



COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**establishing the fundamental principles governing the investigation of accidents in the  
maritime transport sector and amending Directives 1999/35/EC and 2002/59/EC**

(presented by the Commission)

{SEC(2005) 1515}

## **EXPLANATORY MEMORANDUM**

### **1) CONTEXT OF THE PROPOSAL**

- **Grounds for and objectives of the proposal**

The general objective of the Commission's proposal is to improve maritime safety by establishing clear Community-wide guidelines on the technical investigations to be carried out following maritime casualties and incidents.

The lessons learned from maritime disasters and the conclusions resulting from the investigations carried out thereof have had a major impact on the improvement of maritime safety over the years.

The lack of mandatory provisions ensuring the systematic conduct of technical investigations on maritime casualties and guaranteeing an appropriate return of experience from those investigations can be considered as a serious shortcoming of the maritime safety policy of the European Union.

In its 2001 White Paper "European Transport Policy for 2010: time to decide", the Commission drew attention to the growing need for independent technical investigations based on an analysis of the circumstances and causes of accidents or incidents, the results of which should focus on risk prevention and how legislation can be improved.

This need was also noted by the European Parliament in the light of the work carried out by the Temporary Committee on Improving Safety at Sea (MARE Committee) following the sinking of the Prestige oil tanker in 2002. The European Parliament concluded that, with a view to preventing further accidents and incidents, clear guidelines must be drawn up within the EU for the carrying out of an independent investigation into accidents and incidents at sea. The Parliament further considered that this should be the task of an independent investigative body at Member State level or, if appropriate, at European level.

- **General background**

The aftermath of the sinking of the Erika and Prestige oil tankers very clearly exposed the shortcomings of international legislation and the difficulties which the Member States of the EU must overcome in order to conclude technical investigations following serious maritime accidents in a satisfactory and timely manner.

These shortcomings and difficulties reveal a striking contrast with the situation in the air transport sector where, since 1994, the European Community has had rules to ensure that technical investigations into accidents and incidents are carried out properly and systematically in order to help improve civil aviation safety.

Despite the fact that flag States are bound under international maritime law to carry out technical investigations after all serious maritime incidents and to cooperate with the other States concerned, there is currently no binding legislation at international level in the maritime sector to ensure that flag States fulfil this obligation.

On 27 November 1997, following several years of consideration and with limited experience, the International Maritime Organisation (IMO) adopted a resolution on the adoption of a Code for the Investigation of Marine Accidents. However, applying the recommendations set out in the IMO's Code on carrying out technical investigations relies on the good will of the flag States involved in maritime incidents. The fact remains that the contribution made by some flag States to improving maritime safety through appropriate management of feedback is limited, if not non-existent.

- **Provisions in force in the field covered by the proposal**

Council Directive 1999/35/EC of 29 April 1999 requires Member States to conduct an investigation into any marine accident or incident involving a ro-ro ferry or high-speed passenger craft.

In line with the measures taken following the Erika accident, Directive 2002/59/EC establishing a Community vessel traffic monitoring and information system requires Member States to adhere to the recommendations set out in the IMO's Code for the Investigation of Marine Accidents. This Directive also focuses on the use of 'maritime black boxes' to facilitate investigations following an accident.

Lastly, Regulation (EC) No 1406/2002 has given the European Maritime Safety Agency the task of facilitating cooperation between the Member States and the Commission in developing a common methodology for investigating maritime accidents according to agreed international principles. The Regulation also requires the Agency to support the Member States in their activities concerning investigations related to serious maritime accidents and in analysing existing accident investigation reports.

- **Coherence with other Union policies and objectives**

The proposal is part of the third package of legislative measures aimed at improving maritime safety. This package is one element of the "safety" priority of the Commission's annual strategy policy. The proposal will also contribute to the environmental protection priority by helping to prevent the risk of maritime disasters.

## 2) CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

- **Consultation of the stakeholders**

*Consultation methods, main sectors targeted and general profile of respondents*

In May 2004 and February 2005 the Commission held a double round of consultative meetings with representatives of the Member States and the maritime industry on the basis of staff working documents containing a detailed list of questions on the approach to be followed and the measures to be provided for in legislation on investigations after maritime accidents. The Commission asked the participants consulted to send their detailed comments to it in writing.

With the help of the Maritime Safety Agency, the Commission has gathered the information needed to evaluate the impact of the proposal. The principles which formed the basis for the Commission's proposal were examined during a technical meeting held by the Agency in February 2005 attended by IMO experts and the maritime authorities and investigative bodies of the Member States.

Summary of responses and how they have been taken into account

The representatives of the Member States and the maritime industry, as well as the various experts consulted, are in full agreement on the importance of technical investigations as part of maritime safety policy.

Overall, all the consulted parties agree on the importance of conducting technical investigations on marine casualties and incidents. A significant majority would support the introduction into EC Law of provisions harmonising and consolidating the Member States' technical investigation procedures on the basis of the IMO's principles and recommendations. In addition, they consider that the proposed instrument should ensure at least the same level of feedback from preventing the risk of new accidents as that guaranteed by the legislation in the aviation sector.

• **Obtaining and using expertise**

Scientific areas or fields of expertise concerned

Maritime safety, technical investigations following maritime incidents.

Methodology used

Gathering opinions, examining the expertise available (International Maritime Organisation, investigative bodies in the Member States and in third countries) and experience gained when implementing Community legislation on carrying out technical investigations in the civil aviation sector.

Main organisations/experts consulted

Work undertaken by the European Parliament's Temporary Committee on Improving Safety at Sea following the sinking of the Prestige oil tanker in 2002 (conclusions of the MARE Committee).

The European Maritime Safety Agency, whose tasks include supporting the Member States in activities concerning investigations relating to serious maritime accidents and analysing existing accident investigation reports.

The group of independent experts which advises the Commission on a strategy for dealing with accidents in the transport sector, established under the Commission Decision of 11 June 2003 (OJ L 144, 12.6.2003).

### Summary of advice received and used

The fact that there are potentially serious risks which have irreversible consequences has been recognised, and there is broad consensus that such risks do exist.

There are currently marked differences within the Community between the ways in which independent investigations are carried out following maritime incidents. While some Member States carry out this type of investigation systematically, they are carried out in a superficial and non-systematic manner in others. The extent to which IMO recommendations on technical investigations are observed varies greatly. The fact that there are no clear guidelines for a common level of commitment from all the Member States is a major deficiency in the EU's maritime safety legislation.

The biggest concern in the international maritime sector is still the inability of some flag States to carry out investigations directly following maritime incidents. The States under whose flags most accidents happen seem to be those which carry out proportionally fewest investigations or at any rate which disseminate the least information about the findings of their investigations and draw fewest concrete conclusions from them, and the competent international bodies do nothing about this.

### Methods used to make the results of these expert opinions available to the public

The results of the expert opinions are set out in the detailed impact assessment carried out by the Commission (see below). The data and expert reports collected by the European Maritime Safety Agency are available on the Agency's website ([www.emsa.eu.int](http://www.emsa.eu.int)).

#### • **Impact analysis**

Four possible alternatives were considered when assessing the possible action to be taken:

- (1) maintaining the current status quo ("do nothing");
- (2) a non-legislative Community initiative encouraging the Member States to apply the recommendations in the IMO Code voluntarily;
- (3) a submission to the IMO from the 25 Member States of the EU to amend the international conventions to establish a formal obligation to carry out technical investigations following maritime incidents, and
- (4) developing clear guidelines at Community level on carrying out technical investigations and on feedback of experience following all serious maritime incidents.

Analysis of the potential impact of these options has confirmed that:

- Community legislation is the most appropriate option for dealing with the issue of technical investigations following maritime incidents within the framework of maritime safety policy;
- the instrument chosen (a Directive establishing the basic principles which Member States should follow for technical investigations following maritime incidents) should be based, as far as possible, on the principles and recommendations in the IMO Code. However, the proposed legislation should ensure at least the same level of feedback as that guaranteed by the legislation in the aviation sector; and that
- Community action in this area is urgently needed because technical investigations form part of a policy aimed at preventing further maritime disasters within the European Union.

This impact assessment is part of the Commission's Legislative and Work Programme and is available on the Commission's website:

[http://europa.eu.int/comm/secretariat\\_general/impact/index\\_en.htm](http://europa.eu.int/comm/secretariat_general/impact/index_en.htm)

### **3) LEGAL ELEMENTS OF THE PROPOSAL**

#### **• Summary of the proposed action**

The general objective of the proposal (Article 1) is to improve maritime safety and prevent future disasters. As in the aviation sector, the aim of technical investigations in the maritime area is not to determine, and far less to apportion civil or criminal liability, but to establish the circumstances and to research the causes of maritime incidents in order to draw all possible lessons from them and thereby improve maritime safety.

The proposal was drawn up in compliance with the rules of international maritime law and in accordance with the definitions and recommendations in the IMO Code for the Investigation of Marine Accidents (Articles 2 and 3). It introduces into Community law the obligation for Member States to carry out technical investigations after maritime accidents (Articles 5 and 6).

The proposal gives a status to technical investigations in the maritime area (Article 4) by expanding or creating specialised bodies and giving technical investigators investigative powers over third parties (Article 7). Moreover, the proposal contains a provision on cooperation between Member States (Article 8) and between Member States and third countries (Article 9). It also aims to ensure that evidence is preserved (Articles 10 and 11) and to develop procedures for protecting, safeguarding and compiling the investigation reports and providing feedback (Articles 12, 13, 14 and 15).

Lastly, the proposal takes account of the role the European Maritime Safety Agency will play in this area in accordance with the provisions of Regulation (EC) No 1406/2002.

- **Legal basis**

Article 80(2) of the EC Treaty.

- **The subsidiarity principle**

The Subsidiarity principle applies as the proposal does not concern an area in which the Community has exclusive competence.

The objectives of the proposal cannot be satisfactorily achieved by action on the part of the Member States for the following reasons.

There is in particular a need to harmonise and consolidate the Member States' technical investigation procedures at Community level, to make a clear distinction between technical safety investigations and judicial inquiries, to speed up investigators' access to the site of an accident, the availability of evidence and meetings with the persons concerned and to guarantee the independence of the investigators from the supervisory authority.

The lack of clear guidelines at European level on how to carry out technical investigations and provide feedback to prevent the risk of serious maritime accidents is a major gap which has been found in the EU's maritime safety legislation. Similarly, the lack of any commitment from all Member States on this matter has a negative effect on the level of safety and the efforts taken to prevent serious accidents in the EU as a whole.

The objectives of the proposal may be better achieved through Community action for the following reasons.

A coordinated network involving exchanges of information and enabling there to be joint action, if necessary, to identify and prevent the risk of further maritime disasters is more effective than isolated measures aimed at establishing the circumstances and investigating the causes of maritime incidents with a view to learning from them to improve maritime safety.

The Community's action will ensure that technical investigations are carried out systematically by all Member States with maritime concerns following maritime incidents.

Conducting these investigations on the basis of a common methodology which complies with principles agreed at international level will ensure their efficiency and quality.

A cooperation network made up of the investigating bodies in the Member States will ensure that knowledge is pooled, that there is mutual technical assistance and that

effective feedback measures are established to prevent the risk of similar accidents at Community level.

Lastly, establishing a database and technical information-exchange system adds great value to individual actions undertaken by Member States to protect human life at sea and prevent the environmental consequences of maritime accidents.

The scope of the proposal is limited to providing for the effective implementation within the Community of the obligation to carry out investigations following accidents in accordance with international maritime law. The proposal provides for clear guidelines for implementing the recommendations drawn up by the IMO to this end.

The proposal therefore complies with the principle of subsidiarity.

- **The principle of proportionality**

The proposal complies with the principle of proportionality for the following reasons.

The proposal for a Directive establishes the basic principles governing the way in which technical investigations are carried out following maritime incidents. The Member States must take the most appropriate measures to ensure this is implemented at national level.

Furthermore, the proposal is based on the provisions laid down in the IMO's international maritime conventions and recommendations which are binding on the Member States. The proposal for a Directive introduces minimum quality criteria for the practical application of these provisions and recommendations while at the same time leaving Member States sufficient scope for decisions. It also provides a framework for mutual cooperation and technical assistance at European level which the Member States do not currently have.

The proposal does not involve financial and/or administrative burdens either for economic operators or citizens. Member States which do not currently have the structures needed to carry out investigations into accidents in the maritime sector should make an administrative effort to provide the necessary resources at the level of their national authorities. Regional and local authorities need not be involved.

In return, feedback from technical investigations will help improve fleet safety and the operation of maritime transport and thereby reduce the risk of further accidents and incidents.

- **Choice of instruments**

Proposed instrument(s): Directive

Other instruments would not be appropriate for the following reasons:

One of the main objectives of this proposal is to establish clear guidelines for independent investigations into maritime accidents and incidents. A Directive is the right instrument for establishing the general principles of action under Community law while allowing the Member States the largest possible scope for decisions regarding



the necessary measures to be taken.

Other mechanisms such as voluntary cooperation between Member States or self-regulation (technical investigations carried out by economic operators) would be inadequate. The aftermath of the Erika and Prestige accidents clearly showed the shortcomings of international legislation and the difficulties which the Member States of the EU must overcome in order to conduct technical investigations following serious maritime accidents in a satisfactory and timely manner.

#### **4) BUDGETARY IMPACT**

The legislative proposal has no impact on the operational expenditure of the Community budget. A very limited impact on administrative expenditure is expected in order to ensure the Directive is implemented correctly.

#### **5) ADDITIONAL INFORMATION**

- **Repeal of existing legislation**

Adopting this proposal will mean some legislation must be repealed.

- **Review/revision/sunset clause**

The proposal includes a revision clause.

- **Correlation table**

The Member States are required to communicate to the Commission the text of national provisions transposing the Directive as well as a correlation table between those provisions and this Directive.

- **European Economic Area**

This draft instrument concerns an area covered by the EEA Agreement and must therefore be extended to the European Economic Area.

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**(Text with EEA relevance)**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 80(2) thereof,

Having regard to the proposal from the Commission<sup>1</sup>,

Having regard to the opinion of the European Economic and Social Committee<sup>2</sup>,

Having regard to the opinion of the Committee of the Regions<sup>3</sup>,

Acting in accordance with the procedure laid down in Article 251 of the Treaty<sup>4</sup>,

Whereas:

- (1) A high general level of safety should be maintained in maritime transport in Europe and every effort should be made to reduce the number of marine casualties and incidents.
- (2) The expeditious holding of technical investigations into marine casualties improves maritime safety as it helps to prevent the recurrence of such casualties resulting in loss of life, loss of ships and pollution of the marine environment.
- (3) The European Parliament, in its resolution<sup>5</sup> on improving safety at sea, has urged the Commission to present a proposal for a directive on investigating shipping accidents.
- (4) Article 2 of the United Nations Convention on the Law of the Sea 1982 (UNCLOS)<sup>6</sup>, establishes the right of coastal States to investigate the cause of any marine casualty occurring within their territorial seas which might pose a risk to life or to the

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<sup>1</sup> OJ C [...], [...], p. [...].

<sup>2</sup> OJ C [...], [...], p. [...].

<sup>3</sup> OJ C [...], [...], p. [...].

<sup>4</sup> OJ C [...], [...], p. [...].

<sup>5</sup> 2003-2235 (INI).

<sup>6</sup> Final Act of the Third United Nations Conference on the Law of the Sea 1973-1982, Class Nr. 341.45 L 412 1997.

environment, involve the coastal State's search and rescue authorities, or otherwise affect the coastal State.

- (5) Article 94 of UNCLOS establishes that flag States shall cause an inquiry to be held, by or before a suitably qualified person or persons, into certain casualties or incidents of navigation on the high seas.
- (6) The International Convention for the Safety of Life at Sea, 1974 (SOLAS regulation I/21)), the International Convention of Load Lines, 1966 and the International Convention for the Prevention of Pollution from Ships, 1973 lay down the responsibilities of flag States to conduct casualty investigations and to supply the International Maritime Organisation (IMO) with relevant findings.
- (7) The [draft] Code for the implementation of Mandatory IMO Instruments<sup>7</sup> recalls the obligation of flag States to ensure that marine safety investigations are conducted by suitably qualified investigators, competent in matters relating to marine casualties and incidents. The Code further requires flag States to be prepared to provide qualified investigators for that purpose, irrespective of the location of the casualty or incident.
- (8) Account should be taken of the Code for the Investigation of Marine Casualties and Incidents adopted in November 1997 by IMO Assembly Resolution A.849, which provides for implementation of a common approach to the safety investigation of marine casualties and incidents and for cooperation between States in identifying the contributing factors leading to marine casualties and incidents. Account should also be taken of Circular 953 of the IMO Maritime Safety Committee, which provides updated definitions of terms used in the Code, and IMO Resolutions A.861(20) and MSC.163(78), which provide a definition of “voyage data recorders”.
- (9) Council Directive 1999/35/EC of 29 April 1999 on a system of mandatory surveys for the safe operation of regular ro-ro ferry and high-speed passenger craft services<sup>8</sup> requires Member States to define, in the framework of their respective internal legal systems, a legal status that will enable them and any other substantially interested Member State to participate, to cooperate in, or where provided for under the Code for the investigation of marine casualties, to conduct any marine casualty or incident investigation involving a ro-ro ferry or high-speed passenger craft.
- (10) Directive 2002/59/EC of the European Parliament and of the Council of 27 June 2002 establishing a Community vessel traffic monitoring and information system and repealing Council Directive 93/75/EEC<sup>9</sup> requires Member States to comply with the IMO Code for the Investigation of Marine Casualties and Incidents and ensure that the findings of the accident investigations are published as soon as possible after its conclusion.
- (11) Investigation of casualties and incidents involving seagoing vessels, or other vessels in port or other restricted maritime areas, should be carried out by or under the control of an independent body or entity in order to avoid any conflict of interest.

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<sup>7</sup> Version IMO FSI 13/WP.3 of 9 March 2005.

<sup>8</sup> OJ L 138, 1.6.1999, p. 1. Directive as amended by Directive 2002/84/EC (OJ L 324, 29.11.2002, p. 53).

<sup>9</sup> OJ L 208, 5.8.2002, p. 10.

- (12) Member States should ensure that their internal legal systems enable them and any other substantially interested Member States to participate or cooperate in, or conduct, accident investigations on the basis of the provisions of the IMO Code for the investigation of marine casualties.
- (13) Under SOLAS regulation V/20, passenger ships and ships other than passenger ships of 3 000 gross tonnage and upwards constructed on or after 1 July 2002 must carry voyage data recorders (VDRs) to assist in accident investigations. Given its importance in the formulation of a policy to prevent shipping accidents, such equipment should be systematically required on board ships making national or international voyages which call at Community ports.
- (14) The data provided by a VDR system, as well as by other electronic devices, can be used both retrospectively after a marine casualty or incident to investigate its causes and preventively to gain experience of the circumstances capable of leading to such events. Member States should ensure that such data, when available, is properly used for both purposes.
- (15) Distress alerts from a ship or information from any source that a ship is, or persons on or from a ship are imperilled or that, as a result of an event in connection with the operation of a ship, there is a serious potential risk of damage to the persons, to the ship's structure or the environment should be investigated or otherwise examined.
- (16) Regulation (EC) No 1406/2002 of the European Parliament and of the Council<sup>10</sup> requires the European Maritime Safety Agency (hereinafter: "the Agency") to work with the Member States to develop technical solutions and provide technical assistance related to the implementation of Community legislation. In the field of accident investigation, the Agency has the specific task of facilitating cooperation between the Member States and the Commission in the development, with due regard to the different legal systems in the Member States, of a common methodology for investigating maritime accidents according to agreed international principles.
- (17) According to Regulation (EC) No 1406/2002, the Agency must facilitate cooperation in the provision of the support of the Member States in activities concerning investigations related to serious maritime accidents, and in the carrying out of an analysis of existing accident investigation reports.
- (18) The safety recommendations resulting from a casualty or incident safety investigation should be duly taken into account by the Member States.
- (19) Since the aim of the technical investigation is the prevention of marine casualties and incidents in the future, the conclusions and the safety recommendations should not be used to determine liability or apportion blame.
- (20) Since the objectives of the action to be taken, namely to improve marine safety in the Community and thereby reduce the risk of future marine casualties, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or the effects of the action, be better achieved at Community level, the Community may

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<sup>10</sup> OJ L 208, 5.8.2002, p. 1. Regulation as last amended by Regulation (EC) No. 724/2004, (OJ L 129, 29.4.2004, p. 1).

adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. 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.

- (21) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred to the Commission<sup>11</sup>,

HAVE ADOPTED THIS DIRECTIVE:

*Article 1*  
Subject-matter

The purpose of this Directive is to improve marine safety, and so reduce the risk of future marine casualties, by:

- (a) facilitating the expeditious holding of safety investigation and proper analysis of marine casualties and incidents and
- (b) ensuring the timely and accurate reporting of safety investigations and proposals for remedial action.

Investigations under this Directive shall not be concerned with determining liability nor, except so far as is necessary to achieve its objective, apportioning blame.

*Article 2*  
Scope

1. This Directive shall apply to marine casualties, incidents and distress alerts that:
  - (a) involve ships flying the flag of one of the Member States; or
  - (b) occur within areas over which Member States are entitled to exercise jurisdiction; or
  - (c) involve other substantial interests of the Member States.
2. This Directive shall not apply to marine casualties, incidents and distress alerts involving only:
  - (a) ships of war and troop ships and other ships owned or operated by a Member State and used only on government non-commercial service;
  - (b) ships not propelled by mechanical means, wooden ships of primitive build, pleasure yachts and pleasure craft, unless they are or will be crewed and carrying more than 12 passengers for commercial purposes;

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<sup>11</sup> OJ L 184, 17.7.1999, p. 23.

- (c) inland waterway vessels operating in inland waterways;
- (d) fishing vessels with a length of less than 24 metres;
- (e) fixed offshore drilling units.

### *Article 3* Definitions

For the purposes of this Directive:

1. 'SOLAS' means the 1974 International Convention for the Safety of Life at Sea (SOLAS 74), as amended by its 1978 and 1988 Protocols.  
  
'IMO Code' means the Code for the Investigation of Marine Casualties and Incidents adopted by the International Maritime Organisation through Assembly Resolution A.849 of 27 November 1997 as amended.
2. The following terms shall be understood in accordance with the definitions contained in the IMO Code:
  - (a) 'marine casualty';
  - (b) 'very serious casualty';
  - (c) 'marine incident';
  - (d) 'marine casualty or incident safety investigation';
  - (e) 'substantially interested State'.
3. The terms "serious casualty" and "less serious casualty" shall be understood in accordance with the updated definitions contained in Circular 953 of the IMO Maritime Safety Committee.
4. The terms "ro-ro ferry" and "high-speed passenger craft" shall be understood in accordance with the definitions contained in Article 2 of Directive 1999/35/EC.
5. 'Lead investigating Member State' means a Member State that is required to conduct or, where there is more than one substantially interested State, to lead, a safety investigation in accordance with this Directive.
6. 'Voyage data recorder' (VDR) shall be understood in accordance with the definition contained in IMO Resolutions A.861 (20) and MSC.163 (78).
7. 'Distress alert' means a signal given from a ship, or information from any source, indicating that a ship is, or that persons on or from a ship are, in distress at sea.

8. 'Safety recommendation' means any proposal made by either of the following:
- (a) the investigative body of the State conducting, or leading, the marine casualty or incident safety investigation on the basis of information derived from that investigation; or, where appropriate;
  - (b) the Commission, acting on the basis of an abstract data analysis.

#### *Article 4*

#### Status of safety investigations

1. Member States shall establish, in accordance with their respective internal legal systems, rules for the conduct of marine casualty or incident safety investigations. In doing so, they shall ensure that such investigations:
  - (a) are independent from criminal or other parallel investigations held to determine liability or apportion blame; and
  - (b) are not precluded, suspended or delayed by reason of such investigations.
2. The rules to be established by the Member States shall include provisions for allowing:
  - (a) cooperation and mutual assistance in marine casualty or incident safety investigations led by other Member States, or the delegation to another Member State of the task of leading such an investigation in accordance with the provisions of this Directive; and
  - (b) coordination, in close cooperation with the Commission, of the activities of their respective investigative bodies to the extent necessary to attain the objectives of this Directive.

#### *Article 5*

#### Obligation to investigate

1. Every Member State shall ensure that an investigation is carried out by the investigative body referred to in Article 8 after serious or very serious marine casualties:
  - (a) involving a ship flying its flag, irrespective of the location of the casualty; or
  - (b) occurring within the areas over which it is entitled to exercise jurisdiction, 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.
2. In addition to investigating serious and very serious casualties, the investigative body referred to in Article 8 shall, having established the initial facts of the case, decide

whether or not a safety investigation of a less serious casualty, marine incident or a distress alert shall be undertaken.

In its decision, it shall take into account the seriousness of the casualty or incident, the type of vessel and/or cargo involved in the distress alert, and/or any request from the search and rescue authorities.

3. The scope and the practical arrangements for the conduct of safety investigations shall be determined by the investigative body of the lead investigating Member State in cooperation with the equivalent bodies of the other substantially interested States, in such manner as appears to it most conducive to achieving the objectives of this Directive, and with a view to preventing future casualties and incidents.
4. Safety investigations shall follow the common methodology for investigating marine casualties and incidents developed pursuant to Article 2(e) of Regulation (EC) No. 1406/2002. The adoption or modification of such methodology for the purposes of this Directive shall be decided in accordance with the procedure laid down in Article 18(2)
5. A safety investigation shall be started as promptly as is practicable after the marine casualty or incident occurs.

#### *Article 6* Obligation to report

A Member State shall require, in the framework of its national legal system, that its investigative body be notified without delay, by the responsible authorities and/or by the parties involved, of the occurrence of all casualties, incidents and distress alerts falling within the scope of this Directive.

#### *Article 7* Joint safety investigations

1. In cases of serious and very serious casualties involving a substantial interest for two or more Member States, the Member States concerned shall rapidly agree which of them is to be the lead investigating Member State.  
  
Member States shall refrain from conducting parallel safety investigations into the same marine casualty or incident. They shall abstain from any measure which could jeopardise the conduct of a safety investigation falling within the scope of this Directive.
2. By common consent, a Member State may delegate to another Member State the task of leading a marine casualty or incident safety investigation. It may invite another Member State to participate in such an investigation.
3. When a ro-ro ferry or high-speed passenger craft is involved in a marine casualty, incident or distress alert, the investigation procedure shall be launched by the Member State in whose waters the accident or incident occurs or, if occurring in extra-territorial waters, by the last Member State visited by the ferry or craft.



That State shall remain responsible for the investigation and coordination with other substantially interested Member States until such time as it is mutually agreed which of them is to be the lead investigating State.

*Article 8*  
Investigative bodies

1. Member States shall ensure that marine casualty or incident safety investigations are conducted under the responsibility of an impartial permanent investigative body or entity, (hereinafter referred to as “investigative body”, and by suitably qualified investigators, competent in matters relating to marine casualties and incidents.

That investigative body shall be functionally independent of, in particular, the national authorities responsible for seaworthiness, certification, inspection, manning, safe navigation, maintenance, sea traffic control, port state control, operation of seaports and, in general, of any other party whose interests could conflict with the task entrusted to it.

2. The investigative body shall ensure that individual investigators have a working knowledge and practical experience in those subject areas pertaining to their normal investigative duties. Additionally, the investigative body shall ensure ready access to appropriate expertise, as necessary.
3. The activities entrusted to the investigative body may be extended to the gathering and analysis of data relating to marine safety, in particular for prevention purposes, in so far as these 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, and where appropriate in cooperation with the authorities responsible for the judicial inquiry, shall require that the investigators of its investigative body, or of any other investigative body to which it has delegated the task of investigation, be authorised:
  - (a) to have free access to any relevant area or casualty site as well as to any ship, wreck or structure including cargo, equipment or debris;
  - (b) to ensure immediate listing of evidence and controlled search for and removal of wreckage, debris or other components or substances for examination or analysis;
  - (c) to require examination or analysis of the items referred to in point (b), and have free access to the results of such examinations or analysis;
  - (d) to have free access to, copy and have use of any relevant information and recorded data, including voyage data recorder (VDR) data, pertaining to a ship, voyage, cargo, crew or any other person, object, condition or circumstance;
  - (e) to 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) to 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) to examine witnesses in the absence of any person whose interests the investigators consider to hamper the safety investigation;
  - (h) to 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) to 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 investigative body 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 status giving them the necessary guarantees of independence.
  6. The investigating body may combine its tasks under this Directive with the work of investigating occurrences other than marine casualties on condition that such investigations do not endanger its independence.

#### *Article 9*

##### Non-disclosure of records

Member States shall ensure that the following records are not made available for purposes other than the safety investigation, unless the appropriate judicial authority in that State determines that the interest in their disclosure outweighs the adverse domestic and international impact that such action may have on that investigation or on any future investigations:

- (a) all witness evidence and other statements, accounts and notes taken or received by the investigative body 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) medical or private information regarding persons involved in the casualty or incident.

#### *Article 10*

##### Permanent cooperation framework

1. Member States shall, in close cooperation with the Commission, establish a permanent cooperation framework enabling their respective marine casualty or incident safety investigative bodies to cooperate among themselves and with the Commission to the extent necessary to attain the objectives of this Directive.

2. The rules of procedure of the permanent cooperation framework and the organisation arrangements required thereof shall be decided in accordance with the procedure referred to in Article 18(2).
3. Within the permanent cooperation framework, the investigative bodies in the Member States and the Commission shall agree, in particular, the best modalities of cooperation in order to:
  - (a) share installations, facilities and equipment for the technical investigation of wreckage and ship's equipment and other objects relevant to the safety investigation, including the extraction and evaluation of information from voyage data recorders and other electronic devices;
  - (b) provide each other with the technical cooperation or expertise needed to undertake specific tasks;
  - (c) acquire and share information relevant for analysing casualty data and making appropriate safety recommendations at Community level;
  - (d) draw up common principles for the follow-up of safety recommendations and for the adaptation of investigative methods to the development of technical and scientific progress;
  - (e) establish confidentiality rules for the sharing of witness evidence and the processing of data;
  - (f) organise, where appropriate, relevant training activities for individual investigators;
  - (g) promote cooperation with the investigative bodies or entities of third countries and with the international maritime accidents investigation organisations in the fields covered by this Directive.
4. Any Member State, the facilities or services of which have been, or would normally have been, used by a ship prior to a casualty or an incident, and which has information pertinent to the investigation, shall provide such information to the investigative body conducting the investigation.

#### *Article 11*

##### Costs

Member States shall make every effort to avoid making a charge for the provision of any assistance required by other Member States for the purposes of conducting safety investigations under this Directive.

#### *Article 12*

##### Cooperation with substantially interested third countries

1. Member States shall cooperate, to the maximum possible extent possible, with other substantially interested third countries in the investigation of marine casualties.

2. Substantially interested third countries shall, by mutual consent, be allowed to join a safety investigation led by a Member State under the terms of this Directive at any stage of the investigation.
3. The cooperation of a Member State in an investigation conducted by a substantially interested third country shall be without prejudice of the conduct and reporting requirements of marine casualty or incident safety investigations under this Directive.

### *Article 13*

#### Preservation of evidence

Member States shall adopt measures to ensure that the parties involved in casualties, incidents and distress alerts under the scope of this Directive make every effort to achieve the following:

- (a) to save all information from charts, log books, electronic and magnetic recording and video tapes, including information from voyage data recorders and other electronic devices relating to the period preceding, during and after an accident;
- (b) to prevent the overwriting or other alteration of such information;
- (c) to prevent interference with any other equipment which might reasonably be considered pertinent to the investigation of the accident;
- (d) to collect and preserve all evidence expeditiously for the purposes of the marine casualty or incident safety investigations.

### *Article 14*

#### Accident reports

1. Marine casualty or incident safety investigations carried out under the terms of this Directive shall result in a published report presented in accordance with the guidelines set out in Annex I.
2. Investigative bodies shall make every effort to make a report available to the public within 12 months from the day of the casualty. If it is not possible to produce the final report within that time, an interim report shall be published within 12 months from the date of the casualty.
3. The investigative body of the lead investigating Member State shall send a copy of the final or interim report to the Commission. It shall take into account the possible observations of the Commission for improving the quality of the report in the way most conducive to achieving the objectives of this Directive.

*Article 15*  
Safety recommendations

1. Member States shall ensure that safety recommendations made by the investigative bodies are duly taken into account by the addressees and, where appropriate, acted upon in accordance with Community and international law.
2. Where appropriate, an investigative body or the Commission shall make safety recommendations on the basis of an abstract data analysis.
3. A safety recommendation or an interim recommendation shall in no circumstances apportion blame or liability for a casualty.

*Article 16*  
Early alert system

If the investigative body of a Member State takes the view, at any stage of a marine casualty investigation or of an incident investigation, that urgent action is needed at Community level to prevent the risk of new casualties, it shall speedily inform the Commission of the need to give an early alert.

The Commission shall immediately examine the matter and, if necessary, issue a note of warning for the attention of the responsible authorities in all the other Member States, the shipping industry, and to any other relevant party.

*Article 17*  
European database for marine casualties

1. Data on marine casualties and incidents shall be stored and analysed by means of a European electronic database to be set up by the Commission, which shall be known as the European Marine Casualty Information Platform (EMCIP).
2. Member States shall notify to the Commission the entitled authorities that will have access to the database.
3. The investigative bodies of the Member States shall notify the Commission on marine casualties and incidents in accordance with the format in Annex II. They shall also provide the Commission with data resulting from marine casualty or incident safety investigations in accordance with the EMCIP database schema.
4. The Commission shall inform the investigative bodies of the Member States about the requirements and timescale of the notification and reporting procedures.

*Article 18*  
Committee

1. The Commission shall be assisted by the Committee on Safe Seas and the Prevention of Pollution from Ships (COSS) instituted by Article 3 of Regulation (EC) No 2099/2002 of the European Parliament and the Council<sup>12</sup>.
2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at two months.

3. The Committee shall adopt its Rules of procedure.

*Article 19*  
Amending powers

The Commission may update definitions in this Directive, and the references made to Community acts and to IMO instruments, in accordance with the procedure referred to in Article 18(2) in order to bring them into line with Community or IMO measures which have entered into force, subject to observance of the limits of this Directive.

Acting in accordance with the same procedure, the Commission may also amend the Annexes.

*Article 20*  
Additional measures

Nothing contained in this Directive shall prevent a Member State from taking additional measures on maritime safety which are not covered by this Directive, provided that such measures do not infringe this Directive or in any way adversely affect its attainment.

*Article 21*  
Penalties

Member States shall lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive.

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<sup>12</sup> OJ L 324, 29.11.2002, p. 1.

*Article 22*  
Amendments to existing acts

1. Article 12 of Directive 1999/35/EC is deleted.
2. Article 11 of Directive 2002/59/EC is deleted.

*Article 23*  
Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [...] at the latest. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

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

*Article 24*  
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 25*  
Addressees

This Directive is addressed to the Member States.

Done at Brussels, [...]

*For the European Parliament*  
*The President*  
[...]

*For the Council*  
*The President*  
[...]

## ANNEX I

### **Safety investigation report format and content**

#### Foreword

This identifies the sole objective of the safety investigation, that a safety recommendation shall in no case create a presumption of liability or blame, and that the report has not been written, in terms of content and style, with the intention of it being used in legal proceedings.

*(The report should make no reference to witness evidence nor link anyone who is referred to in the report to a person who has given evidence during the course of the investigation.)*

#### 1. Summary

This part outlines the basic facts of the marine casualty or incident: what, when, where and how it happened; and states whether any deaths, injuries, damage to the ship, cargo, third parties or environment occurred as a result.

#### 2. Factual information

This part includes a number of discrete sections, providing sufficient information that the investigating body interprets to be factual, from which to fully populate the relevant fields of the European database for marine casualties, substantiate the analysis and ease understanding.

These sections include, at least, the following information:

##### 2.1 Ship particulars

- Ship flag/register,
- Ship identification,
- Ship main characteristics,
- Ownership and management,
- Construction details,
- Minimum safe manning,
- Authorised cargo.

##### 2.2 Voyage particulars

- Ports of call,
- Type of voyage,
- Cargo information,
- Manning.



### 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,
- Human factors data,
- Consequences ( to people, ship, cargo, environment, other).

### 2.4 Shore authority involvement and emergency response

- Who was involved,
- Means used,
- Speed of response,
- Actions taken,
- Results achieved.

In addition to providing necessary particulars and other background information, this part of the report includes the results of any relevant examinations or tests and any safety action that might already have been taken to prevent future marine casualties.

## 3. Narrative

This part reconstructs the marine casualty or incident through a sequence of events, in a chronological order leading up to, during and following the marine casualty or incident and the involvement of each actor (i.e. person, material, environment, equipment or external agent). The period covered by the narrative depends on the timing of those particular accidental events that directly contributed to the marine casualty or incident.

## 4. Analysis

This part includes a number of discrete sections, providing an analysis of each accidental event, with comments relating to the results of any relevant examinations or tests conducted during the course of the investigation and to any safety action that might already have been taken to prevent future marine casualties.

These sections should cover issues such as:

- accidental event context and environment,

- human erroneous actions and omissions, events involving hazardous material, environmental effects, equipment failures, and external influences,
- contributing factors involving person related functions, shipboard operations, shore management or regulatory influence.

The analysis and comment enable the report to reach logical conclusions, establishing all of the contributing factors, including those with risks for which existing defences aimed at preventing an accidental event, and/or those aimed at eliminating or reducing its consequences, are assessed to be either inadequate or missing.

## 5. Conclusions

This part consolidates the established contributing factors and missing or inadequate defences (material, functional, symbolic or procedural) for which safety actions should be developed to prevent future marine casualties.

## 6. Safety recommendations

When appropriate, this part of the report contains safety recommendations derived from the analysis and conclusions and related to particular subject areas, such as legislation, design, procedures, inspection, management, health and safety at work, training, repair work, maintenance, shore assistance and emergency response.

The safety recommendations are addressed to those that are best-placed to implement them, such as ship owners, managers, recognised organisations, maritime authorities, vessel traffic services, emergency bodies, international maritime organisations and European institutions, with the aim of preventing future marine casualties.

This part also includes any interim safety recommendations that may have been made during the course of the safety investigation.

## 7. Appendices

When appropriate, the following non-exhaustive list of information is attached to the report in paper and/or electronic form:

- photographs, moving images, audio recordings, charts, drawings,
- applicable standards,
- technical terms and abbreviations used,
- special safety studies,
- miscellaneous information.

## ANNEX II

### **MARINE CASUALTY OR INCIDENT NOTIFICATION DATA**

(Part of the European Marine Casualty Information Platform)

01. Member State responsible / contact person
02. Member State investigator
03. Member State role
04. Coastal state affected
05. Number of substantially interested states
06. Substantially interested states
07. Notification entity
08. Time of the notification
09. Date of the notification
10. Name of the ship
11. IMO number/ distinctive letters
12. Ship flag
13. Type of marine casualty or incident
14. Type of ship
15. Date of the marine casualty or incident
16. Time of the marine casualty or incident
17. Position - Latitude
18. Position - Longitude
19. Location of the marine casualty or incident
20. Port of departure
21. Port of destination
22. Traffic separation scheme
23. Voyage segment
24. Ship operation

- 25. Place on board
- 26. Lives lost:
  - Crew
  - Passengers
  - Other
- 27. Serious injuries:
  - Crew
  - Passengers
  - Other
- 28. Pollution
- 29. Ship damage
- 30. Cargo damage
- 31. Other damage
- 32. Brief description of the marine casualty or incident

Note: Underlined numbers mean that data should be provided for each ship if more than one is involved in the marine casualty or incident.

## LEGISLATIVE FINANCIAL STATEMENT

### 1. NAME OF THE PROPOSAL:

Proposal for a Directive of the European Parliament and of the Council establishing the fundamental principles governing the investigation of accidents in the maritime transport sector and amending Directives 1999/35/EC and 2002/59/EC.

### 2. ABM/ABB FRAMEWORK

Policy area: Energy and Transport

Activities: Maritime and inland waterway transport, intermodality

### 3. BUDGET LINES

3.1 Budget lines (operational lines and related technical and administrative assistance lines (ex-B.A. lines)) including headings: Not applicable

3.2 Duration of the action and of the financial impact: Not applicable

3.3 Budgetary characteristics (add rows if necessary): Not applicable

| Budget line | Type of expenditure |  | New     | EFTA contribution | Contributions from applicant countries | Heading in financial perspective |
|-------------|---------------------|--|---------|-------------------|--|----------------------------------|
|             | Comp/Non-comp       | Diff <sup>1</sup> /Non-diff <sup>2</sup> | YES/ NO | YES/ NO           | YES/ NO                                | No [...]                         |
|             | Comp/Non-comp       | Diff/Non-diff                            | YES/ NO | YES/ NO           | YES/ NO                                | No [...]                         |

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<sup>1</sup> Differentiated appropriations.

<sup>2</sup> Non-differentiated appropriations.

#### 4. SUMMARY OF RESOURCES

##### 4.1 Financial resources

##### 4.1.1 Summary of commitment appropriations (CA) and payment appropriations (PA)

*EUR million (to 3 decimal places)*

| Expenditure type | Section no. |  | Year n | n +1 | n +2 | n +3 | n +4 | n + 5 and later | Total |
|------------------|-------------|--|--------|------|------|------|------|-----------------|-------|
|------------------|-------------|--|--------|------|------|------|------|-----------------|-------|

##### **Operational expenditure<sup>3</sup>**

|                                |     |   |   |   |   |   |   |   |      |
|--------------------------------|-----|---|---|---|---|---|---|---|------|
| Commitment Appropriations (CA) | 8.1 | a | 0 | 0 | 0 | 0 | 0 | 0 | None |
| Payment Appropriations (PA)    |     | b | 0 | 0 | 0 | 0 | 0 | 0 | None |

##### **Administrative expenditure within reference amount<sup>4</sup>**

|   |       |   |   |   |   |   |   |   |      |
|---|-------|---|---|---|---|---|---|---|------|
| Technical & administrative assistance (NDA) | 8.2.4 | c | 0 | 0 | 0 | 0 | 0 | 0 | None |
|---|-------|---|---|---|---|---|---|---|------|

##### **TOTAL REFERENCE AMOUNT**

|                                  |  |            |          |          |          |          |          |          |                 |
|----------------------------------|--|------------|----------|----------|----------|----------|----------|----------|-----------------|
| <b>Commitment Appropriations</b> |  | <b>a+c</b> | <b>0</b> | <b>0</b> | <b>0</b> | <b>0</b> | <b>0</b> | <b>0</b> | Not applicable. |
| <b>Payment Appropriations</b>    |  | <b>b+c</b> | <b>0</b> | <b>0</b> | <b>0</b> | <b>0</b> | <b>0</b> | <b>0</b> | Not applicable. |

##### **Administrative expenditure not included in reference amount<sup>5</sup>**

|   |       |   |              |              |              |              |              |              |              |
|---|-------|---|--------------|--------------|--------------|--------------|--------------|--------------|--------------|
| Human resources and associated expenditure (NDA)  | 8.2.5 | d | <b>0.054</b> | <b>0.054</b> | <b>0.054</b> | <b>0.054</b> | <b>0.054</b> | <b>0.054</b> | <b>0.324</b> |
| Administrative costs, other than human resources and associated costs, not included in reference amount (NDA) | 8.2.6 | e | <b>0</b>     | <b>0</b>     | <b>0</b>     | <b>0</b>     | <b>0</b>     | <b>0</b>     | <b>0</b>     |

<sup>3</sup> Expenditure that does not fall under Chapter xx 01 of the Title xx concerned.

<sup>4</sup> Expenditure within Article xx 01 04 of Title xx.

<sup>5</sup> Expenditure within Chapter xx 01 other than Articles xx 01 04 or xx 01 05.

### Total indicative financial cost of intervention

|   |  |                 |              |              |              |              |              |              |              |
|---|--|-----------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|
| <b>TOTAL CA including cost of Human Resources</b> |  | a+c<br>+d+<br>e | <b>0.054</b> | <b>0.054</b> | <b>0.054</b> | <b>0.054</b> | <b>0.054</b> | <b>0.054</b> | <b>0.324</b> |
| <b>TOTAL PA including cost of Human Resources</b> |  | b+c<br>+d+<br>e | <b>0.054</b> | <b>0.054</b> | <b>0.054</b> | <b>0.054</b> | <b>0.054</b> | <b>0.054</b> | <b>0.324</b> |

### Co-financing details

The legislative proposal does not provide for cofinancing on the part of the Member States

*EUR Million (to 3rd decimal place)*

| Co-financing body                      |               | Year<br>n | n +1 | n +2 | n +3 | n +4 | n+5<br>and<br>later | Total |
|--|---------------|-----------|------|------|------|------|---------------------|-------|
| .....                                  | f             | 0         | 0    | 0    | 0    | 0    | 0                   | 0     |
| <b>TOTAL CA including co-financing</b> | a+c+d<br>+e+f | 0         | 0    | 0    | 0    | 0    | 0                   | 0     |

#### 4.1.2 Compatibility with Financial Programming

- Proposal is compatible with existing financial programming
- Proposal will entail reprogramming of the relevant heading in the financial perspective
- Proposal may require application of the provisions of the Interinstitutional Agreement<sup>6</sup> (i.e. flexibility instrument or revision of the financial perspective)

#### 4.1.3 Financial impact on Revenue

- Proposal has no financial implications on revenue
- Proposal has financial impact – the effect on revenue is as follows:

***Note: all details and observations relating to the method of calculating the effect on revenue should be shown in a separate annex.***

<sup>6</sup> See points 19 and 24 of the Interinstitutional Agreement.

EUR Million (to 3rd decimal place)

|             |                              | Prior to action<br>[Year n-1] | Situation following action |       |       |       |       |                    |
|-------------|------------------------------|-------------------------------|----------------------------|-------|-------|-------|-------|--------------------|
| Budget line | Revenue                      |                               | [Year n]                   | [n+1] | [n+2] | [n+3] | [n+4] | [n+5] <sup>7</sup> |
|             | a) Revenue in absolute terms |                               | 0                          | 0     | 0     | 0     | 0     | 0                  |
|             | b) Change in revenue         | Δ                             | 0                          | 0     | 0     | 0     | 0     | 0                  |

- 4.2 Human resources FTE (including officials, temporary and external staff) – see details under point 8.2.1.

(Management by existing staff).

| Annual requirements             | Year n<br>(2007*) | n +1 | n +2 | n +3 | n +4 | n+5 and later |
|---------------------------------|-------------------|------|------|------|------|---------------|
| Total number of human resources | 0.5               | 0.5  | 0.5  | 0.5  | 0.5  | 0.5           |

## 5. CHARACTERISTICS AND OBJECTIVES

- 5.1 Need to be met in the short or long term

The aim of this legislative proposal is the establishment of the basic principles which Member States should follow for technical investigations after maritime incidents.

The actions foreseen will be carried out by the Governments of the Member States, in particular by the departments responsible for maritime affairs and technical investigations on marine casualties.

- 5.2 Value-added of Community involvement and coherence of the proposal with other financial instruments and possible synergy

The proposal will, in particular, make it possible to identify at an early stage the lessons and measures that should be taken into account at Community level for preventing accidents and reducing maritime transport-related risks to which the citizens and the marine environment of the Member States are exposed.

The value added will appear in the form of an improvement of the overall level of maritime safety. There are not foreseeable implications for any financial instrument.

<sup>7</sup> Additional columns should be added if necessary i.e. if the duration of the action exceeds 6 years.



5.3 Objectives, expected results and related indicators of the proposal in the context of the ABM framework

The general objective of the Commission's proposal is to establish clear guidelines at Community level concerning the manner in which technical investigations are carried out following maritime casualties and incidents. The difficulties encountered when investigating the sinking of the Erika and the Prestige oil tankers revealed the need for further Community action in this area.

In accordance with the rules of international maritime law and the rights and obligations of Member States, the proposal for a Directive contains the measures strictly needed at European Union level to ensure that the technical investigations following maritime accidents which caused or threatened to cause serious damage to people, goods and the environment of the Member States, are carried out properly.

Community legislation will ensure the effective application, at Community level, of the principles agreed at international level and thereby support the Member States, either as flag States or as States concerned, in activities relating to investigations into serious maritime accidents.

5.4 Method of Implementation (indicative)

Show below the method(s)<sup>8</sup> chosen for the implementation of the action.

**Centralised Management**

Directly by the Commission

Indirectly by delegation to:

Executive Agencies,

Bodies set up by the Communities as referred to in art. 185 of the Financial Regulation

National public-sector bodies/bodies with public-service mission

**Shared or decentralised management**

With Member States

With third countries

**Joint management with international organisations (please specify)**

Relevant comments:

Not applicable.

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<sup>8</sup> If a number of methods are indicated, please provide details in the "Comments" section.

## 6. MONITORING AND EVALUATION

The draft Directive contains a provision requiring the Member States to communicate to the Commission the national implementing measures (NIM) to be adopted in order to transpose the Directives into national law.

Failure to communicate these NIMs (as well as incomplete communication) will automatically result in the launch of infringement proceedings under Article 226 of the Treaty.

Monitoring the effective implementation of the new rules will be undertaken, at their respective levels of competence, by the investigative bodies in the Member States, the national maritime administrations and by the Commission.

### 6.1 Evaluation:

#### 6.1.1 *Ex ante* evaluation

In May 2004 and February 2005 the Commission held a double round of consultative meetings with representatives of the Member States and the maritime industry on the basis of staff working papers containing a detailed list of questions on the approach to be followed and the measures to be taken with regard to legislation needed for investigations after maritime accidents. The Commission asked the participants consulted to send their detailed comments to it in writing.

With the help of the Maritime Safety Agency, the Commission has also gathered the necessary information to assess the impact of the proposal. The principles which formed the basis for the Commission's proposal were examined during a technical seminar organised by the Agency in February 2005 attended by IMO experts and the maritime administrations and investigative bodies of the Member States.

Finally, when drawing up the draft Directive, the Commission was advised by the Group of independent experts which advises the Commission on the strategy for dealing with accidents in the transport sector.

The outcome of the consultations and impact studies carried out confirmed that:

- the most appropriate option for dealing with the issue of technical investigations following a maritime incident within the framework of maritime safety policy is to use Community legislation;
- the chosen instrument (a Directive establishing the basic principles which Member States should follow for technical investigations after a maritime incident) should be based as far as possible on the principles and recommendations of the International Maritime Organisation (IMO's Code). However, the legislation proposed should result in at least a similar level of feedback as that guaranteed under the implementing legislation in the aviation sector;

- Community action in this area is urgently needed because technical investigations are part of a policy aimed at preventing future maritime disasters within the European Union.

6.1.2 Measures taken following an intermediate/ex-post evaluation (lessons learned from similar experiences in the past)

Not applicable.

6.1.3 Terms and frequency of future evaluation

Not applicable.

## **7. ANTI-FRAUD MEASURES**

Not applicable.

## 8. DETAILS OF RESOURCES

### 8.1 Objectives of the proposal in terms of their financial cost: **Not applicable**

*Commitment appropriations in EUR million (to 3 decimal places)*

| (Headings of Objectives, actions and outputs should be provided) | Type of output | Av. cost | Year n      |            | Year n+1    |            | Year n+2    |            | Year n+3    |            | Year n+4    |            | Year n+5 and later |            | TOTAL       |            |
|--|----------------|----------|-------------|------------|-------------|------------|-------------|------------|-------------|------------|-------------|------------|--------------------|------------|-------------|------------|
|  |                |          | No. outputs | Total cost | No. outputs | Total cost | No. outputs | Total cost | No. outputs | Total cost | No. outputs | Total cost | No. outputs        | Total cost | No. outputs | Total cost |
| OPERATIONAL OBJECTIVE No. 1 <sup>9</sup> .....<br>.....          |                |          |             |            |             |            |             |            |             |            |             |            |                    |            |             |            |
| <b>Action 1</b> .....  |                |          |             |            |             |            |             |            |             |            |             |            |                    |            |             |            |
| Output 1.....  |                |          |             |            |             |            |             |            |             |            |             |            |                    |            |             |            |
| Output 2.....  |                |          |             |            |             |            |             |            |             |            |             |            |                    |            |             |            |
| <b>Action 2</b> .....  |                |          |             |            |             |            |             |            |             |            |             |            |                    |            |             |            |
| Output 1.....  |                |          |             |            |             |            |             |            |             |            |             |            |                    |            |             |            |
| Sub-total Objective 1  |                |          |             |            |             |            |             |            |             |            |             |            |                    |            |             |            |
| OPERATIONAL OBJECTIVE No.2.....                                  |                |          |             |            |             |            |             |            |             |            |             |            |                    |            |             |            |
| <b>Action 1</b> .....  |                |          |             |            |             |            |             |            |             |            |             |            |                    |            |             |            |
| Output 1.....  |                |          |             |            |             |            |             |            |             |            |             |            |                    |            |             |            |
| Sub-total Objective 2  |                |          |             |            |             |            |             |            |             |            |             |            |                    |            |             |            |

<sup>9</sup> As described under Section 5.3.

|                                  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
|----------------------------------|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|
| OPERATIONAL<br>OBJECTIVE<br>No n |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| Sub-total<br>Objective n         |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| <b>TOTAL COST</b>                |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |

## 8.2 Administrative expenditure

### 8.2.1 Number and type of human resources

| Types of post  |            | Staff to be assigned to management of the action using existing and/or additional resources ( <b>number of posts/FTEs</b> ) |          |          |          |          |          |
|--|------------|---|----------|----------|----------|----------|----------|
|  |            | Year n  | Year n+1 | Year n+2 | Year n+3 | Year n+4 | Year n+5 |
| Officials or temporary staff <sup>10</sup><br>(06 01 01) | A*/AD      | 0.5   | 0.5      | 0.5      | 0.5      | 0.5      | 0.5      |
|  | B*, C*/AST | 0   | 0        | 0        | 0        | 0        | 0        |
| Staff financed <sup>11</sup> by art. XX 01 02            |            | 0   | 0        | 0        | 0        | 0        | 0        |
| Other staff financed <sup>12</sup> by art. XX 01 04/05   |            | 0   | 0        | 0        | 0        | 0        | 0        |
| <b>TOTAL</b>   |            | 0.5   | 0.5      | 0.5      | 0.5      | 0.5      | 0.5      |

### 8.2.2 Description of tasks deriving from the action: Tasks

The Directive establishing the principles for carrying out technical investigations following maritime transport accidents extends Community competence in the area of maritime safety. This will require the recruitment of additional staff – estimated at ½ an A official – to ensure that implementation of the Directive is monitored correctly.

### 8.2.3 Sources of human resources (statutory)

- Posts currently allocated to the management of the programme to be replaced or extended
- Posts pre-allocated within the APS/PDB exercise for year n
- Posts to be requested in the next APS/PDB procedure
- Posts to be redeployed using existing resources within the managing service (internal redeployment)
- Posts required for year n although not foreseen in the APS/PDB exercise of the year in question

<sup>10</sup> Cost of which is NOT covered by the reference amount.

<sup>11</sup> Cost of which is NOT covered by the reference amount.

<sup>12</sup> Cost of which is included within the reference amount.

8.2.4 Other administrative expenditure included in reference amount (XX 01 04/05 – Expenditure on administrative management)

EUR million (to 3 decimal places)

| Budget line<br>(Number and heading)   | Year n | Year<br>n+1 | Year<br>n+2 | Year<br>n+3 | Year<br>n+4 | Year n+5<br>and later | TOTAL |
|---|--------|-------------|-------------|-------------|-------------|-----------------------|-------|
| <b>1. Technical and administrative assistance (including related staff costs)</b> |        |             |             |             |             |                       | 0     |
| Executive agencies <sup>13</sup>  |        |             |             |             |             |                       | 0     |
| Other technical and administrative assistance                                     |        |             |             |             |             |                       | 0     |
| - <i>intra muros</i>  |        |             |             |             |             |                       | 0     |
| - <i>extra muros</i>  |        |             |             |             |             |                       | 0     |
| <b>Total technical and administrative assistance</b>                              |        |             |             |             |             |                       | 0     |

8.2.5 Financial cost of human resources and related costs not included in the reference amount

EUR million (to 3 decimal places)

| Type of human resources  | Year n | Year n+1 | Year n+2 | Year n+3 | Year n+4 | Year n+5<br>and later |
|--|--------|----------|----------|----------|----------|-----------------------|
| Officials and temporary staff (06 01 01)   | 0.054  | 0.054    | 0.054    | 0.054    | 0.054    | 0.324                 |
| Staff financed by Art. XX 01 02 (auxiliary, END, contract staff, etc.) (specify budget line) | 0      | 0        | 0        | 0        | 0        | 0                     |
| <b>Total cost of Human Resources and associated costs (NOT in reference amount)</b>          | 0.054  | 0.054    | 0.054    | 0.054    | 0.054    | 0.324                 |

Calculation– *Officials and Temporary agents*

$$(108\ 000\ € * 0.5 = 54\ 000\ €)$$

Calculation– *Staff financed under Article XX 01 02*

Not applicable

<sup>13</sup> Reference should be made to the specific legislative financial statement for the Executive Agency/Agencies concerned.

## 8.2.6 Other administrative expenditure not included in reference amount

EUR million (to 3 decimal places)

|   | Year n | Year n+1 | Year n+2 | Year n+3 | Year n+4 | Year n+5 and later | TOTAL |
|---|--------|----------|----------|----------|----------|--------------------|-------|
| XX 01 02 11 01 – Missions   | 0      | 0        | 0        | 0        | 0        | 0                  | 0*    |
| XX 01 02 11 02 – Meetings and Conferences   | 0      | 0        | 0        | 0        | 0        | 0                  | 0     |
| XX 01 02 11 03 – Committees <sup>14</sup>   | 0      | 0        | 0        | 0        | 0        | 0                  | 0     |
| XX 01 02 11 04 - Studies and consultations  | 0      | 0        | 0        | 0        | 0        | 0                  | 0     |
| XX 01 02 11 05 - Information systems  | 0      | 0        | 0        | 0        | 0        | 0                  | 0     |
| <b>2. Total other management expenditure (XX 01 02 11)</b>  | 0      | 0        | 0        | 0        | 0        | 0                  | 0     |
| <b>3. Other expenditure of an administrative nature</b> (specify including reference to budget line)                        | 0      | 0        | 0        | 0        | 0        | 0                  | 0     |
| <b>Total administrative expenditure, other than human resources and associated costs (NOT included in reference amount)</b> | 0      | 0        | 0        | 0        | 0        | 0                  | 0     |

\* With no impact on the current mission budget.

Calculation - *Other administrative expenditure not included in reference amount*

Not applicable

<sup>14</sup> Specify the type of committee and the group to which it belongs.