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THE LEGAL BASIS AND SCOPE OF AUTHORITY AND ACTIVITY OF THE POLISH STATE MARINE ACCIDENT INVESTIGATION COMMISSION

Abstract

At the end of August 2012 the Polish Parliament enacted the Act on State Marine Accident Investigation Commission, which regulates its organization and operation. The Act transposed, within its regulation, 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 is based on the Code of the International Standards and Recommended Practices for a Safety Investigation into a Marine Casualty or Marine Incident (Casualty Investigation Code), issued by the International Maritime Organization (IMO) together with amendments to the SOLAS Convention. The purpose of the Directive, as well as the Casualty Investigation Code, is to improve maritime safety and the prevention of pollution by ships by facilitating the expeditious holding of safety investigations and proper analysis of marine casualties and incidents in order to determine their causes. The EU Parliament obliged, through the Directive, the EU Member States to ensure that the safety investigations are conducted under the responsibility of an impartial permanent investigative body, endowed with the necessary powers, and by suitably qualified investigators, competent in matters relating to marine casualties and incidents. This impartial permanent investigative body had been named in Poland: *Państwowa Komisja Badania Wypadków Morskich* [the State Marine Accident Investigation Commission] and began its operation in May 2013 upon the appointment, by the Minister of Transport, Construction and Maritime Economy, of the third one of five statutory members of the Commission. Since the beginning of its activity the Commission has initiated 77 safety investigations, prepared and adopted 272 resolutions, published 53 safety reports and issued more than 30 safety recommendations. The establishment

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and activity of the Commission leads to greater awareness of casualty causation and has a positive impact on the level of maritime safety.

Keywords: State Marine Accident Investigation Commission, marine casualty, marine incident.

INTRODUCTION

On 31st August 2012 the Polish Parliament enacted the Act on State Marine Accident Investigation Commission¹ (*Państwowa Komisja Badania Wypadków Morskich – PKBWM*). The Act (hereinafter referred to as the ‘Act’ or the ‘Statute’) regulates the organization and operation of the State Marine Accident Investigation Commission (hereinafter referred to as the ‘Commission’ or ‘SMAIC’), principles and methods of investigation of marine casualties and incidents, preparation of reports, and making recommendations related to safety at sea². The Commission, according to the Act, shall deal with marine casualties and incidents under the Act, as well as the rules, standards, and recommended practices agreed within the International Maritime Organization (IMO), binding upon the Republic of Poland.

The Act has amended the following acts: the Act of 1 December 1961 on Maritime Chambers, the Act of 18 September 2001 - Maritime Code and the Act of 18 August 2011 on Maritime Safety, and what is also important, the Act transposed, within its regulation, 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 Council³.

The purpose of Directive 2009/18 is to improve maritime safety and the prevention of pollution by ships, and therefore to reduce the risk of future marine casualties, by facilitating the expeditious holding of safety investigations and proper analysis of marine casualties and incidents in order to determine their causes, and ensuring the timely and accurate reporting of safety investigations and proposals for remedial action.

¹ Journal of Laws of 2012, item 1068, as amended. During voting on the Bill (submitted by the Government) in the Parliament on 27th July 2012, among 439 Parliament Members participating in voting (representing 6 political parties) 439 were in favour of the Act.

² D. Pyć, *Wpływ zaleceń Państwowej Komisji Badania Wypadków Morskich na stan bezpieczeństwa morskiego*, Gdańskie Studia Prawnicze, vol. XXXVIII, WUG 2017, pp. 475–487.

³ Official Journal EU L 131, 28.05.2009, p. 114, as amended.

The same general goal has been articulated in the Code of the International Standards and Recommended Practices for a Safety Investigation into a Marine Casualty or Marine Incident (Casualty Investigation Code)⁴, issued one year earlier, and adopted with amendments to Chapter XI-1 of the International Convention for the Safety of Life at Sea, 1974 ('SOLAS'). The Code defined the marine safety investigation as 'investigation or inquiry (however referred to by a State), into a marine casualty or marine incident, conducted with the objective of preventing marine casualties and marine incidents in the future'.

It is worth to mention that the obligation to conduct casualty investigations comes from the wider responsibilities of the flag States contained under the provisions of SOLAS (Regulation I/21), the International Convention on Load Lines, 1966 (Article 23) and the International Convention for the Prevention of Pollution from Ships, 1973 (Article 12). The State which takes responsibility for the conduct of the marine safety investigation is called, according to the Code, a 'marine safety investigating State'.

Furthermore, it has to be added that Article 2 of the United Nations Convention on the Law of the Sea of 10 December 1982 (UNCLOS) 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 environment, involve the coastal State's search and rescue authorities, or otherwise affect the coastal State, and that Article 94 of UNCLOS establishes that flag States are to 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.

On the basis thereof, Directive 2009/18 in its Article 8 obliged the EU Member States to ensure that safety investigations are conducted under the responsibility of an impartial permanent investigative body, endowed with the necessary powers, and by suitably qualified investigators, competent in matters relating to marine casualties and incidents.

That impartial permanent investigative body, which as per the Casualty Investigation Code is 'an Authority in a State, responsible for conducting investigations in accordance with the Code', was named *Państwowa Komisja Badania Wypadków Morskich (PKBWM)* (State Marine Accident Investigation Commission)⁵ and began its activity in May 2013 upon the appointment by the Minister of Transport, Construction and Maritime Economy of the third one of five statutory members

⁴ The Resolution MSC.255 (84) adopting a Code of International Standards and Recommended Practices for a Safety Investigation into Marine Casualty or Marine Incident (the Casualty Investigation Code), adopted by the International Maritime Organization (IMO) on 16 May 2008.

⁵ C. Łuczywek, *Państwowa Komisja Badania Wypadków Morskich*, Maritime Law, vol. XXVIII, Gdańsk 2012, pp. 297–305.

of the Commission. It was nine months after the Parliament had enacted the Statute in question.

1. ORGANIZATION OF THE COMMISSION

The Statute of 2012 provides that the Commission is a permanent and independent body. It acts at the Minister competent for maritime economy, consists of five members, including the chairman, deputy chairman and a secretary. The Chairman of the Commission manages its work and represents the Commission externally. He is appointed by the Minister for a period of 5 years. The remaining members are appointed by the Minister for the same period of five years upon consultation with the Chairman of the Commission.

The Minister competent for maritime economy shall withdraw the appointment of a member of the Commission in two cases. Firstly, when the Chairman, upon obtaining information that in the course of investigation a member of the Commission, who should have been excluded, participated or is participating in the works of the Commission (including the works of the investigative team), ordered a verification of actions conducted by that member and once the verification had been completed, the Chairman had doubts as to impartiality of the member of the Commission and submitted to the Minister an application for revocation of the appointment of that member of the Commission and the second case relates to the same situation with the member of the Commission but concerns the period after the investigation completion or the report publication. The Minister may also revoke the appointment of a member of the Commission upon the Commission's proposal passed by an absolute majority of votes.

The Act of 2012 allows a person, who is a Polish citizen and enjoys full civil rights, has full legal capacity, has not been convicted by the final judgment for an offense committed intentionally, has higher education of second degree within the meaning of the Act of 27 July 2005 - Law on Higher Education⁶ in at least one of the following fields of science: technical, mathematics, physics, chemistry, economics, humanities or law; has knowledge of the safety of navigation and protection of the marine environment and has at least five years of professional experience in terms of: marine navigation or the commercial operation of the vessel, or the operation of an engine room, or the operation of fishing vessels, or the design and construction of vessels, or the electrical installation and automation of the vessel or chemical rescue and fire-fighting, or maritime law, to become a member of the Commission.

⁶ Journal of Laws of 2016, item 1842, as amended.

The person, who meets the conditions referred to above, and having at least 15 years of experience working in the maritime economy, including at least 10 years of work on board commercial vessels, covering at least 5 years working at the management level positions referred to in the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, signed in London on 7 July 1978, may become the Chairman of the Commission. The membership in the Commission expires at the end of the appointment period upon death, the cessation of meeting the requirements laid down in the Statute, the withdrawal of the designation done by the Minister competent for maritime economy, or upon the acceptance of resignation by that Minister.

The Minister competent for maritime economy is obliged to provide the administrative support to the Commission as well as the funds for the operation of the Commission and its services, in particular remuneration for its members, experts participating in the works of the Commission and technical equipment, training, publication of materials of the Commission, administration of its website, as well as the costs of expertise, research and analysis conducted at the request of the Chairman of the Commission.

Apart from the members of the Commission, experts appointed by the Chairman may participate in the works of the Commission, as necessary. A member or an expert participating in the works of the Commission, even after the termination of the membership in the Commission or the completion of the expert work of the Commission, is required to maintain confidentiality of information obtained in connection with the investigation carried out by the Commission of a marine casualty or incident and may be exempted from the confidentiality obligation by a competent authority only if the best public interest justifies the exemption from the principle of confidentiality. The Act lays down that the Commission member cannot act as an expert in the proceedings before a court or other authority in respect of the matters conducted by the Commission, in which a member or an expert participates.

The Commission takes decisions concerning the key issues regarding its activity, including investigation, in the form of the resolutions. The Act of 2012 provides that when adopting a resolution members of the Commission should follow the principle of discretion in the evaluation of evidence. The subjects which have to be regulated by resolutions are determined by the Commission's Rules of Procedure⁷.

⁷ *Rules of Procedure of the State Marine Accident Investigation Commission*. Annex to the Order No 20 of the Minister of Transport, Construction and Maritime Economy, of 30 July 2013 (item 42). According to § 11 of the Rules, the Commission at the meeting shall make resolutions with regard to:

- 1) the withdrawal from the investigation of a serious marine casualty;
- 2) the results of the accomplished investigation of a marine casualty or incident;

2. CASUALTY INVESTIGATION

The Casualty Investigation Code as well as Directive 2009/18 impose on a State an obligation to investigate very serious marine casualties. The Polish Statute of 2012 expands it also to serious ones. The definitions of marine casualties and marine incidents are derived from the Casualty Investigation Code and the Circular MSC-MEPC.3/Circ.3 of the IMO Maritime Safety Committee and Marine Environment Protection Committee of 18 December 2008⁸. All of them have been incorporated into the Polish Statute⁹.

Article 2 of the Act describes a very serious casualty as a marine casualty involving the total loss of the vessel, a man's death, or severe damage to the environment. The serious casualty shall be understood as a marine casualty other than very serious, which has such consequences as: 1) immobilization of the main propulsion system, extensive accommodation damage, a change in the stability of the vessel, severe structural damage in the underwater part of the hull – rendering the vessel unfit to proceed, being in a condition which does not correspond with requirements specified in international conventions, presenting a danger to the ship and the persons on board or an unreasonable threat of harm to the marine environment, or 2) infliction of damage to the environment, including environmental pollution, or 3) a breakdown necessitating towage of the vessel or shore assistance. A marine incident means an event, or sequence of events, other than marine casualty, directly in connection with the operations of a vessel that endangered, or, if not corrected, would endanger the safety of the vessel, its occupants or any other person or the environment. However, a deliberate act or omission with the intention to cause harm to the safety of the vessel, an individual or the environment shall not be regarded as marine casualty or marine incident.

The Commission has an absolute obligation to investigate every very serious casualty. In the event of a serious marine casualty the Commission may withdraw from the investigation after a preliminary assessment of the reasons for its occurrence. In the event of an accident other than a very serious or serious marine

3) the adoption of a final, interim or simplified report;

4) the exclusion of the Chairman of the Commission from the works of the Commission, or the works of the investigative team (according to Article 18 of the Act);

5) the application for revocation of the designation of a member of the Commission by the Minister competent for maritime economy.

⁸ It should be mentioned that this Circular, issued on 18 December 2008, has been superseded by Circular MSC-MEPC.3/Circ.4/Rev.1 issued on 18 November 2014, which removed from its range of definitions the following ones: 'serious' and 'less serious casualties'.

⁹ The term 'accident', which is also contained in the name of the Polish investigative body (SMAIC), used to have the broader meaning than casualty and comprised all types of marine casualties and incidents.

casualty or in the event of an incident, the Commission decides to undertake the investigation or to renounce it. When making a decision the Commission shall take into account the seriousness of the accident, the type of a vessel or cargo involved, and whether the results of the investigation shall contribute to the prevention of marine casualties and incidents in the future.

Following the provisions of Directive 2009/18 the SMAIC shall, according to the Act, investigate marine casualties and incidents in which participated: any Polish vessel, any foreign vessel if the marine casualty or incident occurred in the Polish internal sea waters or the Polish territorial sea, and any ro-ro passenger ferry or a high-speed passenger craft, if the marine casualty or incident occurred outside the internal sea waters or the territorial sea of the European Union Member State, where the last port of call was a port in the Republic of Poland. The Commission shall also investigate casualties in relation to which Poland is a substantially interested State¹⁰.

The Commission is not obliged to investigate marine casualties and incidents involving exclusively: vessels of the Navy, the Border Guard or the Police and vessels without mechanical propulsion or wooden vessels of a primitive build. Similarly, the Commission does not investigate accidents involving exclusively other vessels performing only a special State duty or operated by the State for non-commercial purposes, fishing vessels with a length of less than 15 m, pleasure yachts, and ships or floating objects forming a towage team – with the exception of very serious casualties. The SMAIC does not carry out investigations of accidents on fixed offshore platforms, in which the sea-going vessels have not participated.

One of the most important rules governing the involvement of the Commission in the casualty investigation is that the Commission neither apportions blame or determines liability. That results directly from the Casualty Investigation

¹⁰ The Casualty Investigation Code as well as the Polish Act determine 'substantially interested State' as a State:

- 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).

Code and Directive 2009/18. The first Article of the Directive states expressly that '[i]nvestigations under this Directive shall not be concerned with determining liability or apportioning blame'¹¹. However, Member States shall ensure that the investigative body is not refraining from fully reporting the causes of a marine casualty or incident because 'fault or liability may be inferred from the findings'. In addition, it is important to note that safety investigations are independent of criminal or other parallel investigations held to determine liability or apportion blame and cannot be unduly precluded, suspended or delayed by reason of such investigations. Such a provision is contained in the Polish Act of 2012 (Article 16.4) as well as Directive 2009/18 (Article 4.1).

The purpose of a marine casualty or incident investigation (to which the international instruments refer to as the 'marine safety investigation') is to establish the circumstances and causes of its occurrence for the prevention of marine casualties and incidents in the future and the improvement of maritime safety. The investigation carried out by the Commission involves collecting and analysing evidence as well as determining the factors which have influenced the occurrence of a marine casualty or incident. In fact, the casualty investigation is a process consisting of several 'stages', such as: an initial response, site management, the start-up meeting (mostly in cases when the investigation involves more than one State), collection of evidence, inspection of the casualty site, gathering or recording physical evidence, witness information, reviewing of documents, procedures and records, conducting specialized studies (as required), reconstruction and analysis, reconstruction of the casualty events and their linked conditions and safety analysis.

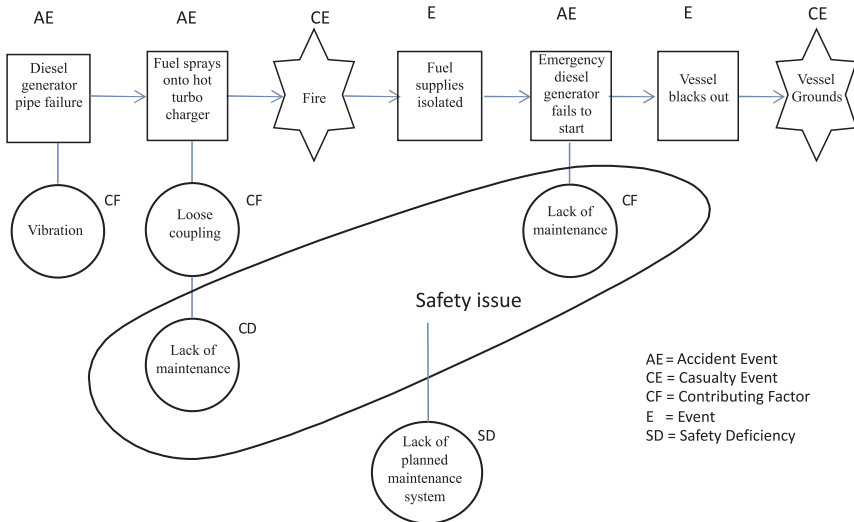
The activities under the investigation are conducted by a team appointed by the Chairman of the Commission, composed of the members of the Commission and, where appropriate, the experts taking part in the works of the Commission. The investigative team shall consist of at least two persons, including at least one member of the Commission.

According to the Act of 2012, immediately upon receipt of notification of a marine casualty or an incident, the Commission shall establish whether there has been a marine casualty or incident, and shall proceed to investigation immediately, but not later than within 2 months from the date of the marine casualty or incident. However, the operational practice of the Commission is to deploy the investigative team to the casualty site as early as possible, as the less time passes from the accident the better, (more reliable) information can be obtained from the witnesses and less evidence may be deteriorated and disappear over time.

Marine casualties and incidents can have many causal factors and the underlying safety issues often are remote from the casualty site. The proper identification

¹¹ It was one of the reasons that such kind of investigations cannot be carried out by the Polish Maritime Chambers which have done it for more than last 90 years.

of such issues requires the timely and methodical investigation, going far beyond immediate evidence in search of the conditions which may cause any future occurrences. Therefore, such investigations should be seen as a means of identifying not only the accident events, but also safety deficiencies in overall management of the operation from policy through its implementation, as well as in regulation, survey and inspection. For this reason, safety investigations should be broad enough to meet these overriding criteria.



The following diagram illustrates the exemplary sequence of events leading to a casualty¹².

The extent of any safety investigation can be divided into five areas: people, environment, equipment, processes and procedures as well as organization and external influences.

In order to gather and record physical evidence and witness information the members of the Commission have been authorized by the Act of 2012 to:

- 1) have access to the place of the marine casualty or incident as well as to the vessel, wreck, equipment, cargo, and their remains;
- 2) participate in the search and removal of the wreck, debris and vessel's parts or substances requiring expertise, research or analysis;
- 3) make a request to the Chairman of the Commission to carry out surveys, studies or analyses, necessary to conduct the investigation of the marine casualty

¹² The diagram is derived from Resolution A.1075(28) *Guidelines to assist investigators in the implementation of the Casualty Investigation Code (Resolution MSC.255(84))* adopted on 4 December 2013.

- or incident, of the above mentioned items or substances, and to have access to the results of these surveys, studies or analyses;
- 4) have access to documents, including their copying and use of, information and data, including data from the VDR or S-VDR recorders - relating to the vessel, the voyage, cargo, crew and passengers, as well as to the results of examination of the bodies of victims of a marine casualty or the results of examination of samples taken from the bodies of victims;
 - 5) require to examine the crew members or other persons involved in the operation of the vessel, who may be significant for the investigation of a marine casualty or incident, in particular, to collect fingerprints, hair, urine, blood, saliva, smell, take a swab of the cheeks, a writing sample, take a photograph of a person or record their voice and to have access to the results of such examination;
 - 6) interview persons;
 - 7) have access to information and documentation concerning the inspection of the vessel at the disposal of the ship owner, flag State, the classification society or any other entity which is established or represented on the territory of the Republic of Poland;
 - 8) read the results of surveys, studies or analyses of the marine casualty or incident which are owned by the Police, prosecutors, the Border Guard, the marine chamber or the court.

In the event of the marine casualty or incident, the members of the Commission and experts, involved in its works, are entitled to exercise their powers in the first place. It means that no one may disturb the Commission members in execution of their duties at the casualty site¹³. In order to carry out the investigation of a marine casualty or incident, the members of the Commission and experts, participating in the works of the Commission, shall have the right of access to all Polish ports and port infrastructure.

The Commission members and experts, investigating casualties, have also to take into account and observe the relevant provisions of the IMO guidelines on fair treatment of seafarers in the event of a maritime accident¹⁴. This particular provision has not been included into the Act of 2012 but has been published in the Commission Rules of Procedure.

¹³ The Chairman of the Commission (the author of this paper) signed on 27 October 2014 the Agreement on Mutual Cooperation with the Prosecutor General of the Republic of Poland, conforming that the SMAIC and public authorities such as prosecutors, the Police, ABW, the Military Police and the Border Guard act parallel and independent with mutual respect as to the competency and without making difficulties in the process of reaching the goals determined by law.

¹⁴ Resolution LEG.3(91) adopted on 27 April 2006 *Adoption of guidelines on fair treatment of seafarers in the event of a maritime accident.*

Finally, during the investigation of the marine casualty or incident, the Commission members should remember that the investigation shall be carried out in such a way that it shall not cause unjustified delay of a vessel in port. In exceptional cases, in order to make possible the completion of the investigation of the marine casualty or an incident, the Commission may, by issuing the decision subject to immediate execution, detain the vessel in port for the time necessary to complete the investigation, but for not more than 24 hours.

In order to establish how a casualty or an incident has happened it can sometimes be necessary to conduct the specialized studies. They can include, for example, metallurgic specialist studies of broken machinery parts or ship's wire, analysis of food or oil (fuel), calculation and reconstruction of a ship's stability features, specialist analysis of weather and sea conditions at the time and place of the casualty, and the use of simulators to reconstruct and analyse the sequence of events. Although it is not required by the Act, the Commission cooperates closely with such entities as: the Polish Register of Shipping in Gdańsk, the Institute of Forensic Research in Krakow, the Central Criminal Laboratory of the Police and the Main School of Fire Service from Warsaw, the Institute of Meteorology and Water Management – National Research Institute (IMGW) Gdynia and the Maritime Universities from Gdynia and Szczecin.

3. REPORTS AND RECOMMENDATIONS

The Act of 2012 obliges the Commission to draw up and publish final, interim or simplified reports. The report should include, inter alia: a summary of the basic facts about the marine casualty or incident, including information about the wounded persons, casualties or pollution of the environment; the flag state of the vessel, her owner, operator and classification society; information concerning vessels involved in the marine casualty or incident, their size and power as well as information about the crew members, in particular the scope of their responsibilities and the period of embarkation; description of the circumstances of the marine casualty or incident; analysis and comments on the factors that contributed to the marine casualty or incident, including mechanical, human or organizational factors; description of the results of the investigation, including the identification of safety issues and conclusions arising from the investigation; as well as safety recommendations – if applicable.

The Commission shall publish, on its website, a final report within 12 months of the marine casualty or incident. The Chairman of the Commission is to notify

immediately the Minister competent for maritime economy of preparing all types of reports.

One of the most important issues concerning the reports, which is derived directly from the Casualty Investigation Code (Chapter 25) as well as (although indirectly) from Directive 2009/18 (Article 9), is that the report drawn up by the Commission shall not constitute evidence in criminal proceedings nor other proceedings aiming at determining liability or apportioning blame for the marine casualty or incident, described in the report. Similar provisions are contained in Article 40.2 of the Polish Act of 2012.

On the basis of information obtained during the investigation of the marine casualty or incident, the Commission shall draw up recommendations regarding safety. The Commission may draw up recommendations based on the analysis of collective data or on the basis of the general results of investigation of marine casualties or incidents. The recommendations cannot apportion blame or determine liability.

Where it becomes apparent, during an investigation, that there is a safety deficiency that presents a serious potential risk to lives, ships or the environment, the Commission should take an action to inform the people or organizations responsible for managing the risk. This may take the form of an interim safety recommendation or some other means of correspondence. It is important not to delay action to address such safety risks until the completion of the investigation.

Every recommendation addressed to an individual or a specific organization should be followed up, within a reasonable period following the release of a final safety investigation report, with a view to promoting safety action. It is also a good practice to reinforce positive safety actions taken to address a recommendation by making it public. The SMAIC used to publish information on an action taken, delivered by the recommendation's addressee, on the Commission's website.

4. THIRD PARTIES' OBLIGATIONS

The Act on SMAIC imposes a common duty on a person, who has found or noticed the abandoned vessel, wreck, ship debris or pollution of the marine environment or witnessed the marine casualty or incident, to immediately notify the nearest local maritime authority or the maritime search and rescue service, or the Navy, the Border Guard, the Police, or the fire brigade, or other legally established emergency services. Those who have received such notification are obliged to inform immediately the Commission about the marine casualty or marine incident.

Special obligations are imposed by the Statute on ship owners and ship masters as well as the entities managing the port and the users of port infrastructure affected by the marine casualty. Besides the duties to inform the Commission directly about the marine casualty they have to protect traces and evidence of the casualty.

The Act of 2012 also imposes, on the entities to which the recommendations are directed, the requirement to notify the Chairman of the Commission, within the time frame of 6 months from the date of delivery of the final report, of the acceptance or rejection of the recommendations issued by the Commission.

One of the most important statutory obligations, which is very helpful for the Commission in fulfilling its duties, is that the bodies of public administration, including local authorities of the maritime administration, maritime search and rescue service (SAR), the Navy, the Border Guard, the Police and the national fire service, are obligated to provide necessary assistance to the Commission in carrying out activities related to the investigation of a marine casualty or incident.

The Statute of 2012 imposes – on persons having at their disposal: the means of communication that may help in the transfer of messages on the marine casualty or incident, and the means of image or sound recording or materials or information that may help to establish the circumstances and causes of the marine casualty or incident – an obligation to provide them immediately at the request of the Commission.

Similarly, persons having at their disposal: information related to the marine casualty or incident derived from charts, log-books, electronic and magnetic records and video tapes, including information from the VDR or S-VDR recorders and other electronic devices, relating to the period before, during and after the occurrence of the investigated marine casualty or incident and are obliged to preserve them, prevent from overwriting or from making other alteration of such information, and other devices, which could reasonably be considered as related to the investigation of the marine casualty or incident, are obliged to prevent the interference with these devices. This obligation lasts until a person is informed by the Commission that they are not necessary to conduct the investigation, but not longer than for 3 months from the date of occurrence of the marine casualty or incident.

The Act of 2012 on SMAIC provides for penalties for any person who: witnessing the marine casualty or incident has not informed the entities which should have been notified; prevented the members of the Commission from exercising their rights, does not make available to the Commission, at its request, measures, materials, or information; and being obliged to notify the Chairman of the Commission of the acceptance or the reasons for rejection of the recommendations

issued by the Commission, within the specified time limit, has not notified him or her thereof.

The person, who has breached the provisions of the Act, shall be subject to a fine in the amount not exceeding twenty times the average monthly remuneration in the national economy for the preceding year, as announced by the Chairman of the Central Statistical Office (GUS) in Poland.

5. COOPERATION WITH SUBSTANTIALLY INTERESTED STATES

The Casualty Investigation Code requires all substantially interested States to co-operate with the marine safety investigating State (or States) to the extent practicable. The marine safety investigating State shall provide for the participation of the substantially interested States to the extent practicable¹⁵.

The Polish Statute of 2012 establishes the rule that the Commission shall carry out the investigation of the marine casualty or incident individually, but it allows the Commission to: transfer the management of the investigation to another State which is substantially interested in the marine casualty or incident, allows another State substantially interested in the marine casualty or incident to participate in the investigation of the marine casualty or incident and to join the investigation of the marine casualty or incident conducted by a substantially interested State other than Poland.

When a marine casualty occurs on the high seas or in an exclusive economic zone the Casualty Investigation Code requires the flag State of a ship, or ships involved, to notify other substantially interested States as soon as it is reasonably practicable. When a marine casualty occurs within the territory, including the territorial sea of a coastal State, the flag State and the coastal State shall notify each other and between them notify other substantially interested States as soon as it is reasonably practicable.

Such provisions are missing in the Polish Act of 2012. The Act only requires the Chairman of the Commission to inform the European Commission on any marine casualty and incident and about abandoning the investigation of any casualty other than very serious one, by furnishing information on the form provided in the EMCIP database. That provision follows the requirement provided for in Directive 2009/18 (Article 17).

¹⁵ The reference to “extent practicable” may be understood as meaning, for example, that co-operation or participation is limited because national laws make it impracticable to fully co-operate or participate.

Nevertheless, the SMAIC follows the provisions contained in the Casualty Investigation Code¹⁶ and notifies both: the EU Member States - using the EMCIP portal and the third countries - using a typical format of notification which contains as much of the following information as is readily available, such as: the name of the ship and its flag State; the IMO ship identification number; the nature of the marine casualty; the location of the marine casualty; the time and date of the marine casualty; the number of any seriously injured or killed persons; consequences of the marine casualty to individuals, property and the environment; and the identification of any other ship involved.

Although there is no time limit for notification of a marine casualty or incident it is to be provided to all affected parties as soon as reasonably practicable. It has also to be remembered that the notification shall not be delayed due to the lack of complete information.

The way of cooperation of the SMAIC with the other EU substantially interested States has been determined by Directive 2009/18. In the investigation of marine casualty or incident the Commission shall use a common methodology for investigating marine casualties and incidents referred to in the Commission Regulation (EU) No 1286/2011 of 9 December 2011 adopting a common methodology for investigating marine casualties and incidents developed pursuant to Article 5(4) of Directive 2009/18/EC of the European Parliament and of the Council¹⁷.

The Commission may, in a particular case, depart from that common methodology, if in the opinion of the Commission, based on its professional knowledge, it can be justified and if it is needed to achieve the objectives of the investigation. The withdrawal from the methodology adopted shall require the consent of the Chairman of the Commission.

The main rule as to cooperation with third countries (other than EU Member States) says that the Commission is to cooperate to the maximum extent possible with other substantially interested third countries in safety investigations. Substantially interested third countries shall, by mutual agreement, be allowed to join a safety investigation led by the Commission at any stage of the investigation. The cooperation of the Commission in a safety investigation conducted by a substantially interested third country shall be without prejudice to the conduct and reporting requirements of safety investigations under the Act of 2012. Where a substantially interested third country is conducting a safety investigation involving Commission, the Commission may decide not to carry out a parallel safety

¹⁶ The Casualty Investigation Code constitutes part of the SOLAS convention and, as the convention has been adopted to the Polish legal system by the statute ratified by the Parliament, may be directly applicable.

¹⁷ Official Journal of the European Union L 328 of 10.12.2011, p. 36.

investigation, provided that the safety investigation carried out by the third country is conducted in accordance with the Casualty Investigation Code.

As regards cooperation between the countries it should be also noted that the EU Member States have established, in close cooperation with the European Commission, a permanent cooperation framework (PCF)¹⁸, enabling their respective investigative bodies (such as SMAIC) to cooperate among themselves to the extent necessary to attain the objective of Directive 2009/18¹⁹.

6. EMCIP AND GISIS

Both Directive 2009/18 and IMO circular MSC-MEPC.3/Circ.4 require particular marine casualty data to be entered respectively into the EMCIP database and the GISIS marine casualties and incidents module, together with the final version of a marine safety investigation report.

The Polish Act of 2012 defines EMCIP database as an electronic database called the European Marine Casualty Information Platform (EMCIP), in which information on maritime accidents and incidents is collected and stored. The Commission is entitled to have access to information contained in the EMCIP database and what is more important, it has to deliver to it, quite often, quite large number of data.

The Chairman of the SMAIC shall inform the European Commission on any marine casualty or incident and abandoning the investigation of the marine casualty other than very serious one or the incident by furnishing information on the form provided in the EMCIP database. The Chairman has also a duty to submit to the European Commission a copy of the reports prepared (issued) by the SMAIC. Information concerning the marine casualty or incident, which is the subject of the report, shall be included by the Commission on the form provided by the EMCIP database.

The Act of 2012 obliges the Chairman of the Commission to send to the International Maritime Organization (IMO) a copy of the final report of the investigation of a very serious marine casualty, and of a marine casualty other than very serious, or a marine incident, which contains information that could prevent or

¹⁸ Commission Implementing Regulation (EU) No 651/2011 of July 2011 adopting the rules of the permanent cooperation framework established by Member States in cooperation with the Commission pursuant to Article 10 of Directive 2009/18/EC of the European Parliament and of the Council (OJ L 177, 6.7.2011, p. 18).

¹⁹ The author of this paper as a representative of Poland attended the meetings of that body (PCF) from its beginning in 2013 to 2017.

reduce the impact of marine casualties or incidents in the future. All of this has to be done through the Global Integrated Shipping Information System (GISIS), constituting a database of information on safety, maritime security and the marine environment, managed by IMO.

7. SMAIC STATISTICS

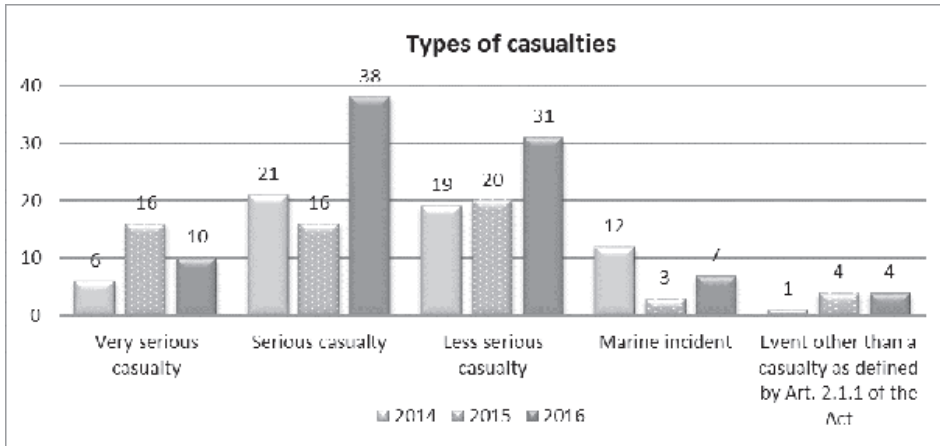
The SMAIC Rules of Procedure oblige the Commission to prepare the annual analysis of marine casualties and incidents that have occurred during the calendar year and to publish it on the Commission's website until the end of January of the following year. The analysis should include the following elements:

- 1) number of notifications of marine casualties and incidents;
- 2) number of undertaken investigations;
- 3) number of investigations completed within the past year;
- 4) specification of the number of accidents by type;
- 5) description of causes of marine casualties and incidents set out in the course of investigations;
- 6) specification and description of safety recommendations issued by the Commission;
- 7) specification of disregarded recommendations and a description of reasons for their rejection;
- 8) description of the measures taken by the entities to whom the recommendations apply;
- 9) number and content of the issued warnings about the possible danger (early alerts), including notifications sent to the European Commission; and
- 10) description of the cooperation, if such is the case, with the substantially interested States.

For the first three full years (2014-2016) of the Commission's activity comparative statistics²⁰ show that number of casualties (the cases reported to the Commission) increased from 59 in 2014 and 2015 to 90 in 2016. It does not mean that the actual number of accidents increased but that knowledge and awareness of different entities concerning the duty of reporting has increased. Around one third of accidents happened in ports. The rest of events occurred at sea or in internal sea waters (including rivers, canals, roadsteads and bays).

²⁰ The source of data comes from the annex to *Annual Analysis 2016* available at the SMAIC website.

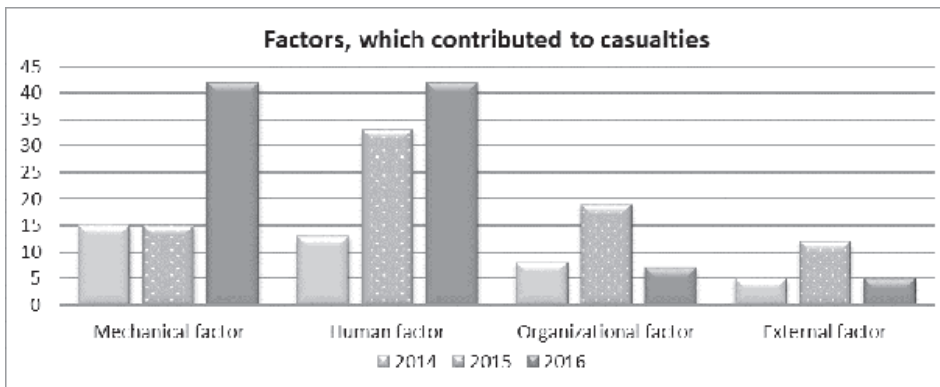
The types of casualties over these three years are shown in the diagram below.



The factors, which at most contributed to casualties (generally divided into: mechanical, human, organizational and external ones), are shown in the following diagram.

The Commission issued, each year, several safety reports. For the period in question it was: 10 reports in 2014, 12 in 2015 and 14 in 2016. Ten of them (in average) each year contained safety recommendations. The number of entities, to which the recommendations were directed, varied from 20 in 2014, to 24 in 2015 and 23 in 2016.

The types of entities, to which recommendations were directed, are shown below.



Starting from the beginning of SMAIC activity in May 2013 until mid-2017 the Commission initiated 77 safety investigations, prepared and adopted 272

resolutions, published 53 safety reports, including 43 final, 5 interim and 5 simplified reports. From among all safety reports issued by the Commission, 34 reports contained safety recommendations.

CONCLUSIONS

Casualties resulting in loss of life, loss of ships and pollution of the marine environment continue to occur. The international maritime community, represented mostly by the IMO Member States, acknowledges that the investigation and proper analysis of marine casualties and incidents can lead to greater awareness of casualty causation and result in remedial measures, for the purpose of enhancing safety of life at sea and protection of the marine environment. Recognizing the international nature of shipping and the need for co-operation between the States having a substantial interest in a marine casualty or incident for the purpose of determining the circumstances and causes thereof and the need for a standard approach to the marine casualty and incident investigation with the objective of preventing marine casualties and incidents in the future, in 2008 the Code of the International Standards and Recommended Practices for a Safety Investigation into a Marine Casualty or Marine Incident (the Casualty Investigation Code) was adopted.

The Code recommended the States to ensure that marine safety investigating authorities, meaning the authority in a State responsible for conducting the investigation in accordance with the Code, have sufficient material and financial resources available to them and suitably qualified personnel to enable them to facilitate the State's obligations to undertake marine safety investigations into marine casualties and incidents under the Code.

The European Parliament, mindful of the series of sea catastrophes which took place during the last years of the 20th century, such as the ferry boat *Herald of Free Enterprise* (1987 – Zeebrugge, Belgium, 193 lives lost), the passenger ship *Estonia* (1994 – the Baltic Sea, 852 persons lost), the tanker *Erica* (1999 – the Bay of Biscay, spillage of about 20 000 tons of oil) and the tanker *Prestige* (2002 – Finis-terre, Spain, spillage of more than 30 000 tons of oil), in its resolution of 21 April 2004 on improving safety at sea²¹, had urged the European Commission to present a proposal for a directive on investigating shipping accidents. The Commission prepared and submitted, 5 years later, the directive establishing the fundamental principles governing the investigation of accidents in the maritime transport sector.

²¹ Official Journal EU C 104 E, 30.4.2004, p. 730.

Directive 2009/18, noting that 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, noting also that 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, imposed on the Member States an obligation to ensure that safety investigations are conducted under the responsibility of an impartial permanent investigative body, endowed with the necessary powers, and by suitably qualified investigators, competent in matters relating to marine casualties and incidents.

Following this source of European law the Polish Parliament enacted the Act of 2012 on State Marine Accident Investigation Commission and established the national accident investigative body entitled to investigate accidents that have occurred on board any Polish ship as well as on any other ship within Polish waters (the territorial sea or internal sea waters).

The Commission, acting according the Statute, as well as the rules, standards, and recommended practices, agreed within IMO, binding upon the Republic of Poland, has performed hundreds of initial assessments of the causes of casualties reported to the Commission and investigated several dozen cases in order to find the reasons of the accident and, what is not less important, has issued tens of safety recommendations to various entities that can contribute to the prevention of marine casualties or incidents.

As a result of some of the Commission's recommendations seven acts of generally applicable law, including four Statutes and three Regulations, and one act of local law have been changed. Establishing the SMAIC and its activities lead to greater awareness of the casualty causation and undoubtedly have positive effects on the level of maritime safety in Poland.

PODSTAWY PRAWNE ORAZ KOMPETENCJE I DZIAŁALNOŚĆ PAŃSTWOWEJ KOMISJI BADANIA WYPADKÓW MORSKICH

Słowa kluczowe: Państwowa Komisja Badania Wypadków Morskich, wypadek morski, incydent morski

Abstrakt

W sierpniu 2012 r. Sejm RP przyjął ustawę o Państwowej Komisji Badania Wypadków Morskich, która uregulowała organizację i działanie Komisji, zasady i sposoby badania wy-

padków i incydentów morskich oraz sporządzania raportów i wydawania zaleceń dotyczących bezpieczeństwa morskiego. Treść ustawy odzwierciedla postanowienia Kodeksu badania wypadków, przyjętego przez IMO i będącego częścią Konwencji SOLAS, oraz implementuje Dyrektywę 2009/18/WE Parlamentu Europejskiego i Rady. Ustawa zmieniła ustawę z dnia 1 grudnia 1961 r. o izbach morskich, ustawę z dnia 18 września 2001 r. – Kodeks morski oraz ustawę z dnia 18 sierpnia 2011 r. o bezpieczeństwie morskim.

W maju 2013 r. po wyznaczeniu przez Ministra Transportu, Budownictwa i Gospodarki Morskiej trzeciego z pięciu ustawowo przewidzianych członków Komisja rozpoczęła swoją działalność. Komisja bada wypadki na statkach polskich oraz na statkach obcych, które zaistniały na polskim morzu terytorialnym oraz morskich wodach wewnętrznych. Komisja nie bada wypadków okrętów wojennych, statków państwowych, jednostek bez napędu i drewnianych o prostej budowie. Nie bada też wypadków małych statków rybackich i jachtów rekreacyjnych, o ile nie uczestniczyły one w tzw. bardzo poważnym wypadku morskim.

Od dnia rozpoczęcia działalności przez Komisję do połowy 2017 r. Komisja rozpatrzyła 272 powiadomienia o zaistnieniu wypadku lub incydentu morskiego, podjęła 77 badań okoliczności i przyczyn wypadku, wydała 53 raporty dotyczące bezpieczeństwa. Wiele z tych raportów zawierało zalecenia dotyczące bezpieczeństwa, skierowane do podmiotów, które mogą przyczynić się do zapobiegania wypadkom lub incydentom morskim. Na skutek zaleceń Komisji zostało zmienionych 7 aktów prawnych, w tym 3 ustawy i 4 rozporządzenia oraz jeden akt prawa miejscowego.

Powołanie Komisji i jej działania prowadzą do zwiększenia świadomości przyczyn zaistnienia wypadków i mają niewątpliwie pozytywny wpływ na poziom bezpieczeństwa morskiego w Polsce.

