of the safety investigation and therefore are 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 the examination or analysis of the items referred to in point (b), and have free access to the results of such examination 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 to be *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 *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 investigators shall be afforded a status that gives them the necessary guarantees of independence.

6. The *safety* investigation authority may combine its tasks under this Directive with the work of investigating occurrences other than marine casualties or incidents on condition that such safety investigations do not endanger its independence.
7.  Each Member State *may* develop, implement and maintain a quality management system for its *safety investigation authority*.
8. *The permanent cooperation framework referred to in Article 10 shall support safety investigation authorities and enhance their safety investigation capabilities by drawing up guidance and recommendations to ensure that safety investigations are conducted in a consistent manner, and shall in this regard develop and implement a peer review programme.*

Article 9

Confidentiality

- 1. Without prejudice to Regulation (EU) 2016/679 of the European Parliament and of the Council*, a Member State, acting in the framework of its legal system, shall ensure that the following records are not made available for purposes other than the safety investigation, unless that Member State's competent authority concludes that there is an overriding public interest in the disclosure of those records, including where that competent authority concludes that the benefits of the disclosure outweigh the adverse domestic and international impact that such disclosure could have on that or any future safety investigation:**
 - (a) all statements taken from persons by the safety investigation authority in the course of the safety investigation;**
 - (b) records revealing the identity of persons who have given evidence in the context of the safety investigation;**

- (c) *information collected by the safety investigation authority that is of a particularly sensitive and personal nature, including information concerning the health of individuals;*
- (d) *material subsequently produced during the course of the safety investigation such as notes, drafts and opinions written by the investigators, and opinions expressed in the analysis of information;*
- (e) *information and evidence provided by investigators from other Member States or third countries in accordance with the international standards and recommended practices, where so requested by their 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. *VDR and S-VDR recordings from a safety investigation shall not be made available or used for purposes other than those of the safety investigation or of ship safety, unless such recordings are anonymised or disclosed under secure procedures.*
3. *For the purposes referred to in paragraph 1, only data that is strictly necessary shall be disclosed.*
4. *Member States may decide to limit the cases in which a disclosure as referred to in paragraph 3 may be taken, while respecting Union law.*

* *Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).’;*

(8) 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 *safety* investigation authorities to cooperate **with each other** to the extent necessary to attain the objectives of this Directive.’;

(b) paragraph 3 is amended as follows:

(i) the introductory wording and point (a) are replaced by the following:

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

(a) enable *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;’;

(ii) points (h) and (i) are replaced by the following:

‘(h) promote cooperation with the *safety* investigation authorities of third countries and with the international maritime accidents investigation organisations in the fields covered by this Directive;

(i) provide *safety* investigation authorities conducting safety investigations with any pertinent information.’;

(9) *in Article 12, paragraph 3 is replaced by the following:*

‘3. The cooperation of a Member State in a safety investigation conducted by a substantially interested third country shall be without prejudice to its compliance with the conduct and reporting requirements of safety investigations under this Directive. Where a substantially interested third country is leading a safety investigation involving one or more Member States, those Member States may decide not to conduct a parallel safety investigation, provided that the safety investigation led by the third country is conducted in accordance with the IMO Casualty Investigation Code. In such cases, Article 14 shall not apply to the safety investigation authorities.’;

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

‘(a) save all information from charts, logbooks, electronic and magnetic recordings 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 ***safety*** investigation authority and in accordance with the relevant sections of Annex I.

A safety investigation authority may decide to publish only a concise report on a safety investigation, where:

- (a) ***the safety investigation does not concern a very serious marine casualty; or***
- (b) ***the findings of the safety investigation concerning a marine casualty or incident do not have the potential to lead to the prevention of future marine casualties or incidents.***

2. A *safety* investigation authority 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 marine casualty or incident. If, *in the case of a very serious marine 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 marine casualty or incident.
3. The *safety* investigation authority of the lead investigating Member State shall send a copy of the final or interim report to the Commission. The *safety* investigation authority shall take into account any technical observations of the Commission on final reports provided that those observations do not affect the substance of the findings, in order to improve 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 following parts of Annex I to this Directive: ‘2. Factual information’, ‘3. Narrative’ and ‘4. Analysis’.*;

(12) in Article 15, paragraphs 1 and 2 are replaced by the following:

- ‘1. Member States shall ensure that safety recommendations made by the *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.
2. Where appropriate, *a safety* investigation authority or the Commission shall make safety recommendations on the basis of an abstract data analysis and of the overall results of safety investigations carried out.’;

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

‘Without prejudice to its right to give an early alert, the **safety** investigation authority shall, at any stage of a 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 ■ paragraph ■ is inserted:

‘2a. Member States shall notify to **EMCIP** all marine casualties and incidents in accordance with the format in Annex II **and, when a safety investigation is carried out, provide data resulting from that safety investigation 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. **If very serious marine casualties involving fishing vessels of less than 15 metres are not investigated, the reasons for not doing so shall be reported to EMCIP.**’;

(b) paragraph 3 is replaced by the following:

‘3. The *safety* investigation authorities 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 *inform the competent national authorities.*’;

(c) *the following paragraph is added:*

‘5. *The Commission is empowered to adopt delegated acts in accordance with Article 20 to amend Annex II to this Directive, to update the list of marine casualty or incident notification data to take into account changes by the IMO to the IMO Casualty Investigation Code.*’;

(15) the following article ■ is inserted:

‘Article 17a

Training and operational support

1. The Commission, *with the assistance of the Agency and in cooperation with Member States*, shall facilitate the development of capacities within and the sharing of knowledge between the *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, *depending on the needs of safety investigation authorities*.
2. At the request of the *safety* investigation authorities, and assuming that no conflict of interest arises, the Commission shall provide operational support to the Member States in the conduct of their safety investigations. Such support *may* include the provision of specialised analytical tools or equipment, as well as *specific* expertise, *provided that the provision of support does not result in the independence of the safety investigation authorities concerned being compromised.*’;

(16) Articles 19 and 20 are 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 of the European Parliament and of the Council**.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

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 Articles 14(4) and 17(5) shall be conferred on the Commission for an indeterminate period of time from ... [the date of entry into force of this amending Directive].**
- 3. The delegation of power referred to in Articles 14(4) and 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 on 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 Articles 14(4) and 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.*

* Regulation (EC) No 2099/2002 of the European Parliament and of the Council of 5 November 2002 establishing a Committee on Safe Seas and the Prevention of Pollution from Ships (COSS) and amending the Regulations on maritime safety and the prevention of pollution from ships (OJ L 324, 29.11.2002, p. 1).

** Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

*** *OJ L 123, 12.5.2016, p. 1.*;

(17) *the following 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.’;

(18) Article 23 is replaced by the following:

‘Article 23

Implementation review

The Commission shall by ... [***90 months from the date of entry into force*** of this amending Directive] submit a report to the European Parliament and to the Council on the implementation of, and compliance with, this Directive, ***and, if necessary, shall propose further measures in the light of the recommendations set out therein, including considering the possibility of including mandatory safety investigation for fishing vessels of less than 15 meters in length in the scope of this Directive and the impact thereof on the workload of the safety investigation authorities.***’;

(19) *Annex I is amended as follows:*

(a) *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.’;

(b) *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 marine casualties or incidents involving shore or port workers, the cargo being carried,

Human factors data,

Consequences (for people, ship, cargo, environment, other).’;

(20) *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 ... [30 months from the date of entry into force of this amending Directive], the laws, regulations and administrative provisions necessary to comply with this Directive. They shall immediately inform the Commission thereof.*

When Member States adopt those measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

2. Member States shall communicate to the Commission the text of the main measures of national law which they adopt in the field covered by this Directive.

Article 3

Repeal

Commission Regulation (EU) No 1286/2011 is repealed with effect from ... [30 months from the date of entry into force of this amending Directive].

Article 4
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 5
Addressees

This Directive is addressed to the Member States.

Done at ...,

For the European Parliament
The President

For the Council
The President
