

**Journal of Laws, 2012, item 1068**

**Prepared based  
on: Journal of  
Laws of 2019, item  
1374.**

**ACT**

of 31 August 2012

**on the State Marine Accident Investigation Commission<sup>1</sup>**

## Chapter 1

**General provisions**

**Art. 1.** 1. This Act regulates the organisation and operation of the State Marine Accident Investigation Commission, the principles and manner of investigating marine casualties and incidents, the preparation of reports and making recommendations on marine safety.

2. The State Marine Accident Investigation Commission, hereinafter referred to as "the Commission", shall investigate marine casualties and incidents on the basis of the Act and the standards, norms and recommended methods of conduct agreed within the International Maritime Organisation (IMO) and binding on the Republic of Poland.

**Art. 2.** 1. Whenever this Act refers to:

- 1) a marine casualty - it shall be understood as an event, or a number of consecutive events, directly related to the operation of a ship, resulting in:
  - a) death or serious injury to a person, or
  - b) loss of a person whilst on board the ship, or
  - c) the sinking, missing or any other loss of the ship, or
  - d) damage to the ship substantially affecting its structure, manoeuvrability or operation, requiring major repairs, or
  - e) run aground, grounding, hitting an underwater obstruction, immobilisation or collision of ships, fire, explosion, hitting a structure, appliance or installation, shifting of cargo, damage due to bad weather, ice damage, hull cracking or suspected hull damage, or
  - f) substantial damage caused by the ship to port infrastructure, infrastructure providing access to ports or harbours, installations or structures at sea, resulting in a serious threat

<sup>1</sup> Within the scope of its regulation, this Act transposes 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 EU L 131, 28.05.2009, p. 114, as amended).

- to the safety of the ship, other ships or persons, or
- g) causing environmental damage or creating a threat of the damage, until such marine casualty is not a deliberate act or omission done with the intent to endanger the safety of the ship, cause personal injury or damage to the environment;
- 2) a very serious casualty - it shall be understood as the marine casualty resulting in the total loss of a ship, the death of a person or substantial harm to the environment;
  - 3) a serious casualty - it shall be understood as the marine casualty other than that specified in point 2, which results in:
    - a) immobilisation of the ship's main propulsion system, extensive damage to accommodation, change in the ship's stability, serious damage to the ship's structure at the underwater part of the hull - resulting in the ship not complying with the requirements specified in international agreements and posing a threat to the safety of the persons on board or to the environment, making the ship unfit to continue the voyage, or
    - b) causing environmental damage other than that referred to in point 2, including damage caused by pollution, or
    - c) a breakdown requiring the ship to be towed or assisted from shore;
  - 4) a marine incident - it shall be understood as an event, or a number of consecutive events, other than those specified in points 1 to 3, directly related to the operation of the ship, which has had or may have had an adverse effect on the safety of the ship, its occupants or the environment, except that a marine incident is not a deliberate act or omission done with the intent to endanger the safety of the ship, cause personal injury or damage to the environment;
  - 5) the Casualty Investigation Code - it shall be understood as the Code of International Standards and Recommended Practices for a Safety Investigation into a Marine Casualty or Marine Incident, adopted by the Maritime Safety Committee of the International Maritime Organisation (IMO)<sup>2</sup>;
  - 6) VDR or S-VDR recorder - it shall be understood as a set of devices for recording data on a ship's voyage, including time, position, speed, course and recording voice on the navigation bridge, meeting the requirements established by the International Maritime Organisation (IMO);
  - 7) EMCIP database - it shall be understood as the electronic database called European Marine Casualty Information Platform (EMCIP) in which information on marine casualties and

<sup>2</sup> Resolution MSC.255(84) adopting the Code for International Standards and Recommended Practices for a Safety Investigation into a Marine Casualty or Marine Incident (Casualty Investigation Code), adopted by the International Maritime Organisation (IMO) on 16 May 2008 (Official Journal of the IMO of 2011, item 44).

incidents is collected and stored;

- 8) high-speed passenger craft - it shall be understood as the ship as defined in Regulation 1 of Chapter X of the International Convention for Safety of Life at Sea, 1974, drawn up in London on 1 November 1974 (Journal of Laws of 1984, items 318 and 319, of 1986, item 177, of 2005, item 1016 and of 2017, item 142) together with the Protocol of 1978 relating to the International Convention for Safety of Life at Sea, 1974, drawn up in London on 17 February 1978 (Journal of Laws of 1984, items 320 and 321), and the Protocol of 1988 relating to the International Convention for Safety of Life at Sea, 1974, drawn up in London on 11 November 1988 (Journal of Laws of 2008, items 1173 and 1174) (SOLAS Convention), carrying more than 12 passengers.

2. Whenever this Act refers to a ship, a fishing vessel, a ro-ro passenger ferry, a pleasure yacht, a recognised organisation, international agreements, a European Union Member State, a third country, it shall be understood as a ship, a fishing vessel, a ro-ro passenger ferry, a pleasure yacht, a recognised organisation, international agreements, a European Union Member State, a third country, within the meaning of the Act of 18 August 2011 on Marine Safety (Journal of Laws 2018, item 181, 1137, 1669 and 2245).

## Chapter 2

### **Organisation of the State Marine Accident Investigation Commission**

**Art. 3.** 1. The Commission is a permanent and independent body.

2. The Commission acts as an independent body at the minister in charge of maritime affairs.

3. The Commission is composed of five members, including: the Chairman, the Deputy chairman and the Secretary.

4. The Chairman of the Commission directs its work and represents the Commission externally.

5. The Chairman of the Commission is designated by the Minister in charge of maritime affairs for a period of 5 years.

6. Other members of the Commission are designated by the Minister in charge of maritime affairs for a period of 5 years, after consultation with the Chairman of the Commission.

7. The Minister in charge of maritime affairs shall withdraw the designation of a member of the Commission in the cases referred to in Article 18 (5) and (7).

8. The Minister in charge of maritime affairs may withdraw the designation of a member of the Commission upon a proposal of the Commission passed by an absolute majority of votes.

9. The Commission is entitled to access the information contained in the EMCIP database and shall notify the European Commission thereof.

**Art. 4.** 1. A member of the Commission may be a person who:

- 1) is a Polish citizen and enjoys full public rights;
- 2) has full legal capacity;
- 3) has not been sentenced by a valid court judgement for offences committed intentionally;
- 4) has a university degree, as referred to in Article 77(1)(2) of the Act of 20 July 2018 - The Law on Higher Education and Science (Journal of Laws, item 1668, as amended<sup>3</sup>), in technical, mathematical, physical, chemical, economic, humanistic or legal sciences;
- 5) has knowledge in the field of navigation safety and protection of the marine environment;
- 6) has at least five years of professional practice in:
  - a) marine navigation, or
  - b) commercial operation of a ship, or
  - c) operation of marine engine rooms, or
  - d) operation of fishing vessels, or
  - e) shipbuilding and construction, or
  - f) ship electrical and automatic installations, or
  - g) chemical salvage and firefighting, or
  - h) maritime law.

2. The Chairman of the Commission may be a person who fulfils the conditions referred to in paragraph 1 and has at least 15 years' experience in maritime work, including at least 10 years' work on merchant ships, of which at least 5 years' work on management level positions as referred to in the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, drawn up in London on 7 July 1978 (Journal of Laws of 1984, items 201 and 202, of 1999, item 286, of 2013, items 1092 and 1093, of 2018, items 1866 and 2088, and of 2019, item 103).

**Art. 5.** 1. Membership in the Commission shall expire at the end of the period of designation, on death, on cessation of compliance with the requirements set out in Article 4(1), on withdrawal of designation under Article 3(7) and (8), or on acceptance of resignation by the Minister in charge of maritime affairs.

2. The termination of the membership in the Commission caused by the expiry of the period of designation, by the cessation of the requirements set out in Article 4(1), by the withdrawal of the designation under Article 3(7) and (8), or by the acceptance of the resignation by the Minister in

<sup>3</sup> Amendments to the said Act were announced in the Journal of Laws of 2018, items 2024 and 2245, and of 2019, items 276, 447, 534, 577, 730 and 823.

charge of maritime affairs, shall be equivalent to termination of the employment relationship without notice.

**Art. 6.** With regard to the establishment and termination of the employment relationship, the Act of 26 June 1974 - The Labour Code (Journal of Laws of 2019, item 1040 and 1043), hereinafter referred to as the "Labour Code", shall apply to the members of the Commission, subject to the cases specified in this Act. As of the date of designation, an employment contract shall be concluded with a member of the Commission.

**Art. 7.** The provisions of Articles 21-24, Article 26 and Article 28 of the Act of 16 September 1982 on employees of state offices (Journal of Laws of 2018, item 1915, and of 2019, item 1043) shall apply *mutatis mutandis* to the members of the Commission.

**Art. 8.1.** The provisions of the Labour Code shall apply to the working time of a member of the Commission, subject to the provisions of this Act.

2. The reference period of working time of members of the Commission shall not exceed 6 months.

3. The schedule of working time shall be established one week in advance and on an ongoing basis in the event of the marine casualty or incident.

4. In the event of the marine casualty or incident, the daily working time of a member of the Commission may be extended to 16 hours.

5. The period of rest after the extension of working time referred to in paragraph 4 shall not be less than 8 hours. The remaining rest period, constituting the difference between the number of hours of rest to which the member of the Commission is entitled, as referred to in Article 132 of the Labour Code, and the number of hours of rest granted, shall be given to the member of the Commission upon completion of work in the extended daily working hours, but no later than within 7 days.

6. In the event of the marine casualty or incident, the rest referred to in Art. 133 of the Labour Code, shall be granted immediately after the cessation of the reasons making it necessary to perform work on a day off, but no later than within 14 days from the day on which this rest was scheduled.

7. A member of the Commission shall be available for investigation activities outside normal working hours (on-call duty) up to a maximum of 160 hours per month. On-call time shall not be counted as working time if the Member of the Commission did not work during on-call time. Telephone on-call time may be performed during the rest period referred to in art. 132 and art. 133 of the Labour Code. The duration of the on-call duty shall be remunerated in the amount resulting from the number of hours of on-call duty multiplied by 30% of the hourly rate resulting from the basic remuneration of the member of the Commission.

**Art. 9.** 1. A member of the Commission is obliged to undertake investigation activities as

soon as he/she is notified of the need to undertake such activities.

2. The time of travelling to the place of conducting the investigation activities, counted from the moment of notifying the member of the Commission of the need to undertake those activities until the moment of arrival at that place, as well as the time of return to the seat of the Commission or the place of residence, shall be included in the working time.

3. The Chairman of the Commission may delegate a member of the Commission to carry out tasks outside the seat of the Commission, specifying the duration of such delegation.

**Art. 10.** 1. Experts designated by the Chairman of the Commission shall participate in the work of the Commission as required.

2. An expert may be a person having at least secondary education or secondary vocational education and experience to the extent necessary for the investigation of the marine casualty or incident.

3. Experts shall be entitled to remuneration for their participation in the work of the Commission, including for the performance of their expert opinion, as specified in the civil law contract, the amount of which shall depend on the nature of the investigation conducted and its complexity.

4. The Chairman of the Commission may order expert opinions, studies or analyses necessary for the investigation of the marine casualty or incident, to entities other than experts.

**Art. 11.** A member of the Commission or an expert who takes part in the work of the Commission, even after the expiry of his/her membership in the Commission or the termination of his/her work in the Commission:

- 1) is obliged to keep confidential the information acquired in connection with the investigation of the marine casualty or incident by the Commission;
- 2) may be released from the obligation of confidentiality by the competent authority only if there is an overriding public interest justifying derogation from the principle of confidentiality;
- 3) shall not act as an expert witness in any proceedings before a court or other authority in respect of matters handled by the Commission in which as a member of the Commission or an expert has taken or is taking part.

**Art. 12.** 1. The administrative service for the Commission shall be provided by the Minister in charge of maritime affairs.

2. The Minister in charge of maritime affairs shall provide, from the part of the State budget at his/her disposal, funds for the operation of the Commission and its service, in particular for the remuneration of its members, experts participating in the work of the Commission and for technical equipment, costs of training, publication of the materials of the Commission, maintenance of its

website, as well as the costs of expert opinions, studies and analyses ordered by the Chairman of the Commission.

**Art. 13.** The Minister in charge of maritime affairs shall, by way of an ordinance, determine the seat of the Commission and its rules of procedure, taking into account the nature of the tasks to be performed by the Commission and the recommended methods of fair treatment of seafarers in the event of a maritime casualty or incident agreed upon by the International Maritime Organization (IMO) and binding on the Republic of Poland.

**Art. 14.** 1. The Commission shall participate in the Permanent Cooperation Group established by Commission Implementing Regulation (EU) No 651/2011 of 5 July 2011 adopting the rules of procedure of the permanent cooperation framework established by Member States in cooperation with the Commission pursuant to Article 10 of Directive 2009/18/EC of the European Parliament and of the Council (OJ L 177, 6.7.2011, p. 18).

2. The Commission shall designate a member of the Commission to represent it in the permanent cooperation team.

3. The Commission, when taking part in the permanent cooperation arrangements, shall agree with the safety investigation authorities of other Member States of the European Union the best modalities of cooperation in order to:

- 1) enable the investigative bodies to share installations, facilities and equipment for the technical investigation of wreckage and ship's equipment and other objects relevant to the investigation, including the acquisition and evaluation of information from VDRs or S-VDRs and other electronic devices;
- 2) ensure technical cooperation and reciprocal access to each other's expertise necessary for the execution of specific tasks in the field of marine casualty and incident investigation;
- 3) obtain and share with each other the information needed for the analysis of marine casualty or incident data and the preparation of appropriate safety recommendations at the European Union level;
- 4) preparing common principles for the implementation of the safety recommendations referred to in Article 43 and adapting the methods of investigating marine casualties and incidents to the changes resulting from technical and scientific progress;
- 5) make appropriate use of the early alert referred to in Article 42;
- 6) establish the methods of providing access to the evidence, documents, records and information referred to in Article 32(1), taking into account the legislation of the Member States of the European Union and of third countries, as appropriate, regarding restricted access to such data;
- 7) organise, where appropriate, relevant trainings for the investigators of marine casualties and

- incidents;
- 8) promote cooperation in the field of marine casualty or incident investigation with the relevant authorities of third countries and international organisations dealing with such marine casualties or incidents;
  - 9) provide the investigative bodies with the necessary information.

### Chapter 3

#### **Investigation of marine casualties and incidents**

**Art. 15.** 1. The Commission shall investigate marine casualties and incidents:

- 1) involving:
  - a) a ship of Polish nationality,
  - b) a ship of foreign nationality, if the marine casualty or incident occurred on Polish internal waters or Polish territorial sea,
  - c) a ro-ro passenger ferry or high-speed passenger craft, if the marine casualty or incident occurred outside internal waters or territorial sea of a Member State of the European Union, if the last port of call of the ship was a port in the Republic of Poland;
- 2) in relation to which the Republic of Poland is a substantially interested State within the meaning of Article 21(3).

2. The Commission shall not investigate marine casualties and incidents:

- 1) involving only:
  - a) vessels of the Navy, Border Guard or Police,
  - b) ships not propelled by mechanical means or wooden ships of primitive build;
- 2) involving only:
  - a) ships, other than those referred to in point 1(a), which are exclusively on special State service or operated by the government for non-commercial purposes,
  - b) fishing vessels with an overall length of up to 15 m,
  - c) pleasure yachts,
  - d) vessels and floating objects forming part of a towing assembly, other than the towing vessel,

- except for very serious casualties;
- 3) on fixed offshore drilling platforms that did not involve marine vessels.

**Art. 16.** 1. The Commission shall not decide on guilt or liability.



2. The Commission shall make decisions in the form of a resolution.

3. Members of the Commission, when adopting a resolution, shall be guided by the principle of free evaluation of evidence.

4. The Commission shall conduct investigations irrespective of criminal or other proceedings conducted at the same time to establish guilt or liability. The conduct of such proceedings shall not prevent or delay the investigation of the marine casualty or incident by the Commission.

**Art. 17.** 1. The purpose of the marine casualty or incident investigation shall be to establish the circumstances and causes of the casualty or incident in order to prevent future marine casualties and incidents and to improve marine safety.

2. An investigation shall include the collection and analysis of evidence and the identification of factors contributing to the marine casualty or incident and, where appropriate, the preparation of safety recommendations, as referred to in Article 43(1).

3. The investigation activities shall be carried out by a team designated by the Chairman of the Commission and composed of members of the Commission and, if necessary, of experts participating in the work of the Commission.

4. The team conducting the investigation activities shall consist of at least two persons, including at least one member of the Commission.

**Art. 18.** 1. A member of the Commission or an expert who is subject to exclusion shall not participate in the work of the Commission, including in the work of the team conducting the investigation activities. The provision of Article 24 of the Act of 14 June 1960 - the Code of Administrative Procedure (Journal of Laws of 2018, item 2096, and of 2019, item 60, 730 and 1133) shall apply *mutatis mutandis* to such exclusion.

2. A member of the Commission or an expert who is subject to exclusion from the work of the Commission, including from the work of the team conducting the investigation activities, shall be excluded by the Chairman of the Commission.

3. The Chairman of the Commission shall be excluded by the Commission. The provisions of paragraphs 4 to 7 shall apply *mutatis mutandis*.

4. Where the Chairman of the Commission, in the course of an investigation, becomes aware that an excluded member of the Commission or an excluded expert is or has been involved in the work of the Commission, including the work of the team conducting the investigation activities, the Chairman of the Commission shall:

- 1) order the verification of the activities carried out with the participation of such Commission member or expert;
- 2) designate another member of the Commission or an expert to the work of the team.

5. If, as a result of the verification referred to in paragraph 4 (1), the Chairman of the Commission has doubts as to the impartiality of a member of the Commission or an expert who participated in the works of the Commission, including in the works of the team conducting the investigative activities he/she shall:

- 1) submit a request to the Minister in charge of maritime affairs to withdraw the designation of the member of the Commission;
- 2) withdraw the designation of the expert.

6. Where the Chairman of the Commission, after the completion of the investigation or after the publication of the report, becomes aware that an excluded member of the Commission or an excluded expert has taken part in the works of the Commission, including the work of the team conducting the investigation activities, the Chairman of the Commission shall order the verification of the activities carried out with the participation of that member of the Commission or expert.

7. If, as a result of the verification referred to in paragraph (6), the Chairman of the Commission has doubts as to the impartiality of a member of the Commission or an expert who has participated in the works of the Commission, including in the works of the team conducting the investigation activities, he/she shall order a re-examination and:

- 1) submit a request to the Minister in charge of maritime affairs to withdraw the designation of the Commission member;
- 2) withdraw the designation of the expert.

**Art. 19.** 1. The Commission shall determine, as soon as possible after receiving a report of the marine casualty or incident, whether such the marine casualty or incident occurred.

2. The Commission shall start the investigation of the marine casualty or incident without delay, but not later than 2 months from the date of such marine casualty or incident.

3. The investigation of the marine casualty or incident shall be conducted in such a manner that it does not result in unwarranted detain of the ship in port.

4. In exceptional cases, in order to allow the completion of the ongoing investigation of the marine casualty or incident, the Commission may, by way of a decision which shall be immediately enforceable, detain a ship in port for the time necessary to complete the investigation, which shall not exceed 24 hours.

5. The Commission shall immediately inform the harbour master competent for the place where the ship is detained of the detention of the ship in port.

6. The decision to detain a ship in port may be appealed to the Minister in charge of maritime affairs.

**Art. 20.** 1. The Commission shall investigate any very serious casualty and serious casualty.

2. After a preliminary assessment of the causes of a serious casualty, the Commission may decide not to conduct an investigation.

3. In the event of a casualty, other than the casualty referred to in paragraph 1, or a marine incident, the Commission shall decide whether or not to undertake an investigation.

4. When making decision referred to in paragraphs (2) and (3), the Commission shall take into account the seriousness of the event, the type of ship or cargo involved and whether the findings of the investigation will contribute to the prevention of future marine casualties and incidents.

5. The Chairman of the Commission shall notify the European Commission of any marine casualty or incident and of any abandonment of the marine casualty or incident investigation as referred to in paragraphs 2 and 3 by posting the information on the form provided in the EMCIP database.

**Art. 21.** 1. The Commission shall conduct the marine casualty or incident investigation independently.

2. The Commission may:

- 1) delegate the conduct of the investigation of the marine casualty or incident to a State, other than the Republic of Poland, substantially interested in the marine casualty or incident;
- 2) allow a State, other than the Republic of Poland, substantially interested in the marine casualty or incident to participate in the investigation of this marine casualty or incident;
- 3) join the investigation of the marine casualty or incident conducted by a State, other than the Republic of Poland, substantially interested by this marine casualty or incident.

3. A State substantially concerned by the marine casualty or incident, hereinafter referred to as the "substantially interested State", shall be:

- 1) the flag State of the ship involved in the marine casualty or incident, or
- 2) the coastal State in whose internal waters or territorial sea the marine casualty or incident occurred, or
- 3) the State whose environment, including the waters and territory over which it has jurisdiction, has suffered damage of a substantial nature as a result of the marine casualty, or
- 4) the State which, in respect of artificial islands, structures and installations over which it has jurisdiction, has suffered damage or been threatened with damage as a result of the marine casualty or incident, or
- 5) the State whose nationals have suffered death or serious injury as a result of the marine casualty, or
- 6) the State having relevant information which the Commission considers useful during the

investigation of the causes of the marine casualty or incident, or

- 7) the State which otherwise has an interest in the investigation of the marine casualty or incident and that is considered by the Commission to be substantial.

**Art. 22.** 1. The Commission may delegate the management of the investigation of the marine casualty or incident to a substantially interested State other than the Republic of Poland (the lead investigating State) upon agreement with the competent authority for the investigation of marine casualties or incidents of that State that it will assume responsibility for the management of the investigation of the marine casualty or incident and will conduct the investigation in accordance with the Casualty Investigation Code.

2. Until it is agreed which State is to be the lead investigating State, the Commission shall be responsible for conducting the marine casualty or incident investigation and shall conduct the investigation itself.

**Art. 23.** 1. The Commission shall admit a substantially interested State other than the Republic of Poland to participate in the marine casualty or incident investigation upon written request to the Chairman of the Commission by the appropriate authority of such State. Admission may take place after the Commission has undertaken the investigation.

2. The Commission shall allow participation in the marine casualty or incident investigation by a substantially interested Member State of the European Union other than the Republic of Poland after having agreed on the scope and modalities of the investigation, taking into account the need to ensure that a representative of that State has the same right to be heard and to have access to evidence as the members of the Commission.

3. The Commission shall admit a substantially interested third State to participate in the investigation of the marine casualty or incident, upon the conclusion of an agreement with the competent authority for the investigation of marine casualties or incidents of that State, the provisions of which shall ensure that the investigation is conducted in accordance with the requirements of the Casualty Investigation Code.

**Art. 24.** 1. If the investigation of the marine casualty or incident for which the Republic of Poland is a substantially interested State has been undertaken by the competent authority for the investigation of marine casualties or incidents of another substantially interested State than the Republic of Poland, the Commission shall, subject to Article 15, decide whether to join that investigation.

2. In order to join the marine casualty or incident investigation conducted by the competent authority for the investigation of marine casualties or incidents of a substantially interested Member State of the European Union other than the Republic of Poland, the Commission shall agree with that authority the scope and conduct of the investigation.

3. In order to join the marine casualty or incident investigation conducted by the competent authority for the investigation of marine casualties or incidents of a substantially interested third State, the Commission shall enter into an agreement with that authority, the provisions of which shall ensure that the investigation is conducted in accordance with the requirements of the Casualty Investigation Code.

**Art. 25.** 1. In exceptional cases, if the interest of the investigation so requires, the Commission shall conduct its own marine casualty or incident investigation, notwithstanding the investigation being conducted by a substantially interested Member State of the European Union other than the Republic of Poland (parallel investigation).

2. The Chairman of the Commission shall inform the European Commission of the reasons for undertaking a parallel investigation.

3. Where a parallel investigation is conducted, the Commission shall refrain from taking any measure which might unduly prevent or delay the conduct of the marine casualty or incident investigation and shall cooperate with the State referred to in paragraph 1, in particular by exchanging information collected during the course of the investigation, with a view to achieve, as far as possible, equivalent results.

**Art. 26.** 1. During the investigation of the marine casualty or incident, the Commission shall use the common methodology for investigating marine casualties and incidents as set out in 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).

2. The Commission may, in a specific case, deviate from the methodology referred to in paragraph 1 if, in the opinion of the members of the Commission, based on their professional knowledge, such deviation can be justified and is necessary to achieve the objectives of the investigation. Deviation from the methodology adopted shall be subject to the agreement by the Chairman of the Commission.

**Art. 27.** 1. The Chairman of the Commission may request an authority of another State to carry out investigation activities for the Commission.

2. Where the conduct of investigative activities for the Commission is to be carried out by an authority, other than the Republic of Poland, of a Member State of the European Union, involved in the investigation of the marine casualty or incident by the Commission, the Chairman of the Commission may request that authority to carry out such activities free of charge, based on reciprocity principle.

3. Where the conduct of investigative activities for the Commission is to be carried out by an authority of a Member State of the European Union other than the Republic of Poland, which is not involved in the investigation of the marine casualty or incident by the Commission, or by an

authority of a third country, the Chairman of the Commission shall agree the costs associated with the conduct of such activities.

**Art. 28.** 1. In the event of a request from an authority of a Member State of the European Union other than the Republic of Poland to carry out activities relating to the investigation of the marine casualty or incident, if the Republic of Poland is a substantially interested State, the Commission shall carry out these activities free of charge, on the basis of reciprocity principle.

2. In the event of a request from an authority of a Member State of the European Union other than the Republic of Poland to carry out activities relating to the investigation of the marine casualty or incident, if the Republic of Poland is not a substantially interested State, or from an authority of the third country, the Commission shall carry out such activities after the Chairman of the Commission has agreed with that authority on the costs related to the carrying out of these activities.

**Art. 29.** 1. The members of the Commission are authorised to:

- 1) access to the scene of the marine casualty or incident;
- 2) access to the ship, its wreck, equipment, cargo and their remains;
- 3) participate in the search for or removal of wreckage, remains and ship's components or substances requiring expertise, examination or analysis;
- 4) request the Chairman of the Commission to carry out the expert reports, examinations or analyses referred to in Article 10 (4) of the items or substances referred to in point (3), and have access to the results of such expert reports, examinations or analyses;
- 5) access to documents, including photocopying and the use thereof, information and data, including data from a VDR or S-VDR, relating to the ship, its voyage, cargo, crew and passengers;
- 6) access to the results of examinations of the bodies of marine casualties or the results of examinations of samples taken from the bodies of casualties;
- 7) request the examination of members of the ship's crew or other persons involved in the operation of the ship that may be important for the investigation of the marine casualty or incident, in particular to take fingerprints, samples of hair, urine, blood, saliva, odour, buccal swabs, writing samples, take photographs of the person or make a recording of the voice, and to have access to the results of such examination;
- 8) to hear the persons;
- 9) have access to information and documentation concerning ship surveys which are at the disposal of the shipowner, the flag state of the ship, the classification society or any other entity which has its registered office or representation on the territory of the Republic of Poland;

10) familiarise themselves with the results of expert opinions, examinations or analyses relating to the marine casualty or incident which are held by the Police, the Public Prosecutor's Office, the Border Guard, the Maritime Chamber, or a court.

2. The manner of exercising the powers by the members of the Commission referred to in paragraph (1) shall be determined by the Minister in charge of maritime affairs in the rules of procedure of the Commission, guided by the need to ensure full and impartial determination of the circumstances and causes of marine casualties and incidents under investigation.

3. A document confirming the powers referred to in paragraph 1 points 1-3 and 5-10 is an ID card of a member of the Commission.

4. A document confirming the powers referred to in paragraph 1 points 1-3 and 5-10 is an ID card of a member of the Commission.

5. The Minister in charge of maritime affairs shall determine, by way of a regulation, the model of the Commission member's identity card, guided by the need to specify the necessary information enabling the identification of a person who is a member of the Commission.

**Art. 30.** 1. In the event of the marine casualty or incident, the members of the Commission and the experts taking part in its work shall be authorised to exercise their powers in the first place.

2. Members of the Commission and experts participating in the activities of the Commission shall be entitled to access to ports and port facilities for the purpose of the investigation of the marine casualty or incident.

3. The activities of the members of the Commission in connection with the investigation of the marine casualty or incident shall not prejudice the competences of law enforcement or judicial authorities.

**Art. 31.** 1. Experts participating in the work of the Commission, as well as representatives of the substantially interested States referred to in Article 23, shall exercise the powers of the Members of the Commission referred to in Article 29(1) upon presentation of the relevant authorisation issued by the Chairman of the Commission to the extent specified therein.

2. In the case of representatives of the substantially interested States referred to in Article 23, the authorisation shall be limited to hearing the persons and having access to evidence.

3. The Minister in charge of maritime affairs shall establish, by means of a regulation, a template of the authorisation, taking into account the scope of the necessary information enabling the identification of the persons referred to in paragraph 1.

**Art. 32.** 1. In order to ensure the confidentiality of the investigation of the marine casualty or incident obtained by the Commission:

1) evidence from hearing of persons and other documents made or received by the Commission

during the investigation of the marine casualty or incident,

- 2) records disclosing the identity of persons heard during the investigation of the marine casualty or incident,
- 3) information relating to persons involved in the marine casualty or incident which is of a sensitive or private nature, including information concerning their health,

- shall not be made available by the Commission to either the trial authorities in criminal proceedings or any other authority conducting proceedings to establish liability or fault.

2. Disclosure of evidence, documents, records and information referred to in paragraph (1) may be made only for the purposes of pre-trial proceedings, court proceedings, court-administrative proceedings or proceedings before the Maritime Chamber with the consent of the court, if the court considers that an overriding public interest justifies such disclosure. The Regional Court in Gdańsk has jurisdiction to hear the case.

**Art. 33.** 1. The opinions made by the Commission or experts participating in the work of the Commission, in particular on the basis of evidence, technical data of the vessel, VDR or S-VDR recorders, may be made available by the Commission at the request of the maritime chamber, court, public prosecutor or the Police, to these entities.

2. The opinions and expert reports disclosed must not constitute proof of guilt or a prerequisite for liability in proceedings before the authorities referred to in paragraph 1.

**Art. 34.** If it is necessary for the investigation of the marine casualty or incident for the Commission to cooperate with another marine casualty or incident investigation body operating on the territory of the Republic of Poland, including the State Commission on Aircraft Accidents Investigation, the scope and modalities of cooperation shall be agreed upon by the chairmen of these bodies.

**Art. 34a.** The Commission shall implement the obligation referred to in Article 13(1) and (2) of the 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, 04.05.2016, p. 1, as amended<sup>4</sup>), at the first action addressed to the data subject, unless the data subject is in possession of this information and the scope or content has not changed.

## Chapter 4

### Reports and recommendations

**Art. 35.** The Commission shall draw up and publish reports: final, or interim, or simplified.

**Art. 36.** 1. Upon completion of the investigation of the marine casualty or incident, the

<sup>4</sup> The amendment of the said regulation was announced in OJ L 127, 23.05.2018, p. 2.



Commission shall prepare a final report.

2. The final report should include:

- 1) a summary of the basic facts of the marine casualty or incident, including information on injuries, fatalities or pollution;
- 2) identification of the flag State of the ship, its owner, operator and classification society;
- 3) information regarding the ships involved in the marine casualty or incident, their dimensions and engine power, as well as information concerning the crew members, in particular their duties and period of embarkation;
- 4) a description of the circumstances of the marine casualty or incident;
- 5) an analysis and observations of the factors which contributed to the marine casualty or incident, including mechanical, human or organisational ones;
- 6) a description of the results of the investigation carried out, including identification of safety issues and conclusions arising therefrom;
- 7) safety recommendations as referred to in Article 43(1), where justified.

3. The Commission shall publish the final report within 12 months of the marine casualty or incident, on its website.

**Art. 37.** 1. If, due to the particular complexity of the ongoing investigation, it is not possible to prepare and publish the final report within the time limit referred to in Article 36 (3), the Commission shall prepare and publish an interim report within that time limit.

2. The interim report shall contain at least the information contained in the notification of the marine casualty or incident referred to in Article 20(5), the circumstances of the marine casualty or incident and the estimated time for completion and publication of the final report.

3. The interim report referred to in paragraph 1 and the subsequent final report shall be published by the Commission on its website.

**Art. 38.** 1. If, at the end of the investigation of the marine casualty other than a very serious marine casualty or incident, the Commission determines that the results of the investigation will not contribute to the prevention of future marine casualties or incidents, it shall prepare and publish a simplified report.

2. The simplified report shall contain the elements referred to in Article 36(2)(1) to (6).

3. The Commission shall publish the simplified report, within 12 months of the marine casualty or incident, on its website.

**Art. 39.** 1. Prior to the publication of the final report, the Commission shall send the draft report to the bodies established for the investigation of marine casualties or incidents of the

substantially interested States and other entities affected by the content of the report for comments, together with an indication of the deadline for the submission of such comments.

2. The Commission shall decide on the manner in which the comments will be taken into account.

3. The entities referred to in paragraph 1 should not disclose the content of the draft report.

**Art. 40.** 1. The Commission shall state the causes of the marine casualty or incident, if known, in the final, simplified and interim reports, whether or not the contents of the report may be the basis for the determination of liability or fault by others.

2. A report prepared by the Commission shall not constitute evidence in any criminal proceedings or other proceedings to establish fault or liability for causing the marine casualty or incident to which the report relates.

**Art. 41.** 1. About the preparation of the final or interim or simplified report, the Chairman of the Commission shall immediately inform the Minister in charge of maritime affairs.

2. The Chairman of the Commission shall send a copy of the report referred to in paragraph 1 to the European Commission. The information relating to the marine casualty or incident which is the subject of the report shall be entered by the Commission on a form provided in the EMCIP database.

3. The Chairman of the Commission shall send a copy of the final investigation report to the International Maritime Organisation (IMO):

- 1) of the very serious marine casualty,
- 2) of the marine casualty other than that referred to in point 1, or the marine casualty or incident which contains information likely to prevent or reduce the consequences of future marine casualties or incidents,

- through the Global Integrated Shipping Information System (GISIS), which is a database of information on safety, security and marine environment maintained by the International Maritime Organisation (IMO).

4. The Chairman of the Commission shall immediately forward to the President of the State Mining Authority a copy of the report referred to in paragraph 1 if it concerns an event connected with activities involving the exploration, prospecting or extraction of hydrocarbons from deposits within the maritime areas of the Republic of Poland.

**Art. 42.** 1. The Commission, at any stage of the investigation of the marine casualty or incident, may, in order to prevent the risk of further marine casualties or incidents, address a warning of a possible hazard (early alert) to those whose action may contribute to the prevention of marine casualties or incidents, including shipowners, maritime authorities, emergency services and other

entities considered by the Commission to be appropriate.

2. Where action by countries of the European Union other than the Republic of Poland is necessary to prevent the risk of marine casualties or incidents, the Chairman of the Commission shall immediately inform the European Commission of the need to issue an early alert.

**Art. 43.** 1. On the basis of the information obtained during the marine casualty or incident investigation, the Commission shall make safety recommendations, hereinafter referred to as the "recommendations".

2. The Commission may make recommendations on the basis of an analysis of aggregated data or on the basis of the overall results of the marine casualty or incident investigations carried out.

3. The recommendations must not determine liability or fault.

4. The recommendations shall be proposals for action aimed at entities likely to contribute to the prevention of marine casualties or incidents, including shipowners, recognised organisations, maritime administrations, coastguards, police, statutory emergency services and any other bodies considered by the Commission to be appropriate.

5. The Commission may communicate its recommendations to international maritime organisations and European institutions competent in matters relating to the prevention of marine casualties or incidents.

**Art. 44.** The entities to which the recommendations have been addressed are required to notify the Chairman of the Commission, within 6 months from the date of delivery of the final report, of the acceptance or reasons for not accepting the recommendations made by the Commission.

**Art. 45.** The Minister in charge of maritime affairs shall define, by way of a regulation, the detailed scope of the reports to be drawn up by the Commission, taking into account the European Union legislation establishing the basic principles governing the investigation of accidents in the maritime transport sector<sup>5</sup> and the requirements of the Casualty Investigation Code.

**Art. 46.** The Commission may carry out a re-examination of the marine casualty or incident, after the publication of the final or simplified report, if facts or evidence relating to the marine casualty or incident not known to the Commission, and which may have a significant effect on the outcome of the investigation, will become known later.

<sup>5</sup> 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, 28.05.2009, p. 114, as amended).

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## Chapter 5

### **Obligations of other entities relating to the investigation of marine casualties and incidents**

**Art. 47.** 1. Anyone who has found or noticed an abandoned ship, wreck, ship's remains or pollution of the marine environment or has witnessed the marine casualty or incident is obliged to immediately notify:

- 1) the nearest local maritime administration authority, or
- 2) the Maritime Search and Rescue Service, or
- 3) the Navy, or
- 4) the Border Guard, or
- 5) the Police, or
- 6) the State Fire Service, or
- 7) other statutory services called upon to provide assistance.

2. Entities which have received the notification referred to in paragraph 1 shall immediately notify the Commission about the marine casualty or incident.

3. The shipowner and the master of the ship involved in the marine casualty or incident are obliged to immediately notify the Commission and the harbour master of the first Polish port of call of the ship after the marine casualty or incident and to secure the traces and evidence of the marine casualty or incident.

4. The port authority and the user of port infrastructure affected by the marine casualty resulting in:

- 1) death or serious injury to a person, or
- 2) port facilities have been damaged or caused damage,

- must notify the Commission of the marine casualty and secure the traces and evidence relating to it.

5. The Minister in charge of maritime affairs shall define, by way of the Regulation, about the manner in which the obligations of the shipowner and the shipmaster, the managing entity of the port and the user of the port infrastructure in respect of the way in which traces and evidence relating to the marine casualty or incident shall be secured, taking into account the need for proper handling of the marine casualty or incident.

**Art. 48.** Public administration bodies, including local maritime administration bodies, the Maritime Search and Rescue Service, the Navy, the Border Guard, the Police, and the State Fire Service are obliged to provide the Commission with the necessary assistance in carrying out activities related to the investigation of the marine casualty or incident.

**Art. 49.** A person who has:

- 1) means of communication likely to assist in the transfer of a message relating to the marine casualty or incident,
- 2) means of recording images or audio, or material or information which may assist in establishing the circumstances or causes of the marine casualty or incident,

- is obliged to make them available immediately at the request by the Commission.

**Art. 50.** 1. A person in possession of:

- 1) information relating to the marine casualty or incident coming from charts, log books, electronic and magnetic records and video tapes, including information coming from VDRs or S-VDRs and other electronic devices, relating to the period before, during and after the occurrence of the marine casualty or incident under investigation is obliged to keep it, prevent it from being overwritten or otherwise altered,
- 2) equipment other than those specified in point 1, which could reasonably be considered to be relevant to the investigation of the marine casualty or incident, is obliged to prevent interference with that equipment,

- until he/she will be informed by the Commission that they are not necessary for the investigation, but not longer than 3 months from the date of the marine casualty or incident.

2. The persons referred to in paragraph 1 shall, on the occurrence of the marine casualty or incident, promptly inform the Commission regarding the information and equipment listed in paragraph 1 that they have in their possession.

## Chapter 6

### Financial penalties

**Art. 51.** 1. Whoever:

- 1) while witnessing the marine casualty or incident, has failed to notify:
  - a) the nearest local maritime administration authority, or
  - b) the Maritime Search and Rescue Service, or
  - c) the Navy, or
  - d) the Border Guard, or
  - e) the Police, or
  - f) the State Fire Service, or
  - g) other statutory services called upon to provide assistance,
- 2) prevents members of the Commission from exercising their powers referred to in Article 29

- (1),
- 3) prevents experts participating in the work of the Commission or representatives of substantially interested States from exercising the powers granted to them pursuant to Article 31,
  - 4) does not make available to the Commission, upon request, the means, material or information referred to in Articles 49 and 50,
  - 5) being obliged to notify the Chairman of the Commission about the consideration or the reasons for disregarding the recommendations made by the Commission within the time limit referred to in Article 44, has failed to notify that authority,
- will be a subject to a financial penalty up to the amount not exceeding twenty times the average monthly remuneration in the national economy for the preceding year, as announced by the President of the Statistics Poland.

**Art. 52.** Financial penalties shall be imposed, by decision, by the Minister in charge of maritime affairs.

**Art. 53.** Proceeds from financial penalties constitute revenue for the state budget.

#### Chapter 7

##### **Amendments to existing legislation**

**Art. 54.** (omitted)

**Art. 55.** (omitted)

**Art. 56.** (omitted)

#### Chapter 8

##### **Transitional and adaptive provisions**

**Art. 57.** Article 57. In cases of marine casualties, within the meaning of Article 1, paragraph 2 of the Act amended by Article 54 in the current wording, which occurred before the date of entry into force of this Act, the proceedings shall be conducted on the basis of the current provisions, by the competent maritime chambers.

**Art. 58.** To cases initiated and not concluded before the date of entry into force of this Act pursuant to the provisions of Article 76(4), and cases to which the provisions of points 17.2 and 18.9.5 and 18.21 of the Annex to the Act amended by Article 56 are applicable, the existing provisions shall apply.

**Art. 59.** Pilot stations referred to in Article 229 of the Act referred to in Article 55 established before the entry into force of this Act shall become pilot stations within the meaning of Article 229 of the Act referred to in Article 55 as amended by this Act.

**Art. 60.** The implementing provision issued on the basis of Articles 12(2), 28(4) and 107(10) of the Act referred to in Article 56, in the current wording, shall remain in force until the entry into force of the implementing provision issued on the basis of Articles 12(2), 28(4) and 107b(5) of the Act referred to in Article 56, in the wording established by this Act, but not longer than for 12 months from the date of entry into force of this Act.

**Art. 61.** Marine pilot qualification documents issued before the date of entry into force of Article 107 of the Act referred to in Article 56, as amended by this Act, shall remain in force for the period for which they were issued.

**Art. 62.** 1. In the years 2012-2021, the maximum limit of expenditure of the state budget as a financial effect of the Act shall be in:

- 1) 2012 – PLN 1,270,000;
- 2) 2013 – PLN 2,310,000;
- 3) 2014 – PLN 2,368,000;
- 4) 2015 – PLN 2,427,000;
- 5) 2016 – PLN 2,488,000;
- 6) 2017 – PLN 2,550,000;
- 7) 2018 – 2,611,000;
- 8) 2019 – PLN 2,674,000;
- 9) 2020 – PLN 2,738,000;
- 10) 2021 – PLN 2,803,000.

2. In the event that the maximum limit on expenditure adopted for a given financial year, as referred to in paragraph 1, is exceeded or threatened to be exceeded, corrective mechanisms will be applied which consist in:

- 1) the use of other technological solutions for the conduct of marine casualty or incident investigations by the Commission,
- 2) rationalisation of the performance of the Commission's activities,
- 3) a reduction in the cost of the Commission's external service,

- with a view to ensuring the proper functioning of the Commission and the safety of shipping.

3. The body competent to monitor the use of the expenditure limit referred to in paragraph 1 and to implement the corrective mechanisms referred to in paragraph 2 shall be the Minister in charge of maritime affairs.

**Art. 63.** The Act shall enter into force 30 days after the date of promulgation<sup>6</sup>, except for the provisions of Article 56, points 12 and 13, which shall enter into force 12 months after the date of promulgation.

<sup>6</sup> The Act was promulgated on 26 September 2012.