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From: General Secretariat of the Council
To: Delegations

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
**[doc ST 10115/23 COM(2023) 270 final
Interinstitutional number– 2023/0164 (COD)]**
– Opinion of the European Economic and Social Committee

Delegations will find, in annex, the opinion of the European Economic and Social Committee on the above-mentioned proposal.

This opinion is available in all language versions on the following website:

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OPINION

European Economic and Social Committee

Maritime accident investigation

Revision of Directive on Maritime accident investigation
[COM(2023) 270 final – 2023/0164 (COD)]

TEN/817

Rapporteur: **Sam HÄGGLUND**

Referral	European Parliament, 12/06/2023 Council of the European Union, 09/06/2023
Legal basis	Articles 100(2) and 304 of the Treaty on the Functioning of the European Union
Section responsible	Transport, Energy, Infrastructure and the Information Society
Adopted in section	06/09/2023
Adopted at plenary	20/09/2023
Plenary session No	581
Outcome of vote (for/against/abstentions)	216/1/1

1. Conclusions and recommendations

- 1.1 The EESC welcomes the European Commission's proposal to update Directive 2009/18/EC to increase maritime safety and the protection of the marine environment. The very purpose of maritime accident investigations is to improve safety for the crew and vessel and maritime accident prevention. Investigations and the dissemination of their reports are key to identifying and communicating crucial safety deficiencies and improving the safety of ships, the personnel operating them, passengers etc. and ultimately saving lives at sea.
- 1.2 The EESC supports the partial inclusion within the scope of the Directive of the small fishing vessel segment (those less than 15 metres long). Whilst the EESC notes that full inclusion, beyond a preliminary assessment by the competent authorities, would have been the ideal option, it also takes into consideration the resources and capacity concerns of Member States.
- 1.3 The EESC also welcomes the inclusion within the scope of the proposed updated Directive of accidents involving ships in port, which has often been a "blind spot" and not approached consistently by all Member States in their reporting.
- 1.4 The EESC fully supports the objectives of providing Member States' accident investigation bodies with further legal clarity and capacity to improve their operations and timely reporting. In particular, cooperation and mutual assistance of EU Member States in safety investigations should be stepped up in light of new maritime security challenges. The EESC supports the obligation for Member States' investigation authorities to notify all very serious marine casualties to the European Maritime Casualty Information Platform (EMCIP). Further, EMCIP data should be made public and investigation reports should be published as soon as is practical.
- 1.5 The EESC stresses the crucial role of the European Maritime Safety Agency (EMSA) in providing training to Member States' competent authorities with regard to new technologies, energy sources for propulsion, manoeuvring, operation and sustainability issues. EMSA should have the means to keep training investigators on emerging technologies and their safety impact.
- 1.6 The EESC also underlines the importance of the development of a specific Quality Management System (QMS) for Accident Investigation Bodies (AIBs) to ensure procedures are systematically followed and improve the overall quality of accident investigations.
- 1.7 The EESC further notes the utmost importance of ensuring clarity and consistency between IMO regulations and the relevant EU legislative framework, in particular the Port State Control and flag State Requirements Directives, which are also proposed to be revised. The EESC supports updating the Directive to bring it in line with the IMO Casualty Investigation Code.
- 1.8 The EESC welcomes the reference in the proposed Directive to fair treatment of seafarers in a new Article 3 paragraph 4 in the case of maritime accidents to avoid the unfair criminalisation of the profession. Maritime workers are respected professionals and it is important to highlight that they play a critical role in the management and implementation of safe operations. In this respect, the dissemination of accident reports to a wide audience and fast implementation of

their recommendations should therefore be further developed in collaboration with the industry and social partners.

2. Background

2.1 The European Commission presented on 1 June 2023 five legislative proposals to modernise EU rules on maritime safety and prevent water pollution from ships. This maritime package is composed of five revision proposals relating to:

- Directive 2009/21/EC on compliance with flag State requirements;
- Directive 2009/16/EC on port State control;
- Directive 2009/18/EC on maritime transport accident investigation;
- Directive 2005/35/EC on ship-source pollution and the introduction of penalties; and,
- Regulation (EC) No 1406/2002 establishing the European Maritime Safety Agency.

2.2 Directive 2009/18/EC legally sets out the EU regime on the investigation of accidents in the maritime transport sector and incorporates the principles underlying Article 94 (7) of the United Nations Convention of the Law of the Sea (UNCLOS) as well as the relevant International Maritime Organisation (IMO) code (Code of International Standards and Recommended Practices for a Safety Investigation into a Marine Casualty or Marine Incident (Casualty Investigation Code) into EU law. The main purpose of the Directive is to improve maritime safety by providing clear EU guidelines for the harmonisation of technical investigations and lessons learnt after accidents at sea.

2.3 In accordance with the Directive, EU and European Economic Area (EEA) Member States are required to establish independent accident investigation bodies, to be notified of marine accidents and incidents, to investigate accidents depending upon their severity, to publish investigation reports and to notify the European Commission of marine casualties and incidents via a database (the European Marine Casualty Information Platform – EMCIP) established and maintained by the European Maritime Safety Agency (EMSA) for this purpose.

2.4 The Directive provides that EU/EEA Member States should conduct an investigation when lessons can be learned from an accident, when an accident involves a ship flying their flag or occurs in its waters or/and when their significant interests are affected. Such investigations do not seek to determine or assign any civil or criminal liability.

2.5 The Directive was the subject of an ex-post evaluation and fitness check of maritime legislation in 2018. A certain number of issues have been identified as being problematic. The outcome confirmed that the Directive is relevant, effective, efficient and brings added value at EU level, playing a key role in enforcing IMO and EU standards, thereby contributing to a high level of safety, security and sustainability of maritime transport as well as ensuring a level playing field between Member States. However, it also identified a number of areas for improvement or which required clarification:

- The Directive as currently formulated does not provide for the investigation of accidents involving fishing vessels shorter than 15 metres in length.
- Unclear definitions, vague wording as well as a lack of precision in some provisions of the text create confusion.
- Developments in the relevant international regulatory environment. EU law must be kept aligned with the relevant international instruments/resolutions.
- Some accidents are going unreported or are not being investigated because the accident investigation bodies (AIBs) lack adequate resources and expertise.
- New developments and/or technologies that may arise in the greening of maritime transport or the use of autonomous ships will necessarily imply new challenges for AIBs.

3. General comments

Inclusion of small fishing vessels

- 3.1 The EESC supports the partial inclusion within the scope of the Directive of the small fishing vessel segment (less than 15 metres long). Whilst the EESC notes that full inclusion, beyond a preliminary assessment by the competent authorities, would have been the ideal option, it also takes into consideration the resources and capacity concerns of Member States.
- 3.2 Many vessels in this size (less than 15 metres long) may be engaged in recreational fishing. A clear definition based on whether a sea fishing license is granted would be needed. It is also noted that there are no legally-binding codes or standards for the design, construction or operation of such vessels. The IMO, ILO and FAO do publish recommendations and voluntary codes but these are non-binding.
- 3.3 Data on accidents in the fishing capture sector is poor and there is a lack of a consistent approach across the EU. A lack of data, particularly for accidents or "near misses", is potentially hiding a much bigger problem. Fishing remains a dangerous occupation and the Commission's proposal is a step in the right direction to improve safety standards in the industry.

Human element

- 3.4 The EESC welcomes the reference in the proposed Directive to fair treatment of seafarers in a new Article 3 paragraph 4 in the case of maritime accidents to avoid the unfair criminalisation of the profession, as seafarers should be considered respected professionals.
- 3.5 In this respect, it is significant to highlight that seafarers, fishers and port workers play a critical role in the management and implementation of safe operations. The challenge remains to implement lessons learned from accidents into practices at the individual level.
- 3.6 The dissemination of accident reports to a wide audience and fast implementation of their recommendations should therefore be further developed in collaboration with the industry and social partners. The importance of prevention should not be neglected: working conditions,

fatigue, etc. can lead to tragic maritime accidents that can cost the lives of seafarers, fishers and port workers.

Alignment with the IMO

- 3.7 The EESC notes the utmost importance of ensuring clarity and consistency between IMO regulations and the relevant EU legislative framework, in particular the Port State Control and flag State Requirements Directives, which are also proposed to be revised. The EESC in particular supports updating the Directive to bring it in line with the IMO Casualty Investigation Code. In particular, the EESC supports the alignment with the IMO, through the sole use of the IMO Guidelines to assist investigators in the implementation of the Casualty Investigation Code (Resolution A.1075(28)) and the repeal of the Commission Regulation (EU) No 1286/2011 of 9 December 2011 adopting a common methodology for investigating marine casualties and incidents.

Resources of Member States

- 3.8 The EESC fully supports the objectives of providing Member States' accident investigation bodies with further legal clarity and capacity to improve both their operations and timely reporting.
- 3.9 In light of the new critical maritime security challenges (including accidents at sea involving smuggled migrants and trafficked human beings), cooperation and mutual assistance of EU Member States in safety investigations should be stepped up.
- 3.10 The EESC supports the obligation for Member States' investigation authorities to notify all very serious marine casualties to the European Maritime Casualty Information Platform (EMCIP). The EESC also supports the possibility to report all marine casualties and incidents other than very serious marine casualties to EMCIP by a duly designated competent authority of a Member State other than the marine safety investigation authority, by EMSA or by the Commission.
- 3.11 The EESC stresses that the European Maritime Casualty Information Platform (EMCIP) data is of utmost importance to share knowledge about marine casualties and incidents. EMCIP should be made public to become more transparent and accountable to EU citizens.
- 3.12 Whilst the implementation of the Directive has contributed to the publication of accident reports within prescribed deadlines, their publication should be further accelerated. It is important that the facts about a maritime accident be published as soon as possible for the families of the victims. Waiting for an answer for several years is inhumane and may affect the necessary payment of insurance money that can secure the family's future.
- 3.13 The EESC stresses the crucial role of the European Maritime Safety Agency (EMSA) in providing training to Member States' competent authorities with regard to new technologies and sustainability issues. EMSA should have the means to keep training investigators on emerging

technologies (i.e. autonomous ships, alternative fuels transported as cargo or for propulsion and ship electrification) and their safety impact.

- 3.14 The EESC also underlines the importance of the development of a specific Quality Management System (QMS) for Accident Investigation Bodies (AIBs) to ensure procedures are systematically followed and improve the overall quality of accident investigations.

Brussels, 20 September 2023.

Oliver Röpke
The president of the European Economic and Social Committee
