

# Deutscher Verein für Internationales Seerecht

Deutsche Landesgruppe des Comité Maritime International

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## CMI International Working Group on the Fair Treatment of Seafarers

### QUESTIONNAIRE

#### **PART I (Answers to these Questions are essential)**

***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?

**Response:**

The German Ministry of transport, building and housing has got the responsibility for administering and enforcing maritime safety and marine pollution prevention and control in the German waters. The maritime administration is part of this ministry.

***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?

**Response:**

The "Bundesstelle für Seeunfalluntersuchungen" will immediately investigate the accident and in case of damage or loss of life the German public prosecutor's office investigates.

***Question 3:***

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

**Response:**

Even though the last such incident occurred many, many years ago, criminal charges against ships' personnel are provided within German law.

**Question 4:**

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

**Response:**

The investigative process mainly focuses on the accident and/or marine pollution and future prevention.

**Question 5:**

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

**Response:**

Yes, the German investigative process allows detention but only in case of risk of escape and severe liability.

**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?

**Response:**

They usually are allowed to leave Germany depending on the risk of escape.

**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?

**Response:**

The State might require a financial surety. The amount depends on the income of the seafarer and the risk of escape.

**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?

**Response:**

Yes the German maritime administration is responsible for the protection, right and welfare of all seafarers due to ILO regulations.

**PART II (Answers to these Questions would be most helpful)**

**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?

**Response:**

The crew members are only be held responsible in the case of personal liability, wilful misconduct and negligence.

**Question 10:**

If the accident, as outlined in Question 10, 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?

**Response:**

Yes

**Question 11:**

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

**Question 12:**

If the maritime accident outlined in Question 9 occurred outside your State's Territorial Seas, although damage occurs in areas under your State's jurisdiction, would the procedures involved be different?

**Response:**

No

**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?

**Response:** Pollution of the waterways, risk of escape.

- 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?

**Response:** They have all the right every German citizen has.

- c) Will full reasons and/or charges be provided to those detained?

**Response:** Yes

- d) What is the expected length of such detention?

**Response:** The trial has to start within 6 month after detention. 6 month is the longest time without trial. The period of detention for pollution is 5 years at the longest. From time to time there reviews of a detention order by law.

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

**Response:** As German citizens as well in a prison.

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

**Response:** Every access. They are allowed to contact legal advice around the clock.

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

**Response:** Yes

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

**Response:** Yes

**Question 14:**

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

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Hamburg, 31 March 2005