Reports of Cases

JUDGMENT OF THE COURT (Fifth Chamber)

9 July 2020 *

(Failure of a Member State to fulfil obligations — Principles governing the investigation of accidents in the maritime transport sector — Directive 2009/18/EC — Article 8(1) — Parties whose interests could conflict with the task entrusted to the investigative body — Members of the investigative body simultaneously performing other functions — Failure to provide for an independent investigative body)

In Case C-257/19,

ACTION under Article 258 TFEU for failure to fulfil obligations, brought on 26 March 2019,

European Commission, represented by S.L. Kalėda and N. Yerrell, acting as Agents,

applicant,

v

Ireland, represented by M. Browne, G. Hodge and A. Joyce, acting as Agents, and by N.J. Travers, Senior Counsel, and B. Doherty, Barrister-at-Law,

defendant,

THE COURT (Fifth Chamber),

Composed of I. Jarukaitis, acting as President of the Fifth Chamber, K. Lenaerts, President of the Court, acting as Judge of the Fifth Chamber, E. Juhász, M. Ilešič and C. Lycourgos (Rapporteur), Judges,

Advocate General: H. Saugmandsgaard Øe,

Registrar: A. Calot Escobar,

having regard to the written procedure,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

* Language of the case: English.

Judgment

1 By its application, the European Commission requests that the Court declare that, by failing to provide for an investigative body which is independent in its organisation, legal structure and decision-making of any party whose interests could conflict with the task entrusted to that investigative body, Ireland has failed to comply with its obligations under Article 8(1) of Directive 2009/18/EC of the European Parliament and of the Council of 23 April 2009 establishing the fundamental principles governing the investigation of accidents in the maritime transport sector and amending Council Directive 1999/35/EC and Directive 2002/59/EC of the European Parliament and of the Council (OJ 2009 L 131, p. 114).

Legal context

EU law

2 Recitals 2, 13, 25 and 26 of Directive 2009/18 state:

‘(2) The expeditious holding of technical investigations into marine casualties improves maritime safety as it helps to prevent the recurrence of such casualties resulting in loss of life, loss of ships and pollution of the marine environment.

…

(13) Conducting safety investigations into casualties and incidents involving seagoing vessels, or other vessels in ports or other restricted maritime areas, in an unbiased manner is of paramount importance in order to effectively establish the circumstances and causes of such casualties or incidents. Such investigations should therefore be carried out by qualified investigators under the control of an independent body or entity endowed with the necessary powers in order to avoid any conflict of interest.

…

(25) The safety recommendations resulting from a safety investigation should be duly taken into account by the Member States and the [European Union].

(26) Since the aim of the technical safety investigation is the prevention of marine casualties and incidents, the conclusions and the safety recommendations should in no circumstances determine liability or apportion blame.’

3 Article 1 of the directive provides:

‘1. The purpose of this Directive is to improve maritime safety and the prevention of pollution by ships, and so reduce the risk of future marine casualties, by:

(a) facilitating the expeditious holding of safety investigations and proper analysis of marine casualties and incidents in order to determine their causes; and

(b) ensuring the timely and accurate reporting of safety investigations and proposals for remedial action.

2. Investigations under this Directive shall not be concerned with determining liability or apportioning blame. However, Member States shall ensure that the investigative body or entity (hereinafter referred to as the investigative body) is not refraining from fully reporting the causes of a marine casualty or incident because fault or liability may be inferred from the findings.'

4 Article 5 of the directive provides:

'1. Each Member State shall ensure that a safety investigation is carried out by the investigative body referred to in Article 8 after very serious marine casualties:

(a) involving a ship flying its flag, irrespective of the location of the casualty;

(b) occurring within its territorial sea and internal waters as defined in [the United Nations Convention on the Law of the Sea], irrespective of the flag of the ship or ships involved in the casualty; or

(c) involving a substantial interest of the Member State, irrespective of the location of the casualty and of the flag of the ship or ships involved.

2. In addition, in the case of serious casualties, the investigative body shall carry out a preliminary assessment in order to decide whether or not to undertake a safety investigation. Where the investigative body decides not to undertake a safety investigation, the reasons for that decision shall be recorded and notified in accordance with Article 17(3).

In the case of any other marine casualty or incident, the investigative body shall decide whether or not a safety investigation is to be undertaken.

…'

5 Article 8 of Directive 2009/18 is worded as follows:

'1. Member States shall ensure that safety investigations are conducted under the responsibility of an impartial permanent investigative body, endowed with the necessary powers, and by suitably qualified investigators, competent in matters relating to marine casualties and incidents.

In order to carry out a safety investigation in an unbiased manner, the investigative body shall be independent in its organisation, legal structure and decision-making of any party whose interests could conflict with the task entrusted to it.

…

2. The investigative body shall ensure that individual investigators have a working knowledge of, and practical experience in, those subject areas pertaining to their normal investigative duties. Additionally, the investigative body shall ensure ready access to appropriate expertise, as necessary.

3. The activities entrusted to the investigative body may be extended to the gathering and analysis of data relating to maritime safety, in particular for prevention purposes, in so far as these activities do not affect its independence or entail responsibility in regulatory, administrative or standardisation matters.

…

5. The investigative body shall be enabled to respond immediately on being notified at any time of a casualty, and to obtain sufficient resources to carry out its functions independently. Its investigators shall be afforded status giving them the necessary guarantees of independence.

6. The investigating body may combine its tasks under this Directive with the work of investigating occurrences other than marine casualties on condition that such investigations do not endanger its independence.'

6 Under Article 14(1) and (2) of that directive:

'1. Safety investigations carried out under this Directive shall result in a published report presented in a format defined by the competent investigative body and in accordance with the relevant sections of Annex I.

Investigative bodies may decide that a safety investigation which does not concern a very serious or, as the case may be, a serious marine casualty and the findings of which do not have the potential to lead to the prevention of future casualties and incidents shall result in a simplified report to be published.

2. Investigative bodies shall make every effort to make the report referred to in paragraph 1, including its conclusions and any possible recommendations, available to the public, and especially to the maritime sector, within 12 months of the date of the casualty. If it is not possible to produce the final report within that time, an interim report shall be published within 12 months of the date of the casualty.'

7 Article 15 of the directive provides:

'1. Member States shall ensure that safety recommendations made by the investigative bodies are duly taken into account by the addressees and, where appropriate, be given an adequate follow-up in accordance with [EU] and international law.

2. Where appropriate, an investigative body or the Commission shall make safety recommendations on the basis of an abstract data analysis and of the overall results of safety investigations carried out.

3. A safety recommendation shall in no circumstances determine liability or apportion blame for a casualty.'

Irish Law

Merchant Shipping Act

8 Section 7 of the Merchant Shipping (Investigation of Marine Casualties) Act 2000 ('the Merchant Shipping Act') created the Marine Casualty Investigation Board ('the MCIB'). Under Section 7(1), the MCIB's mission is 'to investigate marine casualties and publish reports of such investigations'. Under Section 7(3), the MCIB is to have 'powers as are necessary for or incidental to the performance of its functions'.

9 Section 8 of the Merchant Shipping Act provides that the MCIB 'shall be independent of the Minister in the performance of its functions and, in general, shall be independent of any other person or body whose interests could conflict with the functions of the [MCIB]'. According to Section 2 of that act, the term 'Minister' means the Minister for the Marine and Natural Resources.

10 Section 9(1) of that act provides:

'The [MCIB] shall consist of —

(a) three persons appointed by the Minister;

(b) the Chief Surveyor; and

(c) the Secretary-General of the Department of the Marine and Natural Resources, or his or her nominee'.

11 Section 9(2) of that act provides that the Minister must appoint one of the persons appointed under Section 9(1) to be the Chairperson of the MCIB and another to be its Deputy Chairperson.

12 The term 'Chief Surveyor' is defined in Section 2 of the Merchant Shipping Act as the person holding the post or performing the duties of the Chief Surveyor in the Marine Survey Office of the Department of the Marine and Natural Resources.

13 Section 17 of the act lays down rules relating to conflicts of interests and provides, in particular, that the members of the MCIB and any consultants, advisers or investigators are required to disclose any 'pecuniary or other beneficial interest in, or material to, any vessel or the cargo of a vessel involved in a marine casualty, or to any other matter to be considered by the [MCIB]'.

Merchant Shipping Regulations

14 Under Regulation 4 of the European Communities (Merchant Shipping) (Investigation of Accidents) Regulations 2011 ('the Merchant Shipping Regulations'), the MCIB is designated as the permanent investigative body for the purposes of applying Article 8 of Directive 2009/18.

15 Under Regulation 6 of those Regulations, the MCIB is required to conduct a safety investigation in respect of a very serious casualty and carry out a preliminary assessment in the case of a serious casualty in order to decide whether or not to undertake a safety investigation.

16 Regulation 11 of the Merchant Shipping Regulations makes provision for the publication of a report on any safety investigation carried out.

17 Regulation 12(1) of the regulations provides that the MCIB is to make safety recommendations to the appropriate parties and must follow up on its recommendations in accordance with EU and international law. Regulation 12(2) provides that in no circumstances may the safety recommendations issued by the MCIB determine liability or apportion blame for a casualty.

Pre-litigation procedure and the proceedings before the Court

18 On 13 July 2015, the Commission sent a letter to Ireland as part of the 'EU Pilot' procedure, inviting it to provide clarification on various issues connected with the implementation of Directive 2009/18 and in particular to explain the detailed rules under Irish law for ensuring operational independence and impartiality as required by Article 8 of that directive. In that regard, it stated that two members of the MCIB, that is to say the Chief Surveyor and the Secretary-General of the Department of Transport, Tourism and Sports ('the DTTS') which now assumes the responsibilities of the Department of the Marine and Natural Resources, performed other regulatory and enforcement functions in respect of the regulations in the field of maritime transport and/or fisheries.

19 On 17 September 2015, Ireland replied to that letter, invoking the principle of independence laid down in Section 8 of the Merchant Shipping Act. In particular, it provided clarification on the structure and workings of the MCIB and on the role of the Chief Surveyor, who is a member of that board, and that of his or her Deputy in the event of an investigation being carried out by the MCIB or the preparation of a report on a marine casualty. It also submitted that the Minister and the DTTS have no role to play in those situations.

20 On 29 April 2016, the Commission sent a letter of formal notice to Ireland, in which it stated that the measures taken by that Member State were not sufficient to ensure compliance by the MCIB with the requirements for independence laid down in Article 8(1) of Directive 2009/18, on the grounds that, first of all, the Chief Surveyor of the Marine Survey Office and the Secretary-General of the DTTS were members of the MCIB, next, the DTTS assumed overall control and responsibility for maritime transport in Ireland and, finally, the board carried out other regulatory and enforcement functions in respect of the regulations, such as the inspection and licensing of vessels, certification of seafarers' competency and prosecutions for breaches of regulations.

21 On 22 June 2016, Ireland replied to that letter of formal notice, arguing inter alia that the MCIB fulfilled the requirements of independence laid down in Article 8 of Directive 2019/18 and that the Commission had not adduced evidence of any conflict of interests on the part of the Members of the MCIB as agents of their supervising department, or of any infringement in practice of the requirements laid down in that provision.

22 On 28 April 2017, the Commission sent a reasoned opinion to Ireland, in which it stated that, by failing to provide for an investigative body which is independent in its organisation, legal structure and decision-making of any party whose interests could conflict with the task entrusted to it, Ireland failed to comply with its obligations under Article 8(1) of Directive 2009/18. The Commission requested that that Member State take the necessary measures to comply with the reasoned opinion within two months of its notification.

23 On 22 June 2017, in its reply to that reasoned opinion, Ireland disputed the failure alleged by the Commission.

24 Not being satisfied with Ireland's reply, the Commission decided to bring the present action.

The action

Arguments of the parties

25 The Commission reproaches Ireland for not complying with the provisions of Article 8(1) of Directive 2009/18 by not making provision in its national law for legislation which guarantees independence in the MCIB's organisation, legal structure and decision-making in respect of any party whose interests could conflict with the task entrusted to it.

26 That institution states that, even though Section 8 of the Merchant Shipping Act provides that the MCIB must be independent of any other person or body whose interests could conflict with its functions, Section 9(1) of that act provides that the MCIB is to consist of five members which mandatorily must include the Chief Surveyor and the Secretary-General of the DTTS or his or her nominee. The Commission states that the Chief Surveyor and the Secretary-General perform functions as members of the MCIB whilst continuing to carry out their normal tasks as head of the Marine Survey Office and Secretary-General of the DTTS, respectively. Section 9 of the Merchant Shipping Act thus expressly links the status of both those members of the MCIB to the performance of those other functions.

27 The Commission states first that, within the DTTS, the Marine Survey Office is responsible for inspection, surveys, certification and licensing of vessels and vessels' radio equipment, the examination and certification of seafarers' competency, enforcement of standards by way of audits of organisations and facilities, and prosecutions for breaches of regulations. It states that that office is also responsible for issuing Marine Notices on relevant subjects as part of its role of enforcing the regulations.

28 The Commission adds that the Secretary-General of the DTTS is the head of the whole department, with responsibility for its day-to-day management. It states that he or she is in charge inter alia of the Marine Survey Office, the Irish Coast Guard and the Maritime Safety Policy Division which is responsible for safety and security policy and legislation, including the Vessel Traffic Monitoring System.

29 The Commission states, secondly, that the MCIB is required to investigate very serious marine casualties involving Irish flagged vessels, or which occur in Irish territorial waters.

30 It concludes from both those factors that the subject matter of any safety investigation will overlap with the activities and responsibilities of the DTTS and its Secretary-General as a whole, and the Marine Survey Office and its Chief Surveyor in particular. The members in question of the MCIB are simultaneously required to assume responsibility for the maritime safety of Irish flagged vessels and safety inspections in Irish waters. That situation means that the condition laid down in Article 8(1) of Directive 2009/18 is not being complied with. Nor does the fact that the MCIB may carry on activities other than the investigative activities referred to in Article 5 of that directive mean that the requirements for independence under Article 8(1) are fulfilled.

31 The Commission adds that, at the end of an investigation, the MCIB must make safety recommendations to the parties concerned and follow up its recommendations in accordance with EU and international law, pursuant to Regulation 11(1) and Regulation 12(1) of the Merchant Shipping Regulations, in order to improve maritime safety and reduce the risk of future marine casualties. It concludes that the Chief Surveyor and the Secretary-General of the DTTS can, in practice, be required to make recommendations to themselves, in so far as any recommendation from the MCIB aimed at improving maritime safety or following up specific safety issues revealed by an investigation is implemented by the DTTS and/or the Marine Survey Office responsible for enforcing the regulations and publishing the Marine Notices relating to specific matters.

32 The Commission accepts that neither the wording of, nor the objectives pursued by Article 8(1) of Directive 2009/18 require the investigative body to be independent of all public bodies. However, it states that, in accordance with that provision, the investigative body must be independent in its organisation, legal structure and decision-making of any party whose interests 'could conflict' with the task entrusted to it. It is clear from the use of the conditional that, by that obligation, the directive aims to prevent potential conflicts of interest which must result in Member States making provision for sufficient legal guarantees of independence as regards the investigating body, in particular in relation to parties performing regulatory functions, where these coincide with the objective of the safety investigations.

33 Given the status of two of the five members of the MCIB, there is an inherent risk of a conflict of interests. The Irish Government's argument relating to the practice of resorting to the Deputy Chief Surveyor, within the DTTS, to hear investigations conducted by the MCIB or to examine the MCIB's recommendations in an investigation report addressed to the Minister or to the DTTS is an implicit acknowledgement by Ireland of the existence of such a conflict of interests arising from the fact that the Chief Surveyor and the Secretary-General of the DTTS are members of the MCIB. Resorting in practice to the Deputy Chief Surveyor within the DTTS cannot, in any event, constitute a sufficient guarantee of independence.

34 As regards the MCIB's reports, which Ireland relies on to demonstrate that, in practice, it acts independently of the DTTS, the Commission submits that, by stating that the MCIB, in its reports, draws attention to elements of the Irish regulations or their application which could be improved, Ireland implicitly acknowledges that the safety investigations conducted by the MCIB examine and consequently overlap with the activities of the DTTS.

35 As a preliminary point, Ireland refers, first, to the terms of Sections 8 and 17 of the Merchant Shipping Act which provide for the independence of the MCIB and lay down rules relating to conflicts of interest for the members of that body. It adds that the MCIB is subject to the Ethics in Public Office Act 1995 and the Standards in Public Office Act 2001 which provide that holders of certain positions in the public service must disclose any interests which could materially affect the performance of their duties. Ireland also refers to the creation, by that act, of the Standards in Public Office Commission (Ireland) which investigates complaints and provides detailed guidance on how civil servants are to abide by the legislation.

36 The MCIB is subject to that legislation. It is also subject to the Code of Practice for the Governance of State Bodies which, in Section 5(1), requires the MCIB to adopt a code of conduct for its members and its employees. In that respect, Ireland refers to the MCIB's Code of Business Conduct and submits that, in accordance with that code, rules provide for, inter alia, the impartiality of that body, the resolution of conflicts of interests, access to information and the legal obligations of the MCIB.

37 Secondly, Ireland disputes the Commission's line of argument that any investigation conducted by the MCIB necessarily overlaps with the activities and responsibilities of the DTTS. It relies on a number of examples which, in its opinion, demonstrate that some investigations do not impinge on the activities or responsibilities of the DTTS. In addition, Ireland submits that the Merchant Shipping Act provides that the DTTS surveyors do not participate in investigations conducted by the MCIB. Furthermore, in order to apply Article 8(2) and Article 14(2) of Directive 2009/18, the MCIB set up a panel of independent investigators from which it appoints an investigator on a case-by-case basis, according to the needs of the investigation.

38 Thirdly, Ireland contends that the MCIB is composed of five members, and so it is not under the control of the two members referred to by the Commission. All of the MCIB's recommendations are addressed to Irish public bodies and not to the two members in question. The MCIB does not send any safety recommendation to the Marine Survey Office, and the fact that it issues investigation reports containing recommendations to the DTTS demonstrates, rather than undermines, its independence.

39 Following those preliminary considerations, Ireland highlights three points.

40 In the first place, Ireland argues that Directive 2009/18 requires the MCIB to be independent, not of the DTTS, but of any party whose interests could conflict with the tasks entrusted to it, which, in its submission, refers to the owner of the vessel or some other person directly involved in the incident being investigated, and not a public body like the DTTS.

41 Moreover, Directive 2009/18 does not lay down a specific requirement that the investigative body should be independent from the regulatory bodies.

42 In that respect, Ireland states that, in Article 8(1) of the Proposal for a Directive of the European Parliament and of the Council establishing the fundamental principles governing the investigation of accidents in the maritime transport sector and amending Directives 1999/35/EC and 2002/59/EC of 23 November 2005 (COM(2005) 590 final) ('the proposed directive'), it was provided that the investigative body is to be 'functionally independent of, in particular, the national authorities

responsible for seaworthiness, certification, inspection, manning, safe navigation, maintenance, sea traffic control, port State control, operation of seaports and, in general, of any other party whose interests could conflict with the task entrusted to it'.

43 That wording was not used in Common Position (EC) No 17/2008, adopted by the Council on 6 June 2008 with a view to adopting Directive 2008/…/EC of the European Parliament and of the Council of … establishing the fundamental principles governing the investigation of accidents in the maritime transport sector and amending Directives 1999/35/EC and 2002/59/EC (OJ 2008 C 184 E, p. 23) which removed the requirement for an investigative body which is independent of the national authorities responsible for maritime affairs.

44 Furthermore, if the EU legislature had wanted the investigative body to be independent of all public bodies or any possible influence, as the Commission maintains, it could have expressed such a condition, as has been done in other EU legislative acts.

45 In the second place, Ireland contends that the Commission cannot rely on the presumption that, first, the Chief Surveyor and the Secretary-General of the DTTS, who are members of the MCIB, are influenced by the functions which they perform outside that body and, secondly, the MCIB is influenced by those two members.

46 Ireland states that they are a minority within the MCIB and that the Commission has not adduced evidence of tangible elements which prove that the impartiality or the independence of the MCIB has been compromised. Reliance on a presumption is not permitted. Ireland contends that the Commission cannot assume that there is a lack of independence due to the structural links which exist between two bodies and nor can it rely on a conflict of interests based only on such links.

47 In the third place, Ireland relies on a number of examples of reports from the MCIB which contain criticisms and recommendations concerning the Irish coast guard and, more generally, concerning the Irish regulations or their implementation, which demonstrates the independence of the MCIB vis-à-vis the DTTS.

Findings of the Court

48 The Commission notes that, under Section 9 of the Merchant Shipping Act, the Secretary-General of the DTTS, who is in charge of the entire Ministry, and the Chief Surveyor of the Marine Survey Office, who reports to the DTTS, are also members of the MCIB. Bearing in mind their functions within the DTTS and the Marine Survey Office, both those persons are required, simultaneously with their functions within the MCIB, to assume responsibility for the maritime safety of Irish flagged vessels and safety in Irish waters. Here the Commission reproaches Ireland for not complying with its obligations under Article 8(1) of Directive 2009/18 on the ground that that Member State did not make provision for legislation which guarantees independence in the MCIB's organisation, legal structure and decision-making in respect of any party whose interests could conflict with the task entrusted to it.

49 In that regard, it should be observed at the outset that, in accordance with Section 7 of the Merchant Shipping Act and Regulation 4 of the Merchant Shipping Regulations, the MCIB is responsible, in Ireland, for performing the functions of the investigative body referred to in Article 8 of Directive 2009/18. It is under the responsibility of that body that the safety investigations provided for in Article 5 of that directive are to be conducted.

50 Article 8(1) of Directive 2009/18 provides that Member States must ensure that safety investigations are conducted under the responsibility of an impartial permanent investigative body. That provision provides that 'in order to carry out a safety investigation in an unbiased manner, the investigative body shall be independent in its organisation, legal structure and decision-making of any party whose interests could conflict with the task entrusted to it'.

51 In the first place, with regard to the issue whether the DTTS and the Marine Survey Office are, within the meaning of Article 8(1) of Directive 2009/18, parties whose interests could conflict with the task entrusted to the MCIB, it is appropriate to reiterate the purpose of that directive.

52 Thus, according to Article 1, the purpose of the directive is to improve maritime safety and the prevention of pollution by ships, to reduce the risk of marine casualties by facilitating the expeditious holding of safety investigations and proper analysis of marine casualties and incidents, and by ensuring the timely and accurate reporting of safety investigations and proposals for remedial action.

53 It is apparent from recital 13 of that decision that conducting safety investigations into casualties and incidents involving seagoing vessels, or other vessels in ports or other restricted maritime areas, in an unbiased manner is of paramount importance in order to effectively establish the circumstances and causes of such casualties or incidents. That recital also states that such investigations should be carried out by qualified investigators under the control of an independent body or entity endowed with the necessary powers in order to avoid any conflict of interest.

54 In addition, although, according to Article 15(3) and recital 26 of Directive 2009/18, the safety investigations are not concerned with determining liability or apportioning blame, they are nevertheless aimed at the drafting of accident reports, in accordance with Article 14 of that directive. Under Article 15(1) of that directive, the safety recommendations of the investigative body must be taken into account by the addressees. As is set out in recital 25 of Directive 2009/18, they should also be duly taken into account by the Member States and the European Union in order to improve maritime safety.

55 Under Section 7 of the Merchant Shipping Act and Regulations 6 and 12 of the Merchant Shipping Regulations, the MCIB is responsible for conducting safety investigations and for drawing up reports and recommendations which may result in it ruling on maritime shipping regulations.

56 It is clear from the file before the Court that the DTTS is responsible for those regulations. In addition, the Maritime Safety Policy Division, which reports to that Ministry, is responsible for safety and security policy and legislation, including the Vessel Traffic Monitoring System.

57 Moreover, the MCIB's investigations may also result in it ruling on the activities of maritime safety, inspection, surveys, certification and licensing of vessels.

58 It is not disputed that the DTTS generally assumes responsibility for the maritime safety of Irish flagged vessels and vessels in Irish waters. The DTTS is also in charge of the Irish Coast Guard and the Marine Survey Office which is responsible for inspection, surveys, certification and licensing of vessels and vessels' radio equipment, the examination and certification of seafarers' competency, enforcement of standards by way of audits of organisations and facilities, and prosecutions for breaches of regulations.

59 It follows that, in the investigations which it conducts, the MCIB may be called upon to rule on activities directly undertaken by the DTTS, but also by the Maritime Safety Policy Division, and by the Coast Guard and the Marine Survey Office, in the same way that, in the reports which it draws up, it may be called upon to question the management of the powers conferred on those public authorities and to make recommendations on practices to be followed in the future or reforms to be introduced.

60 It follows therefore that the DTTS and the Marine Survey Office are parties whose interests may conflict with the task entrusted to the MCIB, within the meaning of Article 8(1) of Directive 2009/18.

61 Such a conclusion cannot be called into question by the arguments advanced by Ireland.

62 In its submission, Article 8(1) of Directive 2009/18 is intended to ensure the independence of the investigative body vis-à-vis only vessel owners or some other person directly involved in the incident being investigated.

63 In support of that position, Ireland relies on the absence, in Directive 2009/18, of a condition mentioned in the proposed directive. In Ireland's submission, the fact that the EU legislature removed that condition, whilst retaining only the provision in its current wording as set out in Article 8(1) of Directive 2009/18, demonstrates that the requirement for an investigative body that is independent of the national authorities responsible for maritime affairs has been shelved.

64 In that regard, it should be pointed out that the condition set out in the proposed directive mentioned only the functional independence of the relevant national authorities, that is to say, the investigative body must be 'functionally independent of, in particular, the national authorities responsible for seaworthiness, certification, inspection, manning, safe navigation, maintenance, sea traffic control, port State control, operation of seaports and, in general, of any other party whose interests could conflict with the task entrusted to it'. However, Article 8(1) of Directive 2009/18, in the wording adopted by the EU legislature, is not limited to functional independence, but is intended to achieve broader independence, since Member States are now required to ensure that the investigative body is independent both in its organisation and in its legal structure and decision-making, and that independence extends to any party whose interests could conflict with the task entrusted to it. It cannot therefore be accepted that, by the choice of wording of Article 8(1) of Directive 2009/18, the EU legislature wanted to preclude public authorities from being included among the parties in respect of whom the independence of the investigative body must be assured.

65 Ireland claims further that, if the EU legislature had wanted the investigative body to be independent of all public bodies or any possible influence, as the Commission maintains, it could have expressed that condition, as was done in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ 1995 L 281 p. 31) and in Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ 2016 L 119, p. 1).

66 However, first, it is not apparent from its written pleadings that the Commission claimed that the investigative body had to be independent of all public bodies.

67 Secondly, although it is true that, in Article 28 of that directive and in Article 52 of that regulation, the condition for independence is worded in different terms from those used in Article 8(1) of Directive 2009/18, the mere fact that the wording of those provisions differs cannot lead to Article 8(1) of Directive 2009/18 being interpreted in any way other than what that provision lays down. That provision requires from the investigative body independence in its organisation, legal structure and decision-making in respect of 'any party whose interests could conflict with the task entrusted to it', and that expression may include, in particular, public authorities.

68 In the second place, it is appropriate to examine whether, as the Commission claims, the MCIB's independence vis-à-vis the DTTS and the Marine Survey Office is not assured as a consequence of the presence within the MCIB of two members who simultaneously perform functions within the DTTS and the Marine Survey Office.

69 The Commission makes clear in particular that, under Section 9 of the Merchant Shipping Act, the MCIB is composed of five members, including the Secretary-General of the DTTS, or his or her deputy, and the Chief Surveyor of the Marine Survey Office. In view of the functions performed simultaneously by both those members, on the one hand, within the DTTS or the Marine Survey Office and, on the other, within the MCIB, their presence demonstrates that Ireland does not fulfil its obligations under Article 8(1) of Directive 2009/18.

70 It should be pointed out that, since the Commission does not claim that the MCIB lacked independence with regard to its legal structure, it is necessary to examine only whether the presence, within that body, of the Secretary-General of the DTTS, or his or her deputy, and the Chief Surveyor of the Marine Survey Office deprives it of its independence in its organisation and decision-making.

71 With regard to the meaning of 'independence', it should be noted that neither Article 8(1) of Directive 2009/18 nor any other provision of that directive defines that term. It is therefore necessary to take its usual meaning into account. Thus, as regards public bodies, independence usually refers to a status that ensures that the body in question is able to act completely freely in relation to those bodies in respect of which its independence is to be ensured, shielded from any instructions or pressure (see, by analogy, judgment of 13 June 2018, *Commission* v *Poland*, C-530/16, EU:C:2018:430, paragraph 67).

72 In the present case, it is true that Section 8 of the Merchant Shipping Act provides that the MCIB must be independent of the DTTS in the performance of its functions and, in general, must be independent of any other person or body whose interests could conflict with the functions of the MCIB. In addition, Section 17 of that act lays down rules relating to conflicts of interests of the members of the MCIB which is also subject to ethical conduct rules.

73 The fact remains that, despite those provisions which establish a general principle of independence and rules relating to conflicts of interests, Section 9(1) of the Merchant Shipping Act, read in conjunction with Section 2 of that act, provides that the Secretary-General of the DTTS and the Chief Surveyor of the Marine Survey Office are to be members of the MCIB. The presence within that investigative body of two civil servants who are respectively responsible for the DTTS and the Marine Survey Office, public authorities whose interests could conflict with the task entrusted to the MCIB, has the consequence that independence in that body's organisation and decision-making is not guaranteed.

74 Indeed, the mere presence of those members whose conflict of interests is evident, given that they are at the same time members of the MCIB and in charge of public authorities whose actions may be examined by that investigative body and may be the subject of criticisms and recommendations from that body, in itself, conflicts with that body's independence in terms of its organisation.

75 With regard to the role which those members are able to play in the decisions of the investigating body, in some cases in favour of the interests of the administrations which they are in charge of, in particular by defending existing rules, procedures or practices of those administrations, this is capable of affecting the MCIB's independence in its decision-making.

76 The existence of that conflict of interests and of that potential role is sufficient to establish an infringement of Article 8(1) of Directive 2009/18, since Member States are obliged to adopt measures which ensure in advance the objective independence of the investigative body, as is confirmed by the use of the conditional in the words 'could conflict' in that provision.

77 Thus, contrary to what Ireland claims, a finding that the investigative body failed to act impartially in specific cases is not necessary to establish an infringement, given that the conditions for independence must be objectively satisfied, such that the MCIB is free from any direct or indirect influence from parties whose interests could conflict with the task entrusted to it (see, by analogy, judgment of 16 October 2012, *Commission* v *Austria*, C-614/10, EU:C:2012:631, paragraph 41).

78 Therefore, the examples of reports from the MCIB cited by Ireland, in which criticisms or proposals were made concerning the DTTS or the Marine Survey Office, do not demonstrate that that Member State complied with its obligations under Article 8(1) of Directive 2009/18.

79 Furthermore, contrary to what Ireland maintains, the fact that the members concerned are a minority within the MCIB is irrelevant, given that the presence within an investigative body of even just one member who at the same time exercises responsibilities within a party whose interests could conflict with the task entrusted to that body has the consequence that the latter is not above all suspicion of partiality vis-à-vis that party (see, by analogy, judgment of 16 October 2012, *Commission* v *Austria*, C-614/10, EU:C:2012:631, paragraph 52).

80 It follows from all of the above considerations that, by failing to provide for an investigative body which is independent in its organisation and decision-making of any party whose interests could conflict with the task entrusted to it, Ireland failed to comply with its obligations under Article 8(1) of Directive 2009/18.

Costs

81 Under Article 138(1) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.

82 Since the Commission has requested that Ireland be ordered to pay the costs and Ireland has been unsuccessful, it must be ordered to pay the costs.

On those grounds, the Court (Fifth Chamber) hereby:

1. **Declares that, by failing to provide for an investigative body which is independent in its organisation and decision-making of any party whose interests could conflict with the task entrusted to that investigative body, Ireland has failed to comply with its obligations under Article 8(1) of Directive 2009/18/EC of the European Parliament and of the Council of 23 April 2009 establishing the fundamental principles governing the investigation of accidents in the maritime transport sector and amending Council Directive 1999/35/EC and Directive 2002/59/EC of the European Parliament and of the Council;**

2. **Orders Ireland to pay the costs.**

Jarukaitis Lenaerts Juhász

Ilešič Lycourgos

Delivered in open court in Luxembourg on 9 July 2020.

A. Calot Escobar
Registrar

I. Jarukaitis
Acting as President of the Fifth Chamber