

Cooperation and Investigation Process

1

David Wheal



EMSA Objective

Development of marine casualty investigation in the EU

- Article 2(e) of Regulation (EC) No.1406/2002:

*...facilitate **cooperation** between the **Member States** and the **Commission**...*

*...with due regard to the **different legal systems** in the Member States...*

*...according to **agreed international principles**...*

Agreed international principles

- SOLAS,
Load Lines: Investigation discretion
- MARPOL: Investigation obligation
Reporting discretion
(Pollution)
- UNCLOS: Investigation obligation
Cooperation obligation
(High Seas)

- Annex 13 to the Chicago Convention (ICAO):
Notification
Responsibility
Independence and status
Participation and coordination
Non-disclosure
Reporting
(Aviation accidents and serious incidents)
- IMO Code: Investigation and reporting obligation
Cooperation obligation
(Very serious and serious casualties)

IMO Code – possible difficulties

- Inconsistent application: “should” not “shall”
“ideally” independent
- Cooperation: “participate” not “cooperate”
coordination with judicial authorities
- Witness evidence: disclosure restriction
report anonymity

- Investigator skills: guidelines
flexibility
- Obligations: investigation
reporting
cooperation
abstract data analysis
quantity
quality assurance

Possible solutions

With due regard to the different legal systems

- Mandatory Code
- Independence (in line with the aviation and railway sectors: Directives 94/56/EC and 2004/49/EC)
- Thoroughness (witness confidentiality, investigator competence)
- Cooperation (flexibility)