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## **OTHER NATIONAL BODIES COMPETENT IN MATTERS RELATING TO MARINE ACCIDENTS AND INCIDENTS IN THE EU COUNTRIES\***

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### **Abstract**

The modern maritime state pays attention to the safety of navigation, environmental protection, the quality of education of sailors, etc. All of them together affect the environmental safety of both an individual country and the whole world. Therefore, the purpose of this study will be to analyze the legislation of some EU member states where an impartial permanent investigative body has been established and is functioning, competent in matters of both maritime accidents and incidents, and other than them. According to the results obtained, appropriate conclusions will be drawn. Such a study can be carried out using the following methods: 1) a random selection of EU member states, which have the analyzed body, an assessment of their national legislation; 2) examination of some components of the legal status of such a body in the above-mentioned EU member states; 3) author's recommendations using the modeling method regarding the feasibility, effectiveness of the functioning of an impartial permanent investigative body competent in matters of both maritime accidents and incidents, and other than them, adjusting the national legislation of the EU member states in accordance with EU legislation to avoid deterioration the world.

*Keywords:* EU, maritime accidents and incidents, national marine accident and incident body, normative legal act

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### **1. Introduction**

In modern conditions, in addition to environmental safety, it is also becoming relevant to reduce the budget for the functioning of a state body, to provide highly qualified specialists in their field or like. In this situation, the solution is to create and operate the body

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with a broad mandate. For example, accidents investigation in the maritime and aviation sectors. This practice is also supported by the EU: each EU member state should have an impartial, permanent investigative body with the necessary competence in matters related to maritime accidents, incidents and other than maritime accidents (Directive 2009/18/EC, 2009). The results of studying the legislation of the EU member states on this issue, where there is such a body, show the following: one acceptance a normative legal act (hereinafter - NLA) regulating the legal status of the above body is not sufficient. This is due to the fact that the norms themselves do not meet the requirements of EU legislation, cannot be implemented in practice due to the lack of logic and consistency in their presentation. The consequence is a constant search for options to preserve the existing level of environmental safety, constant improvement of the legal status of the body responsible for the investigation of marine accidents, incidents without detailed study and revision of the existing «white spots» in this direction. It means the national legislative framework of the EU member states on this body, which can be implemented and will comply with EU legislation, should be adopted in order to reduce marine accidents, incidents and consequences from them.

The purpose of this study will be to analyze the legislation of some EU member states where an impartial permanent investigative body has been established and operates, competent in matters of both maritime accidents and incidents, and other than them. And based on it, positive and negative aspects of the subordination, structure, and competence of the body will be formulated, recommendations for rational and effective changes in this direction will be proposed.

This study consists the following parts: a) a random selection of EU member states where there is an impartial permanent investigative body competent in matters of both maritime accidents and incidents, and other than them: the Republic of Bulgaria, the Republic of Croatia, the Republic of Finland, the Republic of Latvia, the Republic of Slovenia and the Portuguese Republic; b) an examination of the legislation of the studied EU member states regarding some components of the legal status of the studied body; 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**

Legislation of the EU member states studied in the aspect - the Republic of Bulgaria, the Republic of Croatia, the Republic of Finland, the Republic of Latvia, the Republic of Slovenia and the Portuguese Republic. It can be argued there are no marine accidents or incidents in 5 out of 6 countries selected for the study from the analysis of the graph in Fig. 1. At first glance, it's a positive dynamic, an experience. Such countries legislation on the body could be adopted. However, the current practice of not submitting all reports on maritime accidents and incidents to the Global Integrated Shipping Information System requires an analysis of the situation and the adoption of drastic measures. The reasons are the period of investigation (from 3 months to a year or more), reports bureaucracy, absence of fines, and other sanctions for not providing these reports. Consequently, it will be impossible to carry out any measures to further prevent such maritime accidents and incidents. Accordingly, it is not possible to fully identify the damage from such phenomena caused to the environment. It can be calculated only by those reports in the database, or by sea accidents, incidents known through the media.

Table 1 displays information on the body created and functioning in the above countries, its independence, subordination and number of employees. Research and obtaining results here were accompanied by stages: 1) a random selection of EU member states with an impartial permanent investigative body competent in matters of maritime accidents and incidents, and other than them, analysis of their national legislation; 2) an examination of some components of the legal status of such the body in the above-mentioned EU member

states; 3) author's recommendations using the modeling method regarding the feasibility, effectiveness of the functioning of an impartial permanent investigative body competent in matters of both marine accidents and incidents, and other than them, adjusting the national legislation of the EU member states in accordance with the norms of EU legislation in order to avoid deterioration of environmental safety in the world.

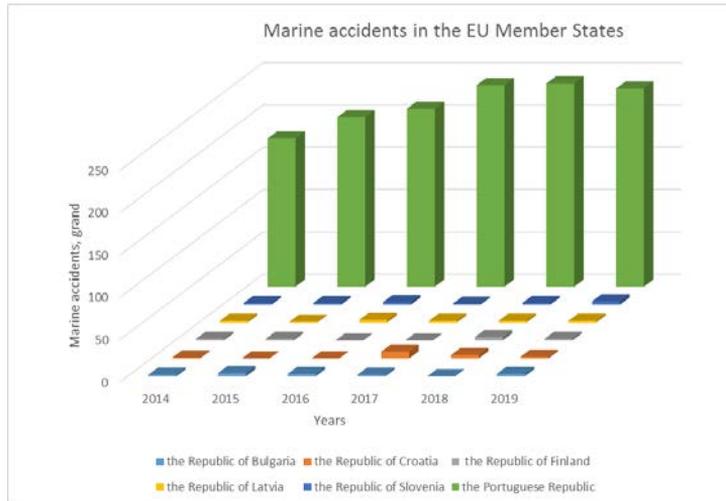


Fig. 1. Maritime accidents in the selected EU Member States

Table 1. Others national authorities competent both maritime casualties, incidents and non-maritime accidents in the EU countries

<i>The EU country</i>	<i>Other national authorities competent both maritime casualties, incidents and non-maritime accidents in the EU countries</i>	<i>Legislative independence</i>	<i>Subordination</i>	<i>The number of employees</i>
The Republic of Bulgaria	The National Board for Investigation of Accidents in Air, Water and Railway Transport	Yes	The Council of Ministers The Ministry of Transport, Information Technologies and Communications	11
The Republic of Croatia	The Agency for Research of Air, Maritime and Railway Accidents	Yes	The Government of the Republic of Croatia	not indicated
The Republic of Finland	The Accident Investigation Council	Yes	The Ministry of Justice	not indicated
The Republic of Latvia	The Transport Accident and Incident Investigation Bureau	No/ Yes	The Ministry of Transport	10 people, as needed, can involve an unlimited number of specialists

The Republic of Slovenia	The Ministry of Infrastructure	No	The Government of the Republic of Slovenia	not indicated
The Portuguese Republic	The Directorate of Marine Accident Investigation and Directorate of Aeronautical Meteorology (GAMA)	No	The Ministry of Agriculture and the Sea	not indicated

### 3. Results and discussion

#### 3.1. The Republic of Bulgaria

The Republic of Bulgaria is one of the five studied EU countries with the minimum number of maritime accidents in the last 6 years (Fig. 2). In the author’s opinion, such statistics requires the analysis of the national authority for marine accidents and incidents, first of all.

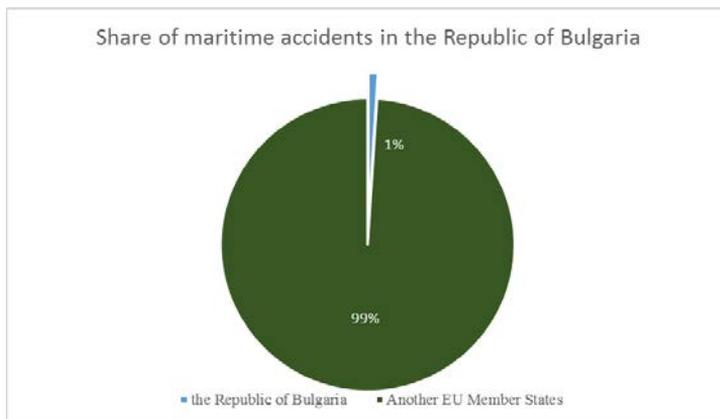


Fig. 2. Share of maritime accidents in the Republic of Bulgaria

In the Republic of Bulgaria such a body is the National Board for Investigation of Accidents in Air, Water and Railway Transport (hereinafter - NBIAAWRT) in accordance with the Decree of the Council of Ministers № 6 of the 22 January 2020, The establishment of a National Board for Investigation of Accidents in Air, Water and Railway Transport and on the adoption of Rules of Procedure, Structure and Organization of the National Board for Investigation of Accidents in Air, Water and Railway Transport (Decree 6, 2020). It was created taking into account the Directives 2004/49/EC norms, which were not implemented in the legal status of its predecessor. NBIAAWRT is a permanent, independent, specialized, collegial state body under the Council of Ministers, an independent legal entity according (Decree 6, 2020). The chairman of the board is the deputy budget manager of the minister of transport, information technology and communications. Consequently, the independence of the newly created body is secured only at the legislative level, but in fact it does not exist. As in practice, independence will disappear when the Council of Ministers receives funding from the Ministry of Transport, Information Technology and Communications. Although according to the Rules of Procedure, Structure and Organization of the National Board for Investigation of Accidents in Air, Water and Railway Transport: «The target volume of budgetary expenditures in the main areas - personnel costs, maintenance and capital expenditures, is approved by the

National Assembly on the state budget of the Republic of Bulgaria for the corresponding year» (Decree 6, 2020). Thus, it is necessary for NBIAAWRT to have an independent budget, which will allow it to be financially independent.

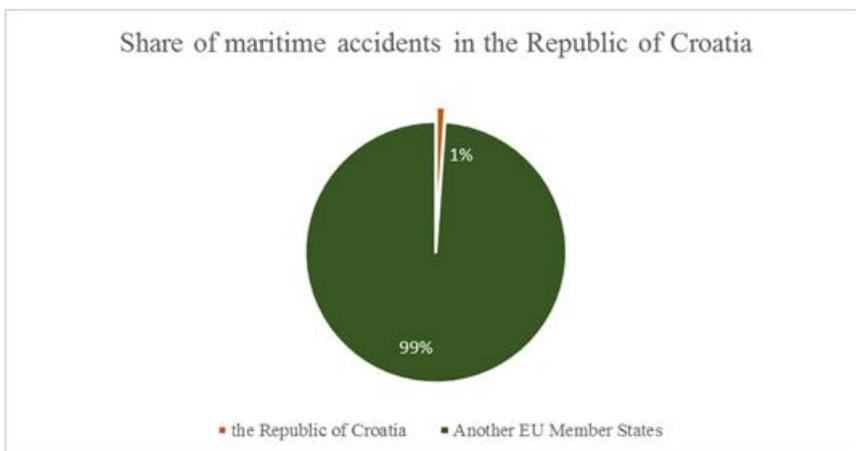
There are 11 full-time positions in the staff of this board - President, 2 vice-presidents and 8 full-time inspectors. President and 2 Vice Presidents are appointed by the Prime Minister. In the author's opinion, it implies the tacit subordination to the Prime Minister of the President and 2 vice-presidents of the analyzed body is again traced.

In the field of investigation of marine accidents and incidents NBIAAWRT's powers are described in sufficient detail based on the analysis of (Decree 6, 2020) and Ordinance of the Minister of Transport, Information Technology and Communications № 23 of the 24 October 2011, On reporting and investigation of marine accidents and incidents. However, in practice the implementation of the assigned powers to the full extent of this Board may be problematic due to the above problems. Thus, there is an attempt to fulfill the requirements of the relevant norms of the EU Directives by adopting a new NLA and creating a new body with old employees on the part of the Bulgarian government. Moreover they are almost identical to their predecessors according to the comparative analysis. In the author's opinion, such events are nominal, and the efficiency of NBIAAWRT functioning will be rather low.

### *3.2. The Republic of Croatia*

Croatia is one of the five studied EU countries with a small number of maritime accidents and incidents over the past 6 years (Fig. 3). The information displayed depends primarily on the body that is authorized to do this. It is necessary to conduct research on its legal status.

In Croatia the body under consideration is the Agency for Research of Air, Maritime and Railway Accidents (hereinafter - the Agency), established under the Law on the Establishment of the Agency for Research of Air, Maritime and Railway Accidents № 54/13, 96/18 of the 11 August 2018 (Law 54/13 & 96/18, 2018). The body is a legal entity functionally and organizationally independent of all bodies responsible for air, sea and rail transport, all legal entities and individuals, which on the basis of public authority independently performs the tasks defined by Law, as an activity of interest to the Republic of Croatia. The Agency began its activity on the day of making an entry in the court register. It's in the 29 July 2013.



**Fig. 3.** Share of maritime accidents in the Republic of Croatia

There is an inconsistency in the norms of the analyzed NLA: the founder of the body is the Republic of Croatia; the Government of the Republic of Croatia enjoys fundamental rights, and the Agency is functionally and organizationally independent of everyone.

The bodies of the investigated legal entity are the Board, consisting three members appointed by the Board of the Republic of Croatia after an open tender held by the Ministry of Maritime Affairs, Transport and Infrastructure, and the Director. At the same time the members of the Board of the Agency cannot be employees of this Agency, are hired or perform other functions in legal entities to which the provisions of the law regulating air transport, maritime affairs and the safety and interoperability of railway transport are applied, be owners or co-owners or members of their management and supervisory boards or perform other tasks that may lead to a conflict of interest. There is a deputy director, three chief investigators, permanent and occasional expert advisory bodies as necessary in this body. Thus, the Agency, which began to function five years after the adoption of the relevant NLA, has a clear number of staff and non-staff employees that is not regulated at the legislative level. In the future it may lead to an uncontrolled increase in staff, additional costs from the state budget of the Republic of Croatia, from which the regular activities of this body are financed.

Based on the analysis of (Law 54/13 & 96/18, 2018), the powers of the Agency's employees are presented in the form of general phrases, without specific actions and resemble a kind of algorithm.

Consequently, in fact the Agency is also dependent on the Government of the Republic of Croatia, although at the legislative level the opposite is true. The legal status of the body requires amendments by the legislative body for its more efficient functioning.

### 3.3. The Republic of Finland

The Republic of Finland is also characterized by a small number of maritime accidents and incidents over the past 6 years (Fig. 4). Such positive statistics indicate the need for an analysis of the body responsible for this area.

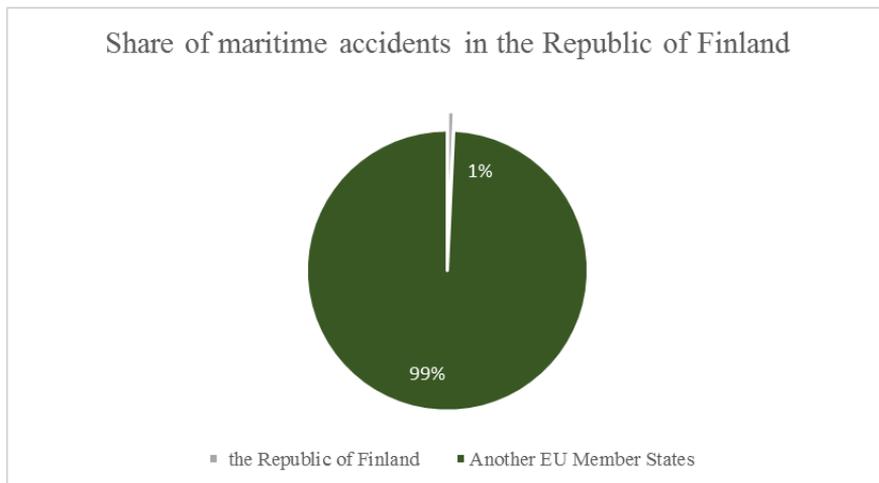


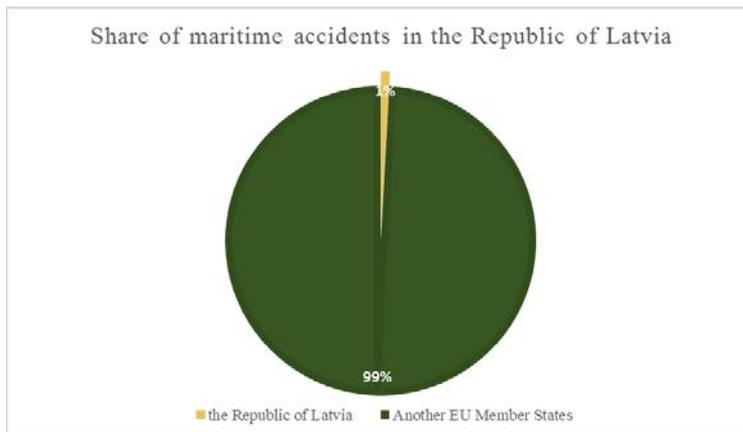
Fig. 4. Share of maritime accidents in the Republic of Finland

There is the Accident Investigation Council (hereinafter - the Council) in Finland. Its legal nature is regulated by the Safety Investigation Act № 525 of the 20 May 2011 (Act 525/2011, 2011). The Council exists under the Ministry of Justice and performs his tasks independently. He is also responsible for the investigation of marine accidents and accidents.

The Council's composition is the director, security investigators and other officers, as well as other staff as required. The director is appointed by the government. At the same time the exact number of employees in the body is not regulated by these regulations. From the analysis of the (Act 525/2011, 2011), it can be concluded that the Council's tasks are quite general, but their implementation is fixed at the legislative level precisely and clearly. Funding for the body comes from the state budget in accordance the Law on the Council of State № 175 of the 28 February 2003, Government Statute № 262 of the 03 April 2003. Thus, the implementation of the norms of European legislation occurs only in theory (at the legislative level in the conflicts form), but in practice - indirect control, supervision over the activities of the Council, unlimited spending of funds from the state budget with a clearly defined algorithm of actions. As a result, in the opinion of the author, in the future will lead to the impossibility of finding those responsible for the problems described above.

### *3.4. The Republic of Latvia*

The Republic of Latvia is one of those EU countries where 1% marine accidents and incidents over the last 6 years are among those studied (Fig. 5). In the author's opinion, one of the factors influencing these data is the legal status of the national authority in this direction.



**Fig. 5.** Share of maritime accidents in the Republic of Latvia

In this country the investigated body is the Transport Accident and Incident Investigation Bureau (hereinafter - TAIIB). Its legal status is regulated by the Cabinet Regulation № 973 of the 20 December 2005, Regulations of the Transport Accident and Incident Investigation Bureau (Regulation 973, 2005). It can be stated the Latvian government completely ignores the norms of EU legislation on this issue based on the analysis of this NLA. For example, TAIIB is a direct management institution under the supervision of the Minister of Transport. His activity's purpose is to fulfill the functions of state administration in the field of investigation of aviation accidents and incidents of civil aviation, investigation of serious railway accidents and serious accidents, as well as investigation of marine accidents and incidents. The Bureau's activities do not create legal consequences for third parties, unless otherwise provided by NLA. At the same time in later legislative acts (for example, clause 10 of the Resolution of the Cabinet of Ministers № 561 of the 12 July 2011, the Procedure for Investigation of Marine Accidents and Incidents) the body must already be independent in its legal structure and making decisions from any organization that may have an interest in not disclosing the cause of the accident or incident.

In the author's opinion, in Latvian legislation such a conflict may negatively affect the reliability and correctness of the data in the reports during marine investigations.

The internal organizational structure of the body is approved by the Director. The staff is represented by ten employees. However, «this Bureau has the right to involve other specialists in the investigation of aviation accidents and incidents of civil aviation, railway accidents and maritime accidents and incidents, as well as to request and receive information and documents from legal entities and individuals necessary for the investigation to carry out these tasks» (Regulation 973, 2005). Hence we can conclude that they are also trying to fully use the received budget for the year. Since January 2010 TAIIB has been acting as an extra-budgetary institution, and, accordingly, the state budget does not contain an item of expenditures for it (Law 41, 1994). This body receives funding in accordance with the procedure established by NLA: from receipts for air navigation services, from financing the railway infrastructure and from the funds of the Latvian Maritime Administration, received in accordance with the prices established by the Cabinet of Ministers for paid services provided within the framework of public administration tasks, and other own income (Law 102/15, 1998; Law 123, 1994; Law 168, 2002). Consequently, the body has a budget. The income is formed from various revenues from other bodies. For example, the «State Agency «Civil Aviation Agency» is an off-budget institution of state administration under the supervision of the Ministry of Transport. It is financed from funds received for the provided public services and other own revenues, gifts and donations, as well as foreign financial assistance in accordance with the prices of public services and from part of the revenues for air navigation services in the Riga flight information region in accordance with the rules of the Cabinet of Ministers on the procedure for the distribution of charges for air navigation services, as well as from revenues for ensuring the safety of aircraft flights and overseeing the safety of civil aviation in accordance with the rules of the Cabinet of Ministers on collection of fees for services provided at the national civil aviation aerodrome» (Law 123, 1994).

Thus, the government of the Republic of Latvia has relinquished responsibility for financing TAIIB and transferred it to third parties. It thereby forced, perhaps, the State Agency «Civil Aviation Agency» to expand the scope of public services or increase the cost of the latter for self-sufficiency. The author believes that this approach has both positive aspects (for example, the state budget has reduced the expenditure side or increased other items of the budget at the expense of the same funds), and negative (for example, the imposition of additional public services on the respective buyers).

Based on the analysis of the relevant Latvian legislation (Regulation 973, 2005, : II) it can be argued that the functions and powers assigned to the TAIIB are sufficiently detailed and enshrined at the legislative level.

In the author's opinion, the legal nature of the investigated body also requires revision by the authorized bodies in order to agree on the NPA to avoid any influence on the results of the reports from other bodies of the EU country.

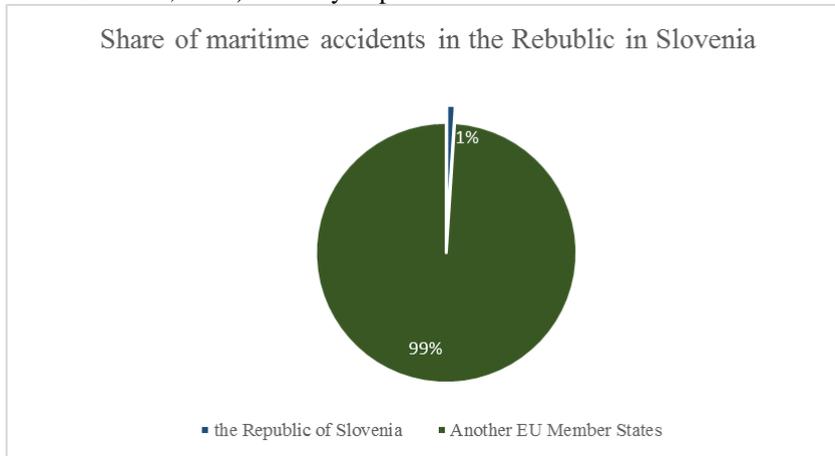
### *3.5. The Republic of Slovenia*

There is also a small number of maritime accidents and incidents in the Republic of Slovenia (Fig. 6). It can be concluded that these statistics may be influenced by the current national body responsible for this area.

In this EU Member State the investigated body is the Ministry of Infrastructure. And the Maritime Administration of the Republic of Slovenia (hereinafter - RS), which is part of its structure, according to the Decree on bodies within ministries of the 14 May 2015 (Decree 35/15, 2015) is an administrative body within the above ministry, created to perform specialized professional tasks (Act 113/05, 2002).

The RS Government manages the state administration through ministers, supervises the work of ministries, gives them guidance on the implementation of policies, legal acts, and

also ensures the coordinated implementation of their tasks by the ministries. Accordingly, it also applies to the Ministry of Infrastructure. Therefore, we can conclude that the norms of (Directive 2009/18/EC, 2009) not fully implemented.



**Fig. 6.** Share of maritime accidents in the Republic of Slovenia

The activity's scope of the Maritime Administration is quite extensive based on the analysis of (Decree 35/15, 2015) and does not contain specific regulations regarding the scope of marine accidents, incidents. Thus, although it is the only subdivision in the Ministry of Infrastructure related to the sea, there is no connection with the issues of marine accidents, incidents. RS legislation has a Maritime Code of the 23 March 2001 and Maritime Accident Investigation Regulation of the 25 August 2011 (Maritime Code, 2001; Decree 67/11, 2011). The last clearly states: «Anyone who learns of a maritime accident that has occurred in the internal waters or territorial sea of RS, or in which a vessel flying the Slovenian flag is involved, must immediately notify the police, the Notification Center or the Maritime Administration of RS. On the basis of the message received the authorities should immediately inform the investigating body of the ministry in charge of maritime affairs, the Maritime Administration and the police if there is a maritime accident on a military vessel, as well as the ministry in charge of defense». Thus, in the author's opinion, it can be assumed there is a separate body in the Ministry of Infrastructure, which is either subordinate directly to the minister, or is included in one of the three administrative bodies of such a ministry, - RS's Office for Infrastructure, the RS's Maritime Administration or the RS's Inspectorate for Infrastructure. The issue remains unresolved since national legislation does not contain clear rules and regulations. The powers of the investigator are quite broad based on the analysis of the norms of the (Decree 67/11, 2011). After studying the national legislation of this country it can be stated it is not fixed by whom the investigator is appointed, what their state is, but Maritime Accident Investigation Regulation of the 25 August 2011 mentions an investigator in the amount of 1 person. It means this aspect requires specification. Funding comes from the financial plan of the Ministry of Infrastructure, adopted in accordance with the Public Finance Law (Act 113/05, 2002).

It seems that RS from the other selected EU member states is the only representative where in the Ministry of Infrastructure the legal status of an investigative body is not enshrined at the legislative level, and certain norms establishing its rights, duties, tasks are in conflict with EU legislation. This situation is a vivid example of the fact that the main thing is to determine the causes of an accident, to prevent their occurrence in the future (Maritime Code, 2001).

### *3.6. The Portuguese Republic*

Portugal is an EU country that accounts for 95% of maritime accidents and incidents in the last 6 years among the studied EU countries (Fig. 7). I believe that one of the influencing factors is the legal status of the national authority for marine accidents and incidents.

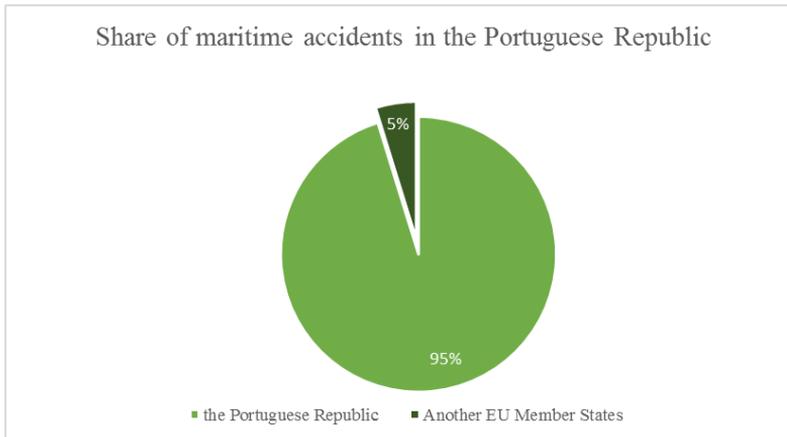


Fig. 7. Share of maritime accidents in the Portuguese Republic

In this country the body is the Directorate of Marine Accident Investigation and Directorate of Aeronautical Meteorology (hereinafter - GAMA), created by (Decree Law 236, 2015). «It is the central service of direct government of the state, endowed with administrative autonomy and acting under the Ministry of Agriculture and the Sea, an investigative body which transposed Directive, 2009, laying down the fundamental principles for the investigation of accidents in the maritime transport sector». Consequently, the Portuguese legislators have partially complied with the provisions of (Directive 2009/18/EC, 2009), as they ignored the another provisions of this NLA regarding independence in its organization, legal structure and decision-making process from any other interested party, whose interests may conflict with the functions assigned to it.

Based on the analysis of the norms of the (Decree Law 236, 2015), it can be argued the financing of the functioning of GAMA, as well as the logistical and administrative support, are quite peculiar. It is due to the fact that support is provided by the General Directorate of Maritime Policy (it is the central direct government service of the state within the Ministry of Agriculture and the Sea), and revenues consist appropriations allocated in the state budget and own revenues. For example, remuneration and other income due as a result of carrying out its activities; compensation and subsidies provided by national, community or non-hospital bodies in the framework of structural programs and projects and others. In the author's opinion, in (Directive 2009/18/EC, 2009) the required independence is possible for GAMA, if, firstly, it completely abandons allocations from the budget and goes to self-sufficiency, and secondly, does not function within any ministry or be subordinate to others way, be dependent on another government body of the Portuguese Republic.

The body is the national oversight body for civil aviation meteorology and the investigative body in the investigation of accidents in the maritime transport sector (Decree Law 236, 2015), it can be assumed that a clear number of staff positions is problematic here. Although in (Decree Law 236, 2015) an attempt is made: the director, leaders of multidisciplinary teams and workers are indicated. At the same time the number of the last two staff units is not fixed in the analyzed NLA. At first glance, it allows us to talk about an increase in the cost of operating GAMA. However, the above income, in my opinion,

completely change the vision, since this body is limited by its own budget, where the income is also made up of own income. However, their percentage has not been established.

«GAMA, as the accident investigation body in the maritime transport sector, is committed to investigating maritime accidents and incidents as efficiently and quickly as possible in order to identify the underlying causes, prepare and disseminate appropriate reports and issue recommendations on maritime safety measures aimed at reducing the number of accidents in sea». And to this mission GAMA has established the relevant responsibilities at the legislative level. Analyzing these responsibilities, it can be argued that they represent more interaction, cooperation with other bodies (for example, the European Commission, the General Directorate of Natural Resources, Security and Marine Services, the General Directorate of Maritime Authorities about incidents or incidents at sea). It seems that this is due to the fact that there is a wide area of activity. Therefore, it is necessary to revise the responsibilities of this body, to consolidate at the legislative level the detailed powers, to ensure the independence of GAMA in accordance with (Directive 2009/18/EC, 2009), to determine the required number of employees.

#### **4. Concluding remarks**

A study conducted among randomly selected EU member states gave the following results. Firstly, the lack of compliance with the norms of (Directive 2009/18/EC, 2009). Secondly, in most cases the broad scope of action of the considered bodies has a negative effect: the NLA governing its legal status requires revision and adjustment, for example, in powers, subordination, number of employees, etc. Thus, the mere consolidation at the legislative level of the presence of a national authority competent in matters relating to marine accidents and incidents, in practice, does not give the expected effect, but in most cases acts as one of the expenses of the corresponding budget with an unlimited amount. In the studied EU countries the practice cannot be recommended and requires rethinking.

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