

RESPONSE BY THE NEDERLANDSE VERENIGING VOOR ZEE- EN VERVOERSRECHT (NVZV) (DUTCH MARITIME AND TRANSPORT LAW ASSOCIATION) TO THE CMI QUESTIONNAIRE DISTRIBUTED ON 11 NOVEMBER 2013 WITH REGARD TO THE 2006 GUIDELINES ON FAIR TREATMENT OF SEAFARERS IN THE EVENT OF A MARITIME ACCIDENT (THE GUIDELINES)

1. Have the Guidelines been passed into the law/s of your country? Please tick:

Netherlands:

YES

NO

The Guidelines have not been passed into the laws of the Netherlands. However, certain principles mentioned in the Guidelines are also arranged for in the laws of the Netherlands.

2. If the Guidelines have been passed into the law/s of your country, have all or some of the paragraphs of the Guidelines been passed into the law/s of your country? Please tick:

Netherlands:

ALL PARAGRAPHS

SOME PARAGRAPHS,

Although there is no implementation of the Guidelines and the Guidelines have not been passed into the laws of the Netherlands, we will, for the purpose of this Questionnaire, identify how the subject matter of the various paragraphs of the Guidelines is otherwise covered in the laws of the Netherlands.

3. If some of the paragraphs of the Guidelines have been passed into the law/s of your country, please tick the paragraphs of the Guidelines that have been passed into the law/s of your country. Please tick:

Netherlands:

PARAGRAPH 1

PARAGRAPH 2

PARAGRAPH 3

PARAGRAPH 4

PARAGRAPH 5

PARAGRAPH 6

PARAGRAPH 7

PARAGRAPH 8

PARAGRAPH 9 (9.1 – 9.22), partially

PARAGRAPH 10 (10.1 – 10.12), partially

PARAGRAPH 11 (11.1 – 11.8), partially

PARAGRAPH 12 (12.1 – 12.7) partially

PARAGRAPH 13 (13.1 – 13.4)

4. If some or all of the paragraphs of the Guidelines have been passed into the law/s of your country, does the law/s give rights to seafarers which are enforceable in your courts? Please tick:

Netherlands:

YES

NO

5. If some or all of the paragraphs of the Guidelines have been passed into the law/s of your country, please identify the specific law/s: ie title of the law/s, and date of the law/s, and relevant provisions in the law/s:

Netherlands:

- Kingdom Act on the Dutch Safety Board of 2 December 2004 (Rijkswet Onderzoeksraad voor Veiligheid)
- Kingdom Decree on the Dutch Safety Board of 10 December 2004 (Rijksbesluit Onderzoeksraad voor Veiligheid)
- Decree on the Dutch Safety Board of 4 December 2004 (Besluit Onderzoeksraad voor Veiligheid)
- Regulation on the Dutch Safety Board of 4 December 2004 (Regeling Onderzoeksraad voor Veiligheid)
- General Administrative Law Act (Algemene Wet Bestuurrecht)
- Act on Seafarers of 11 December 1997 (Wet Zeevarenden)
- Act on Port State Control of 6 November 1997 (Wet Havenstaatcontrole)
- Civil Code (Book 7, title 10, chapter 12) (Burgerlijk Wetboek)

6. If some or all of the paragraphs of the Guidelines have not been passed into the law/s of your country, please explain the reason/s for not passing those paragraphs of the Guidelines into the law/s of your country. Please tick one of more of the following answers:

Netherlands:

- The existing law/s adequately protects the rights of seafarers. Please identify the law/s.
- The Guidelines inadequately protect the rights of seafarers
- The Guidelines unduly protect the rights of seafarers and are unfair to other parties
- The Guidelines are unclear and/or ambiguous
- The Guidelines are still under consideration

■ Please state any other reason

The existing law/s were identified above under question 5.

During the implementation process of European Directive 2009/18/EG 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) in Parliament it has been considered that in Dutch legislation IMO Guidelines (in general) shall not be incorporated by way of referral thereto.

7. If some or all of the paragraphs of the Guidelines have not been passed into the law/s of your country, please explain what action, if any, your country may require in order for those paragraphs of the Guidelines to be passed into the law/s of your country. Please tick one or more of the following answers:

Netherlands:

- The provision of model legislation by the IMO regarding the passing of the Guidelines into national law
- The provision of information by the IMO regarding the meaning of the Guidelines
- The amendment of the Guidelines by the IMO

■ Please explain any other action

The conversion of the Guidelines into a Resolution may be helpful. During the implementation process of European Directive 2009/18/EG 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) in Parliament it has been considered that in Dutch legislation IMO Guidelines (in general) shall not be incorporated by way of referral thereto. However, incorporation of an IMO Resolution by way of referral thereto in Dutch legislation is an accepted principle. In case a new IMO Resolution is established then this would have to be incorporated separately into Dutch legislation. Resolution MSC.255(84) has been incorporated into Dutch legislation via art 11b of the Kingdom Decree on the Dutch Safety Board that stipulates that in as far as the Kingdom Act on the Dutch Safety Board does not provide for or regulates specific matters, the Code of the International Standards and

Recommended Practices for a Safety Investigation into a Maritime Casualty or Maritime Incident as established by the Resolution MSC.255(84) of the IMO (16 May 2008) will be observed. Passing the remaining Guidelines (not yet arranged for in Resolution MSC.255(84)) into a new IMO Resolution should ultimately lead to implementation into the Dutch Legislation.

8. *Do the laws of your country require that a seafarer must be informed of the basis on which an investigation into a maritime accident is being conducted?*

Netherlands:

■ YES. If YES, please explain:

NO

Art 11b of the Kingdom Decree on the Dutch Safety Board stipulates that in as far as the Kingdom Act on the Dutch Safety Board does not provide for or regulates specific matters, the Code of the International Standards and Recommended Practices for a Safety Investigation into a Maritime Casualty or Maritime Incident as established by the Resolution MSC.255(84) of the IMO (16 May 2008) will be observed. Art 12.2 MSC.255(84) stipulates that a seafarer shall be informed of the nature and basis of the marine safety investigation.

9. *Can a seafarer be detained as part of an investigation into a maritime accident, or as part of a trial?*

Netherlands:

YES. If YES, please explain the potential legal basis for such detention in particular with regard to pre-trial detention.

■ NO

The detention is not arranged for in any of the relevant laws. However art 51 Kingdom Act on the Dutch Safety Board stipulates that in case of a hearing of the Dutch Safety Board (which we assume is a trial as meant in the Questionnaire) a witness is obliged to appear and failing his appearance the witness may be summoned and even the witness may be forced to appear by the Public Prosecutor.

10. *What safeguards exist if a seafarer is detained as part of an investigation into a maritime accident, or as part of a trial. In particular:*

Netherlands: Despite the fact that there is no right established in the relevant laws to detain a seafarer, we can for the purpose of the Questionnaire provide additional information.

10.1 *Is there any provision in your county's laws/s whereby a seafarer must be informed of his/her legal rights?*

YES. If YES, please explain

■ NO

10.2 *Does a seafarer have the right to be provided interpretation services?*

Netherlands:

■ YES. If YES, please explain:

NO

If a Seafarer is heard as a witness, then on the basis of article 53 Kingdom Act on the Dutch Safety Board, we conclude that interpretation services shall be provided and the costs involved shall be compensated.

10.3 *Does a seafarer have the right to be provided free independent legal advice?*

Netherlands:

■ YES. If YES, please explain:

NO

Art 11b of the Kingdom Decree on the Dutch Safety Board stipulates that in as far as the Kingdom Act on the Dutch Safety Board does not provide for or regulates specific matters, the Code of the International Standards and Recommended Practices for a Safety Investigation into a Maritime Casualty or Maritime Incident as established by the Resolution MSC.255(84) of the IMO (16 May 2008) will be observed. Art 12.2 MSC.255(84) stipulates that a seafarer shall be informed and allowed access to legal advice.

10.4 Does a seafarer have the right not to answer questions that may be considered self-incriminating, if so advised?

Netherlands:

■ YES. If YES, please explain:

NO

Art 11b of the Kingdom Decree on the Dutch Safety Board stipulates that in as far as the Kingdom Act on the Dutch Safety Board does not provide for or regulates specific matters, the Code of the International Standards and Recommended Practices for a Safety Investigation into a Maritime Casualty or Maritime Incident as established by the Resolution MSC.255(84) of the IMO (16 May 2008) will be observed. Art 12.1 MSC.255(84) stipulates that a seafarers human rights shall be upheld at all times. The right to remain silent is acknowledged as a fundamental human right.

10.5 Are there any other due process safeguards provided to seafarers facing an investigation into a maritime accident, or as part of a trial?

Netherlands:

■ YES. If YES, please explain:

NO

Art 11b of the Kingdom Decree on the Dutch Safety Board stipulates that in as far as the Kingdom Act on the Dutch Safety Board does not provide for or regulates specific matters, the Code of the International Standards and Recommended Practices for a Safety Investigation into a Maritime Casualty or Maritime Incident as established by the Resolution MSC.255(84) of the IMO (16 May 2008) will be observed. Art 12.1 MSC.255(84) stipulates that a seafarers human rights shall be upheld at all times.

11. If the Guidelines have been implemented into your law, have they been relied upon/referenced in any cases? If so please comment further.

Netherlands: No, there is no case law available in respect of the Guidelines.

12. Does your Association have any comments, suggestions or recommendations on this subject?

Netherlands: The NVZV has, whilst preparing the answers to this Questionnaire, formed the opinion that the European Directive 2009/18/EG 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) is not entirely (and thus not properly) implemented. Art 18 of the Directive states that Member States shall take into account the relevant provisions of the IMO Guidelines on the fair treatment of seafarers in the event of a maritime accident in the waters under their jurisdiction. During the implementation process of European Directive 2009/18/EG 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) in Parliament it has been considered that in Dutch legislation IMO Guidelines (in general) shall not be incorporated by way of referral thereto and therefore art 18 of the Directive is not implemented. The Decree on the Investigation Council does (in art 11b) incorporate the MSC.255(84). This Resolution does include some of the Guidelines but not all. The opportunity to improve the position of seafarers has not been used.