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INVESTIGATIVE BODY COMPETENT IN MATTERS RELATED TO MARINE ACCIDENTS AND INCIDENTS IN THE EU COUNTRIES*

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Abstract

Each country must have a special body that is empowered to deal with the mitigation of the consequences of maritime accidents and incidents. The purpose of the study is to analyze the legislation of some EU countries, which have established an impartial permanent investigative body competent in matters of maritime accidents and incidents (hereinafter - IPIBCMMAI). And on the basis of it, identify positive and negative aspects in the subordination, structure, competence of such a body, offer recommendations for rational and effective changes in this direction. It is carried out using the following methods: 1) a random selection of EU countries, where there is IPIBCMMAI, and the study of their national legislation; 2) assessment of some components of the legal status of this body in the above-mentioned EU countries; 3) the author's recommendations for improving national legislation in the analyzed EU countries on the issue under consideration regarding the effective functioning of the IPIBCMMAI to maintain environmental safety in the world using the modeling method.

Keywords: EU, investigative body, maritime accidents and incidents, normative legal act

1. Introduction

In modern conditions, sea transportation is not complete without maritime accidents and incidents, incl. and in Europe (Accident Investigation - Annual Overview, Accident Investigation - Key Figures). It leads, accordingly, to the destruction of the natural environment and negatively affects the environmental safety in the world. In order to reduce the consequences of these events, measures are taken in different directions: legal, technical, economic, etc. For example, (Directive 2009/18/EC, 2009) and other are valid at the EU

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legislative level. Each EU countries must have an IPIBCMMAI in accordance to it. Landlocked Member States which have neither ships nor vessels flying their flag will identify an independent focal point to cooperate in the investigation pursuant (Directive 2009/18/EC, 2009). From the analysis of the national legislation of the EU countries that have such a body, it follows its functioning is most often of a nominal nature, and the normative legal act (hereinafter - NLA) regulating its legal status contains many or general or requiring revision provisions that make it inoperative and "dead". All of the above affects the situation with marine accidents and incidents, environmental safety. Consequently, the presence of the necessary national legal framework in the EU member states, which meets the norms of EU legislation, for the body will reduce the number of maritime incidents and accidents, as well as the consequences of them.

The purpose of this study is to analyze the legislation of some EU member states in which the IPIBCMMAI was created. And on the basis of it, the identification of positive and negative aspects in the subordination, structure, competence of such a body, the proposal of recommendations for rational and effective changes in this direction.

This work consists of the following parts: a) a random selection of EU countries in which the EU IPIBCMMAI was created: the Hellenic Republic, the Kingdom of Belgium, the Republic of Cyprus, the Republic of Poland, the Federal Republic of Germany, the French Republic and the Republic of Estonia; b) an assessment of the legislation of the studied EU member states regarding some components of the legal status of the IPIBCMMAI; c) analysis of the results obtained, formulation of conclusions and recommendations to reduce the number of marine incidents and accidents, as well as the consequences of them.

2. Material and methods

The Hellenic Republic, the Kingdom of Belgium, the Republic of Cyprus, the Republic of Poland, the Federal Republic of Germany, the French Republic and the Republic of Estonia are EU member states, the legislative framework of which were analyzed on the issue under study. Fig. 1 shows the dynamics of the number of accidents in the selected EU countries over the past 6 years from the Global Integrated Shipping Information System (hereinafter - GISIS).

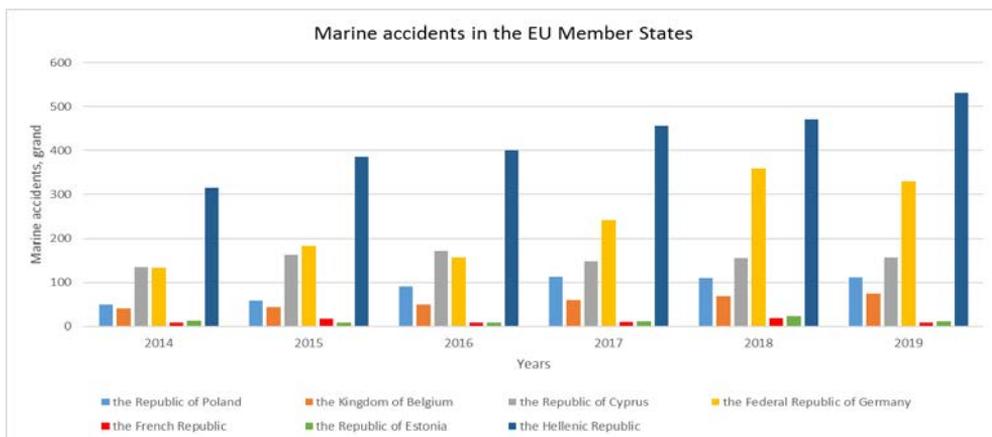


Fig. 1. Maritime accidents in the EU Member States

However, the small number of maritime accidents and incidents in France, Estonia do not allow us to assert the reliability of the data. This is also typical for other EU countries.

The reason is not submitting reports to GISIS due to bureaucracy, lack of punishment. Having a report is an understanding of the source of such an accident. Consequently, it is not possible to assess the actual damage caused to the environmental situation.

Table 1 show which body was created in each of the analyzed EU member states, their independence, funding, and number of employees. The following was done in this work to achieve certain results for the set goal: 1) a random choice EU member states, which have an IPIBCMMAI, study of their national legislation; 2) assessment of some components of the legal status of this body in the above-mentioned EU member states; 3) the author's recommendations for improving national legislation in the analyzed EU member states on the issue under consideration regarding the effective functioning of the IPIBCMMAI to maintain environmental safety in the world using the modeling method.

Table 1. An investigative body competent in matters relating to marine casualties and incidents in the EU countries

| <i>The EU country</i> | <i>An investigative body competent in matters relating to marine casualties and incidents</i> | <i>Legislative independence</i> | <i>Subordination</i> | <i>The number of employees</i> |
|---------------------------------|--|---------------------------------|--|--|
| The Republic of Poland | The State Commission for the Investigation of Maritime Accidents | Yes | The Ministry competent for maritime economy | 5 people, as required, can invite experts |
| The Kingdom of Belgium | The Federal Agency for the Investigation of Marine Accidents | Yes | The King | 3 |
| | | | The Ministry in charge of maritime mobility | |
| The Republic of Cyprus | The Committee for the Investigation of Marine Accidents and Events | Yes | The Ministry of Transport, Communications and Works | 5 |
| The Federal Republic of Germany | The Federal Bureau of Investigation of Accidents at Sea | Yes | The Federal Ministry of Transport and Digital Infrastructure | required amount employees |
| The French Republic | The Bureau of Marine Accident Investigation | Yes | The Ministry of Ecology and Solidarity in Transition | 9 people, as needed, up to 20 people can still be involved |
| The Republic of Estonia | The Estonian Safety Investigation Commission (specialized in the investigation of accidents in several modes of transport) | Yes | The Ministry of Economic Affairs and Communications | not indicated |
| | The Maritime Administration | | | |
| The Hellenic Republic | The Greek Bureau of Marine Accident Investigation | Yes | The Ministry of Civil Protection | 26 |

3. Results and discussion

3.1. The Republic of Poland

Based on the GISIS data, marine accidents in the Republic of Poland constitute 9% of the total aggregate of such accidents in the EU countries, which are shown in Fig. 2. Such statistics require an analysis of the body responsible for the investigation of marine accidents.

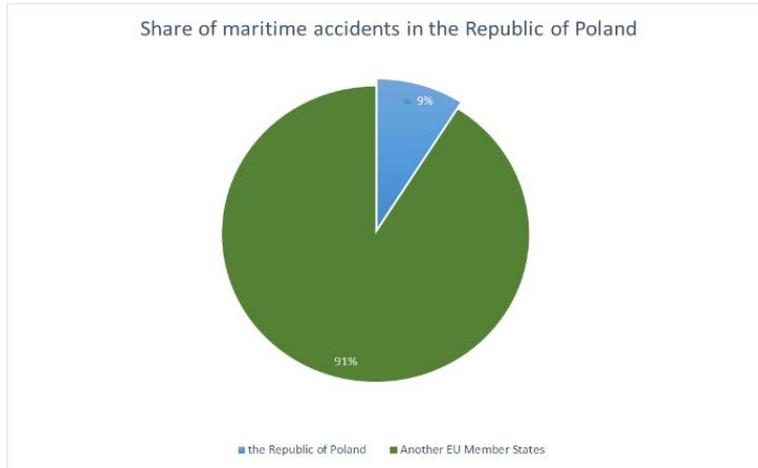


Fig. 2. Share of maritime accidents in the Republic of Poland

The State Commission for the Investigation of Marine Accidents (hereinafter - the Commission) is a body operating in the Republic of Poland. The government of this country has regulated its legal status with the following legal acts: Act on the State Commission for the Investigation of Marine Accidents № 1068 of the 31 August 2012 (Act 1068, 2012); Order of the 26 June 2018 № 23 the regulations of the State Marine Accident Investigation Commission and its seat (Order 23, 2018) etc. Thus, it is a permanent and independent body under the authority of the Ministry responsible for maritime affairs (Act 1068, 2012). Hence, we can conclude that independence for the Polish body exists only theoretically and not practically. It is confirmed by other articles of this Law (Act 1068, 2012:12, 13). The commission consists of five members, including: chairman, deputy chairman and secretary. And they are appointed by the Ministry responsible for maritime affairs. The same minister ensures the administrative functioning of a body subordinate to him, funds for the activities of the Commission from the part of the state budget at his disposal. At the same time, according to the norms of the same NLA experts can be invited to participate in the work of the Commission, whose work is paid from the state budget (Act 1068, 2012). However, in the current Polish legal acts on this issue the number of such experts per year are not regulated. I believe there is also the emergence of additional costs from the state budget leading to the need for constant checks on the rationality and expediency of such costs.

Regarding the rights and obligations of the employees of the considered Commission, they are enshrined in (Act 1068, 2012; Order 23, 2018). However, the purpose of the investigation of a maritime accident or incident is to establish the circumstances and causes of its occurrence in order to prevent future maritime accidents and incidents and improve maritime safety (Act 1068, 2012). It can be argued, in the opinion of the author, the rights of the Commission's members and persons involved in the investigation are very clearly spelled out, taking into account the investigation of a maritime incident, a maritime accident (Act

1068, 2012:29, 30). At the first blush, the duties of the Polish commission's staff appears to be extensive, detailed based on the analysis of the norms (Order 23, 2018). Comparing the norms of several NLA, we can come to the conclusion that they will be carried out with the tacit agreement with the Ministry responsible for maritime affairs.

The study of Polish legislation showed that it is necessary, first of all, to harmonize the norms of national legal acts between themselves and within, taking into account the requirements of EU legislation in this aspect.

3.2. The Kingdom of Belgium

In the Kingdom of Belgium GISIS data show 6% (Fig. 3). Such the positive trend requires a study of the IPIBCMMAI.

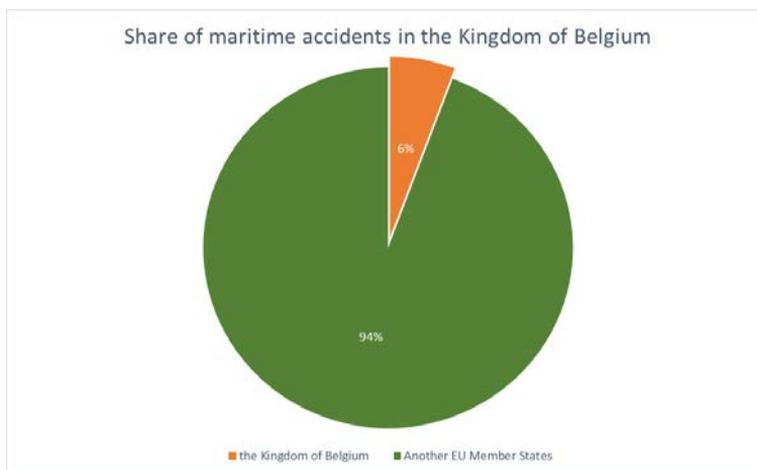


Fig. 3. Share of maritime accidents in the Kingdom of Belgium

In the Kingdom of Belgium the body is the Federal Agency for the Investigation of Marine Accidents (hereinafter - FOSO). His legal status is regulated by the Federal Agency Act for investigation of maritime accidents № 2012 - 1736 of the 02 June 2012 (Act 1736, 2012) and Royal Decree № 2018/30220 of the 28 January 2018 The The Federal Agency for the Investigation of Marine Accidents regulation of the organization, composition and operation and to determination of the skills of staff (Royal Decree 2018/30220, 2018). The analysis of the legal acts showed the FOSO is not autonomous and functionally independent from anyone whose interests may conflict with the tasks assigned to it. This conclusion was made: 1) "After consultation with the Council of Ministers the King decides by decision the FOSO's organization, composition, functioning and the staff skills. The Minister in charge of maritime mobility is responsible for the proper functioning of the FOSO (Act 1736, 2012); 2) the decision of the Constitutional Court № 158/2013 of the 21 November 2013 (case number: 5540); 3) the amount of the contribution and the payer are set for the functioning of the FOSO (Act 1736, 2012). The payer is the operator of a Belgian vessel and the operator of a vessel under a foreign flag calling at the ports of Antwerp, Brussels, Ghent, Liege, Ostend and Zeebrugge (Act 1736, 2012). Therefore, in the event of a maritime incident, where one of the participants will be, for example, the operator of the vessel occupying a leading position in the payment of such contributions, then perhaps FOSO employees can break the law themselves. For example, they can forge the necessary documents proving his innocence to such a participant for their further funding. Another amount of funding FOSO depends on

the gross tonnage of the Belgian ship and the number of foreign ships calling at the ports defined above (Act 1736, 2012).

The FOSO staff consists 2 researchers (senior and junior researchers) and an administrative assistant. On the proposal of the minister from the candidates nominated by SELOR the king appoints researchers who take the oath in the minister's hands (Royal Decree 2018/30220, 2018). And again there is an indirect dependence, subordination. Thus, article 7 of (Act 1736, 2012) contradicts other articles of this NLA and (Royal Decree 2018/30220, 2018) and, accordingly, is invalid.

The tasks assigned to the FOSO are implemented through its powers, enshrined in (Act 1736, 2012). They are generally without specifics.

Consequently, the legal status of the FOSO requires revision, and the norms of (Act 1736, 2012) - consistency. For a more effective autonomous and independent functioning of such the body, firstly, it is necessary to appoint its employees by the authorized EU governing body, and secondly, to finance from the EU budget.

3.3. The Republic of Cyprus

1/6 of all maritime accidents in EU countries occur in the Republic of Cyprus (Fig. 4). And it is directly related to the functioning of the body responsible for the investigation of marine accidents and incidents.

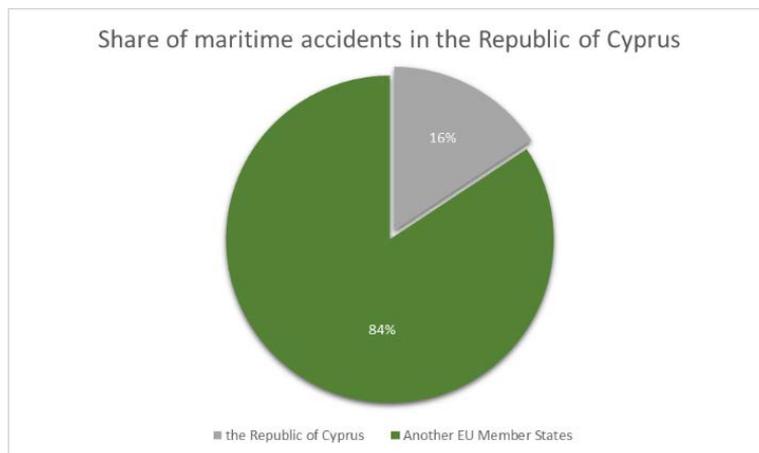


Fig. 4. Share of maritime accidents in the Republic of Cyprus

In the Republic of Cyprus the Committee for the Investigation of Maritime Accidents and Events (hereinafter - IMAE) has been established in accordance the Law on the Investigation of Marine Accidents and Incidents 2012 (94 (I) / 2012) (Law 94(I)/2012, 2012). This body is administratively and functionally independent from any body or third party if their interests conflict with the powers of the body in question. However, the IMAE is under the general supervision of the Minister of Transport, Communications and Works and is provided the necessary funds and sufficient resources for its mobilization in order to fulfill its responsibilities independently in the event of an accident or incident by this ministry. It seems at the legislative level the body was assigned to the relevant ministry, which would secretly be able to influence the results of the work of its subordinate.

According (Law 94(I)/2012, 2012) the IMAE consists three members: the President and two other permanent members, who are appointed by a decision of the Council of Ministers, published in the Official Gazette of the Republic at the proposal of the Minister.

The Council of Ministers also appoints two deputy members of the IMAE. The author allows to conclude analysis of paragraph 3 of Art. 5 of this Law that this norm is not working, since such the Committee's employee has a clear rule here: if necessary you follow the higher management orders, which do not create any kind of interest that affects the impartiality of the subordinate employee's judgment in the exercise of his powers, duties, or you resign.

The Committee is assisted by the Service. Its employees are members of the public service. At the same time this NLA does not indicate the total number of staff positions in this Service. And the Service can be assisted in the performance of its duties by purchasing services. In the author's opinion, the creation and operation of the Service, given the Committee is a highly specialized body in its activities, is one of the ways to launder money.

From the analysis the responsibilities assigned to the IMAE and the Service in accordance to (Law 94(I)/2012, 2012) it follows that the Service has a supporting role in the work of the Committee. It seems expedient to liquidate this Service, and to transfer its responsibilities to the IMAE, to revise the number of staff members in the Committee.

3.4. The Federal Republic of Germany

This country ranks second in the number of maritime accidents and incidents among the analyzed EU countries (Fig. 5). One of the reasons is the legal status of the IPIBCMMAI.

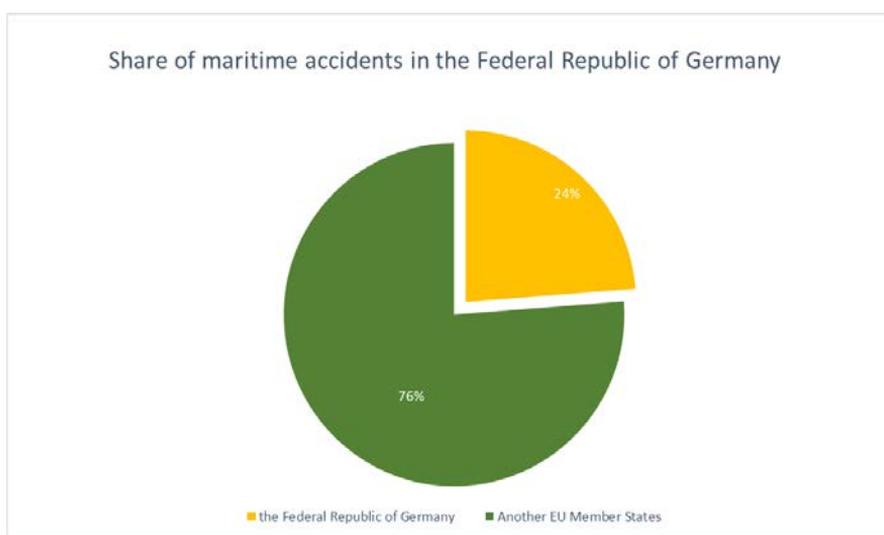


Fig. 5. Share of maritime accidents in the Federal Republic of Germany

In Germany the Federal Bureau of Investigation of Accidents at Sea (hereinafter - the Federal Office) was established with the adoption of the Maritime Safety Investigation Act of the 16 June 2002 (SUG, 2002). It is the highest federal body in a subdivision of the Federal Ministry of Transport and Digital Infrastructure, which performs its functions functionally and in an orderly manner independently of all individuals and legal entities, as well as does not receive instructions regarding the implementation of its powers. Considering that the Federal Office is financed from the German federal budget, it can be argued about its dependence on the higher-standing bodies and the corresponding payment of its costs. The specific number of full-time employees in this body are no norms in the SUG. At the same time the same legal act contains a slightly different norm: such a body is staffed with employees in the required number. In the author's opinion, it testifies to the uncontrolled spending of funds from the federal budget, which is so popular among the EU member states.

The powers of the analyzed office are spelled out quite clearly, in detail in the (SUG, 2002). From the conducted research it can be concluded that in this issue German legislation also contains many «blank spots».

3.5. The French Republic

The French Republic is one of the countries with 1% of maritime accidents and incidents compared to other EU countries (Fig. 6). In the author's opinion, it is necessary to study and adopt, if possible the legislative experience in the functioning of, first of all, the investigative body responsible for this area.

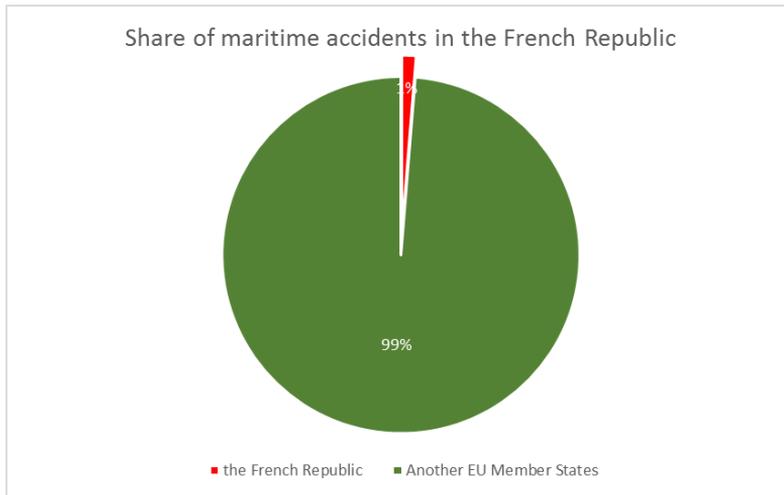


Fig. 6. Share of maritime accidents in the French Republic

In France a specialized body has been created - the Bureau of Marine Accident Investigation (hereinafter - the Bureau) in accordance with the Decree of the 16 December 1997 № EQUH9701842A, Establishing the Bureau for Technical and Administrative Investigations after Accidents and Other Marine Events and a permanent commission of inquiry (Decree EQUH9701842A, 1997). The body is under the jurisdiction of the Ministry of Ecology and Solidarity in Transition. Today the legal nature of the Bureau is regulated by numerous legal acts, which are regularly updated and do not always reflect the changes made. It can be stated that it is the state independent body from the ministry departments, which are responsible for defining and monitoring safety standards for navigation, responsible for conducting safety investigations related to accidents and serious maritime incidents based on the analysis of this legal framework. Hence, we can conclude that this Bureau is dependent under the jurisdiction of the ministry. As enshrined at the legislative level it is necessary to change subordination for complete independence.

The tasks and powers of the body fixed at the legislative level are quite general, which allows them to be carried out at the discretion of an employee of this body. The main thing for the Bureau is to carry out investigations of maritime accidents in order to prevent further possible catastrophes. In the author's opinion, it is impossible since there is scientific and technological progress, natural conditions and other uncontrolled phenomena that contribute to marine accidents.

This body employs 9 people and can employ up to 20 people as needed (Decree EQUH9701842A, 1997; Decree EQUI0400909A, 2004). And again, uncontrolled spending of funds from the state budget can be traced.

3.6. The Republic of Estonia

The Republic of Estonia also ranks first among the countries with the least number of maritime accidents among the studied EU member states (Fig. 7). The presence of such positive dynamics is the reason for conducting research in this country and, possibly, learning from experience.

Estonia is one of the EU member states which two bodies have been created and are functioning in this area - the Estonian Safety Investigation Commission (specialized in the investigation of accidents in several modes of transport) (hereinafter - the Commission) and the Maritime Administration (hereinafter - MA). The Commission was established following the relevant amendments to the Aviation Law, the Maritime Safety Law and the Railway Law (Act 33, 2011). Its legal status is regulated by the draft Regulations on the Commission for Safety Investigation, the Safety Investigation Procedure, the Maritime Safety Law, etc. According to the not yet adopted Regulations on the Commission for Safety Investigation this body is a structural unit that performs a specific task of the Ministry of Economic Affairs and Communications (hereinafter - IEC) and is independent, autonomous in conducting a safety investigation (Statutes of the safety investigation center). Consequently, funding comes from the same sources as for the IEC, i.e. from the state budget (Statute 323, 2002).

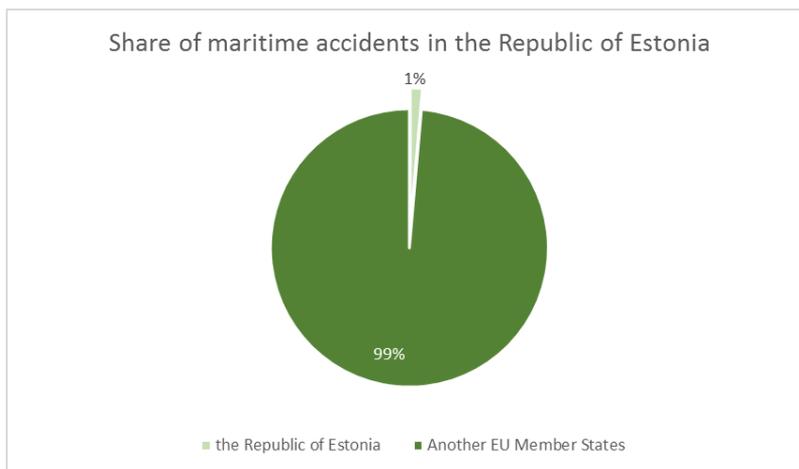


Fig. 7. Share of maritime accidents in the Republic of Estonia

The composition of the employees of the Commission is also approved by the same Ministry, but the number of staff units is not clearly indicated here (Statutes of the safety investigation center). Thus, there is again an indirect pressure on the functioning of the subordinate structural unit. And it also indicates the possibility of the Minister making changes to the number Estonian Safety Investigation Commission staff at its own discretion. Subsequently, this trend leads to unplanned spending from the state budget.

The legal status of MA is regulated by the Statutes of the Maritime Administration of the 12 February 2003 № 34, approved by the Minister of Economic Affairs and Communications (Statute 34, 2003). It is a state institution operating in the field of IEC management, which performs the functions of management, exercises state supervision and applies state coercion on the basis established by the law. It is accountable to a minister who directs and coordinates its activities and exercises official supervision over it in the manner prescribed by the law. MA prepares and submits accounting and statistical reports in the manner prescribed by the law. The activities of the administration are coordinated and organized by the IEC Secretary General. MA cooperates with the aviation and maritime

departments of the Ministry. The expenses of the administration are covered from the state budget, and the IEC approves, changes and monitors the execution of its budget.

The activities scope of the analyzed body includes the performance of management and state supervision functions within the framework of the tasks stipulated by EU laws and legislation, and the application of state coercion to ensure safe and reliable water traffic in the sea areas and navigable inland waters of the Republic of Estonia.

The structural divisions of MA are the Maritime Security Service, the Hydrography and Navigational Marking Service, the General Service and the Vessel Traffic Department. The structure and composition of this body is approved by the minister to whom he reports, on the proposal of the director general of the same body. Officials have the right to be present while on duty in ports, boats, shipping companies and maritime training institutions. The general manager approves the Statutes, which sets out the structure and functions of the MA structural unit, job descriptions of employees (Statute 34, 2003).

Based on the analysis of the norms of the Statutes of the Maritime Administration, it can be argued about their analogy, similarity with the norms of the draft Regulation on the Commission for Safety Investigation. At the same time the difference between these bodies is that the investigation of the safety of a very serious maritime accident is organized by the IEC structural unit, the Commission, and the MA is the organizer of the investigation of the safety of a maritime accident, a dangerous incident and a maritime accident involving a pleasure craft, a vessel performing public administration functions. inland navigation vessel and fishing vessel less than 15 meters in length (Act 33, 2011). In the author's opinion, in this case it would be more expedient to join the MA to the Commission. It is due to the fact that the MA's main functions and tasks are quite general, they are not endowed with maritime specifics in accordance (Statute 34, 2003). Therefore, the reorganization of such an administration should not affect the safety investigation including the maritime sphere.

3.7. The Hellenic Republic

The Hellenic Republic ranks first among the EU member states for the highest number of maritime accidents and incidents. This is 43% (Fig. 8). This situation requires analysis and research of the legal status of the body responsible for this area.

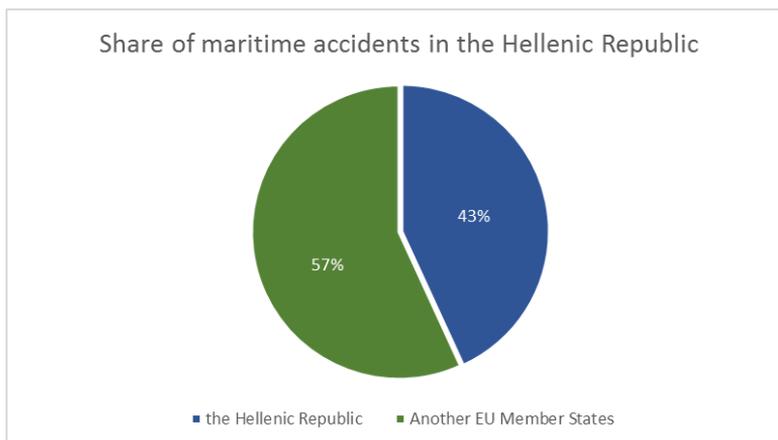


Fig. 8. Share of maritime accidents in the Hellenic Republic

In this country the body is the Greek Bureau of Marine Accident Investigation (hereinafter - HBMCI) established and functioning in accordance with Law 4033/2011: Adaptation to the provisions of (Directive 2009/18/EC, 2009) of the European Parliament

and of the Council of 23 April 2009 on the establishment of the fundamental principles governing the investigation of maritime transport accidents and on the amendment of Directive 1999/35 / EC of the Council. and Directive 2002/59 / EC of the European Parliament and of the Council on the integration of regulations, implementing measures and other provisions of the 17 December 2011 № 4033/2011 (Law 4033/2011, 2011). This body is administratively independent and subordinate to the Ministry of Civil Protection, as well as independent from the bodies and services responsible for the maritime safety and maritime safety of ships and, mainly, for the control of maritime traffic, proper operation and seaworthiness, from any individual or legal entity, interests which may conflict with the mission entrusted to him (Law 4033/2011, 2011). I believe these norms of the above-mentioned NLA may have difficulties with implementation in practice. It is due to the fact that in Greece like other EU member states surveyed, HBMCI is subordinate to the Ministry of Civil Protection.

The analyzed Greek law stipulates the number of employees in this body clearly. So, it is controlled by the head, managed by the director and consists of the following departments: 1) Department of the first technical investigation (10 investigators); 2) Division B Research, Applications and Statistical Analysis (8 people); 3) Department C of administrative, financial and legal support (8 people). Moreover, their duties are presented in the form of specific actions during the investigation based on the analysis Law 4033, 2011. It seems that the latter requires revision, because, firstly, the rights of these employees must be spelled out and enshrined at the legislative level, and, secondly, the duties of HBMCI's employees should not be fixed in the (Law 4033/2011, 2011) as an algorithm for action, which the interested party allows to influence the result of a particular study, but in the form of a certain list of responsibilities that take into account all possible options for action in this direction.

Thus, although the Greek legislation is presented in the form of one legal regulation, it requires a rethinking and adjustment of its norms, taking into account the above problems.

4. Concluding remarks

An analysis of the legislation of the EU member states, selected by a random sample, showed that they have a single common problem: the national authority for the investigation of marine accidents and incidents submits to some national ministry and, accordingly, most of them are financed from the state budget. All this affects the results of the investigation. The «independence», indicated for each IPIBCMMAI in the corresponding NLA, must be implemented in practice. It is necessary to revise some norms in the EU legislation and make amendments: «The establishment, control over the activities of such bodies will be carried out by the authorized EU body. The funding will come from the EU budget. Any interactions of the IPIBCMMAI with any national authority should be in the consultations, cooperation, with an EU body - submission of a report on its activities». Such actions are necessary to avoid the deterioration of the environmental situation in the world, increase in expenditures from the state budget of an EU member state. They are a challenge to contemporary existing problems.

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