



European Maritime Safety Agency

## SAFEMED III Seminar on Marine Accident Investigation

### Cooperation and communication



Lisbon, 18-19 February 2014

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## Cooperation within the State

### IMO Code Ch.8 – Powers of investigators

All States shall ensure that their national laws provide investigators carrying out a marine safety investigation with the ability to board the ship, interview the master and crew and any other person involved, and acquire evidential material for the purpose of a marine safety investigation

### Ref. to the Directive provisions ...

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## Free access to casualty data

**Member States** acting in the framework of their respective legal systems,

**shall ensure that the investigators** of its investigative body,

or of any other investigative body to which it has delegated the task of safety investigation,

where appropriate **in collaboration with** the authorities responsible for the **judicial inquiry**,

be **provided with any information** pertinent to the conduct of the safety investigation and therefore be authorized to: ...”

Directive 2009/18/EC, Article 8

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## Cont. Free access to casualty data

- have free access to any relevant area or casualty site, wreckages etc
- **require and get access to examination and analysis**
- access to **relevant information and recorded data, including VDR data**
- access to the **results of examinations of the bodies of victims**
- access to the **results of examinations of ... people involved**
- **interview witnesses in the absence of any person whose interests could be considered as hampering the safety investigation;**
- obtain **survey records etc. from** the flag State, the owners, classification societies
- **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.

Directive 2009/18/EC, Article 8

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## Confidentiality

"Without prejudice to Directive 95/46/EC, Member States, acting in the framework of their legal systems, shall ensure that the following records are not made available for purposes other than the safety investigation, unless the competent authority in that Member State determines that there is an overriding public interest in the disclosure of:"

- All witness evidence and statements
- Records revealing the identity of persons who have given evidence
- Medical or private information regarding persons involved

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Directive 2009/18/EC, Article 9

## Confidentiality

- Key difference of safety investigation compared with other investigations
  - Litigious society means safety investigators need to provide assurances that evidence sources will remain confidential to enable open and honest dialogue
  - Safety investigation's reputation depends on prosecutions having no link with safety investigation
- Ultimately trying to foster a "no blame" safety culture

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## Cooperation with other interested States

### IMO Code Ch. 10 – Co-operation

All substantially interested States shall co-operate with the marine safety investigating State(s) to the extent practicable. The marine safety investigating State(s) shall provide for the participation of the substantially interested State to the extent practicable.

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## Ref. to the Directive provisions...

## Flag States - Port States - Coastal States



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## Scope

Applicable to *marine casualties and incidents* that:

- involve ships **flying the flag** of one of the Member States
- occur within Member States' **territorial sea and internal waters** as defined in UNCLOS (12 nm)
- involve other **substantial interests** of a Member State

Directive 2009/18/EC, Article 2



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## Factors to be taken into account when seeking agreement for who will be the leading investigating State

- Whether the casualty occurred in the territory, including territorial sea, of a State
- Whether the ship or ships involved in a casualty that occurred in high seas, sail to the territorial sea of a State
- The resources and commitment required
- The need to access evidence in consideration of the State or States best placed to facilitate access to that evidence
- Any perceived or actual adverse effects of the casualty on other States
- The nationality of the crew, passengers and other persons affected by the casualty

IMO Code, Ch. 18

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## Substantial Interested State(s)

1. which is the **flag State** of a ship involved in a marine casualty or marine incident; or
2. which is the **coastal State** involved in a marine casualty or marine incident; or
3. whose **environment** was **severely** or significantly **damaged** by a marine casualty (including the environment of its waters and territories recognized under international law); or
4. where the **consequences** of a marine casualty or marine incident **caused**, or **threatened, serious harm** to that State or to artificial islands, installations, or structures over which it is entitled to exercise jurisdiction; or
5. where, as a result of a marine casualty, **nationals of that State lost their lives** or received **serious injuries**; or
6. that has **important information at its disposal** that the marine safety investigating State(s) consider useful to the investigation; or
7. that for some other reason establishes an interest that is **considered significant** by the marine safety investigating State(s).

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Directive 2009/18/EC, Article 3 and IMO MSC.255(84)

## Leading of, and participation in, safety investigations

"In principle, each marine casualty or incident shall be subject to only one investigation carried out by a Member State or a lead investigating Member State with the participation of any other substantially interested Member State."

- A marine casualty or incident should only be subject to **one** safety investigation
- Cooperation to rapidly agree who will be the **lead investigating (Member) State**
- Parallel investigations limited to exceptional cases and Commission must be notified of reasons why
- A **Substantially interested State** has equal rights to evidence and their point of view taken into account

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Directive 2009/18/EC, Article 7





### Parallel safety investigation

Where a substantially interested third country is leading a safety investigation involving one or more Member States,

Member States may decide not to carry out a parallel safety investigation, provided that

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**THE SAFETY INVESTIGATION LED BY THE THIRD COUNTRY IS CONDUCTED IN ACCORDANCE WITH THE IMO CODE**

Directive 2009/18/EC, Article 12



### IMO Code, Ch.13 – Draft marine safety investigation reports

The marine safety investigating State(s) shall send a copy of the draft report to the substantially interested State(s) to allow the latter to make comments on the draft report.

The [...] State(s) are not bound to comply if:

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THE RECEIVING STATE CANNOT ENSURE THAT EVIDENCE INCLUDED IN THE DRAFT REPORT **WILL NOT BE ADMITTED** IN CIVIL OR CRIMINAL PROCEEDINGS AGAINST A PERSON WHO GAVE THE EVIDENCE

## In EU there is a Permanent Cooperation Framework

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### Permanent Cooperation Framework (PCF)

"Within the permanent cooperation framework, the investigative bodies in the Member States shall agree, in particular, upon the best modalities of cooperation in order to:"

- provide each other with technical cooperation or expertise
- acquire and share information relevant for analysis and making appropriate safety recommendations at EU level
- common principles for follow-up safety recommendations and investigation methods
- manage the early alerts
- organise training activities for investigators
- promote cooperation with the investigation bodies of third countries
- ...

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Directive 2009/18/EC, Article 10



# ***¿ Questions ?***

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