

C M I Questionnaire

Answers of B M L A

Part I

Question 1: Who has responsibility for administering and enforcing maritime safety and marine pollution prevention and control in the waters under the jurisdiction of your State?

Answer: According to the Commercial Shipping Code (C S C) (published in the State gazette, 55 of 14.07. 1970, recently amended in State gazette 55 of 25.06. 2004) the authorized body responsible to the control of maritime safety and marine pollution prevention is the Executive Agency “Marine Administration” at the Minister of transport and communications. This Agency is a legal entity on budget and own resources, a secondary authorizing officer with budget credits. The headquarter of the Executive Agency “Marine Administration” is Sofia and this authorized body has territorial sections in Burgas, Varna, Russe and Lom.

The Executive Agency “Marine Administration” exercise :

1. A State control on Bulgarian flag vessels, related to observance of legally established administrative, technical and social requirements;
2. A State control in the ports on the foreign-flag vessels from the moment of their entry until their departure from Bulgarian ports. This State control consists of international safety standards observance, prevention of pollution and occupational safety and health on board of vessels, entering to Bulgarian ports. In a period of a calendar year the Executive Agency “Marine Administration” accomplishes a number of examinations, covered minimum of 25 percent of vessels, entering to Bulgarian ports;
3. A state control on the safety shipping in maritime territories and Bulgarian length of Danube river.

The Minister of transport and communications determines by ordinances the legal requirements related to the safety of various types of vessels, their construction and shipping equipment.

Part II of Commercial Shipping Code (CSC) consists of special legal requirements dedicated on shipping safety. According to art.72 of CSC there is no possible to put into service a vessel without an authorized statement of Executive Agency "Marine administration" that this vessel is build, get ready and it's crew has the qualification needed according to the safety of shipping requirements. The ship-owner has to cooperate with the official authorities and to enterprise the measures needed concerning the vessels and it's crew safety, the prevention of marine pollution from vessels and the keeping and restoration of fish resources.

The ships and other vessels, shipping in the internal waters, territorial sea and adjacent waters of Republic of Bulgaria, must to have equipment of radio-communication methods approved by Executive Agency "Marine administration". This approval has to be done in accordance with the requirements of registration, equipment, installations of radio-communication established by Telecommunications.

According to art.73 of CSC the Executive Agency "Marine administration" accomplishes vessels and ship-owners examinations related to safety of shipping requirements and prevention of marine pollution requirements. As a result of these examinations the Executive Agency "Marine administration" issues authorizations. The examinations above mentioned could be accomplished by other organizations authorized by Executive Agency "Marine administration" and approved by the Minister of transport and communications issues an ordinance related to the conditions and procedure of examinations. The determination of Bulgarian vessels class, the technical control on their construction and exploitation have to be accomplished by Bulgarian legal entities, named classification organization, or by foreign organizations receiving governmental approval by Executive Agency "Marine administration" and Minister of transport and communications.

After the examinations of vessels overall state, accomplished by Executive Agency "Marine administration" or other authorised

organisations. The Executive Agency “Marine administration” issues a special safety certificates, in the case that the requirements have been observed.

Question 2: When maritime accidents and/or marine pollution incidents occur within the waters under the jurisdiction of your State, what process of accident investigation is legally required?

Answer: According to art.79 of CSC Executive Agency “Marine administration”: investigates each accident occurred in marine territories and in internal waters of Republic of Bulgaria; investigates an accidents occurred with Bulgarian vessels although the place of those accidents; cooperates to foreign official administrations during the investigation of high sea accidents when a Bulgarian vessels have been involved and as a result of this accidents a Bulgarian or foreign citizen death or grievous bodily harm have been caused, or a serious vessels or equipments damages have been caused and their safe exploitation have been hind; investigates the cases of substances throwing out, when these substances have caused a marine or fluvial pollution or floor pollution; investigates the cause of sinking or throwing out of vessel or vessels cargo, consisting substances causing marine or fluvial pollution or pollution of marine floor. In the end of investigation, the Executive Agency “Marine administration” issues an ascertainment act related to accidents causes.

The Minister of transport and communications issues an ordinance related to the procedure of accident investigations.

Question 3: Do your State’s maritime accident and/or marine pollution investigative processes contemplate criminal charges against any ship’s personnel involved and, if so what action may be involved?

Answer: According to art.376 of CSC a captain, a pilot or a crew member, who have caused a ship wreck or average during the execution of his professional obligations, if this action is not considered as a crime,

is punished on disqualification in a period from six months to two years and imposed a fine from 200 to 1000 lv. (BGN leva). This is the administrative punishment stipulated in CSC. If the action is considered as a crime, the punishment imposed is in accordance to Penal Code (PC) of Republic of Bulgaria and the procedure is according to Penal Procedure Code (PPC). The action is considered as a crime in the cases when “corpus delicti” in PC is provided, and namely: art.123 of PC - when a death is caused as a result of ignorance or failure to perform correctly some professional obligations or other legally established work, which is a source of high danger, the punishment is to imprison maximum of five years; art.134 of PC – when a grievous bodily harm or medium bodily harm is caused as a result of ignorance or failure to perform correctly some professional obligations or other legally established work, which is a source of high danger, the punishment is to put in prison maximum of three years in the case of grievous bodily harm and to put in prison maximum of two years or probation in the case of bodily harm. Aggravated crimes are also stipulated – in the cases of bodily harm caused to more than one person or when the action is accomplished in a state of intoxication. In art.136 of PC dedicated on occupational safety and health rules a punishment to put in prison maximum of three years or probation or public reprobation is stipulated. If the action is committed by negligence, the punishment is to put in prison one year or probation.

The procedure concerning institution, accomplishment, ceasing and cassation of penal procedure is stipulated in Penal Procedure Code (Chapter III) and consists of two phases – prejudicial and judicial procedure.

The preliminary proceedings have to be initiated by the procurator. The investigators are the authorities of preliminary proceedings, but the procurator could accomplish some investigation or other proceeding actions. According to Bulgarian legislation the accused has the right to defence at the moment of detention.

Question 4: If there is no criminal process, what other investigative process is utilized?

Answer: In the cases when the action is not considered as a crime, the determining infringement and the imposing administrative sanctions

are according to Administrative Violations and Sanctions Act. The administrative procedures themselves are stipulated in administrative penal regulations in CSC.

A ship-owner, who is responsible in a case when his vessel is shipping in infringement of occupational safety and health requirements, is punished on infliction of a fine or pecuniary sanction from 2000 to 50 000 Bg leva (art.374).

A crew member, who is exercising his professional duties after using alcohol or other narcotic substances, dully approved, is punished on disqualification in a period from six months to one year (art. 375). In the case of repeated offence the punishment is a disqualification in a period from one to two years. A captain who has not exercise fir obligation to declare the transport or has not observe the rules related to transport of dangerous cargos or other cargos when this declaration is mandatory, is punished on imposing of fine from 1000 lv to 5000 lv, if the action is not considered as a crime (art. 377).

The CSC infringements have to be determined with acts issued by inspectors of Executive Agency “Marine administration”. There is an obligation to institute an act in the case of written notice to the Executive Agency “Marine administration” issued by the captain and related to infringements of crew members during the shipping. The penal provisions have to be issued by the Executive Director of Executive Agency “Marine administration” (or by authorized official). In the penal provision may be also determined a pecuniary compensation to cover all damages caused. The penal provision could be claimed by the ship-owner in the part consisting of compensation. It is delivered at the moment of it’s delivery to the captain.

Question 5: Does your State’s investigative process permit detention of seafarers and, if so, under what circumstances and with what safeguards?

Answer: The CSC consists of special legal regulation of cases related to ships detention and to captain competences. According to art. 74 of CSC the Executive Agency “Marine administration” could detent a ship in the port and in a period of 24 hours to make an investigation of the

ship because of safety reasons. In the case that the ship is considered as not able to shipping or to realize the aim of ship-owner, the Executive Agency "Marine administration" has to prohibit the ship's exploitation and to specify the defects needed to be eliminated. The shipping safety rules and the surveillance on the fishing vessels in internal water ways of Republic of Bulgaria are also applicable to the foreign-flag vessels unless an international agreement those Bulgaria is a contracting party, stipulates otherwise.

According to art. 89, p.3 of CSC the captain has the right to enterprise all measures needed if a person on board does not observe his legal orders. If a member of personnel on board endangers the vessel's safety or the safety of other persons and properties there in, or this action is considered as a crime according to Penal Code of Bulgaria, the captain has the right to detent the seafarers and other persons in question in isolated detention rooms.

According to art. 90 of CSC, when during the shipping a Penal Code crime was perpetrated, the captain have to execute the functions of investigator and have to observe the rules of PPC and the vessels investigation instruction. This instruction is approved by the Chief - Prosecutor and by the Minister of transport and communications of Bulgaria. The captain has the right to detent the suspected person and to surrender him to the authorities in the first Bulgarian harbor. When a crime is committed on board during the stay in Bulgarian harbor, the captain has to surrender the suspected person to the respective authorities.

In accordance with the General rules of PPC the investigator could detent the suspected person without a prosecutor's order when the crime is considered as a crime of general nature and the preliminary procedure is mandatory (for ex., when the suspected person was detained during the crime or after the crime commitment). In the detention provision the investigator should motivate the detention and has to advise the procurator no later than 24 hours (art. 202 of PPC). The procurator has to approve immediately or to repeal the detention. If the detention was made because of grievous crime of a general nature, the prosecutor may prolong this time limit to 3 days. In the case that during this period a legal action is not initiated, the investigator has to exempt the detained person.

According to art. 206 of PPC the detained person has the rights as follows: to know the reason of detention; to give explanations; to make references, notices or objections and to claim the prosecutor's provisions/the investigators' provisions when they harm his rights and legal interests.

According to art. 51 of PPC the accused has the rights as follows: to know the reasons and the proofs of his accusation; to give explanations; to present proofs; to take part in the penal procedure; to make references, notices or objections; to have a last plea at the bar; to claim the tribunal acts and acts of investigation authorities; to have a defender and to have a last plea. The defender could participate during the investigation process on demand of the accused.

Question 6: If seafarers are required to be present for an investigation, trial or other hearing will they be permitted to leave your State until such investigation, trial or other hearing takes place?

Answer: The analysis of PPC provisions leads to conclude that the accused could leave the country during the investigations/trial process, when that could not hinder to discover the objective evidence. The conclusion above mentioned is "per argumentum" (lat.) from art. 87, p.2 of PPC. According to this provision the accused could not be interrogated by delegation or by video-conference, unless the cases when the accused is abroad and that could not hinder to discover the objective evidence. Concerning the participation of the accused in the court session (the second phase of trial process), according to art. 268, p.3 of PPC the action could be tried in the absence of accused if: the accused was not found in the address mentioned or the address was changed and the respective authorities were not duly advised; his residence in the country is not known and after duly wanted it was not found; the accused is abroad, his residence is not known or he could not be subpoenaed because of other regions, or he was subpoenaed in regular way, but he was absent without good reasons.

Question 7: Does your State require a financial surety to ensure that seafarers return for any subsequent hearing and, if so, how is the amount of such a surety determined and what form is required?

Answer: According to art. 146, p. 1 of PPC one of bails is a safe pledge. The safe pledge is stipulated with the other three bails – common bail, house arrest and detention. The safe pledge could be pecuniary or in government securities (art. 150, p. 1). When the safe pledge is determined, the authorities have also to consider the property status of the accused. The safe pledge could be done by the accused but also by another person. The term to present this bail or to change it with another one (from common bail to safe pledge), is from 3 days to 15 days. The safe pledge has to be released when the accused is discharged, or the punishment is not to put in prison or the detention is made in the aim to execute the punishment (penalty of crime).

Question 8: Is your State’s maritime administration or other authority given legal responsibility for the protection, rights and welfare of all seafarers and, if so, how is this responsibility administered?

Answer: The Executive Agency “Marine administration” at the Minister of transport and communications is not authorized to give a legal defence to the seafarers (the crew members) in the cases of detention because of marine accident occurred. The Executive Agency “Marine administration” is a state control authority on the shipping safety. The seafarers defence has to be realized according to the procedure rules of PPC by legal defenders/advocates or other persons, stipulated in PPC. When the actions are not considered as a crime, the defence has to be done according to administrative legislation.

Part II

Question 9: If a maritime accident resulting in serious pollution occurs in waters under the jurisdiction of your State that involves a foreign-flag vessel with a crew of different nationalities, what is the expected role of vessel crew members held responsible in the subsequent investigative process?

Answer: Firstly, here we need to specify the applicable law. According to Section II of CSC dedicated on the applicable law, the reason and the limits of ship-owner responsibility are stipulated by the law of vessel’s flag country (“lex banderae” – lat.). According to art. 9 of CSC “ship-owner” is the person who use the ship although he is the real owner

or he uses the ship on another legal reason. Bulgarian law is applicable to specify the tort damages caused by vessel in internal sea waters, in territorial sea or in internal water ways of Bulgaria (art. 9, p. 2 of CSC). The compensations of damages caused by vessel's clash in internal sea waters, in territorial sea or in internal water ways are stipulated according to national legislation (art. 14 of CSC).

The analysis of provisions above mentioned leads to conclude that the different nationality of crew members is not important to determinate the applicable law. When Bulgarian law is applicable and namely, the cases related to the compensations of tort damages caused, the provisions of Obligations and Contracts Act (OCA) are available. According to art. 45 of OCA everybody is obliged to cover the tort damages caused guilty to another person. The guilt is always presumptive until the contrary is proved. We could indicate more provisions of Bulgarian civil law related to this question, namely: the person imposing a work is responsible for the damages caused during the work or in occasion to (art. 49 of OCA). The objects owner and the objects supervisor are jointly and severally liable for the damages caused by them (art. 50, p. 1 of OCA). In the cases of proximate damages a compensation is always needed. This compensation could be paid in a single or periodic payment. The compensation could be reduced in the case of contributory negligence. According to art. 52 of OCA the compensation for non-material damages have to be determined by the court "ex equo et bono". If the damage is caused by a member of persons, they are jointly and severally liable. The person responsible instead of another one has the right of regress.

When the action of seafarers (crew members) is considered as a crime, the P Code is applicable and the procedure is according to PPC provisions. When the action is not considered as a crime the administrative penal provisions of CSC are applicable (see the answer of question 3).

The CSC consists a special regulation on the oil-tanker owner responsibility in the case of oil and oil products pollution caused by the oil-tanker. There is a special administrative penal provisions included in a new chapter 15 of CSC, admitted in 2004. According to art.346 a the oil-tanker owner is responsible for the damages caused in case of oil-tanker accident (see more detailed analysis of this responsibility in the answer of

question 10).

Question 10: If the accident, as outlined in Question 9, is due to negligence but not wilful misconduct by responsible crew members, will your State proceed only with pollution damage claims under the accepted international civil liability and compensation system?

Answer: The answer of this question consists to a great extent in the answer of Question 9. If the accident mentioned above is considered as a tort, the guilt for the damages caused is presumptive until the contrary is provided. The regulation is according to OCA (see the answer of Question 9).

CSC consists a special regulation related to the oil-tanker owner's responsibility for damages caused and the oil and oil-products pollution occurred. According to art. 346b the compensation has to cover the proximate damages until the charges needed to restore the environment and also to cover the prevention measures reducing the damages and remoteness of damages. The oil-tanker owner has the right to reduce his responsibility in any case of accident and namely: until 3 million. Special drawing rights of International Monetary Found (IMF) in BG leva – for the oil-tankers with a tonnage until 5000 gross tones; the sum total of the amount in p. 1 and 420 Special drawing rights for every gross tone over 5000 gross tones, but not more than 59,7 million. Special drawing rights in BG leva – for the oil-tankers with over 5000 gross tones (art. 346 c). The oil-tanker owner has not the right to reduce his responsibility if the damages were guilty caused as a result of his own actions. The oil-tanker owner who is transporting a cargo more than 2000 tones broached oil must have an insurance, bank warranty or another financial equitable charge, covering the respective charge – until 3 million Special drawing rights of IMF in BG leva.

Each Bulgarian-flag oil-tanker transporting as a cargo more than 2000 tones of broached oil, must have on board certificate issued by the Executive Agency “Marine administration”. The condnitions and procedure are stipulated in a special ordinance.

A foreign-flag oil-tanker shipping on the flag of State – member of International convention related to civil responsibility for oil-pollution

(1992) and transporting a cargo more than 2000 tones broached oil, must have on board a certificate to prove an insurance, bank warranty or another financial equitable charge, covering the responsibility for oil-pollution damages, or a certificate to declare that the oil-tanker is a property of this State. The responsibility for oil-pollution damages according to art. 346 c is until the amount of 3 million Special drawing rights of IMF in BG leva. The certificate must be issued by State authorities of the oil-tanker flag. The Executive Agency “Marine administration” makes a register of certificates issued.

Question 11: If the answer to Question 10 is “No”, what other processes or procedures will be undertaken by your State?

Answer: The answer to this question consists in the answers to questions 9 and 10.

Question 12:

Answer: According to art. 13 of CSC the flag law (“lex banderae” – lat.) is applicable when the actions on board occurred in high sea or in neutral territory. Consequently, the applicable law is the foreign-flag law. In general, “lex banderae” is the most utilized provision in many countries to determinate the applicable law in the case of tort in high sea. Bulgarian legislation does not consist a general rule related to the applicable law in the case when the tort had not occurred under Bulgarian jurisdiction but some consequences have occurred in Bulgarian waters. In Bulgarian Civil code draft is provided that if the action is committed in the territory of one country but the harmful result occurred in the territory of another country (in the case outlined, in Bulgarian territory), the applicable law is the law which is more favorable for the injured person.

Question 13: regardless whether your State’s investigative process utilizes the criminal justice system or any other system, will the relevant vessel crew members be detained? If so:

a) **What is the legal reason for such detention?**

Answer: The legal reasons for the detention of those seafarers are

specified in CSC and in PPC, as follows: art. 89, p. 3 of CSC; art. 90 of CSC; art. 202 of PPC (see the analyse in the answer to Question 5, p.5-6)

b) What rights will the accused/detained crew member have during the process, and do such rights differ from those available to citizens of your State?

Answer: The rights of detained/accused crew members during the trial process do not differ from the rights of Bulgarian citizens. Their rights are stipulated in PPC. According to art. 206 of PPC the detained person has the rights as follows: to know the reason of detention; to give explanations; to make references, notices or objections and to claim the prosecutor's provisions/the investigators' provisions when they harm his rights and legal interests.

According to art. 51 of PPC the accused has the rights as follows: to know the reasons and the proofs of his accusation; to give explanations; to present proofs; to take part in the penal procedure; to make references, notices or objections; to have a last plea at the bar; to claim the tribunal acts and acts of investigation authorities; to have a defender and to have a last plea. The defender could participate during the investigation process on demand of the accused.

c) –

d) What is the expected length of such detention?

The captain has the right to detain the suspected person/seafarer and to surrender him to the authorities in the first Bulgarian harbor. When a crime is committed on board during the stay in Bulgarian harbor, the captain has to surrender the suspected person to the respective authorities.

In accordance with the General rules of PPC the investigator could detain the suspected person without a prosecutor's order when the crime is considered as a crime of general nature and the preliminary procedure is mandatory (for ex., when the suspected person was detained during the crime or after the crime commitment). In the detention provision the

investigator should motivate the detention and has to advise the procurator no later than 24 hours (art. 202 of PPC). The procurator has to approve immediately or to repeal the detention. If the detention was made because of grievous crime of a general nature, the prosecutor may prolong this time limit to 3 days. In the case that during this period a legal action is not initiated, the investigator has to exempt the detained person.

e) Where and how will the seafarers involved be detained?

Answer: According to art. 89, p.3 of CSC the captain has the right to enterprise all measures needed if a person on board does not observe his legal orders. If a member of personnel on board endangers the vessel's safety or the safety of other persons and properties there in, or this action is considered as a crime according to Penal Code of Bulgaria, the captain has the right to detent the seafarers and other persons in question in isolated detention rooms.

The captain has the right to detent the suspected person/seafarer and to surrender him to the authorities in the first Bulgarian harbour. When a crime is committed on board during the stay in Bulgarian harbour, the captain has to surrender the suspected person to the respective authorities.

f) What access to legal advice and/or defence will such personnel have available to them?

Answer: The access to legal advise and/or defence are regulated in general Bulgarian legislation. According to art. 51 of PPC the accused has the right to have a defender/advocate. The defender may participate during the investigation process, if the accused demanded.

g) Will the vessel's representatives, agents, family members, labour organization representatives, or lawyers be given immediate and full access to those detained?

Answer: there is a legal regulation related to defence by legal defender and by husband/wife, ascendant or descendent of the

accused (art. 67 of PPC). The representatives of employer and crew members could participate in the penal procedure as civil defendants, when a civil action had been proceeded against them (art. 65 of PPC).

h) Will the relevant seafarers have the legal right not to answer questions that may be considered self-incriminating, if so advised?

Answer: Yes, they have the right to not answer questions that may be considered self-incriminating.