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| From: | Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director |
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| To: | Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union |
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| Subject: | COMMISSION STAFF WORKING DOCUMENT EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT Accompanying the document Proposal for a Directive of the European Parliament and of the Council amending Directive 2009/21/EC on compliance with flag State requirements |

Delegations will find attached document SWD(2023) 166 final.

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SWD(2023) 166 final

COMMISSION STAFF WORKING DOCUMENT
EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT

Accompanying the document

Proposal for a Directive of the European Parliament and of the Council
amending Directive 2009/21/EC on compliance with flag State requirements
{COM(2023) 272 final} - {SEC(2023) 210 final} - {SWD(2023) 165 final}

A. Need for action

What is the problem and why is it a problem at EU level?

EU action in the field of maritime safety both complements and implements the international framework as defined by the International Maritime Organization (IMO). The responsibility for maritime safety at state level involves three overlapping lines of action.

The first line of defence is provided by Directive 2009/21/EC on compliance with flag State requirements (FSD). The aim is to ensure that EU Member States as flag States discharge their international law obligations as regards ships flying their flags, that they enhance safety and prevent pollution from those ships. Since this Directive was adopted, the UN specialised agency - the International Maritime Organization - has made the Instruments Implementation Code (III-Code) and IMO audit mandatory as of 2016 for all flag States in the world, including EU Member States as flag States. However, the IMO lacks enforcement powers.

The Directive incorporates parts of the III-Code into EU legislation, but it does so in a fragmented manner. The Directive was the subject of an ex-post evaluation and a maritime fitness check that identified several problematic issues. These include (1) legal uncertainty in implementing new international rules at EU level and, (2) the lack of a harmonised approach to inspections, control, monitoring and information sharing of flagged fleet. It is also essential for national authorities to have the resources needed as a flag State to carry out their international obligations.

Absent EU action, EU flag administrations will work in an uncoordinated and non-harmonised way.

What should be achieved?

This initiative seeks to ensure and improve on the high level of maritime safety and pollution protection across the EU.

What is the value added of action at EU level (subsidiarity)?

Shipping as an international business operates in different EU and international waters and is regulated at the global as well as regional and national instances, it has by nature a strong cross-border dimension. Harmonising flag State inspections and control over flagged fleet at EU level is essential to this end.

B. Solutions

What are the options to achieve the objectives? Is there a preferred option? If not, why?

Four policy options addressing the problems have been developed. All policy options provide for incorporating the now mandatory flag-State parts of the III-Code and maintaining the mandatory IMO audit.

The preferred option is policy option 2. It aims to retain a core capacity of technical staff in flag State administrations for upholding international obligations and to ensure effective control of flagged fleet and purposeful monitoring of recognised organisations. In essence, this option incorporates the remaining key parts of the mandatory III-Code relevant to flag States and provides a joint solution using digitalisation to achieve consistent compliance of flag State requirements across the EU.

What are different stakeholders' views? Who supports which option?

All flag State administrations and industry stakeholders are in favour of a clear, coherent and aligned legal framework that incorporates the international rules: the III-Code and the IMO audit. The preferred policy option is supported as it ensures a high degree of internal and external coherence. This option is considered measured and proportional given the great range in the size and type of fleet in EU Member States. The flag State administrations and industry stakeholders fully support digitalisation.

C. Impacts of the preferred option

What are the benefits of the preferred option?

The societal impacts are mainly assessed in terms of the impacts of the policy options on maritime safety (lives saved), and on environmental protection. With digitalisation, the preferred policy option

also ensures more effective, efficient and transparent ship inspections and monitoring and oversight by the EU recognised organisations.

The preferred option is projected to result in 69 lives saved and 810 injuries avoided during 2025-2050 relative to the baseline figure. These benefits are expected to reduce external costs related to accidents by an estimated EUR 2.3973 billion relative to the baseline costs over 2025-2050 (in 2021 prices). Preventing accidents from occurring in the future¹ is projected to avoid the loss at sea of 1 418 tonnes of bunker fuel relative to the baseline over 2025-2050. This is expected to have an indirect positive impact on the quality of marine water and biodiversity.

For **flag State authorities**, the preferred policy option is expected to generate enforcement cost savings of EUR 48.8-52.9 million relative to the baseline (in current prices over 2025-2050). For **ship operators**, the adjustment cost savings were estimated at EUR 0.6-1.2 million relative to the baseline (current prices over 2025-2050). They are principally the result of implementing technical solutions for electronic flag State inspection reports.

What are the costs of the preferred option (if any, otherwise of main ones)?

Additional costs will fall mainly on flag State authorities as option 2 increase the control of flagged fleet via flag State inspections and oversight of recognised organisations. The total costs for flag State authorities are estimated at EUR 49.1- 49.2 million.

For EMSA, the policy measures related to developing or improving a flag State reporting module and to develop enhanced training tools for inspectors are expected to give rise to adjustment costs estimated at EUR 6.4-7 million.

For ship operators, the limited increase in the number of inspections is expected to result in adjustment costs estimated at EUR 3.2 million.

What are the impacts on SMEs and competitiveness?

The proposed amendments to the Directive will not have an impact on SMEs since the vessels under the scope of the Directive tend to be international merchant vessels. The fleet of small ships (below 300 gross tonnes) fall outside the scope of the Directive.

Will there be significant impacts on national budgets and administrations?

The proposal is expected to give rise to costs for national administrations as flag States estimated at EUR 49.1-49.2 million. However, these costs will be largely offset by savings in enforcement costs due to digitalisation and use and sharing of e-reports and e-certificates, at EUR 48.8-52.9 million.

Will there be other significant impacts?

The proposal will have a positive impact on the internal market, since it will ensure the same high level of safety across the EU.

Proportionality

The preferred policy option does not go beyond what is necessary to reach the overall policy objectives. In essence, the preferred policy option incorporates the remaining key parts of the mandatory III-Code relevant to flag States and provides a joint solution using digitalisation to achieve consistent compliance of flag State requirements across the EU.

D. Follow up

When will the policy be reviewed?

The policy will be reviewed using the flag State performance measurement scheme. The Commission/EMSA will participate as observers to the IMO audits. The EMSA will continue to carry out visits to Member States to verify flag State operations on the ground, leading to horizontal analyses to continuously improve maritime safety.

¹ It should be noted, however, that these estimates are subject to a high degree of uncertainty since the impacts of the Directive on safety are indirect (being the result of inspections and follow-up).