

Translation: Only the Danish document has legal validity

Act no. 457 of 18 May 2011 issued by the Danish Maritime Authority

Act on safety investigations of marine accidents¹

We Margrethe the second, by the grace of God Queen of Denmark hereby witness:

Folketinget (the Danish Parliament) has adopted and We with Our consent hereby enact the following Act:

Section 1. The Minister of Economic and Business Affairs establishes the Danish Maritime Accident Investigation Board, the task of which is to carry out investigations of marine casualties and incidents with a view to reducing the risk of future marine casualties.

Section 2. The accident investigation board shall investigate very serious marine casualties that involve Danish ships or that have occurred in Danish territorial waters or that involve other substantial Danish interests, cf. however subsection 2.

Subsection 2. The accident investigation board may decide not to carry out investigations of very serious casualties on fishing vessels of a length below 15 metres.

Section 3. The accident investigation board may decide to investigate incidents involving a risk of a marine casualty and other marine casualties than those mentioned in section 2(1) that involve Danish ships or that have occurred in Danish territorial waters or that involve other substantial Danish interests.

Subsection 2. If the accident investigation board decides not to carry out an investigation of a serious marine casualty, the reasons for this decision shall be given.

Subsection 3. The accident investigation board shall not investigate marine casualties and incidents that involve only:

- 1) ships of war or other ships owned or operated by a State and used only on government, non-commercial service;
- 2) ships not propelled by mechanical means, wooden ships of primitive build and pleasure yachts unless they are or will be crewed and carry more than 12 passengers for commercial purposes;
- 3) inland waterway vessels operating only in inland waterways; or
- 4) fixed offshore drilling units.

Subsection 4. The Minister of Economic and Business Affairs may, in consideration of relevant international adoptions, lay down more detailed regulations on what is to be considered marine casualties and incidents that involve a risk of a marine casualty and when they are to be considered serious and very serious.

Section 4. The accident investigation board shall be independent of persons, companies and institutions whose interests may conflict with the investigation task.

Subsection 2. The employees of the accident investigation board shall have practical experience in the subject areas pertaining to the normal investigative duties of the accident investigation board.

¹ This act contains provisions implementing 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, Official Journal 2009, no. L 131, pp. 114-127.

Section 5. The accident investigation board shall not take a position on the criminal or tort liability aspects of the casualties or incidents, and its investigations shall be kept separate from criminal or other parallel investigations the purpose of which is to determine liability or apportion blame.

Subsection 2. The accident investigation board and its employees as well as persons and companies assisting the accident investigation board may not make the following information available for purposes other than the investigative work:

- 1) All witness evidence and other statements and accounts received in the course of the investigations and notes taken in connection with the receipt of the evidence mentioned, etc.;
- 2) information revealing the identity of persons who have given evidence in the context of the investigations; and
- 3) information relating to persons involved in the marine casualty or incident which is of a particularly sensitive or private nature, including health information.

Subsection 3. The accident investigation board, the experts called in and others taking part in an investigation by the accident investigation board shall be obliged, pursuant to sections 152 and 152 a-e of the penal code (*straffeloven*) to keep secret from third parties what they learn in connection with the investigation.

Subsection 4. The provisions on the right of access to documents stipulated in the act on public access to documents in administrative files (*lov om offentliggjort i forvaltningen*) shall not apply to information passed on by the accident investigation board to other authorities within the framework of subsection 3 when this information forms part of a pending investigation of a marine casualty or incident.

Subsection 5. The provision of subsection 4 shall apply only until a final marine casualty report is available or a decision has been made not to draw up such a report.

Subsection 6. The accident investigation board may decide that the information mentioned in subsection 2 may be passed on and used for purposes other than the safety investigation if there is an overriding public interest related hereto. Complaints about decisions hereon made by the accident investigation board may be brought before the Chairman of the Danish Shipping Tribunal.

Section 6. The investigations of the accident investigation board shall be made in accordance with the Directive of the European Parliament and of the Council on the fundamental principles governing the investigation of accidents in the maritime transport sector.

Subsection 2. The Minister of Economic and Business Affairs may, following negotiations with the relevant minister, lay down regulations on the cooperation of the accident investigation board with other authorities and on its participation in foreign investigations.

Subsection 3. The Minister may lay down more detailed regulations on the investigative work of the accident investigation board and on the publication of reports and on safety recommendations, including on the publication of information on persons' health conditions where this is necessary to prevent future casualties or to limit their consequences. In addition, the Minister may lay down regulations on the consideration of complaints.

Subsection 4. In cases where other States have a substantial interest in a casualty or an incident covered by section 2(1) or section 3(1), the Danish Maritime Accident Investigation Board may conclude agreements with the investigative bodies of the States concerned on the investigation, including on which of the investigative bodies is to lead the investigation and on the other bodies' participation in the investigation.

Subsection 5. In special cases, the accident investigation board may by agreement leave the investigations to investigative bodies in other countries though they do not have a substantial interest in the casualty or the incident. In addition, the accident investigation board may, following

agreement with an investigative body in another country, carry out investigations for which this body is responsible.

Section 7. When the accident investigation board so deems necessary in connection with the investigation work, the employees of the accident investigation board and any assistants as well as employees of the foreign investigative bodies mentioned in section 6 shall at any time, when showing proper identification, without a court order have the right to:

- 1) have free access to ships and spaces from where business is conducted in relation to the operation of ships as well as access to any relevant area or place of casualty, wreck or structure, including cargo, equipment or debris;
- 2) immediately collect evidence and carry out a controlled search for and removal of wreckage, debris and other components or substances for examination or analysis;
- 3) initiate examination or analysis of the items referred to in point 2 and have free access to the results of such examinations or analyses;
- 4) have free access to and a right to copy and use all relevant information and recorded data, including VDR data, in connection with a ship, a voyage, a cargo, a crew or any other persons, objects, conditions or circumstances;
- 5) have free access to the results of the examinations of or analyses of tests made on samples from the bodies of victims involved in the casualties mentioned in section 2;
- 6) have free access to the results of examinations of or tests made on samples taken from relevant persons;
- 7) interview the persons involved in the absence of others whose interests could be considered as hampering the investigation; and
- 8) obtain survey reports and other relevant information from survey authorities, classification societies, the shipowner and companies or persons approved as safety responsible pursuant to the International Safety Management Code, crewmembers and the organisations of the shipping industry as well as from relevant parties if they are established in Denmark.

Subsection 2. In addition, the accident investigation board may collect information and request assistance from the relevant authorities in the States involved, including flag and port State surveyors, coastguard officers, vessel traffic services and search and rescue services as well as from shipping companies, pilots and other port and maritime personnel.

Subsection 3. Subsections 1 and 2 shall also apply when the accident investigation board assists other investigative bodies acquiring information within the framework of the European cooperation between safety investigation bodies.

Section 8. The ship's owner, master and chief engineer and anyone acting on their behalf shall ensure that all information that may be considered relevant to the investigative work is made available to the accident investigation board, including that information from charts, log books, electronic and magnetic recording and video tapes, VDRs and other electronic devices relating to the period preceding, during and after an accident are saved and that such information is not overwritten, altered or interfered with by other equipment. Others affected by a marine casualty or incident and who have in their possession charts, log books, electronic and magnetic recording and video tapes, VDRs or other electronic devices of relevance to the investigative work shall also make these available to the Commission and ensure that this information is not overwritten, altered or interfered with by other equipment.

Section 9. If the onwards voyage of a ship involves a hindrance of the work performed by the accident investigation board, it may order that the ship's onwards voyage be postponed. The

accident investigation board shall ensure that ships are not unnecessarily detained and that the work on board is not unnecessarily complicated.

Section 10. The accident investigation board may, furthermore, decide that wreckages and debris must not be removed or touched until the accident investigation board has had an opportunity to carry out the necessary investigations. If a ship has gone down or grounded or is drifting and may involve a danger to navigational safety or to the environment, it shall be arranged between the Commission and the Danish Maritime Safety Administration or the Admiral Danish Fleet, respectively, how to avert this danger.

Section 11. It shall not be possible to bring complaints about decisions made by the accident investigation board pursuant to this act, cf. however section 5(6), second clause, before another administrative authority.

Subsection 2. However, complaints about the decisions made by the accident investigation board pursuant to section 9 may be brought before the Danish Shipping Tribunal by the relevant shipping company. Section 5(2) shall also apply to the shipping tribunal when it considers complaints under the first clause.

Section 12. The Minister of Economic and Business Affairs may lay down regulations stipulating that written communication between the accident investigation board and companies about circumstances covered by this act shall be digital. In this connection, the Minister may lay down regulations on the use of specific computer systems, special digital formats and digital signature.

Section 13. Anyone who contravenes section 8 or does not observe orders issued pursuant to the act or pursuant to regulations issued pursuant to the act shall be liable to punishment by fine or imprisonment for a period of not more than one year.

Subsection 2. Companies, etc. (legal entities) shall be liable to punishment according to the provisions of chapter 5 of the penal code (*straffeloven*).

Subsection 3. When determining liability to punishment under subsection 2, persons who are hired to carry out work on board the ship by others than the shipowner shall also be considered to be affiliated with the shipowner. If a document of compliance has been issued pursuant to the International Safety Management Code or a certificate has been issued pursuant to the Maritime Labour Convention to another organisation or person, the master and the seafarers shall also be considered affiliated with the one to whom the certificate has been issued.

Subsection 4. In regulations issued pursuant to the act, punishment by fine or imprisonment for a period of not more than one year may be determined. Such regulations may determine a similar punishment for contraventions of regulations laid down in the regulations of the European Community on circumstances covered by the act.

Section 14. The act shall enter into force on 15 June 2011.

Section 15. The act shall not apply to the Faroe Islands and to Greenland.

Subsection 2. The act may be put into force in full or partially for Greenland by royal decree with the amendments deriving from the Greenland conditions.

Subsection 3. Section 17 may be put into force in full or partially for the Faroe Islands with the amendments deriving from the Faroese conditions.

Section 16. In the act on safety at sea (*lov om sikkerhed til søs*), cf. consolidated act no. 654 of 15 June 2010, as amended by section 2 of act no. 251 of 30 March 2011, the following amendment shall be made:

1. *Section 4(3)* shall be as follows:

Subsection 3. The Minister of Economic and Business Affairs may lay down regulations on the obligation to notify the Danish Maritime Authority about accidents and other incidents at sea and on the authorities' notification hereof to the European information platform for accidents at sea.”

Section 17. In the merchant shipping act (*søloven*), cf. consolidated act no. 856 of 1 July 2010, as amended most recently by section 1 of act no. 251 of 30 March 2011, the following amendments shall be made:

1. In *section 477(3)* and *section 479(2)*, “the Danish Maritime Authority” shall be amended to the Danish Maritime Authority, the Danish Maritime Accident Investigation Board”.

2. In *section 474(2)(iii)* and *section 480(3)*, “the Danish Maritime Authority” shall be amended to “the Danish Maritime Authority, Danish Maritime Accident Investigation Board”.

Christiansborg Castle, 18 May 2011

Margrethe R. / Brian Mikkelsen