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| From:          | General Secretariat of the Council  |
| To:            | Delegations   |
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| Subject:       | Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directive 2009/21/EC on compliance with flag State requirements |

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Following the meeting of the Shipping Working Party on 4 October 2023, delegations will find attached a revised Presidency compromise proposal.

In the Articles, new text compared to the previous Presidency compromise proposal (12982/23 REV 2) is marked in **bold underline** (new text) and ~~striketrough~~ (deleted text). In the Recitals, the same marking is used to show changes compared to the initial Commission proposal (10103/23).

General scrutiny and language reservation: all delegations.

Parliamentary scrutiny reservation: MT.

General reservation: the Commission.

2023/0172 (COD)

Proposal for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**amending Directive 2009/21/EC on compliance with flag State requirements**

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 100(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee<sup>1</sup>,

Having regard to the opinion of the Committee of the Regions<sup>2</sup>,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) The safety of Union shipping and of citizens using it and the protection of the environment should be ensured at all times.
- (2) Under the provisions of the United Nations Convention on the Law of the Sea 1982 (UNCLOS) and of the Conventions for which the **International Maritime Organisation**

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<sup>1</sup> OJ C , , p. .

<sup>2</sup> OJ C , , p. .

(IMO) is the depository, the States which are party to those instruments are responsible for promulgating laws and regulations and for taking all other steps which may be necessary to give those instruments full and complete effect so as to ensure that, from the point of view of safety of life at sea and protection of the marine environment, a ship is fit for the service for which it is intended.

(3) To ensure the effectiveness of the IMO Conventions in the Union, ~~given that all Member States have to be party to the IMO Conventions and have~~ **should take the necessary steps** to discharge the obligations laid down in those conventions with respect to the ships flying their flag, ~~the mandatory provisions of those Conventions should be incorporated in Union legislation.~~ To this end Member States have to discharge their obligations as flag States effectively and consistently in accordance with IMO Resolution A.1070(28) (adopted on 4 December 2013) on the IMO Instruments Implementation Code (III CODE), which contains the mandatory provisions to be implemented by flag States.

**(3bis) Without prejudice to provisions concerning force majeure in the IMO Conventions, Member States could, in crisis situations that may endanger the physical integrity of personnel responsible for or performing surveys, inspections, audits and verifications, introduce restrictions to such activities, while allowing ships to continue to operate.**

**(3ter) The following international instruments in their latest versions refer to the application of the III Code: The International Convention for the Safety of Life at Sea, 1974, the Protocol of 1988 relating to the International Convention on Load Lines, 1966, the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto, the Protocol of 1997 to amend the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto, the International Convention on Standards of Training, Certification and Watchkeeping, 1978, the International Convention on Load Lines, 1966, the International Convention on Tonnage Measurement of Ships, 1969 and the Convention on the International Regulations for Preventing Collisions at Sea, 1972.**

**(3quater) Flag State Surveyors are those authorised by the Competent Authority to survey and certify the ship. Such personnel may be assisted by other personnel such as those in**

inspecting radio installations. However, such personnel should not include technicians involved in serving of life-saving appliances nor surveyors not directly involved in the survey of the merchant shipping fleet.

(3quinquies) The III Code section 22 indicates that a flag State should take all necessary measures to secure observance of international rules and standards by ships entitled to fly its flag and by entities and persons under its jurisdiction so as to ensure compliance with its international obligations. In particular, section 22.2 refers to inspections to verify that the actual condition of the ship and its crew is in conformity with the certificates it carries. Its periodicity should be established by the Member States either with a risk based approach or using its own procedures and instructions, using quantitative or qualitative criteria. The flag states inspections referred to in this directive should be understood to ensure compliance with the III Code and not with other EU legislation stemming from IMO Conventions.

- (4) As IMO Resolution A. 948 (23) has been revoked by IMO Resolution A. 1156(32), Member States should apply, to the ships flying their flag, harmonised requirements for certification and survey by the flag State as laid down in the relevant procedures and guidelines annexed to IMO Assembly resolution A. 1156(32) on survey guidelines under the harmonised system of survey and certification. The annexes to the survey guidelines should be followed as far as deemed necessary by flag State surveyors.
- (5) At international level, the function of investigating maritime accidents is part of flag State responsibilities, while at the Union level ~~it is made independent and~~ the fundamental principles governing the investigation of maritime accidents, such as the independence of the investigative bodies in the Member States, are regulated by Directive 2009/18/EC of the European Parliament and of the Council<sup>3</sup>. This Directive should not affect Directive 2009/18/EC.

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<sup>3</sup> 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 L 131, 28.5.2009, p. 114)

- ~~(6) — Certain implementing acts that have been adopted following the entry into force of Directive 2009/21/EC, already in part implement aspects relating to delegation of authority to recognised organisations should be taken into account.~~
- (7) The ~~maritime~~ administrations of the Member States should be able to rely on adequate resources, ~~including technical decision-making capability,~~ for the implementation of their flag State obligations, ~~commensurate~~ **according** with the size and type of their fleet and based upon the relevant IMO requirements. ~~In order to improve the overall qualitative performance of ships flying the flag of a Member State it is also necessary to harmonise the strict and thorough monitoring, including development of rules and design review, of the recognised organisations performing flag State duties on behalf of Member States.~~
- ~~(8) —~~ Minimum criteria and inspection targets related to those resources should be established on the basis of the practical experience of the Member States, including the use of non-exclusive inspectors, ~~via implementing measures~~ **in accordance with the IMO Instruments Implementation Code (A.1070(28)) (IMO III Code).**
- (7bis) Without prejudice to the national legislation in this regard, Member States should ensure that flag State surveyors and inspectors who work exclusively for the competent authority of a Member State may carry out other work, such as scientific or academic activities, provided that it does not give rise to conflict of interest or impede their independence.**
- ~~(9) — The fulfilment of a harmonised capacity building scheme, post-qualification, by flag State surveyors and inspectors, should ensure a level playing field between maritime administrations and contribute to the qualitative performance of ships flying the flag of a Member State.~~
- ~~(10) — Member States should use the Union Maritime Information and Exchange System (SafeSeaNet) and services, established by Directive 2002/59/EC<sup>4</sup> for the purpose of monitoring flagged ships, maritime surveillance and situational awareness at sea.~~

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<sup>4</sup> — 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).

- (11) The establishment and development of a database providing essential information, in an electronic format on ships flying the flag of a Member State should contribute to enhanced exchange of information, ~~further improve the transparency of the performance of a high quality fleet and allowing enhanced monitoring of flag State obligations to ensure a level playing field between maritime administrations~~ among Member States.
- (12) Essential information, meaning ship particulars, registered owner as well as ship's certificates data ~~including electronic reports and ship certificates following flag State inspections~~, should be encouraged to be available for all concerned authorities and the Commission, for monitoring purposes ~~and for the enhancement of efficiency in carrying out any type of inspection~~.
- (13) ~~The mandatory IMO Member State Audit Scheme follows the standard quality management approach, to determine to what extent Member States are implementing and enforcing the flag State obligations and responsibilities contained in mandatory IMO conventions to which they are parties and thus, ensure a consistent and effective implementation of applicable IMO instruments and to assist Member States to improve their capabilities. The Member States should therefore continue to demonstrate their compliance with the mandatory IMO instruments, as required by Resolution A 1067(28) in its latest version on the framework and procedures for the IMO Member State Audit Scheme, adopted by the IMO Assembly on 4 December 2013.~~
- (14) ~~The Commission, assisted by the European Maritime Safety Agency (EMSA) established by Regulation (EC) No 1406/2002 of the European Parliament and of the Council<sup>5</sup>, should be invited and involved as observer by the auditee Member State as flag State for the purpose of ensuring consistency between IMO audit and Commission assessments, executed by EMSA to check the implementation of Union maritime safety legislation via its visit and inspection scheme, on behalf of the Commission.~~
- (15) In order to further enhance quality of the flagged ships and ensure a level playing field between maritime administrations a quality certification of administrative procedures,

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<sup>5</sup> ~~Regulation (EC) 1406/2002 of the European Parliament and of the Council of 27 June 2002 establishing a European Maritime Safety Agency (OJ L 208 5.8.2002, p. 1).~~

included in the quality management system in accordance with ISO or equivalent standards, should be clarified to cover all registers, whether national (first registers) or international (second or overseas), **the operational parts related to inspection, verification and certification** under the responsibility of the Member State as flag State. Furthermore all ~~related~~ **relevant** activities, including the responsibilities, authority, interrelation and, means of reporting and communication of all flag State personnel performing or involved in surveys or inspections, as well as other personnel assisting in the performance of inspections, not exclusively employed by the competent authority of the Member State, and who may **assist to** carry out certain inspections, other than statutory surveys **or flag state inspections**, should be clarified. **The quality management system should ensure that the statutory work carried out by the recognised organisations complies with the flag State instructions and should include the necessary control measures in this respect.** In order to ensure independence the absence of any **Member States should take appropriate measures to prevent** conflicts of interest of involved personnel should be documented **in relation to the work to be performed.**

- (16) ~~An evaluation and review of the performance scheme for flag States, based on common transparent, reliable and objective key performance criteria and building on current such similar schemes should support all Member States in their continuous compliance and improvement.~~
- (17) ~~In order to discuss flag State matters, including technical, issues and facilitate exchange of expertise and information, a high level group on flag State matters consisting of Member States' national authorities, flag State experts and inspectors, as well as, as appropriate, experts from the private sector, should be established.~~
- (18) ~~An electronic reporting tool for the purposes of further improving the consistent collection of relevant statistics and maritime data and information from Member States, should be established.~~
- (19) ~~In order to allow for an up to date application of the provisions of this Directive to allow Member States to fulfil their obligations under international law in compliance with the Directive, the power to adopt acts in accordance with Article 290 of the Treaty on the~~

Functioning of the European Union should be delegated to the Commission in respect of updating the Annex. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making<sup>6</sup>. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

- (20) The measures necessary for the implementation of this Directive **related to the ships information database** should be adopted in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council<sup>7</sup>. ~~In order to ensure uniform conditions for the implementation Directive 2009/21/EC concerning uniform measures to determine the minimum requirements for appropriate resources, commensurate with the size and type of its fleet and for a common harmonised scheme for measuring of flag State performance,~~ ~~Implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council.~~

**(20bis) The Commission should explore the possibility of setting up a forum for Member States' experts dealing with flag State matters, as well as other stakeholders, when necessary, to exchange regularly information and best practices and develop guidance on issues such as procedures for ship inspections, training resources for inspectors, risk-based criteria that can be used to improve the effectiveness of inspections, the possible development of a common harmonised performance scheme, criteria for analysing flag State performance with a view to identifying best practices and any other issue relevant for the implementation of this directive.**

<sup>6</sup> OJ L 123, 12.5.2016, p. 1.

<sup>7</sup> Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).



~~(21) The European Maritime Safety Agency (EMSA) should provide the necessary support to ensure the implementation of Directive 2009/21/EC.~~

**(20ter) In order not to impose a disproportionate administrative burden on Member States which have no ships flying their flag that fall within the scope of this Directive, such Member States should be allowed to derogate from the provisions of this Directive. This also means that as long as this conditions are fulfilled, they are not obliged to transpose this Directive.**

(22) In accordance with the principle of proportionality, as set out in Article 5 of the Treaty, this Directive does not go beyond what is necessary in order to achieve those objectives.

(23) Directive 2009/21/EC should therefore be amended accordingly,

*HAVE ADOPTED THIS DIRECTIVE:*

#### *Article 1*

#### **Amendments to Directive 2009/21/EC**

Directive 2009/21/EC is amended as follows:

(-1) In Article 1, points (a) and (b) of paragraph 1 are replaced<sup>8</sup> by the following:

‘(a) to ensure that Member States effectively and consistently discharge their responsibilities and obligations as flag States; and

(b) to enhance safety and prevent pollution from ships flying the flag of a Member State.’

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<sup>8</sup> Reservation: the Commission (changes made to text not amended in the Com proposal)

(0) Article 2 is replaced<sup>9</sup> by the following:

*Article 2*

**Scope**

This Directive shall apply to the administration of the State whose flag the ship is flying, for ships subject to certification and engaged in international voyages.’

(1) Article 3 is amended as follows:

(a) point (a) is replaced by the following:

‘(a) ‘ship’ means a ship or craft flying the flag of a Member State falling within the scope of the relevant IMO Conventions under the scope of the III-Code, and for which a certificate is required;’

(b) point (e) is replaced by the following:

‘(e) ‘IMO audit’ means an audit conducted in accordance with the provisions of Resolution A 1067(28) (“Framework and Procedures for the IMO Member State Audit”), in its up-to-date version, adopted by the International Maritime Organisation (IMO);’

(c) the following points are added:

‘(f) ‘Conventions’ means the Conventions, with the Protocols and amendments thereto making the use of the III-Code mandatory, and the related codes of mandatory status, in their up-to-date version;<sup>10</sup>

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<sup>9</sup> Reservation: the Commission (changes made to text not amended in the Com proposal)

<sup>10</sup> Reservation: the Commission (keep reference to PSC or list conventions)

- (g) ‘III-Code’ means Resolution A.1070(28) (“IMO Instruments Implementation Code”), adopted by the International Maritime Organisation (IMO), part 2 with the exception of paragraphs 16.1, 18, 19, 20, 21, 29, 30, 31, 32, 34, 38, 39, 40 and 41, in its up to date version;<sup>11</sup>
- (h) ‘flag State surveyor’ means a public-sector employee, duly authorised by and working exclusively for the competent authority of a Member State, responsible for or performing surveys, verifications and audits on ships and companies covered by the relevant international mandatory instruments and fulfilling the independence requirement specified in Article 8(1). ~~A surveyor employed by a recognized organization may perform the same tasks indicated herein when so authorised by the competent authority of the Member State;~~<sup>12</sup>
- (i) ‘flag State inspector’ means:
- i. a public-sector employee, working exclusively for and duly authorised by the competent authority of a Member State or
  - ii. a person non-exclusively employed and duly authorised by the competent authority of a Member State, on an ad hoc basis or in a contractual situation with the competent authority of the Member State
- who may carry out flag State inspections, and fulfils the qualification and independence requirements specified in Article 8(1);<sup>13</sup>

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<sup>11</sup> Reservation: the Commission (on all changes, but particularly on the deletion of Part 1 and inclusion of 16 and 18 instead of 16.1 and 18.1, as well as 20, 21 and 34 in Part 2)

<sup>12</sup> Scrutiny reservation: the Commission

<sup>13</sup> Scrutiny reservation: the Commission

- (j) ‘other personnel assisting in the performance of surveys’ means a person ~~not exclusively employed by, but authorised on an ad hoc basis by the Member State or in a contractual situation with the competent authority of the Member State, and~~ duly authorised by the competent authority of the Member State **or by the RO acting on its behalf,** who may assist flag state surveyors when carrying out surveys, **as** specified by the competent authority, and who fulfils the criteria of communication, qualification and independence specified in Article 8(1);<sup>14</sup>
- (k) ‘flag State inspection’ means an inspection not leading to certification to verify that the actual condition of the ship and its crew is in conformity with the certificates it carries. When the inspection is not carried out on board it shall ensure the same level of safety and assurance as that of on-site inspections;<sup>15</sup>
- (j) ‘HSSC’ means Resolution A. 1156(32) (“Survey Guidelines under the Harmonized System of Survey and Certification (HSSC), 2021, in its up-to-date version, adopted by the International Maritime Organisation (IMO);’

(2) In article 4, paragraph 1 is replaced by the following:

‘1. Prior to allowing a ship to operate, which has been granted the right to fly its flag, the Member State concerned ~~or the RO acting on its behalf~~ shall take the measures it deems appropriate to ensure that the ship in question complies with the applicable international rules and regulations. **These measures may be taken by a RO, acting on behalf of the Member State, when duly authorised by the competent authority.** In particular, it shall verify the safety records of the ship using, where available, the inspection reports and certificates contained in its own database or, as applicable, in the ship information database referred to in article 6a for Member States that have opted for it. It shall, if necessary, consult with the losing flag State in order to establish whether any outstanding deficiencies or safety issues identified by the latter remain unresolved.’<sup>16</sup>

<sup>14</sup> Scrutiny reservation: the Commission

<sup>15</sup> Reservation: the Commission (on the deletion of ‘on-board’)

<sup>16</sup> Reservation: the Commission

- (3) The following Articles 4a to 4c are inserted:

*Article 4a*

**Safety of ships flying the flag of a Member State**

1. In respect of international shipping Member States shall apply in full the mandatory flag State related provisions laid down in the Conventions in accordance with the conditions and in respect of the ships referred to therein.<sup>17</sup>

2. Member States shall take all necessary measures to ensure compliance with international rules, regulations and standards related to the Conventions by ships entitled to fly their flag.

~~Those measures shall include, in addition, the following~~**In addition, Member States shall take the following measures:**

- (a) (deleted);
- (b) ensuring that ships entitled to fly their flag have been surveyed in accordance with the survey guidelines under the Harmonized System of Survey and Certification (HSSC) and following its annexes as far as deemed necessary; ~~and~~,<sup>18</sup>

**(b.bis) ensuring that a surveyor employed by a recognised organisation may perform the same tasks as flag State surveyors when so authorised by the competent authority of the Member State; and**

- (c) carry out flag State inspections to verify that the actual condition of the ship is in conformity with the certificates it carries. These inspections may be carried out using a risk-based approach<sup>19</sup>, which may include the following criteria:

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<sup>17</sup> Reservation: the Commission (on the deletion of references to III-Code in the Article and in Annex)

<sup>18</sup> Reservation: the Commission (on the addition of the last part “following its annexes as far as deemed necessary”)

<sup>19</sup> Reservation: the Commission (such Risk-based approach require mandatory information. Consequently articles 6 and 6(a) cannot be opt-in but must be mandatory)

- i. records of deficiencies and non-conformities from statutory surveys, audits and verifications performed by the flag state
- ii. reports of very serious accidents
- iii. inspection following a detention or prohibition of operation issued by the Port State Control
- iv. inspection exceeding a Port State Control deficiency ratio established by each Member State
- v. records of deficiencies from inspections carried out according to national legislation as deemed appropriate by each Member State.

Member States may depart from the risk based approach and carry out flag state inspections using their own procedures, instructions and relevant information in compliance with the III-Code

- 3. Member States shall ensure that any deficiencies confirmed or revealed by an inspection carried out in accordance with paragraph 2(c) are rectified in an appropriate timeframe, as determined by the flag State.
- 4. On completion of a flag State inspection, the flag State inspector shall draw up a report providing the outcome of this task.’

*Article 4b<sup>20</sup>*

### **Safety and pollution prevention requirements**

1. Each Member States shall ensure that its administration relies on appropriate resources, whether its own or delegated, according with the size and type of its fleet and with respect to the implementation of administrative processes, procedures and resources necessary, in particular, for meeting the obligations provided for in Article 4a and paragraphs 2 and 3 of this Article.
2. Each Member State shall ensure the oversight of the activities of flag State surveyors, flag state inspectors and other personnel assisting in the performance of surveys and recognised organisations.
3. Each Member State shall develop or maintain a design review and technical decision-making capability whether its own or delegated, according with the size and type of its fleet.
4. (deleted)<sup>21</sup>

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<sup>20</sup> Reservation: the Commission (on deleting the EU Recognised organisation oversight scheme)

<sup>21</sup> Reservation: the Commission (on the wording “its own or delegated” in para. 1 and 3)

*'Article 4c*

~~Common~~ **Training and capacity building** of flag State personnel

1. The personnel responsible for or performing surveys, inspections, ~~and audits~~ **and verifications** on ships and companies shall undergo training relevant for the specific activities carried out.

2. Member States may develop a system of capacity building scheme for the flag State inspectors and surveyors of the Member States and keep it up to date, taking into account new or additional obligations arising from the Conventions and instruments referred to in the III Code.’<sup>22</sup>

(4) Article 5 is amended as follows:

(a) the sole paragraph is numbered as paragraph 1.

(b) the following paragraph 2 is added:

‘2. Member States shall develop and implement an appropriate control and monitoring programme for providing a timely response to situations in paragraph 1 of this Article.’

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<sup>22</sup> Reservation: the Commission



(5) Article 6 is replaced by the following:

*Article 6*

**Electronic information and exchange**

1. Member States shall ensure that at least the following information concerning ships flying their flag is made ~~accessible~~ **available** in an electronic format:

- (a) particulars of the ship (name, IMO number, etc.);
- (b) date of validity of statutory certificates (full or interim);<sup>23</sup>
- (c) identification of the recognised organisations involved in the certification of the ship;
- (d) (deleted);
- (e) (deleted);
- (f) identification of ships which have ceased to fly the flag of the Member State concerned during the previous 12 months
- (g) (deleted).<sup>24</sup>

2. (deleted).

3. (deleted)'

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<sup>23</sup> Reservation: the Commission (on the limitation to data of validity – the entire certificate should be available in electronic format)

<sup>24</sup> Reservation: the Commission (on the deletion of (d), (e) and (g))

(6) The following Article 6a is inserted:

*'Article 6a<sup>25</sup>*

Ships information database

1. The Commission shall develop, maintain and update a ships information database containing the information specified in Article 6. Member States may connect to that database. That database may be based on the ships information database database referred to in Article 24 of Directive 2009/16/EC and may have similar functionalities to that database.

2. Without prejudice to national data protection requirements, Member States ~~expressing their interest~~ **opting** to use the ships information database ~~shall~~:

- a) **shall** communicate the information contained in Article 6 **and**
- b) ~~as an option,~~ **may** transfer to the ships information database the information related to inspections carried out in accordance with this Directive, including information concerning deficiencies and certificates,

ensuring that the information is compatible and interoperable.<sup>26</sup>

2.bis. Member States may use their own databases to collect the information referred to in Article 6. ~~The~~ **This** information shall be communicated to ~~the ships information database provided by the Commission at least on a yearly basis. The Commission shall ensure the transfer of information from Member States' database and be responsible to integrate the data in the ships information database.~~<sup>27</sup>

3. The Commission shall ensure that the ships information database makes it possible to retrieve relevant data concerning the implementation of this Directive based on inspection data provided by Member States.

<sup>25</sup> Reservation: the Commission

<sup>26</sup> Reservation: the Commission (the database cannot be voluntary opt-in. It must be mandatory)

<sup>27</sup> Reservation: the Commission

4. Member States that have opted to use the database shall have access to all the information recorded in the ships information database referred to in paragraph 1 of this Article and the inspection system provided for in Directive 2009/16/EC. Nothing in this Directive shall prevent the sharing of such information between relevant competent authorities within and between Member States, with the Commission or with the European Maritime Safety Agency (EMSA) established by Regulation (EC) No 1406/2002 of the European Parliament and of the Council<sup>28</sup>.

5. Member States that have opted to use the database shall ensure that the date of validity<sup>29</sup> of the Statutory certificates referred to in Article 6(1) paragraph b, is transmitted electronically to the ships information database referred to in paragraph 1 of this Article using the functional and technical specifications for a harmonised electronic reporting interface provided for in Article 24a of Directive 2009/16/EC.

5.bis The Commission shall adopt implementing acts ~~for the implementation of this article, in accordance with the procedure referred to in Article 10(2), including~~ **to define** the rules and functionalities concerning the functioning and the capacities of the database ~~as well as the data to be submitted in the database as indicated in Article 6(1) and Article 6a(2)(a) and to be provided to Member States which have opted to use the database~~ **in accordance with the procedure referred to in Article 10(2). Member States communicating data according to paragraph 2bis of this article shall have access to the database information submitted according to the provisions of Article 6a(2)(a), under the conditions defined in this implementing act.**<sup>30</sup>

(7) Article 7 is replaced by the following:

*'Article 7*

### **Monitoring of compliance and performance of Member States**

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<sup>28</sup> Regulation (EC) 1406/2002 of the European Parliament and of the Council of 27 June 2002 establishing a European Maritime Safety Agency (OJ L 208 5.8.2002, p. 1).

<sup>29</sup> Reservation: the Commission: (to the insertion of ...date of validity...)

<sup>30</sup> Reservation: the Commission

1. Member States shall take the necessary measures to undergo the IMO audit of their administration according to the cycle adopted at the IMO.<sup>31</sup>

2. (deleted)

3. In order to ensure the effective implementation of this Directive and to monitor the overall functioning of flag State compliance with the Administration legal duties pursuant to this directive the Commission shall collect the necessary information when<sup>32</sup> carrying out visits to Member States,'

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<sup>31</sup> Reservation: the Commission (on the deletion of all references for making results public in accordance with relevant national legislation)

<sup>32</sup> Reservation: the Commission (on including “when” instead of “and”)

(8) Article 8 is amended as follows:

(a) paragraph 1 is replaced by the following:

‘Each Member State shall implement and maintain a quality management system covering the operational parts of the flag State-related activities of its administration. Such quality management system shall be certified in accordance with the applicable international quality standards such as ISO 9001 standards.<sup>33</sup>

The quality management system shall include defined responsibilities, authority and interrelation of **personnel performing surveys, inspections, audits and verifications and the** flag State personnel ~~in accordance with Article 4c paragraph 1,~~ who manage, perform and verify work relating to and affecting the flag ~~state~~ **State** obligations of **under** the Conventions. Such responsibilities shall be documented, specifying what type and scope of inspection work that may be performed also by non-exclusively employed flag state inspectors, and also specify how such personnel shall communicate and report. The quality management system shall indicate the tasks that can be carried out by other personnel assisting in the performance of surveys.

Each Member State shall ensure that flag state inspectors non-exclusively employed and other personnel assisting in the performance of ~~inspections or surveys~~ have education, training and supervision commensurate with the tasks they are authorized to perform and can apply flag state instructions, procedures and criteria.

Member States shall take appropriate measures to prevent conflicts of interests of all personnel performing a survey, verification or an inspection and is independent in relation to the work to be performed.

Three years after the date of transposition of this directive the quality management system shall cover the aspects related to this article.’

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<sup>33</sup> Reservation: the Commission (on deletion of “covering all registers under its authority”)

(a2) paragraph 2 is replaced by the following:

Member States which appear on the ~~black~~ **low performance** list or which appear, for two consecutive years, on the **medium performance** list as published in the most recent annual report of the Paris Memorandum of Understanding on Port State Control (hereinafter the Paris MOU) shall provide the Commission with a report on their flag State performance no later than four months after the publication of the Paris MOU report.

The report shall identify and analyse the main reasons for the lack of compliance that led to the detentions and the deficiencies resulting in **low or medium performance** status.

(b) (deleted)<sup>34</sup>

(9) Article 9 is deleted.

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<sup>34</sup> Reservation: the Commission

(10) The following new Articles<sup>35</sup> ~~are~~is inserted:

*Article 9c*

**Derogations<sup>36</sup>**

Member States which have closed their national register or have no ships flying their flag that fall within the scope of this Directive may derogate from the transposition of this Directive and the implementation of this directive as long as the above mentioned requirements are fulfilled. Any Member State that intends to avail itself of that derogation shall notify the Commission at the latest on [to be defined]. Any subsequent change shall also be communicated to the Commission.’

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<sup>35</sup> Reservation: the Commission (on the deletion of Articles 9a and 9b)

<sup>36</sup> Drafting under scrutiny of the CLS.

- (11) Article 10 is replaced by the following:

*Article 10*

**Committee procedure**

1. The Commission shall be assisted by the Committee on Safe Seas and the Prevention of Pollution from Ships (COSS) established by Regulation (EC) No 2099/2002. That Committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

- (12) (deleted)<sup>37</sup>

- (13) (deleted)

- (14) (deleted)<sup>38</sup>

*Article 2*

**Transposition**

1. Member States shall adopt and publish, by [*OP: Please insert a date: four years from the date of entry into force of this amending Directive*] the laws, regulations and administrative provisions necessary to comply with this Directive.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

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<sup>37</sup> Reservation: the Commission (on the deletion of Article 10a)

<sup>38</sup> Reservation: the Commission (on the deletion of the Annex)



*Article 3*

**Entry into force**

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

*Article 4*

**Addressees**

This Directive is addressed to the Member States.

Done at Brussels,

*For the European Parliament*

*The President*

*For the Council*

*The President*