

DENMARK

- 1.1 In Denmark, maritime safety and marine pollution prevention and control are generally governed by two acts of parliament, i.e. the Safety at Sea Act of 1998 is amended (referred to as the "SSA") and in the Maritime Environment Act of 1993 as amended (referred to as the "MEA").
- 1.2 The SSA contains general rules on the construction, equipment and operation of vessels, but it first of all constitutes a statutory framework which authorises the Ministry of Economic and Business Affairs to establish more detailed rules on maritime safety, including rules concerning construction equipment and operation of vessels and rules concerning navigation. It may be mentioned that e.g. the SOLAS Convention, the MARPOL Convention (as far as vessel requirements are concerned) and the COLREG Convention have been given effect in Denmark by way of regulations issued under the provisions of the SSA.
- 1.3 The MEA contains general rules on marine pollution prevention and control, but just as the SSA-it first of all constitutes a statutory framework which authorises the Ministry of the Environment to establish more detailed rules on marine pollution prevention and control. It may be mentioned that the MARPOL Convention (apart from vessel requirements) has been given effect by way of the MCA.

The MEA is administered by both the Ministry of the Environment, which is mainly responsible for issuing statutory instruments to provide more detailed sets of rules concerning marine pollution prevention and control and to ensure compliance with international conventions and agreements and the Ministry of Defence, which is mainly responsible for enforcing the rules in MCA by way of marine environment surveillance, including vessel inspections, and marine pollution control, including intervention against polluting vessels. The Ministry of the Environment has delegated a number of its powers under the MEA to different agencies, including the Environmental Protection Agency and the Maritime Authority. The Ministry of Defence has delegated most of its authority and the MCA to the Chief of Defence, which in turn has delegated its authority to the Admiralty. It is also noteworthy that the police have been given direct authority under the MEA to inspect vessels and intervene against polluting vessels.

1.4 both the SSA and MEA make the violation of certain provisions under the acts subject to criminal liability, and both shipowners, masters, officers and crew members may incur criminal liability.

Crimes are generally investigated by the police, prosecuted by the prosecution service and tried by the courts.

However, in the case of violation of rules established under the provisions of the SSA concerning certain log books related to the prevention of pollution or in the

case of violation of the prohibition of discharge of oil from vessels under the MCA, the Maritime Authority and the Admiralty respectively are - if the violation is deemed not to involve other punishment than the fine - authorised to issue a fixed-penalty notice which will dispense with the need for a trial if it is accepted by the offender.

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2.1 With regard to maritime accidents, which include pollution accidents in connection with bunkering vessels, the Division for Investigation of Maritime Accidents is required to investigate the accident to obtain information about the factual circumstances of the accident and to explain the cause of the accident.

As part of the investigative process, the Division for Investigation of Maritime Accidents is entitled to board vessels on proof of identity without a court order, and both the shipowner, master and chief engineer as well as anyone acting on their behalf are obliged to assist the Division for Investigation of Maritime Accidents in its investigation and to provide any information in this regard.

The investigations are generally conducted in accordance with the principles in IMO's Code for the Investigation of Marine Casualties and Incidents, but the Division for Investigation of Maritime Accidents may also request a maritime declaration to be given and heard in court at a special hearing, to which the shipowner, the master, the officers and any crew member may be summoned and will be required to give testimony.

2.2 With regard to marine pollution, which has not been caused by a maritime accident, the Admiralty is entitled to conduct random inspections of vessels to see if the rules in or issued under the provisions of the MEA are complied with and to conduct investigations of vessels which are actually or in danger of causing pollution.

As part of the investigative process, the Admiralty is entitled to board vessels on proof of identity without a court order, and in principle anyone on board is obliged to assist the Admiralty in its investigation since obstruction of the investigation is subject to criminal liability. Furthermore, the Admiralty is entitled to photograph, copy and seized documents or other relevant objects without compensation.

The Admiralty's inspections and investigations may not cause undue delay of or expense for the vessel.

3

3.1 Investigations of Maritime accidents performed by the Division for Investigation of Maritime Accidents is not per se contemplate criminal charges against any ships' personnel involved.

The purpose of an investigation is only - if possible - to adopt measures designed to reduce the risk of similar Maritime accidents in the future.

3.2 Investigations of vessels actually or in danger of causing pollution by the Admiralty does likewise not per se contemplate criminal charges against any ships' personnel involved.

The purpose of an investigation is only to prevent and control marine pollution.

Random inspections of vessels, on the other hand, are performed to see if the MEA is complied with and - if this is not the case - the offender may be reported to the police unless the Admiralty uses its authority under the MEA to issue a fixed-penalty notice which is subsequently accepted.

3.3 Investigations of potential violations of the SSA and the MEA, which are subject to criminal liability, are performed by the police either as a result of a report of a suspected crime or because the police itself has formed a suspicion.

The result of investigations performed by the Division for Investigation of Maritime Accidents and the Admiralty may be used by the police to bring criminal charges against the master, officers and crew of a ship.

Violations of SSA and MEA are punishable by fines, imprisonment for a maximum of 2 years and - in case of violation of SSA - deprivation of the right to serve as a master, navigator or engineer.

4 N/a

5

5.1 Although seafarers may be required to assist the Division for Investigation of Maritime Accidents and the Admiralty in their investigations and may be required to give testimony of a special court hearing as mentioned under item 2.1 above, the investigative process headed by the Division for Investigation of Maritime Accidents and the Admiralty do not permit the detention of seafarers, only vessels.

5.2 When investigating a potential crime, the police may, however, arrest and detain seafarer charged with the crime for up until 24 hours, but not for a longer period, unless a court order is obtained.

The court may allow the arrest and preliminary detention to be extended for a maximum of three times 24 hours, that detention for a longer period of time can only be ordered if - among other things - the offences punishable by imprisonment for 18 months or more and not if the purpose of detention can be achieved with less radical means (see item 13 below for more details).

As indicated under item 3.3 above, some violations of SSA and MEA may be punished by imprisonment for up until 2 years, e.g. in cases where a master has consumed alcohol to such an extent that the master is no longer capable of carrying out his duties in a fully adequate way. In these cases, detention of a charged offender is therefore a possibility.

Persons who are not charged with the crime may not be detained.

- 6 Even if they seafarer is required to be present for an investigation, trial or other hearing, the seafarer cannot be prevented from leaving Denmark, unless the requirements for detention had been met, in which case the authorities may choose to deprive the seafarer of his passport.

Moreover if they seafarer has been summoned to a court hearing as a witness and fails to appear, the court may order the police to take the seafarer into custody and escort him to the court hearing.

- 7 Under Danish law, no authority exists to request financial surety in order to ensure that seafarers return for any subsequent hearing.

- 8 Neither the Maritime Authority nor any other Danish authority has been given specific responsibility for the protection, rights and welfare of all seafarers.

However, it should be mentioned that the Danish Ombudsman is under a general obligation to ensure that Danish authorities comply with the law and do not exceed their authority towards individuals, including seafarers, and that the Maritime Authority is generally responsible for ensuring that SSA is complied with, including rules on a self and healthy work environment for seafarers.

- 9 As long as it is not in contravention of Denmark's sea International obligations, crew members on foreign flag vessels are expected and legally required to assist the Division of Investigation of Maritime Accidents and the Admiralty in their investigations to the same extent as Danish seafarers.

- 10 No.

- 11 Negligent of violation of SSA and MEA may also lead to criminal charges against seafarers.

- 12 If the accident has occurred outside Danish territorial waters and assuming that the Danish authorities have jurisdiction to investigate the accident, the Division for Investigation of Maritime Accidents is required to carry out its investigation in cooperation with the authorities of the flag state.

- 13 As mentioned under item 5 above, seafarers may under certain circumstances be detained:

(a) see item 5 above.

(b) A foreign seafarer will have the same rights as Danish citizens as set out in the Administration of Justice Act, including the right not to incriminate himself, the right to a lawyer and the right to write unchecked letters to - among others- -the Danish Ombudsman and the and Minister of Justice.

(c) Yes

(d) The detention must be renewed at least every four weeks. The detention can under certain circumstances be upheld until the case has been tried and decided by the courts, i.e. potentially several months.

(e) The seafarer will be detained in a prison.

(f) The seafarer will have full access to legal advice from a lawyer.

- (g) The seafarer will be allowed visitors.
- (h) The seafarer will have the right not to answer questions, which may incriminate the seafarer.