

Taking maritime safety seriously

The Polish perspective

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14.1 Introduction

Polish maritime law does not have long-lasting traditions because, despite the efforts of the Polish monarchs to maintain access to the Baltic Sea, the Polish *raison d'état* was associated historically with the development of agriculture. However, since Poland regained independence in 1918, maritime safety issues have been treated with great care. The regulation of the President of the Republic of Poland of November 24, 1930, on the safety of maritime vessels was the first act of statutory rank which dealt with the issue of maritime safety.³ That regulation was part of a legislative package aimed at rebuilding Poland's maritime identity and strengthening the administrative ties of the coast, which was attached to Poland in 1920 as a consequence of the Treaty of Versailles. Due to the adoption of such goals, the inter-war maritime legislation mainly boiled down to the issue of strengthening maritime administration.⁴ In post-war times, throughout the entire period of the People's Republic of Poland, no coherent regulation of maritime safety was adopted. This subject was regulated by executive acts of maritime administration authorities adopted in the period from 1963 to 2000.⁵ The basis for their enactment was formulated by the first Polish Maritime Code adopted in 1961. A large number of those acts and their diversified scope undoubtedly led to undesirable effects. Therefore, the need to develop a coherent and comprehensive law on safety was repeatedly expressed in the doctrine. The adoption of the first Polish statute on maritime safety in the post-war period⁶ coincided with the adoption of the new Maritime Code in 2001, which was predominantly of a private law nature.⁷

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3 Consolidated text in *Journal of Laws* 1938 No. 46, item 367.

4 Private legal issues related to shipping were regulated by the Act of 1 of August, 1919, maintaining German legislation in the areas of the former Prussian Partition (*Journal of Laws* 1919 No. 64, item 385).

5 M. Kosiński, 'Ustawa o bezpieczeństwie morskim – stan de lege lata i postulaty de lege ferenda', (2012) XXVIII *Prawo Morskie* 53 et al.

6 *Journal of Laws* 2000 No. 109, item 1156.

7 For more, see: M. Dragun-Gernter, 'Polskie ustawodawstwo morskie a prawo międzynarodowe' in E. Kustra (ed.), *Przemiany polskiego prawa* (Toruń, 2002) vol. II, p. 133.

Thus, in the current Maritime Code, unlike the first Maritime Code of 1961, there is no regulation on maritime safety. At the same time, regulation on maritime safety has greatly expanded and the initial assumption that a single ‘maritime safety law’ will be adopted has been abandoned.⁸ The Maritime Safety Act adopted in 2000 was, however, of a framework nature. In 2011, it was replaced by a more extensive regulation currently in force – the Maritime Safety Act.⁹

For years, Poland has been a party to the vast majority of international maritime conventions and all of them have been traditionally associated with maritime safety as it is broadly understood, comprising four essential elements: navigational safety, constructional safety, marine environment protection and the human factor.¹⁰

Pursuant to the Constitution of the Republic of Poland of April 2, 1997, the ratified international agreements constitute a part of the universally binding law in Poland. Moreover, an international agreement ratified upon a prior consent granted by a Polish statute takes precedence over Polish statutes in case of collision. As a consequence, such ratified international agreements have priority over Polish laws in case of possible discrepancies.¹¹ After correct promulgation, they become part of Polish law and are to be applied directly (unless their application depends on the enactment of a statute).¹² Notwithstanding the aforementioned constitutional regulation, the Polish system lacks a direct reference to the tacit acceptance procedure, which is characteristic of the IMO Convention.¹³ The wording used in the Polish legal acts referring to the tacit acceptance method varies. In order to avoid unnecessary connotation with the ratification procedure (which is the ordinary procedure provided for in Polish law for international legal instruments) and at the same time to ensure proper publication of amendments introduced under the tacit acceptance procedure, the Maritime Code uses the term ‘public disclosure in an appropriate manner’ (e.g. Article 97 of the Maritime Code). On the other hand, in the Maritime Safety Act of 2011, the term ‘announcement of amendments’ was adopted (Article 2 of the Maritime Safety Act of 2011). Lack of uniform solutions results in either no publications or significant delays in the publication of the current IMO texts in Polish.

Ratified conventions concerning maritime safety have been introduced into Polish law in numerous acts, often in the form of executive acts issued by the minister competent

8 J. Łopuski, ‘Prawo morskie w dobie reformy ustawodawstwa’ (1996) 3 *Kwartalnik Prawa Prywatnego* 566.

9 *Journal of Laws* 2011 No. 228, item 1368.

10 The International Convention for the Safety of Life at Sea, signed in London on November 1, 1974 (hereinafter: SOLAS), the International Convention on Load Lines, signed in London on April 5, 1966 (hereinafter LL), the International Regulations for Preventing Collisions at Sea (hereinafter COLREG), the International Convention for Safe Containers, signed in Geneva on December 2, 1972 (hereinafter CSC), the International Convention on Standards of Training, Certification and Watchkeeping, signed in London on July 7, 1978 (hereinafter STCW), the International Convention on Maritime Search and Rescue signed in Hamburg on April 24, 1979 (hereinafter SAR), the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation signed in Rome on March 10, 1988 (hereinafter SUA), the Maritime Labor Convention of February 23, 2006 (hereinafter MLC 2006).

11 In accordance with Arts. 87 and 91 of the Constitution of the Republic of Poland, *Journal of Laws* 1997 No. 78, item 483.

12 J. Łopuski, *The new Polish Maritime Code*, in: *Maritime Law in the second half of the 20th century. Selected articles* (Wydawnictwo Naukowe UMK, Toruń 2008), p. 90; J. Nawrot., Z. Peplowska Dąbrowska, ‘Maritime legislation in Poland and the Proposals of the Codification Commission for Maritime Law’ (2017) 23 *Journal of International Maritime Law* 220–227.

13 See D. Lost-Siemińska, ch.1 above.

for maritime affairs. As stated earlier, the Maritime Safety Act of 2011 is of fundamental importance. The Act is of a framework nature and implements numerous acts of international law. Adoption of the reference mechanism allows for flexible application of the convention without the need for constant amendment of the national law. This solution should be considered as correct, given the frequent amendments introduced into international conventions, usually within the framework of the tacit acceptance procedure. The Act, accompanied by executive legislation, constitutes the body of maritime safety law in Poland. At the same time, it should be emphasized that the issues related to the concept of maritime security have been regulated separately in the Shipping and Port Security Act, which implements the ISPS code.¹⁴ Therefore, the matter of the SOLAS was divided in the Polish legal order according to the source of the threat criterion. Nevertheless, the broad concept of safety at sea in Poland undoubtedly consists of elements of both maritime safety and security, which reflects the international concept.¹⁵ The so-called human factor is also an essential element of maritime safety. This issue is regulated by the ISM Code, which has been part of the SOLAS since 1988, as well the STCW, whose main goal was to standardize the principles of training seafarers globally, helping to reduce the number of marine casualties and disasters caused by human error. The MLC 2006, ratified by Poland in 2011 with its social output, should also be considered as an important factor enhancing safety at sea. Both of the aforementioned acts (the ISM Code and the STCW) were introduced by referral to the Polish Maritime Safety Act of 2011.

Despite some kind of division of the safety matter between multiple regulations in the Polish legal system, the Maritime Safety Act of 2011 remains the linking legal instrument.

14.2 National structure for the implementation of maritime safety and security law

In Poland, the minister responsible for the maritime economy is obliged to implement maritime safety and security standards. Currently, it is the responsibility of the Minister of Maritime Economy and Inland Navigation.¹⁶ The legal framework for the functioning of the Polish maritime administration is set out in the Polish Maritime Zones and Administration Act adopted in 1991.¹⁷ The Polish maritime administration has two levels. The central authority is represented by the minister competent for the maritime economy, while directors of maritime offices in Gdynia and Szczecin constitute the local level.¹⁸

14 Ustawa o ochronie żeglugi portów morskich, *Journal of Laws* 2008 No. 171, item 1055. It is also important to note that in Polish there is no such clear and intuitive distinction between 'safety' and 'security' as in English. The Maritime Safety Act of 2011 uses the Polish term 'bezpieczeństwo żeglugi', while the second of these acts uses the term 'ochrona żeglugi'. It seems that these two terms reflect precisely the Anglo-Saxon division into *safety* and *security* used in international acts.

15 Analysis of the international legal order and EU maritime law shows that the concept of maritime safety rather refers to standards concerning the 'internal' rules (e.g. regulations concerning the construction of ships or their equipment), while standards regarding security refer to principles aiming at the reduction of potential external sources of risks or threats. In relation to the former, the regulations contained in the SOLAS and MARPOL as well as relevant secondary law acts introducing them into the EU legal order are of crucial importance. In the field of international law, the latter include regulations on combating piracy and terrorism (SUA, ISPS Code). In the area of EU law, they include regulations on freedom, security and justice.

16 This office was established in 2015 and its department includes four branches of government administration: maritime economy, water management, fisheries and inland navigation.

17 Ustawa o obszarach morskich RP i administracji morskiej, *Journal of Laws* 1991 No. 32, item 131.

18 In April 2020, the third of the existing maritime offices in Słupsk was abolished. From 1st of April, 2020,

Additionally, maritime chambers – special quasi-judicial bodies – have jurisdiction over the professional responsibility of seafarers and maritime pilots. However, these quasi-judicial bodies operating at the regional courts in Gdańsk and Szczecin should not be considered as a substitute for maritime courts. Generally, maritime matters are heard by common courts. The chambers, operating pursuant to the Act of 1961,¹⁹ have retained to this day individual competences in the disciplinary proceedings of seafarers and pilots, but they operate alongside the State Marine Accident Investigation Commission (hereinafter SMAIC). To reduce duplication of their activities, the chambers' jurisdiction was limited to matters that would be reported at the request of the interested entities. The latter aims at explaining the causes of an accident in order to formulate appropriate recommendations for the future which will minimize the risk of similar accidents. However, SMAIC does not prejudice any issue of criminal or civil liability. Regardless of the EU regulation concerning investigation of the causes of maritime accidents, Polish law has contained provisions on severe professional responsibility of seafarers since the early 1960s. As a result, Polish seafarers display a high level of both knowledge and skills as well as diligence in performing their professional duties.

It is also worth mentioning that the functioning of marine chambers was the subject of a judgment of the European Court of Human Rights in 2005.²⁰ The ECHR found that Poland had violated Article 6 of the Convention on Human Rights and Fundamental Freedoms by not providing an opportunity to appeal against the decisions of maritime chambers to a common court of law. As a consequence of the ECHR's judgment, the judicial control over the decisions of marine chambers was introduced into Polish law.

Maritime chambers also keep a register of vessels, which includes information on the ships flying the Polish flag. Notwithstanding the ship register run by the maritime chambers, maritime offices also keep a so-called 'administrative' register of ships which are not subject to the obligation of being entered in the register of vessels.²¹ Concluding, the maritime chambers should not be considered part of the maritime administration and their quasi-judicial functions and nature also allow them to deal with the real rights on ships.

Furthermore, under the Maritime Safety Act of 2011, it is possible for the proper minister to entrust the tasks of maritime administration bodies to a recognized classification society. In Poland, the classification society is the Polish Register of Shipping. Additionally, Polish law provides for the possibility of entrusting recognized foreign classification societies with the application of the said rights.

In the structure of the Polish maritime administration, the competent minister is responsible for preparing the implementation of international and EU standards and regulations within the national law. Inspection bodies, however, are placed within the structure of local maritime administration bodies, i.e. maritime offices. Three types of inspections were identified: maritime control, Flag State Control and Port State Control.

the scope of its activity was taken over by the other two maritime offices. Ordinance on the abolition of the Maritime Office in Słupsk, dated 15th January, 2020, *Journal of Laws* 2020 item 91. It should be considered as a part of further reform of the Polish maritime authorities.

19 Ustawa o izbach morskich, *Journal of Laws* 1961 No. 51, item 320.

20 Case of Brudnicka and Others v. Poland, 03.06.2005.

21 Ships subject to the obligation to enter in the ship's register are specified in the Maritime Code. According to the latest proposal of Maritime Code's amendments (dated 17th August 2020), "administrative" register is planned to be ceased.

Local maritime administration authorities are also responsible – after appropriate prior control – for issuing certificates of ships required under international conventions to which Poland is a party. They issue ship safety and financial security certificates. Additionally, they have other obligations not directly related to ensuring maritime safety. Under the Harbours and Marinas Act,²² directors of maritime offices can manage small ports that are not crucial to the national economy. As a consequence, a strong connection between Polish ports and maritime administration can be observed. Moreover, the directors of maritime offices are competent to handle complaints of port users arising from the application of Regulation 2017/352 by the managing body of the port or other entity that provides port services²³ as well as complaints of passengers against carriers or terminal operators arising from the application of Regulation 1177/2010.²⁴ Thus, in addition to traditional obligations related to the safety of navigation and ports, regional maritime administration bodies fulfil a number of other obligations. The scale of these obligations has significantly increased in recent years.

14.3 Prevention

Following the concept adopted by the Maritime Law Codification Commission relating to the private character of the Maritime Code of 2001, the matter concerning maritime safety was regulated in a separate Maritime Safety Act in 2000 repealed by the new Maritime Safety Act in 2011. The Maritime Safety Act of 2011 contains the regulatory framework regarding preventive standards.

In the preceding Maritime Safety Act of 2000, contents similar to that of SOLAS was adopted,²⁵ taking into account the provisions of the other most crucial maritime safety conventions to which Poland is a party. As a result, the backbone of the Act was composed by Chapters 2–5 regulating the following issues: ship construction, installations and equipment, qualification of the crew and proper manning, navigational safety as well as search and rescue service. The Act incorporated the provisions of the conventions to which Poland is a party, supplementing them with delegations to introduce executive acts for the competent minister and directors of maritime offices.

Relatively soon after the adoption of the first Maritime Safety Act in 2000 in Poland, it became clear that it required revision. The most urgent reason was the need to implement numerous EU laws. Poland became a member of the European Union on May 1st, 2004. Work on the content of the new law was completed with the adoption of the new Maritime Safety Act in 2011.²⁶ This Act is more extensive than its predecessor, although its internal systematics is based on the previously adopted solutions. The Act of 2011 concerns ship

²² Art. 25 of *Ustawa o portach i przystaniach morskich* adopted on 20 December, 1996, *Journal of Laws* 1997 No. 9, item 44.

²³ Regulation (EU) 2017/352 of the European Parliament and of the Council of 15 February, 2017 establishing a framework for the provision of port services and common rules on the financial transparency of ports, OJ L 57, 3.3.2017, p. 1.

²⁴ Regulation (EU) No 1177/2010 of the European Parliament and of the Council of 24 November, 2010 concerning the rights of passengers when travelling by sea and inland waterways and amending Regulation (EC) No 2006/2004, OJ L 334, 17.12.2010, p. 1.

²⁵ *Journal of Laws* 1984 No. 61, item 318.

²⁶ Consolidated text in *Journal of Laws* 2016 item 281.

construction, installations and equipment, qualification of the crew and proper manning, inspections, navigational safety as well as search and rescue service.

The Maritime Safety Act of 2011 applies to vessels flying the Polish flag. It is also applicable to vessels flying foreign flags located in Polish internal waters or the territorial sea in relation to Port State Control and navigational safety as well as to ro-ro passenger ships and high-speed passenger craft in regular service, regardless of their flag in relation to an inspection provided for them under Directive (EU) 2017/2110.²⁷ Foreign vessels found in other Polish maritime zones are subject to the provisions of the Act only within the scope of its provisions on vessel traffic monitoring and information.

According to the Maritime Safety Act of 2011, a ship flying the Polish flag is not allowed to engage in navigation if it does not meet the safety requirements in terms of its construction, installations and equipment as well as living and working conditions on the ship specified in those international agreements to which Poland is a party, in the regulations of the Marine Equipment Act and in the additional provisions of the Maritime Safety Act of 2011. The ship's operator is also obliged to meet the requirements set out in the MLC. Non-convention vessels, for which national requirements have been established in a separate executive act, are exempted from the obligation to meet the requirements specified in the Maritime Safety Act of 2011.²⁸ Since 2015, the Act's provisions have also been partly applicable to fixed platforms.²⁹ It incorporates multiple international conventions: LL, COLREG, MARPOL, TONNAGE 1969, AFS Convention 2001, MLC, STCW, STCW-F, BWM 2004 as well as EU legal acts.³⁰

The Act also allows the proper minister to increase requirements for vessels subject to international agreements in the field of ship construction, its installations and equipment in relation to the requirements set out by international conventions ratified by Poland. In addition, the minister is allowed to exclude the vessels subject to these international agreements from specific provisions of these agreements. So far, the minister has not taken advantage of this possibility. The Act also reserves the possibility of exemption from the requirements set out in Chapter V of the SOLAS in relation to ships whose construction does not allow compliance with the convention's requirements or when it is justified due to the area or navigation conditions, provided that the level of safety is not reduced. Such a decision is taken by the director of a maritime office.

27 Directive (EU) 2017/2110 of the European Parliament and of the Council of 15 November 2017 on a system of inspections for the safe operation of ro-ro passenger ships and high-speed passenger craft in regular service and amending Directive 2009/16/EC and repealing Council Directive 1999/35/EC, OJ L 315, 30.11.2017, p. 61–77.

28 They must meet the requirements set out in the following executive act: Regulation of 2014 on requirements for the ship construction, installations, and equipment for ships not covered by the international agreement, *Journal of Laws* 2014, No. 1335.

29 A floating platform is considered a ship while in a move. Warships, Border Guard and Police vessels are basically excluded from the scope of the Maritime Safety Act of 2011. Furthermore, the rules for controlling and monitoring ship traffic are to be applied to special State purposes vessels and small vessels.

30 Directives: 92/29, 96/98, 97/70, 98/41, 99/35, 2002/59, 2003/25, 2008/106, 2009/15, 2009/16, 2009/17, 2009/21, 2009/42, 2009/45, 2010/36, 2010/65, 2011/15, 2017/2109, 2017/2110.

Moreover, Poland implemented Directive (EU) 2014/90 on marine equipment³¹ in the Marine Equipment Act.³² According to this Act, international regulations are understood not only as the provisions of international conventions and EU standards but also as research standards, including soft law, technical standards, etc.

Furthermore, the Maritime Safety Act of 2011 defines the scope and procedures for issuing certificates required for ships flying the Polish flag and a list of certificates required for foreign ships entering Polish internal waters or the territorial sea. Certificates related to ship safety may be issued, after inspection, by a recognized classification society, which has been authorized to do so by the minister competent for maritime economy.

On the other hand, the Polish law does not specify in detail the issue of safe manning requirements. According to Articles 61 and 62 of the Maritime Safety Act of 2011, a ship is not allowed to operate if it is not properly manned. At the same time, the Maritime Safety Act of 2011 refers to the safe manning requirements set out in Chapter V of SOLAS as well as in STCW, STWC – F and MLC 2006 in relation to proper manning, without its own understanding of the term. As a consequence, the Polish requirements allow for a flexible interpretation of the ‘safe manning’ term, which follows the interpretation agreed internationally. It should also be noticed that, according to Article 80 of the Maritime Safety Act of 2011 and the Regulation on proper manning,³³ the director of a maritime office has the right to reduce or increase standards, taking into account different circumstances, for example, the level of a ship’s automatization, when the composition of the crew is being determined. Such possibility clearly refers to SOLAS.

The Maritime Safety Act of 2011 contains an extensive regulation regarding the ISM Code and possession of the maritime safety certificate is one of the premises of the initial inspection carried out in relation to Polish ships.

Navigational safety regulations are one of the critical elements of the Act. Its entire, extensive Chapter V is devoted to regulations regarding navigational safety. The bodies competent to exercise control in this area are directors of maritime offices, who establish local regulations for navigation in Polish internal waters. On the other hand, navigational safety in the territorial sea is regulated, in principle, in the Polish Maritime Zones and Administration Act of 1991.³⁴

Polish law meets the international and EU requirements in the field of places of refuge. The legal bases for places of refuge are included in Article 94 of the Maritime Safety Act of 2011 supplemented by the executive act.³⁵ The decision to grant a place of refuge to a ship lies with the local maritime administration authorities, competent for the place of the ship’s location. However, this means that, in Poland, there is basically no single national plan for granting places of refuge and such plans are of a regional nature. Demand for changes in this area has been present in the Polish doctrine for many years.³⁶ This problem

31 Directive 2014/90/EU of the European Parliament and of the Council of 23 July 2014 on marine equipment and repealing Council Directive 96/98/EC, OJ L 257, 28.8.2014, p. 146–185.

32 Ustawa o wyposażeniu morskim, dated 2nd December, 2016, consolidated text in *Journal of Laws* 2019 item 255.

33 Regulation on proper manning on ship dated on 9th December, 2015, *Journal of Laws* 2015 item 2104.

34 See more in section 4 of this chapter.

35 *Journal of Laws* 2012 item 575.

36 M. Koziański, ‘Miejsce schronienia (place of refuge)’ (2013) XXIX *Gdańskie Studia Prawnicze* 103–114.

was partially addressed with the adoption of the regulation regarding the organization of the efforts to combat threats and pollution at sea by the Council of Ministers.³⁷ However, this act is not strictly dedicated to the institution of places of refuge, nor does this concept appear in its text. It concerns the organization and coordination of maritime administration bodies and SAR services in the event of a threat to or pollution of the Polish maritime areas and obliges SAR services to develop a national plan to combat threats and pollution. The regulation was issued on the basis of a delegation contained in the Act for the Prevention of Pollution from Ships,³⁸ which essentially implements the provisions of the MARPOL and relevant EU legislation in the field of the protection of the marine environment. Thus, since the issue of places of refuge is regulated in the Maritime Safety Act of 2011 and not in the Act for the Prevention of Pollution from Ships, it still does not exhaust the requirement of comprehensive and transparent regulation regarding places of refuge. However, it should be noted that the said regulation does refer, although not explicitly, to the obligation to establish a maritime assistance service (MAS), introduced by the IMO.

14.4 System of control and surveillance

The primary role assigned to maritime surveillance in new EU maritime policy is the safe use of the sea (*safety*) and securing the EU's maritime borders (*security*) as well as, more broadly, the entire European continent. Maritime surveillance is generally carried out by national authorities and is a primary tool used by States to exercise superior authority over maritime areas. A great advantage of the EU regulations is the ability to combine the results of national supervisory and monitoring activities in order to provide a regional picture of the situation at sea.³⁹

In the said field, two legal acts are crucial in Polish law: the Polish Maritime Zones and Administration Act of 1991 and the Maritime Safety Act of 2011. The former defines the structure of maritime administration, including the structure of local maritime administration bodies with their scope of responsibilities and competences. Maritime offices consist of the following organizational units: maritime inspection, Flag State Control, Port State Control, VTS service, Security Office and local harbour masters' offices. Essentially, they are assigned with a leading role in the supervision of maritime safety. The latter act extensively regulates and clarifies control tasks and surveillance of maritime safety issues. Ship traffic on the territorial sea is subject to the COLREG regime and the Polish maritime zones regulations, determined in accordance with the provisions of the UNCLOS in the Polish Maritime Zones and Administration Act of 1991. In contrast, the regulations regarding ship traffic on internal waters and ports are regulated in the ordinances of directors of maritime offices. The Act refers extensively to Chapter V of the SOLAS Convention as well as international regulations and documents, including the obligation to use IAMSAR.

³⁷ *Journal of Laws* 2017 item 1631.

³⁸ 'Ustawa o zapobieganiu zanieczyszczenia morza przez statki' of 16th March, 1995, *Journal of Laws* 2019 item 2302.

³⁹ It follows from Directive 2002/59/EC of the European Parliament and of the Council of 27 June 2002 establishing a Community vessel traffic monitoring and information system and repealing Council Directive 93/75/EEC, OJ L 208, 5.8.2002, p. 10–27. The directive forms a basis for building Europe-wide SafeSeaNet.

Moreover, the provisions on vessel traffic service reflect the provisions arising from the SOLAS and EU directives. VTS services are located within the structure of maritime offices and are subject to the directors of maritime offices in Gdynia and Szczecin. The Maritime Safety Act of 2011 does not define the concept of traffic service; however, it understands the VTS tasks quite broadly. They relate not only to ship traffic monitoring but also to providing relevant information, maintaining contact with ships, collecting and analysing information about the situation at sea, providing maritime service assistance, disseminating information about the meteorological and hydrographic situation and providing navigational warnings. Moreover, VTS functions as a Central Contact Point according to the ISPS code. The shipmasters of the vessels in the Polish maritime zones are required to comply with the orders, warnings, instructions and recommendations of the VTS Service. Failure to comply with them will result in a financial penalty imposed on the ship's master.⁴⁰

VTS is also an essential component of the SafeSeaNet provided for in Article 91 of the Maritime Safety Act of 2011. That Act also established the function of the National SafeSeaNet System Coordinator, who was given the status of the National Competent Authority (NCA) under the Interface and Functionalities Control Document (IFCD). The National Coordinator is supported by the local maritime authorities in Gdynia and Szczecin. The Polish SafeSeaNet system contains two technical subsystems. The first one is responsible for the monitoring of maritime traffic (AIS, LRIT and data from radars). The second subsystem is designed to transfer information and includes two elements: the Polish Harbours Information & Control System (PHICS) and the Maritime Safety and Security Exchange Information System (SWIBŻ).⁴¹ Basically, the local maritime authorities are also the competent authority to whom the required reporting information and documents should be submitted by the shipmaster or any other person assigned by the ship operator. SWIBŻ was designed in 2003, long before the approval of Directive 2010/65 and is one of the oldest such systems in the EU. At the beginning, it was designed only for the local Maritime Authority in Gdynia, but now this is a national system used to distribute information between various Polish authorities, including other local maritime authorities in Poland, the Polish Navy, SAR, Meteorology Institute, Hydrographical Office of the Polish Navy, the Polish Coast Guard, the National Emergency Centre, the Customs Office, the Police as well as port managements, European Agency of Maritime Safety (EMSA) and NATO's Allied Maritime Command in Northwood, UK. The main function of SWIBŻ is gathering, classifying and distributing maritime safety information and important security information.

PHICS was launched in 2004 in the Maritime Office in Szczecin and since then it has served as a system of basic information exchange about the cargo and passengers on the ships entering or departing from the Polish ports. PHICS has also become a Polish single window, fulfilling the requirement imposed in Article 5 of Directive 2010/65. As a single window, PHICS is a system through which the shipmaster or the ship operator can fulfil all the reporting obligations in relation to the State authorities and other entities (the port management, for example). After completing the required formalities at PHICS, all the interested entities are able to get access to the collected data as participants of the

40 Art. 128 of the Maritime Safety Act of 2011.

41 System Wymiany Informacji Bezpieczeństwa Żeglugi.

PHICS system. This system meets the State obligations under both EU law⁴² and the FAL Convention.⁴³

In the scope of establishing ship routing systems in accordance with Article 97 of the Maritime Safety Act of 2011, the Minister competent for maritime economy cooperates with the relevant IMO and EU bodies. There are several ship traffic separation zones in Poland, generally in areas with approach fairway to ports in Gdańsk, Świnoujście and Szczecin⁴⁴ and recently also in the Polish economic zone – *TSS Ławica Słupska*.⁴⁵

Poland is also a member of the Paris MOU. Port State inspections are carried out by the competent units – Port State Control (PSC) operating within the structures of the local maritime authorities. PSC performs tasks in this respect in accordance with the procedures developed by the Paris MoU based on IMO Resolution A.787 (19) (as amended) and EU Directive 2009/16. The Polish PSC enters the data and information obtained during the inspection into the THETIS⁴⁶ database containing information on Port State inspections carried out in the Paris MoU region. Furthermore, to fulfil the obligations additional to those arising from the Paris MoU, the THETIS EU information database has been in operation since December 2019. This is an information system developed and operated by EMSA which supports the implementation of PSC and FSC tasks, in particular in the field of the inspection of ro-ro passenger ships and high-speed passenger ships.⁴⁷ As a consequence, passenger and ro-ro ships are also inspected in accordance with the inspection schedule set out in Directive 2017/2110.⁴⁸

A few years ago, the fisheries policy became the responsibility of the minister competent for maritime affairs. Earlier, it had been the responsibility of the Ministry of Agriculture for many years. Thus, the sea fisheries policy and sea fisheries administration⁴⁹ are concentrated in the same ministry together with the maritime issues. Regardless of the register of seagoing vessels, a register of fishing vessels is also kept.⁵⁰ Unlike the register of ships flying the Polish flag, it is run directly by the ministry.

14.5 Enforcement

As for making international maritime safety standards binding in Polish law, the Polish legal system operates in a correct and relatively open manner. The Polish legislator decided to adopt the method of incorporating international conventions into the Polish legal order.⁵¹ In case of doubt, the authentic text of the Convention shall prevail.

42 This is essentially Directive 2002/59/EC establishing the maritime information exchange system known as 'SafeSeaNet' (SSN) as well as Directive 2010/65/EU of the European Parliament and of the Council of 20 October 2010 on reporting formalities for ships arriving in and/or departing from ports of the Member States, OJ L 283, 29.10.2010, p. 1–10.

43 *Journal of Laws* 2019 item 384.

44 Traffic Separation Schemes operate on the Gdańsk Bay, the Pomeranian Bay, and the Szczecin Lagoon.

45 Approved by MSC in 2010, taking into account the environmental fragility of the mentioned area.

46 See *supra* 99, chapter 2.

47 Art. 5 point 26a of the Maritime Safety Act of 2011.

48 Directive (EU) 2017/2110, see *supra* 27.

49 It should be noted, however, that local fisheries administration bodies – district sea fishery inspectors – operate separately from local maritime administration bodies.

50 It is a modern register and, unlike the register of sea-going vessels, it is kept in electronic form.

51 See more in section 6 of this chapter.

Therefore, this view presented by the doctrine of Polish maritime law assumes the need for comparative legal research, which significantly strengthens the idea of the unification of maritime law.⁵²

The Maritime Code of 2001 remains the core of Polish maritime law. As part of a significant reform of the maritime law initiated with the change of the Polish system at the end of the 1980s and at the beginning of the 1990s, the maritime code in force since 1961 was amended by incorporating Athens Convention 1974, LLMC 1976, CLC 1969 and FUND 1971. The reform of Polish public maritime law began with the adoption of the Maritime Zones and Maritime Administration Act in 1991, which adapted Polish legal order to the principles arising from the UNCLOS. Exclusive economic zone and contiguous zone⁵³ were also established as ones of the Polish maritime zones. The regulations adopted in the Act mentioned above are basic principles, while the specification of the issues of protection of the marine environment and maritime safety was made at a later stage by adopting the Act for the Prevention of Pollution from Ships in 1995 and the first Maritime Safety Act in 2000. Together with the adoption of the Act for the Prevention of Pollution from Ships the following conventions were incorporated into Polish law: MARPOL Convention 1972, Intervention Convention 1969 with the Protocol from 1973 and the first Convention on the Protection of the Marine Environment of the Baltic Sea Area 1974. The reform of Polish maritime law was completed by the adoption of the new Maritime Code in 2001.

The currently applicable Maritime Code does not include the provision of the previous maritime code of 1961 regarding the priority of international agreements. Such a norm is unnecessary considering the wording of the Polish Constitution. Its Article 88, in conjunction with Article 18 of the Act on International Treaties,⁵⁴ requires international treaties to be adequately published in an official *Journal of Laws* for them to come into force. It seems that the need to ensure the priority of international conventions is met with the updating formula adopted selectively for some conventions⁵⁵ and also used in non-code maritime safety regulations (Article 1 of the Act for the Prevention of Pollution from Ships of 1995 and Article 2 of the Maritime Safety Act of 2011).⁵⁶ Unfortunately, the amendments to most maritime conventions are published in Polish with many years of delays. As a consequence, they may be found as not binding for private entities. This is one of the weaknesses of Polish maritime law.

Polish law includes criminal as well as administrative sanctions for maritime safety breaches as tools to provide proper enforcement. Criminal penalties are provided in the Criminal Code⁵⁷ and include penalties for offences against transportation safety and for environmental crimes. The Maritime Safety Act of 2011 also sets a wide range of administrative sanctions, which are not, contrary to criminal sanctions, ordered by court, but by the

52 M. Dragun-Gertner, 'Polskie ustawodawstwo morskie a prawo międzynarodowe' in E. Kustra (ed.), *Przemiany polskiego prawa* (Toruń 2002) vol. II, pp. 131–153.

53 *Journal of Laws* 2015 item 1642.

54 Ustawa o umowach międzynarodowych, consolidated text in *Journal of Laws* 2020 item 127.

55 LLMC, CLC 92, FUND 92, Bunker Convention.

56 However, it is worth pointing out the lack of consistency of the legislator, who did not make an analogous provision in the Maritime Labour Act.

57 Consolidated text in *Journal of Laws* 2019 item 1950.

administrative authorities. Most of the administrative sanctions are of a financial nature, acting in a preventive and disciplinary manner.⁵⁸

Similar financial sanctions are provided by the Marine Equipment Act in relation to producers or importers of marine equipment and by the Act for the Prevention of Pollution from Ships. The latter also provides a criminal penalty in case of oil or noxious liquid substances discharged from ships. Apart from the instruments mentioned above (e.g. for pilots), the sanctions for safety breaches also include detention of a ship, denial of access to port or suspension of the right to practice the profession.

14.6 Liability

Poland is a party to several liability conventions which require a certificate of financial security. As stated before, according to the Polish Constitution, a ratified international agreement becomes part of Polish law and is to be applied directly (unless its application depends on the enactment of a statute). Moreover, in order to ensure the best possible compliance of internal law with international conventions, Poland has adopted a method of incorporating those conventions by making reference to them in the proper parts of the Maritime Code of 2001. Accordingly, the regime of an incorporated international convention, to which the Maritime Code only refers without duplicating its provisions, will further be used by virtue of Polish law applicability, also in cases when the convention itself would not be applicable due to its limitations (e.g. Article 2.1 of the Athens Convention).⁵⁹ Provisions of a convention which has been incorporated into the Maritime Code become part of the Code itself and are in force in the same way as the other provisions of the Code.⁶⁰

The maritime civil liability conventions which contain the obligation of financial security and have been ratified by Poland include CLC 1992, Bunker Convention and MLC 2006. In addition to the incorporating provisions, the Maritime Code also contains implementation norms necessary for the proper fulfilment of the obligations assumed with the ratification of international treaties.⁶¹ As maritime labour matters are governed by a separate act (the Labour at Sea Act of 2015), the norms implementing the issuance of MLC 2006 certificates are included therein.⁶² Most importantly, the implementation norms included in the Maritime Code of 2001 regulate the issuance of certificates attesting that the insurance or other financial security is in force in accordance with the provisions of a

58 According to the Maritime Safety Act of 2011, such financial sanctions can be imposed on a ship operator and a shipmaster in case of maritime safety breaches enumerated in Arts. 126 and 128 of the Maritime Safety Act of 2011. Administrative and financial sanctions may be imposed on anyone who breaches the maritime safety provisions enumerated in Art. 127 of the Act mentioned above (including natural persons, pilots and port management entities).

59 So far, Poland has not ratified the 2002 Athens Convention and remains bound by the Athens Convention of 1974, which does not require a compulsory financial insurance, see more below. Also incorporated into the Maritime Code are FUND 1992 and 2003 Protocol establishing Supplementary Fund.

60 J. Łopuski, 'Prawo morskie w dobie reformy ustawodawstwa' (1996) 3 *Kwartalnik Prawa Prywatnego* 574.

61 *Ibid.*, 575.

62 Art. 62b of the Labour at Sea Act (Ustawa o pracy na morzu), consolidated text in *Journal of Laws* 2019 item 1889.

particular convention. In Poland, the director of a maritime office is the authority responsible for the issuance of such certificates. In fulfilment of the obligations arising from the ratified conventions, the Maritime Code prohibits those ships under the Polish flag to which the financial security obligation applies from operating unless a proper certificate has been obtained. The Code also prohibits such ships from entering or leaving a Polish port (as well as arriving at or leaving an offshore terminal in the Polish territorial sea) without such a certificate. However, so far it has not provided for an administrative penalty for the breach of this obligation to obtain the certificate, which could be reconsidered as a tool strengthening the conventions' enforcement. Directors of maritime offices are obliged to control the observance of the norms on financial security.

Poland is party to neither the Nairobi Wreck Removal Convention nor HNS. National rules on wreck removal are included in the Maritime Code (Title VII, Part IV) and they require no sort of specific financial security covering wreck removal costs, nor any fund for wreck removal purposes.⁶³ As this can be seen as a weakness of Polish maritime law, the Codification Commission for Maritime Law, in its proposal for the new maritime code delivered to the proper Ministry in June 2017, included provisions incorporating the Wreck Removal Convention, opting for its early ratification. The proposed provisions implementing the certification were largely drafted on the basis of the existing provisions referring to oil and bunker pollution certificates. In light of the advantages arising from the unified and thus predictable regime in the Polish maritime areas, the Codification Commission proposed provisions extending scope of the convention to the territorial sea.⁶⁴ As far as the HNS is concerned, an act authorizing accession to the HNS 1996 was initially adopted by the Polish Council of Ministers, but was later suspended pending the 2010 Protocol. The Polish national regulation on the liability for pollution caused by substances other than oil or bunker oil (covered by the CLC and Bunker Convention) is included in the Maritime Code under the chapter "Miscellaneous pollution" (Articles 265–271). The scope of compensated damage as well as the basis and exclusion from liability are largely inspired by the CLC. It does not, however, contain any obligation in respect of specific compulsory insurance or creation of a compensation fund. Moreover, it attaches liability to the ship's operator, and not to the shipowner, as the latter solution is alien to Polish maritime law and exists only due to the ratification of certain liability conventions. The ship's operator will be able to invoke the limitation of liability under the LLMC 1976 as amended by the 1996 Protocol. So far, Poland has not ratified the 2002 Athens Convention and remains bound by the Athens Convention of 1974, which does not require a compulsory financial security. The 1974 Athens Convention is incorporated into the Maritime Code, and made applicable also to national carriages (with the exclusion of national carriages governed by Regulation (EC) No 392/2009). To remedy lack of insurance obligation under the 1974 Athens Convention, Polish Maritime Code

63 It is worth noting that Poland has made a reservation under Art. 18 (1) (a) LLMC 1976 as amended to exclude limitation of claims in respect of wreck removal.

64 See more in J. Nawrot, Z. Pełowska-Dąbrowska, 'Environmental, Navigational and Regulatory Issues on Wrecks' in M. Musi (ed.), *Port, Maritime and Transport Law Between Legacies of the Past and Modernization*, Il Diritto Marittimo Quaderni (Bonomo Editore 2018), pp. 468–469. Authors are aware that works on the ratification of WRC and 2002 Athens Convention were started by the Ministry of Maritime Economy and Inland Navigation in September 2019 and continued in September 2020. At the time of delivering this chapter, the fate of both conventions in Poland is still unknown.

requires a carrier who undertakes carriage of passengers to hold liability insurance up to carrier's liability limits provided in Articles 7 and 8 of the 1974 Athens Convention. At the same time Poland is bound by the Regulation (EC) No 392/2009, which incorporates 2002 Athens Convention. Thus, in relation to carriages governed by the Regulation, the Maritime Code implements norms on obligatory financial security. This inconsistency of applicable regimes should be seen as weakness of Polish law and the Codification Commission for Maritime Law has opted for ratification of 2002 Athens Convention. Works on ratification of the 2002 Athens Convention have been commenced in 2019 and still continues in September 2020.

Finally, Poland is bound by Directive 2009/20 on the insurance of shipowners against maritime claims, which has been implemented into Polish law in Articles 102a–102g of the Maritime Code together with the certification provisions shaped similarly to the norms of CLC and Bunker Convention certificates.

14.7 Concluding remarks

In recent decades, the form and scope of Polish maritime law has undergone an enormous evolution in terms of its adaptation to maritime safety standards. First, it should be stated that the matter of maritime safety was included in the first phase of the reform of Polish maritime law, which began with the change of the Polish system in the early 1990s. Adoption of the first Polish Maritime Safety Act in 2000 served that purpose. That act put an end to the practice of regulating maritime safety issues in the form of executive acts and gave it the appropriate statutory rank. The new Maritime Safety Act of 2011 is definitely more extensive and, within its framework, it includes numerous previously dispersed provisions in one piece of legislation. In addition, it regulates numerous additional issues, such as inspections (FSC and PSC), SafeSeaNet, search and rescue service and qualifications of seafarers. It also specifies financial penalties applied in Poland for violations of maritime safety regulations. The concept of separating private law issues (in the maritime code) and public law issues (in separate acts) has also been reinforced in Poland.

Maritime law in Poland has gone through a major revision in order to adapt national legislation to EU law. Poland joined the European Union in 2004 and since then it has been successively implementing and applying EU maritime legislation without any significant delay. The Maritime Safety Act of 2011 not only incorporates IMO conventions into the Polish legal system but also implements the EU directives.

In conclusion, it should be noted that the Polish legislator duly fulfils the obligation to apply international standards in the field of maritime safety. The strength of Polish solutions proves that the professional responsibility of seafarers is treated seriously. Irrespective of their criminal liability, seafarers in Poland are subject to an assessment carried out by specialized maritime chambers operating at the regional courts in Gdynia and Szczecin. It has an influence on the high work ethic of Polish seafarers. The model for investigating causes of maritime accidents also works well. It seems, however, that Polish legislation on maritime safety would benefit if the legislator made an effort to include maritime equipment and maritime security standards into the Maritime Safety Act of 2011, instead of regulating those issues separately, as is the case now.

Among the weaknesses of maritime law regulation in Poland, one should mention the lack of a well-designed method of incorporating amendments adopted through the tacit

amendment procedure. It causes delays in their proper publication in Polish, being a premise for their effectiveness. It would be beneficial to implement a special and simplified method of adopting and enforcing the amendments introduced by tacit acceptance. Finally, the low level of the official translations of the maritime international and EU acts into Polish ought to be pointed to as a major deficiency. In some cases, the wording adopted in the Polish official translation of an act deviates from the authentic text so much that it substantially alters its meaning.