

Directive 2009/18/EC of the European Parliament and of the Council of 23 April 2009 establishing the fundamental principles governing the investigation of accidents in the maritime transport sector and amending Council Directive 1999/35/EC and Directive 2002/59/EC of the European Parliament and of the Council (Text with EEA relevance)

Article 5

Obligation to investigate

1 Each Member State shall ensure that a safety investigation is carried out by the investigative body referred to in Article 8 after very serious marine casualties:

- a involving a ship flying its flag, irrespective of the location of the casualty;
- b occurring within its territorial sea and internal waters as defined in UNCLOS, 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, in the case of serious casualties, the investigative body shall carry out a preliminary assessment in order to decide whether or not to undertake a safety investigation. Where the investigative body decides not to undertake a safety investigation, the reasons for that decision shall be recorded and notified in accordance with Article 17(3).

In the case of any other marine casualty or incident, the investigative body shall decide whether or not a safety investigation is to be undertaken.

In the decisions referred to in the first and second subparagraphs, the investigative body shall take into account the seriousness of the marine casualty or incident, the type of vessel and/or cargo involved, and the potential for the findings of the safety investigation to lead to the prevention of future casualties and incidents.

3 The scope and 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 objective of this Directive, and with a view to preventing future casualties and incidents.

4 When carrying out safety investigations, the investigative body shall follow the common methodology for investigating marine casualties and incidents developed pursuant to Article 2(e) of Regulation (EC) No 1406/2002. Investigators may depart from that methodology in a specific case where this can be justified as necessary, in their professional judgement, and if needed to achieve the aims of the investigation. The Commission shall adopt or modify the methodology for the purposes of this Directive, taking into account any relevant lessons drawn from safety investigations.

That measure, designed to amend non-essential elements of this Directive, inter alia, by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 19(3).

5 A safety investigation shall be started as promptly as is practicable after the marine casualty or incident occurs and, in any event, no later than two months after its occurrence.