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#### NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee
No. prev. doc.:	6284/24 + COR 1
No. Cion doc.:	10103/23
Subject:	Proposal for a Directive of the European Parliament and of the Council amending Directive 2009/21/EC on compliance with flag State requirements – Analysis of the final compromise text with a view to agreement

#### I. INTRODUCTION

1. The Commission submitted the above-mentioned proposal to the European Parliament and to the Council on 1 June 2023 as a part of the Maritime Safety Package<sup>1</sup>.
2. The proposal concerns a modification of Directive 2009/21/EC of the European Parliament and of the Council of 23 April 2009 on compliance with flag State requirements<sup>2</sup>.
3. Directive 2009/21/EC regulates the enforcement of rules applicable to flag State at the Union level. The responsibility for monitoring the compliance of ships with particular IMO conventions lies with the State where the ship is registered and whose nationality the ship holds: the flag State. The Directive aims to ensure that Member States effectively and consistently discharge their obligations as flag States.

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<sup>1</sup> 10160/23

<sup>2</sup> OJ L 131, 28.5.2009, p. 132.

4. The revision of the Directive has the following specific objectives:
- to update and align the Directive with the international rules, in particular as regards the IMO Instruments Implementation Code III Code;
  - to ensure adequate inspections of flagged ships and monitoring oversight of recognised organisations (ROs) working on behalf of the flag State;
  - to ensure a higher uptake of digital solutions and
  - to ensure a harmonised approach in the understanding, reporting and measuring of the performance of flag States fleets and duties.
5. The proposal was accompanied by an impact assessment and an evaluation report<sup>1</sup>. The impact assessment was presented and thoroughly examined at one working party meeting, and it did not raise any major concerns for delegations.

## II. STATE OF PLAY

6. The European Parliament designated the Committee on Transport and Tourism (TRAN) as the responsible committee on this proposal and Ms Vera Tax (S&D, Netherlands) as rapporteur. It adopted its position and a mandate for negotiations in plenary on 13 December 2023.
7. On 20 September 2023, the European Economic and Social Committee adopted its opinion on the proposal<sup>2</sup>. On 23 June 2023, the European Committee of the Regions decided not to give an opinion.
8. The Council agreed on a general approach on 4 December 2023.
9. The co-legislators agreed in writing, in the beginning of January 2024, to enter negotiations and granted a broad mandate to the technical level. The co-legislators confirmed the objective of the Commission proposal.

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<sup>1</sup> 10103/23 ADD 2 + ADD 3 + ADD 4

<sup>2</sup> 13385/23

10. On 23 February 2024, the Committee gave the Presidency a comprehensive mandate in view of the trilogue on 27 February.

### **III. MAIN ELEMENTS OF THE FINAL COMPROMISE TEXT**

11. Six major outstanding issues remained for the trilogue, and the compromises reached on those points are presented below in the order they appear in the text.
12. Social provisions: it should be recalled that the social element is politically very important for the Parliament, which had proposed no less than nine amendments on this topic. However, since the Union already has a legal framework in force in this area<sup>1</sup>, the objective of the Presidency was to ensure that no provisions from this directive would generate duplication or legal uncertainty. For this reason, the Presidency suggested several compromise proposals, as described in the mandate, which would not create any additional obligations or burdens for the Member States, in Recitals (1a) and (15a), as well as Articles 1(1), 4(1) and 4a(3). This limited flexibility proved very useful during the negotiations, as the Parliament was persuaded to agree with other elements which were important for the Council, such as digitalisation and the risk-based approach.
13. Risk Based Approach: the provisions of Article 4a are central to the Directive, and they have been, and rightly so, a subject of extensive discussions, both in the Shipping Working Party and in the negotiations with the Parliament. They were also extensively discussed during the trilogue, and the main concern of the Parliament was linked to the fact that, according to the data in the impact assessment, some Member States seem to be conducting a very limited number of flag State inspections. With regard to the risk-based approach proposed by the Council for the flag State inspections, the Parliament could not accept that Member States which decide not to use this approach would not be bound by any quantitative or qualitative requirements. For these situations, the Parliament insisted to set a minimum requirement that every ship would be inspected at least once every 3 years (as opposed to the Presidency proposal of ‘once every 7 years’). After lengthy discussions, a middle ground was agreed for a time-limit of 5 years.

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<sup>1</sup> Directive 2013/54/EU of the European Parliament and of the Council of 20 November 2013 concerning certain flag State responsibilities for compliance with and enforcement of the Maritime Labour Convention

14. Genuine link: The Parliament proposed that the Commission would develop guidelines to set out what constitutes a ‘genuine link’ and its consequences. This was a crucial element for the Parliament negotiating team if they were to reach the necessary majority for this proposal. Following a strong opposition from the Presidency, the negotiations took a negative turn, calling into question the provisional agreements reached thus far and the overall outcome of the negotiations. Having in mind the concerns expressed by Member States on the possible impact of unilateral interpretation of this concept at Union level, including in respect to the overall competitiveness of the shipping sector, the Presidency agreed to a much more restricted wording in Recital (3), which reflects in a neutral, factual way the content of Article 91(1) of UNCLOS. This does not provide any interpretation or limitation of the concept, nor calls for a future interpretation at Union level. In the Presidency’s view, this addition does not change in any way the state of play at Union level.
15. Digitalisation (Articles 6 and 6a): the Parliament accepted, after being presented with an extensive and clear argumentation, the Presidency compromise proposals on this topic. The digital portal for the electronic sharing of information referred to in Article 6, together with the optional ‘ships information database’ in Article 6a will facilitate the work of flag State (and port State) inspectors and improve overall efficiency, while at the same time reducing administrative burdens, both for authorities and for the shipping companies. The main and only stumbling block on these two articles remained the sharing of inspections reports - Article 6(1)(g).

After long discussions, the Commission proposed, as an alternative to the sharing of inspections reports, that Member States would at least have to report on an annual basis, the number of inspections that they carried out, as well as the IMO numbers of the ships inspected, together with the dates and places of the inspections. The Presidency considers that such a limited overview of the inspection activity of member states would not cause excessive administrative burdens, and it would also alleviate all the concerns expressed by Member States regarding the sharing of inspection reports. However, the Presidency insisted that this information would not be shared under the provisions of Articles 6 or 6a, but rather in the broader context of the reporting tool for gathering information and data from the Member States in relation to this Directive, set out in Article 9b (DONA).

16. The III Code: the Presidency managed to keep the *general approach* as regards the deletion of the III Code from the Annex, which both Parliament and Commission were keen on keeping. Instead, the *general approach* definition of the III Code in Article 3(g) was slightly extended to include points 20.1 and 20.2 of the Code, concerning the oversight of ‘recognised organisations’ by Member States.
17. Finally, as regards other issues, it should be noted that some minor adjustments are proposed, in line with the mandate, to
- Article 4a(2)(b) and recital (4) – HSSC: both Parliament and Commission were strongly opposed to the flexibility introduced by the Council *general approach* in respect to the implementation of the HSSC; the only possible way forward was to simply eliminate those provisions from the text, leaving the legal framework in force unchanged.
  - Article 11(3) and recital (20b) - landlocked Member States: the Parliament, strongly supported by the Commission, was against a full exemption from the obligation to transpose and implement the directive for Member States which do not have ships flying their flag that fall within its scope; however, due to the efforts of the Presidency, the Parliament could finally accept such a derogation for Member States which have closed their register. A limited derogation, only for Article 6, will apply for Member States which still have their registers open.
  - Article 2 of the amending Directive - transposition deadline: the Presidency aimed for the longest possible transposition deadline. However, in the interest of an overall agreement, it agreed to a transposition deadline of 30 months.

#### IV. CONCLUSIONS

18. In the light of the above, the Permanent Representatives Committee is invited to:

- examine and approve the final compromise text in the Annex with a view to reaching an agreement at first reading with the European Parliament;
  - allow the Presidency to send a letter to the European Parliament stating that if the plenary of the European Parliament were to adopt, subject to revision of the text by the legal-linguist experts, the amended text of the draft Directive in the same form as set out in the Annex to this report, the Council would adopt the Directive in the form of the Commission proposal as thus amended by the Parliament.
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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~~ **After consulting** 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.

***(1a) It is important to take into account the on-board working and living conditions of the crew and the training and qualifications of crew members, in line with Directive 2013/54/EU and Directive 2022/993 of the European Parliament and of the Council, given that health,***

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

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

*safety, security and the human factor are closely interlinked and that it is of utmost importance to prevent any damage caused by human error.*

- (2) Under the provisions of the **1982** United Nations Convention on the Law of the Sea-1982 (UNCLOS) and of the Conventions for which the **International Maritime Organization (IMO)** is the depository, the States which are party to those instruments are responsible for ~~promulgating~~**adopting** laws and regulations and for taking all other steps**measures** which may be necessary to give those instruments full and complete effect so as to ensure that, ~~from the point of view~~**in terms** of safety of life at sea and ~~the~~ 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 measures** 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.~~ **To that end**, Member States ~~have to~~**should** 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 CODECode), **adopted on 4 December 2013**, which contains the mandatory provisions to be implemented by flag States. **In accordance with Article 91(1) of UNCLOS, there must be a genuine link between a vessel and its flag State, as interpreted by international jurisprudence that is reflected in the duties of a flag State.**
- (3a) **Without prejudice to provisions concerning force majeure laid down in the IMO Conventions, Member States should be able to, in crisis situations that may endanger the physical integrity of personnel responsible for or performing surveys, inspections, audits and verifications, introduce restrictions on such activities, while allowing ships to continue to operate.**
- (3b) **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 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, and the Protocol of 1988 relating thereto; the International Convention on Tonnage Measurement of Ships, 1969; and the Convention on the International Regulations for Preventing Collisions at Sea, 1972.*

- (3c) *Flag State surveyors are those authorised by the competent authorities of the Member States to survey and certify ships. Such personnel may be assisted by other personnel, for instance those inspecting radio installations. However, such personnel should not include technicians involved in the servicing of life-saving appliances or surveyors that are not directly involved in the survey of the merchant shipping fleet.*
- (3d) *Section 22 of the III Code states that a flag State should take all necessary measures to ensure compliance with 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. The periodicity of such inspections should be established by the Member States either by using a risk-based approach or by using their own procedures and instructions, including quantitative or qualitative criteria.*
- (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.-~~
- (5) ~~At international level, the function of investigating~~ **responsibility to investigate** maritime accidents ~~is part of~~ **falls on the** flag State responsibilities, while at **Union level the fundamental principles governing the investigation of maritime accidents, such as the independence of the investigative bodies in the Member States, are** ~~the Union level it is made independent and 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.~~

<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

- (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 with~~**according to** ~~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~~**Minimum criteria and inspection targets related to those resources should be established on the basis of the practical experience of the Member States, including development of rules and design review, of the recognised organisations performing flag State duties on behalf of Member States**~~the use of non-exclusive inspectors, in accordance with the IMO Instruments Implementation Code (A.1070(28)) (IMO III Code).~~
- (7a) ***Without prejudice to the relevant national legislation, Member States may allow 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.***
- (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.-~~
- (9) ***Flag State inspectors, surveyors and other personnel assisting in the performance of surveys should have the education, training and supervision necessary to carry out the tasks they are authorised to perform. The Commission, assisted by the European Maritime Safety Agency (EMSA), and in cooperation with Member States***~~The fulfilment of a harmonised capacity building scheme, post-qualification, by flag State surveyors and inspectors, should ensure a level playing field between maritime~~***develop a voluntary training programme to support flag State administrations in this respect and should facilitate coordination and exchange of information and good practices.***

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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).

*Such training programme should be kept updated and take into account new or additional obligations arising from the instruments and Conventions, such as new technologies, social matters, as well as other relevant developments 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.~~
- (11) The establishment and development of a database providing essential information, ~~in an~~ *in* electronic format on ships flying the flag of a Member State *and ensuring the possibility of issuance of electronic certificates* should contribute to *an* 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. The development of a common and uniform database for issuance of electronic certificates, including the tools for checking the validity of those certificates, would facilitate and contribute to a tangible breakthrough towards maritime digitalization within the Union. It would support operational needs of its actors, in particular those Member States that have not been in a position to develop their own systems for electronic certificates, and also attend to a more efficient use of available limited resources.*
- (12) *For monitoring and inspection purposes*, essential information, including electronic reports and ship certificates following flag State inspections, *such as the ship's particulars, registered owner and ship's certificates* should be available for all concerned ~~to all~~ authorities and the Commission, for monitoring purposes and for the enhancement of efficiency in carrying out any type of inspection *concerned and to the Commission.*
- (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~~

<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).~~

States should ~~therefore~~ continue to demonstrate their compliance with the mandatory IMO instruments, as required by Resolution A 1067(28) *in its up-to-date 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 *the* quality of the flagged ships and *to* ensure a level playing field between maritime administrations *of the Member States*, a quality certification of administrative procedures, included in the quality management system in accordance with ISO or equivalent standards, ~~It should be clarified to cover all registers, whether national (first registers) or international (second or overseas),~~ *cover the operational parts of the maritime administration related to survey, inspection, audit, verification and certification* under the responsibility of the Member State as flag State, *whether national (first registers) or international (second or overseas registers)*. Furthermore, ~~all relevant~~ *all related* 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 ~~carry out certain~~ *assist in carrying out* inspections, other than statutory surveys *or flag State inspections*, should be clarified. *The quality management system should ensure that the tasks assigned to recognised organisations under the scope of this Directive should comply with the flag State's instructions, and should include the necessary control measures in that respect.* In order to ensure *their* independence, *Member States should take appropriate measures to prevent conflicts* ~~the absence of any conflict of interest of involved personnel should be documented~~ *in relation to the work they are to perform.*

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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).~~

- (15a) *In coordination with the International Labour Organisation (ILO), the Commission and the Member States are encouraged to continue to advocate for the improvement of seafarers' working and living conditions.*
- (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 ~~should be adopted in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council~~*with regard to the ships information database should be adopted.* In order to ensure

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

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 of Directive 2009/21/EC, 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<sup>7</sup>.

- (20a) *The Commission should set up a forum for Member State experts dealing with flag State matters, as well as other stakeholders, when necessary, to regularly exchange information and best practices and to 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 to the implementation of this Directive.*
- (20b) *In order to avoid a disproportionate administrative burden in the transposition of this Directive, Member States may, as long as the conditions defined below are fulfilled, apply the following exemptions. The Member States which do not have ships flying their flag that fall within the scope of this Directive should not be obliged to transpose and implement Article 6 of this Directive as regards the sharing of information related to ships. The Member States which do not have ships flying their flag that fall within the scope of this Directive and have closed their register for these ships should not be obliged to transpose and implement this Directive.*
- (21) The European Maritime Safety Agency (EMSA) should provide the necessary support to ensure for the implementation of Directive 2009/21/EC, notably by providing relevant training for flag State inspectors and surveyors, if so requested by Member States.
- (22) *Since the objectives of this Directive, namely to enhance maritime safety and prevent pollution from ships, cannot be sufficiently achieved by the Member States but can rather, by reason of its scale or effects, be better achieved at Union level, the Union may adopt*

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<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. 13.13).

*measures*, in accordance with the principle of proportionality, *subsidiarity* as set out in Article 5 of the Treaty *on European Union. In accordance with the principle of proportionality, as set out in that Article*, 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(1), points (a) and (b) are replaced 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, working and living conditions, and to prevent pollution from ships flying the flag of a Member State.’*

*(0) Article 2 is replaced 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 any type of 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 Conventions and for which a certificate is required;’*

(a) 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);’

(b) the following points are added:

‘(f) ‘Conventions’ means the Conventions, with the Protocols and amendments thereto, ~~and related codes of mandatory status, in their up-to-date version, as defined in Article 2(1) of Directive 2009/16/EC of the European Parliament and of the Council<sup>8</sup>, with the exception of the~~ Maritime Labour Convention, 2006 (MLC 2006) **making the use of the III Code mandatory, and the related codes of mandatory status, in their up-to-date version;**

(g) ‘~~III Code~~**III Code**’ means ~~parts 1 and 2 of~~ Resolution A.1070(28) (“IMO Instruments Implementation Code”), adopted by the International Maritime Organisation (IMO), **Organization (IMO), Part 2**, with the exception of paragraphs ~~16.1, 18.1, 19~~**16, 18, 19, 20.3, 21**, 29, 30, 31, **32, 34, 38, 39, 40 and 41, in its up to date version** ~~and 32 of part 2;~~

(h) ‘flag State surveyor’ means a ~~public sector~~**public sector** employee, duly authorised by and working exclusively for the competent authority of a Member State, **responsible for or performing** ~~to carry out~~ surveys, **verifications** and audits ~~related to the statutory certificates of ships and companies covered by the relevant international mandatory instruments~~ and fulfilling the independence requirement ~~specified~~**laid down** in Article 8(1);

(i) ‘flag State inspector’ means ~~a public sector employee, working exclusively for and duly authorised by the competent authority of a Member State to carry out supplementary flag State inspections, and who~~

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<sup>8</sup> ~~Directive 2009/16/EC of the European Parliament and of the Council of 23 April 2009 on port State control (OJ L 131, 28.5.2009, p. 57).~~



~~fulfils the independence requirement specified in Article 8(1), and the minimum criteria specified in Annex XI to Directive 2009/16/EC;~~

- ~~(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 laid down in Article 8(1);~~

- ~~(j) ‘other personnel assisting in the performance of inspections~~**surveys’** ~~means a person not exclusively employed by, but in a contractual situation with~~**persons duly authorised by** ~~the competent authority of the Member State, and duly authorised by the competent authority of the Member State or by a recognised organisation acting on its behalf, who may carry out certain inspections, other than statutory~~**assist flag State surveyors when carrying out surveys, as specified by the competent authority, and who fulfil** ~~fulfil the criteria of communication, qualification and independence specified~~**laid down** ~~in Article 8(1);~~
- ~~(k) ‘Supplementary flag State inspection’ means an on-board inspection, not leading to certification;~~**conducted to verify that the actual condition of the ship and its crew is in conformity with the certificates it carries**
- ~~(l) ‘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 **to operate**, the Member State concerned shall ensure that the ship in

question complies with the applicable international rules and regulations, ***including safety, social and environmental standards. Those measures may be taken by a recognised organisation, 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.’

(3) the following Articles 4a to 4e 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~~ ***State-related*** provisions laid down in the IMO Conventions in accordance with the conditions ***laid down,*** and in respect of the ships referred to therein and shall apply the III Code in Annex to this Directive, ~~with the exception of paragraphs 16.1, 18.1, 19, 29, 30, 31 and 32 of part 2,~~ ***therein.***
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,~~ ***including*** the following:
  - (a) ~~prohibiting ships from sailing until such ships can proceed to sea in compliance with international rules and standards;~~
  - (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,~~

- (a) *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) *carrying out supplementary-flag State inspections of ships to verify that the actual condition of the ship is in conformity with the certificates it carries-; such inspections may be carried out using a risk-based approach, which shall include the following criteria:*
  - (i) *records of deficiencies and non-conformities from statutory surveys, audits and verifications performed by the flag State;*
  - (ii) *relevant accident investigation reports*
  - (iii) *detentions or prohibition of operation notices issued by a port State control authority*
  - (iv) *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.*
  - (vi) *other relevant information deemed necessary by the Member State*

*Member States using a risk-based approach shall ensure that ships for which there is no sufficient data available for the calculation of the risk rating are inspected at least once every 5 years.*

*Member States not using a risk-based approach shall carry out flag State inspections using their own procedures, instructions and relevant information in compliance with the III Code. They shall ensure that every ship is inspected at least once every 5 years.*

3. Member States shall ensure that any deficiencies *requiring corrective measures, including safety, environmental and social concerns*, confirmed or

revealed by an inspection carried out in accordance with paragraph 2(c) are rectified *within an appropriate timeframe, as determined by the flag State*.

4. On completion of ~~any inspection carried out~~ *a flag State inspection*, the flag State inspector shall draw up a report on the basis of Annex IX to Directive 2009/16/EC *Outcome of this task*.

‘Article 4b

Safety and pollution prevention requirements

1. Each Member ~~States~~ *State* shall ensure that ~~its administration relies on~~ appropriate resources, ~~commensurate with~~ *according to* the size and type of its fleet *and with respect to the implementation of the 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, *are available to its administration*.
2. Each Member State shall ensure the oversight of the activities of flag State surveyors, flag State inspectors and ~~recognised organisations and~~ *participate other personnel assisting* in the EU Recognised Organisation oversight scheme ~~specified by the high level group on flag State matters referred to in Article 9a(1)~~ *performance of surveys, and recognised organisations*.
3. Each Member State shall ~~develop or maintain~~ *ensure that* a design review and technical decision-making capability ~~commensurate with~~ *according to* the size and type of its fleet, *are developed or maintained*.
4. ~~In order to ensure harmonisation of the supplementary flag State inspections referred to in Article 4a(2) point (c), the Commission, after consulting the high level group on flag State matters referred to in Article 9a(1), shall adopt implementing acts to define the uniform measures to determine the minimum requirements for the implementation of the obligations provided for by paragraph 1. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 10(2).’~~

‘Article 4c

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

1. ~~Member States shall ensure that~~ The personnel responsible for or performing surveys, inspections, **audits and verifications of** and audits on ships and companies **shall** undergo the harmonised scheme specified in paragraph ~~2~~**training relevant to the specific activities carried out.**
2. ~~The Commission, seeking the advice of the high level group on~~**Member States may develop a capacity-building scheme for their** flag State matters referred to in Article 9a(1), ~~shall develop a common capacity building scheme (post-qualification at national level)~~**inspectors and surveyors** and keep it updated, considering new technologies and in relation ~~to up to date, taking into account~~ new or additional obligations arising from the relevant international instruments, for Member States flag State surveyors and ~~inspectors~~**Conventions.**
3. **The Commission, with the assistance of EMSA and in cooperation with Member States, shall organise, where appropriate and based on Member States’ demands for support, relevant training activities for flag State inspectors and surveyors.’**

(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, using, as appropriate, the Union Maritime Information and Exchange System (‘SafeSeaNet’) referred to in Article 22a(3) of Directive 2002/59/EC of the European Parliament and of the Council<sup>9</sup> and Annex III thereto, for providing a timely response to situations **in order to provide a**

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<sup>9</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).~~

*timely response to the situations referred to* in paragraph 1 ~~of this Article as well as safety incidents and alleged pollution.~~;

(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 kept and is made accessible in an electronic format compatible and interoperable with Union maritime safety databases~~*made available in electronic format in its up to date version at the latest six years after the entry into force of this amending Directive:*

- (a) ~~particulars of the ship (name, IMO number, etc.);~~
- (b) ~~statutory certificates (full, interim or temporary~~ *or interim*) including dates of surveys, additional and supplementary surveys, if any, and audits;
- (c) ~~identification of the recognised organisations involved in the certification and classification of the ship;~~
- (d) ~~identification of the competent authority which has inspected the ship under port State control provisions and the dates of the inspections;~~
- (e) ~~outcome of the port State control inspections (deficiencies: yes or no; detentions: yes or no);~~
- (f) identification of ships which have ceased to fly the flag of the Member State concerned during the previous 12 months
- (g) ~~report(s) following a flag State survey or inspection carried out in accordance with Article 4a(2) paragraphs (b) or (c).~~

2. ~~The information~~*Commission* shall ~~be communicated to the inspection database provided for~~*develop, maintain and update a digital interoperable portal providing for a single point of access for the information in paragraph 1 and*

*allowing Member States' flag and port State inspectors to access this information in the performance of their duties.*

*The Commission shall make that portal electronically accessible and free of charge for Member States.*

*That portal shall not contain personal data or confidential information.*

*The Commission shall ensure the interoperability of the portal with the ship information database referred to in Article 6a.*

*This digital portal ~~The master shall also be provided with a copy of the report~~ shall be established [three] years from the date of entry into force of this amending Directive, at the latest.*

- 2a. The Commission shall adopt implementing acts to define the technical functioning of the digital portal referred to in paragraph 2 of this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 10(2).'*

(6) The following Article ~~6a~~ is inserted:

‘ Article 6a

~~Inspection~~ **Ships information** database

1. The Commission shall develop, maintain and update ~~an inspection~~ **a ships information** database containing the information ~~specified~~ **referred to** in Article ~~6. All~~ **and providing services for** Member States **on issuing and controlling of electronic certificates. The ships information database** shall be ~~connected~~ **established [five] years from the date of entry into force of this amending Directive, at the latest. Member States may connect** to that database. That database ~~shall~~ **may** be based on the ~~inspection~~ database referred to in Article 24 of Directive 2009/16/EC and ~~shall~~ **may** have similar functionalities to that database.
2. ~~Member States shall ensure that the information related to inspections carried out in accordance with this Directive, including information concerning deficiencies, is transferred without delay to the inspection database as soon as the report(s) according to Article 4a(4) is completed.~~ **Without prejudice to**

*national data protection requirements, Member States opting to use the ships information database:*

- b) may transfer to the ships information database information related to inspections carried out in accordance with this Directive, including information concerning deficiencies and certificates; and*
  - c) may use this database to issue, sign, endorse, extend and withdraw electronic certificates for their ships,*
  - d) ensuring that the information is compatible and interoperable.*
3. The Commission shall ensure that the ~~inspections~~**ships information** database makes it possible to retrieve ~~any~~ relevant data concerning the implementation of this Directive based on inspection data provided by Member States.
4. Member States *that have opted to use the database* shall have access to all the information recorded in the ~~inspections~~**ships information** database referred to in paragraph ~~1~~**2** 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>10</sup>.
- ~~5. Member States shall ensure that Statutory certificates referred to in Article 6(1) paragraph b, shall be transmitted electronically to the inspection 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.~~
- 5a. The Commission shall adopt implementing acts to define the technical functioning of the database referred to in Article 6a. Member States communicating information in accordance with paragraph 2 of this Article shall have access to the database information submitted, under the**

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<sup>10</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).



*conditions defined in those implementing acts. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 10(2).*

(7) Article 7 is replaced by the following:

‘ Article 7

Monitoring of compliance and performance of Member States

1. Member States shall take the necessary measures to undergo the IMO audit of their administration ~~at least once every seven years, and shall publish the outcome of the audit as well as any corrective actions in the Global Integrated Shipping Information System (GISIS) database set up by~~ **according to the cycle adopted at** the IMO. Member States shall also ~~make the same information available to the public~~ **publish the outcome of the audit**, in accordance with relevant national legislation on confidentiality.
2. ~~Member States shall ensure that the Commission, assisted by EMSA, is allowed to participate as an observer in the IMO auditing process and, that any Audit report and the information on subsequent action taken is immediately made available to the Commission.~~
3. In order to ensure the effective implementation of this Directive and to monitor the overall functioning of flag State compliance ~~and the EU-Recognised Organisation oversight scheme~~ **with the Administration legal duties pursuant to this Directive**, the Commission shall collect the necessary information ~~and carry out visits to Member States, in accordance with Article xx of Regulation (EU) xx/xx of the European Parliament and of the Council~~ <sup>14</sup> **when carrying out visits to Member States, in accordance with Article xx of Regulation (EU) xx/xx of the European Parliament and of the Council** <sup>14</sup> **[EMSA Regulation to be adopted],;**

(8) Article 8 is amended as follows:

(a) paragraph 1 is replaced by the following:

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<sup>14</sup> ~~Regulation (EU) xx/xx of the European Parliament and of the Council ... [EMSA Regulation]~~

Each Member State shall implement and maintain a quality management system covering ~~all registers under its authority for all~~ **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.

The quality management system shall include defined responsibilities, authority and interrelation of ~~all flag State personnel, including other personnel assisting in the performance of inspections~~ **personnel performing surveys, inspections, audits and verifications and the flag State personnel** who manage, perform and verify work relating to and affecting ~~safety and pollution prevention~~ **the flag State obligations**. Such responsibilities shall be documented, specifying ~~what~~ **the** type and scope of inspection work that may **also** be performed by ~~other personnel assisting in the performance of inspections, and also specify~~ **non-exclusively employed flag State inspectors, and** 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~~ **surveys**, have education, training and supervision commensurate with the tasks they are ~~authorized~~ **authorised** to perform, **and that they are able to apply flag State instructions, procedures and criteria.**

~~All personnel performing a survey or an inspection shall sign a declaration of absence of conflict of interest attesting to their~~ **Member States shall take appropriate measures to prevent conflicts of interests of all personnel performing a survey, verification or inspection and regarding** independence in relation to the work to be performed, ~~which shall be kept by the Member State responsible authority.~~

**Three years after the date of transposition of this Directive, the quality management system shall cover the aspects related to this Article.'**

**(a2) paragraph 2 is replaced by the following:**

*‘Member States which appear on the 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 that led to the detentions and the deficiencies resulting in a low or medium performance status.;’*

(b) ~~the following paragraphs are added:~~

~~‘2a. Member States shall evaluate their performance annually and identify areas for possible improvement, based on results of the activities performed in the framework of the quality management system referred to in paragraph 1 of this Article and the flag State performance referred to in paragraph 2b of this Article, as well as Article 7.~~

~~2b. In order to ensure a common harmonised performance scheme for the purposes of paragraph 2a, the Commission, after consulting the high level group on flag State matters referred to in Article 9a(1), shall adopt implementing acts to define the details for a revised performance scheme in paragraph 2 of this Article. Those implementing acts shall be adopted in accordance with Article 10.2.–~~

~~Measures to evaluate the performance of the flag States, shall take into consideration, inter alia, flag State inspection results, port State control detention rates, casualty statistics, communication and information processes, annual loss statistics (excluding constructive total losses) and other performance indicators as may be appropriate, to determine whether staffing, resources and administrative procedures are adequate to fulfil the flag State obligations.–~~

~~2c. The Commission shall make available and maintain on a public website information about the performance of flag States.;’~~

- (9) Article 9 is ~~deleted~~*replaced by the following:*

‘ *Article 9*

*Reports and Review*

*Every five years, and for the first time by [three years from the date of entry into force of this amending Directive] the Commission shall present a report to the European Parliament and to the Council on the application of this Directive.’*

- (10) The following new Articles are inserted:

‘ Article 9a

~~High level group on flag State matters~~*Exchange of best practice and experience*

1. The Commission shall establish a ~~high level group on flag State matters for discussing flag State issues and facilitate exchanges of experience~~*provide for the organisation of exchange of experiences and best practices* between the Member States’ national authorities, *and* flag State experts and inspectors, including, as appropriate, *other relevant stakeholders, for the implementation of this Directive* ~~those from the private sector.~~

~~The high level group on~~*Member States’ national authorities and* flag State ~~matters~~*experts and inspectors* shall be composed of representatives of the Member States and of the Commission, assisted by EMSA*explore, together with the Commission, the possibility to develop guidance on elements such as the methodology to perform flag State inspections, content and format of reporting or capacity building.*

~~It shall adopt its rules of procedure.~~

2. ~~The high level group on flag State matters shall have the following tasks, inter alia:~~

- (a) ~~make recommendations for a common approach to flag State inspections; procedures and guidelines for the control of ships;~~
- (b) ~~assist the Commission in the development of a common reporting format, including timing for flag State inspections/ Recognised Organisation (RO) monitoring;~~
- (c) ~~assist the Commission in the development of the technical method for what constitutes appropriate resources, commensurate with the size and type of fleet, referred to in Article 4b;~~
- (d) ~~assist the Commission in identifying measures that may be developed in order to improve the capacity building referred to in Article 4c, in particular as regards keeping up to date knowledge about changes in conventions and emanating due to new technologies;~~
- (e) ~~develop and implement the EU RO oversight and monitoring scheme referred to in Article 7;~~
- (f) ~~provide guidance on how to use the information in the relevant Union maritime databases for preparation of flag State inspections/RO monitoring, with a view to increase efficiency in the use/pooling of resources for ROs monitoring e.g. by focus areas;~~
- (g) ~~assist the Commission in the technical development of the performance criteria referred to in Article 8(2b);~~
- (h) ~~assist the Commission in developing guidance, templates and similar for the reporting obligations referred to in Article 9b;~~
- (i) ~~assist in analysing flag State performance, QMS audits and, IMO Audits comparing findings and follow up action, with a view to identifying best practices;~~
- (j) ~~assist the Commission in identifying measures that may be developed in order to establish:~~

- (i) ~~harmonised procedures for the application of exemptions and equivalents applied in accordance with the IMO Conventions;~~
- (ii) ~~harmonised interpretations of issues left to the discretion of the administrations in the Conventions;~~
- (iii) ~~apply unified interpretations for provisions laid down in the Conventions.~~

‘Article 9b

#### Information and data

The Commission shall establish an electronic reporting tool for the purposes of gathering information and data from the Member States in relation to this Directive.

Member States shall ~~periodically, and at least~~ **inform the Commission** once a year ***of the number of flag State inspections performed in accordance with Article 4a indicating, for each inspection, the IMO number of the ship, the date and the place,*** ~~inform the Commission, about:~~

- (a) ~~administering safety and pollution prevention requirements~~
  - (i) ~~size and age of flagged fleet in terms of number and gross tonnes of conventional ships;~~
  - (ii) ~~the number of flag State inspectors/surveyors/auditors and other personnel assisting in the performance of inspections;~~
  - (iii) ~~the number of flag State surveys, inspections and audits carried out as flag States;~~
  - (iv) ~~the number of ships flagging in and flagging out by type of ship and by originating country or destination country;~~
- (b) ~~quality management and audits~~
  - (i) ~~planned or confirmed dates for IMO Audit;~~

- (ii) ~~planned or confirmed dates for Quality Management System audit as well as cope of quality management system certification~~
- (e) ~~delegation of authority~~
  - (i) ~~Recognised Organisations authorised, functions delegated and certificates issued on behalf of the Member State<sup>2</sup>~~

(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) ~~The following Article 10a is inserted:~~

‘ ~~Article 10a~~

~~Delegated Acts~~

~~The Commission shall be empowered to adopt delegated acts in accordance with Article 10b, concerning amendments to Annex 1, in order to take account of new flag State related provisions and commitments developed at international level, in particular, in the IMO.~~

~~The amendments to the IMO Conventions and to the IMO Instruments Implementation Code (III CODE) may be excluded from the scope of this Directive pursuant to Article 5(2) of Regulation (EC) No 2099/2002.’~~

***(12a) The following Article 10a is inserted:***

‘ ***Article 10a***

*Amendments to the Conventions and III Code*

*Amendments to the Conventions and III Code defined in Article XX of this Directive may be excluded from the scope of this Directive, pursuant to Article 5 of Regulation (EC) No 2099/2002.'*

(13) The following Article 10b is inserted:

‘ Article 10b

~~Exercise of the delegation~~

- ~~1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.~~
- ~~2. The power to adopt delegated acts referred to in Article 10a shall be conferred on the Commission for a period of five years from [xx] 202X. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.~~
- ~~3. The delegation of power referred to in Article 10a may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.~~
- ~~4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.~~
- ~~5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.~~



6. ~~A delegated act adopted pursuant to Article 10a shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.~~

*(13a) In Article 11 the following paragraph is added:*

- ‘3. By derogation from the first subparagraph of paragraph 1, a) the Member States which do not have ships flying their flag that fall within the scope of this Directive may derogate from the obligation to transpose and implement Article 6 of this Directive as long as this condition is fulfilled. b) the Member States which do not have ships that fall within the scope of this Directive and have closed their register for these ships may derogate from the obligation to transpose and implement this Directive as long as this condition is fulfilled. Any Member State that intends to avail itself of one of these derogations shall notify the Commission by [date of transposition]. Any subsequent change shall also be communicated to the Commission.*

*Those Member States may not allow ships falling within the scope of this Directive to fly their flag nor register such ships in their national registry until they have completely transposed and implemented this Directive.’*

- ~~(14) The text set out in the Annex to this Directive is added as Annex to Directive 2009/21/EC.~~

## *Article 2*

### **Transposition**

1. Member States shall adopt and publish, by ... [*OP: Please insert a date: 30 months from the date of entry into force of this amending Directive*~~OP: Please insert a date: one year from the date of entry into force of this amending Directive~~] the laws, regulations and

administrative provisions necessary to comply with this Directive. ***They shall immediately inform the Commission thereof.***

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

- ~~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.~~

### *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*

## ANNEX

### ‘ANNEX

Resolution A.1070(28)

(adopted on 4 December 2013)

## IMO INSTRUMENTS IMPLEMENTATION CODE (IIC CODE)

### **PART 1—COMMON AREAS**

#### **Objective**

1.——The objective of this Code is to enhance global maritime safety and protection of the marine environment and assist States in the implementation of instruments of the Organization.

2.——Different States will view this Code according to their own circumstances and should be bound only for the implementation of those instruments to which they are Contracting Governments or Parties. By virtue of geography and circumstance, some States may have a greater role as a flag State than as a port State or as a coastal State, whilst others may have a greater role as a coastal State or a port State than as a flag State.

#### **Strategy**

3.——In order to meet the objective of this Code, a State is recommended to:

-1 develop an overall strategy to ensure that its international obligations and responsibilities as a flag, port and coastal State are met;

-2 establish a methodology to monitor and assess that the strategy ensures effective implementation and enforcement of relevant international mandatory instruments; and

-3 continuously review the strategy to achieve, maintain and improve the overall organizational performance and capability as a flag, port and coastal State.

## General

4.——Under the general provisions of treaty law and of IMO conventions, States should be 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 safety of life at sea and protection of the marine environment.

5.——In taking measures to prevent, reduce and control pollution of the marine environment, States should act so as not to transfer, directly or indirectly, damage or hazards from one area to another or transform one type of pollution into another.

## Scope

6.——The Code seeks to address those aspects necessary for a Contracting Government or Party to give full and complete effect to the provisions of the applicable international instruments to which it is a Contracting Government or Party, pertaining to:

- .1 safety of life at sea;
- .2 prevention of pollution from ships;
- .3 standards of training, certification and watchkeeping for seafarers;
- .4 load lines;
- .5 tonnage measurement of ships; and
- .6 regulations for preventing collisions at sea.

7.——The following areas should be considered and addressed in the development of policies, legislation, associated rules and regulations and administrative procedures for the implementation and enforcement of those obligations and responsibilities by the State:

- .1 jurisdiction;
- .2 organization and authority;
- .3 legislation, rules and regulations;

- ~~.4 promulgation of the applicable international mandatory instruments, rules and regulations;~~
- ~~.5 enforcement arrangements;~~
- ~~.6 control, survey, inspection, audit, verification, approval and certification functions;~~
- ~~.7 selection, recognition, authorization, empowerment and monitoring of recognized organizations, as appropriate, and of nominated surveyors;~~
- ~~.8 investigations required to be reported to the Organization; and~~
- ~~.9 reporting to the Organization and other Administrations.~~

### **Initial actions**

8.——When a new or amended instrument of the Organization enters into force for a State, the Government of that State should be in a position to implement and enforce its provisions through appropriate national legislation and to provide the necessary implementation and enforcement infrastructure. This means that the Government of the State should have:

- ~~.1 the ability to promulgate laws, which permit effective jurisdiction and control in administrative, technical and social matters over ships flying its flag and, in particular, provide the legal basis for general requirements for registries, the inspection of ships, safety and pollution prevention laws applying to such ships and the making of associated regulations;~~
- ~~.2 a legal basis for the enforcement of its national laws and regulations including the associated investigative and penal processes; and~~
- ~~.3 the availability of sufficient personnel with maritime expertise to assist in the promulgation of the necessary national laws and to discharge all the responsibilities of the State, including reporting as required by the respective conventions.~~

### **Communication of information**

9. ~~The State should communicate its strategy, as referred to in paragraph 3, including information on its national legislation to all concerned.~~

## **Records**

10. ~~Records, as appropriate, should be established and maintained to provide evidence of conformity to requirements and of the effective operation of the State. Records should remain legible, readily identifiable and retrievable. A documented procedure should be established to define the controls needed for the identification, storage, protection, retrieval, retention time and disposition of records.~~

## **Improvement**

11. ~~States should continually improve the adequacy of the measures which are taken to give effect to those conventions and protocols which they have accepted. Improvement should be made through rigorous and effective application and enforcement of national legislation, as appropriate, and monitoring of compliance.~~

12. ~~The State should stimulate a culture which provides opportunities for improvement of performance in maritime safety and environmental protection activities, which may include, inter alia:~~

- ~~.1 continual training programmes relating to safety and pollution prevention;~~
- ~~.2 regional and national drills on safety and pollution prevention, which engage a broad spectrum of maritime-related national, regional and international organizations, companies and seafarers; and~~
- ~~.3 using reward and incentive mechanisms for shipping companies and seafarers regarding improving safety and pollution prevention.~~

13. ~~Further, the State should take action to identify and eliminate the cause of any non-conformities in order to prevent recurrence, including:~~

- ~~.1 review and analysis of non-conformities;~~
- ~~.2 implementation of necessary corrective action; and~~
- ~~.3 review of the corrective action taken.~~

~~14. The State should determine action needed to eliminate the causes of potential non-conformities in order to prevent their occurrence.~~

## **~~PART 2 – FLAG STATES~~**

~~15. In order to effectively discharge their responsibilities and obligations, flag States should:~~

~~.1 implement policies through issuing national legislation and guidance, which will assist in the implementation and enforcement of the requirements of all safety and pollution prevention conventions and protocols to which they are parties; and~~

~~.2 assign responsibilities within their Administrations to update and revise any relevant policies adopted, as necessary.~~

~~16. A flag State should establish resources and processes capable of administering a safety and environmental protection programme, which, as a minimum, should consist of the following:~~

~~.1 administrative instructions to implement applicable international rules and regulations as well as developing and disseminating any interpretative national regulations that may be needed including certificates issued by a classification society, which is recognized by the flag State in accordance with the provisions of SOLAS regulation XI-1/1, and which certificate is required by the flag State to demonstrate compliance with structural, mechanical, electrical, and/or other requirements of an international convention to which the flag State is a party or compliance with a requirement of the flag State's national regulations;~~

~~.2 compliance with the requirements of the applicable international instruments, using an audit and inspection programme, independent of any administrative bodies issuing the required certificates and relevant documentation and/or of any entity which has been delegated authority by the State to issue the required certificates and relevant documentation;~~

~~.3 compliance with the requirements related to international standards of training, certification and watchkeeping of seafarers. This includes, inter alia:~~

~~.1 training, assessment of competence and certification of seafarers;~~

~~.2 certificates and endorsements that accurately reflect the competencies of the seafarers, using the appropriate terminology as well as terms that are identical to those used in any safe manning document issued to the ship;~~

~~.3 impartial investigation to be held of any reported failure, whether by act or omission that may pose a direct threat to safety of life or property at sea or to the marine environment, by the holders of certificates or endorsements issued by the State;~~

~~.4 arrangements for the withdrawal, suspension or cancellation of certificates or endorsements issued by the State when warranted and when necessary to prevent fraud; and~~

~~.5 administrative arrangements, including those involving training, assessment and certification activities conducted under the purview of another State, which are such that the flag State accepts its responsibility for ensuring the competence of masters, officers and other seafarers serving on ships entitled to fly its flag;~~

~~.4 the conduct of investigations into casualties and adequate and timely handling of cases involving ships with identified deficiencies; and~~

~~.5 the development, documentation and provision of guidance concerning those requirements found in the relevant international instruments that are to the satisfaction of the Administration.~~

~~17.— A flag State should ensure that ships entitled to fly its flag are sufficiently and efficiently manned, taking into account relevant and existing measures such as the Principles of Safe Manning adopted by the Organisation.~~

### **Delegation of authority**

~~18.— With regard only to ships entitled to fly its flag a flag State authorizing a recognized organization to act on its behalf, in conducting the surveys, inspections and audits, issuing of certificates and documents, marking of ships and other statutory work required under the conventions of the Organization or under its national legislation, should regulate such authorization(s) in accordance with the applicable requirements of the international mandatory instruments to:~~



~~.1 determine that the recognized organization has adequate resources in terms of technical, managerial and research capabilities to accomplish the tasks being assigned, in accordance with the required standards for recognized organizations acting on behalf of the Administration set out in the relevant instruments of the Organization;~~

~~.2 have as its basis a formal written agreement between the Administration and the recognized organization which, as a minimum, includes the elements set out in the relevant instruments of the Organization, or equivalent legal arrangements, and which may be based on the model agreement for the authorization of recognized organizations acting on behalf of the Administration;~~

~~.3 issue specific instructions detailing actions to be followed in the event that a ship is found unfit to proceed to sea without danger to the ship or persons on board, or is found to present an unreasonable threat of harm to the marine environment;~~

~~.4 provide the recognized organization with all appropriate instruments of national law and interpretations thereof giving effect to the provisions of the conventions and specify, only for application to ships entitled to fly its flag, whether any additional standards of the Administration go beyond convention requirements in any respect; and~~

~~.5 require that the recognized organization maintain records, which will provide the Administration with data to assist in interpretation of requirements contained in the applicable international instruments.~~

19. — ~~No flag State should mandate its recognized organizations to apply to ships, other than those entitled to fly its flag, any requirement pertaining to their classification rules, requirements, procedures or performance of other statutory certification processes, beyond convention requirements and the mandatory instruments of the Organization.~~

20. — ~~The flag State should establish or participate in an oversight programme with adequate resources for monitoring of, and communication with, its recognized organization(s) in order to ensure that its international obligations are fully met, by:~~

~~.1 exercising its authority to conduct supplementary surveys to ensure that ships entitled to fly its flag effectively comply with the requirements of the applicable international instruments;~~

~~.2 conducting supplementary surveys as it deems necessary to ensure that ships entitled to fly its flag comply with national requirements, which supplement the international mandatory requirements; and~~

~~.3 providing staff who have a good knowledge of the rules and regulations of the flag State and those of the recognized organizations and who are available to carry out effective oversight of the recognized organizations.~~

21. — A flag State nominating surveyor(s) for the purpose of carrying out surveys, audits and inspections on its behalf should regulate such nominations, as appropriate, in accordance with the guidance provided in paragraph 18, in particular subparagraphs .3 and .4.

## **Enforcement**

22. — 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. Such measures should include, inter alia:

~~.1 prohibiting ships entitled to fly its flag from sailing until such ships can proceed to sea in compliance with the requirements of international rules and standards;~~

~~.2 the periodic inspection of ships entitled to fly its flag to verify that the actual condition of the ship and its crew is in conformity with the certificates it carries;~~

~~.3 the surveyor to ensure, during the periodic inspection referred to in subparagraph .2, that seafarers assigned to the ships are familiar with:~~

~~.1 their specific duties; and~~

~~.2 ship arrangements, installations, equipment and procedures;~~

~~.4 ensuring that the ship's complement, as a whole, can effectively coordinate activities in an emergency situation and in the performance of functions vital to safety or to the prevention or mitigation of pollution;~~

~~.5 providing, in national laws and regulations, for penalties of adequate severity to discourage violation of international rules and standards by ships entitled to fly its flag;~~

~~.6 instituting proceedings, after an investigation has been conducted, against ships entitled to fly its flag, which have violated international rules and standards, irrespective of where the violation has occurred;~~

~~.7 providing, in national laws and regulations, for penalties of adequate severity to discourage violations of international rules and standards by individuals issued with certificates or endorsements under its authority; and~~

~~.8 instituting proceedings, after an investigation has been conducted, against individuals holding certificates or endorsements who have violated international rules and standards, irrespective of where the violation has occurred.~~

23. — A flag State should develop and implement a control and monitoring programme, as appropriate, in order to:

~~.1 provide for prompt and thorough casualty investigations, with reporting to the Organization as appropriate;~~

~~.2 provide for the collection of statistical data, so that trend analyses can be conducted to identify problem areas; and~~

~~.3 provide for a timely response to deficiencies and alleged pollution incidents reported by port or coastal States.~~

24. — Furthermore, the flag State should:

~~.1 ensure compliance with the applicable international instruments through national legislation;~~

~~.2 provide an appropriate number of qualified personnel to implement and enforce the national legislation referred to in subparagraph 15.1, including personnel for performing investigations and surveys;~~

~~.3 provide a sufficient number of qualified flag State personnel to investigate incidents where ships entitled to fly its flag have been detained by port States;~~

~~.4 provide a sufficient number of qualified flag State personnel to investigate incidents where the validity of a certificate or endorsement or of the competence of individuals holding certificates or endorsements issued under its authority are questioned by port States; and~~

~~.5 ensure the training and oversight of the activities of flag State surveyors and investigators.~~

~~25.—— When a flag State is informed that a ship entitled to fly its flag has been detained by a port State, the flag State should oversee that appropriate corrective measures are taken to bring the ship in question into immediate compliance with the applicable international instruments.~~

~~26.—— A flag State, or a recognized organization acting on its behalf, should only issue or endorse an international certificate to a ship after it has determined that the ship meets all applicable requirements.~~

~~27.—— A flag State should only issue an international certificate of competency or endorsement to a person after it has determined that the person meets all applicable requirements.~~

#### **Flag State surveyors**

~~28.—— The flag State should define and document the responsibilities, authority and interrelation of all personnel who manage, perform and verify work relating to and affecting safety and pollution prevention.~~

~~29.—— Personnel responsible for, or performing surveys, inspections and audits on ships and companies covered by the relevant international mandatory instruments should have as a minimum the following:~~

~~.1 appropriate qualifications from a marine or nautical institution and relevant seagoing experience as a certificated ship's officer holding or having held a valid management level certificate of competency and having maintained their technical knowledge of ships and their operation since gaining their certificate of competency; or~~

~~.2 a degree or equivalent from a tertiary institution within a relevant field of engineering or science recognized by the flag State; or~~

~~.3 accreditation as a surveyor through a formalized training programme that leads to the same standard of surveyor's experience and competency as that required in paragraphs 29.1, 29.2 and 32.~~

30. — Personnel qualified under paragraph 29.1 should have served for a period of not less than three years at sea as an officer in the deck or engine department.

31. — Personnel qualified under paragraph 29.2 should have worked in a relevant capacity for at least three years.

32. — In addition, such personnel should have appropriate practical and theoretical knowledge of ships, their operation and the provisions of the relevant national and international instruments necessary to perform their duties as flag State surveyors obtained through documented training programmes.

33. — Other personnel assisting in the performance of such work should have education, training and supervision commensurate with the tasks they are authorized to perform.

34. — Previous relevant experience in the field of expertise is recommended to be considered an advantage; in case of no previous experience, the Administration should provide appropriate field training.

35. — The flag State should implement a documented system for qualification of personnel and continuous updating of their knowledge as appropriate to the tasks they are authorized to undertake.

36. — Depending on the function(s) to be performed, the qualifications should encompass:

.1 knowledge of applicable, international and national, rules and regulations for ships, their companies, their crew, their cargo and their operation;

.2 knowledge of the procedures to be applied in survey, certification, control, investigative and oversight functions;

.3 understanding of the goals and objectives of the international and national instruments dealing with maritime safety and protection of the marine environment, and of related programmes;

.4 understanding of the processes both on board and ashore, internal as well as external;

.5 possession of professional competency necessary to perform the given tasks effectively and efficiently;

.6 full safety awareness in all circumstances, also for one's own safety; and

~~.7 training or experience in the various tasks to be performed and preferably also in the functions to be assessed.~~

~~37.—The flag State should issue an identification document for the surveyor to carry when performing his/her tasks.~~

### **~~Flag State investigations~~**

~~38.—Marine safety investigations should be conducted by impartial and objective investigators, who are suitably qualified and knowledgeable in matters relating to the casualty. Subject to any agreement on which State or States will be the marine safety investigating State(s), the flag State should provide qualified investigators for this purpose, irrespective of the location of the casualty or incident.~~

~~39.—The flag State is recommended to ensure that individual investigators have working knowledge and practical experience in those subject areas pertaining to their normal duties. Additionally, in order to assist individual investigators in performing duties outside their normal assignments, the flag State is recommended to ensure ready access to expertise in the following areas, as necessary:~~

- ~~.1 navigation and the Collision Regulations;~~
- ~~.2 flag State regulations on certificates of competency;~~
- ~~.3 causes of marine pollution;~~
- ~~.4 interviewing techniques;~~
- ~~.5 evidence gathering; and~~
- ~~.6 evaluation of the effects of the human element.~~

~~40.—It is recommended that any accident involving personal injury necessitating absence from duty of three days or more and any deaths resulting from occupational accidents and casualties to ships of the flag State should be investigated, and the results of such investigations made public.~~

~~41.—Ship casualties should be investigated and reported in accordance with the relevant international instruments, taking into account the Casualty Investigation Code, as may be amended, and guidelines developed by the Organization. The report on the investigation should be forwarded~~

to the Organization together with the flag State's observations, in accordance with the guidelines referred to above.

## **Evaluation and review**

42.—— A flag State should, on a periodic basis, evaluate its performance with respect to the implementation of administrative processes, procedures and resources necessary to meet its obligations as required by the international instruments to which it is a party.

43.—— Measures to evaluate the performance of flag States should include, inter alia, port State control detention rates, flag State inspection results, casualty statistics, communication and information processes, annual loss statistics (excluding constructive total losses (CTLs)) and other performance indicators as may be appropriate, in order to determine whether staffing, resources and administrative procedures are adequate to meet its flag State obligations.

44.—— Areas recommended for regular review may include, inter alia:

- ~~.1 fleet loss and accident ratios to identify trends over selected time periods;~~
- ~~.2 the number of verified cases of detained ships in relation to the size of the fleet;~~
- ~~.3 the number of verified cases of incompetence or wrongdoing by individuals holding certificates or endorsements issued under the flag State's authority;~~
- ~~.4 responses to port State deficiency reports or interventions;~~
- ~~.5 investigations into very serious and serious casualties and lessons learned from them;~~
- ~~.6 technical and other resources committed;~~
- ~~.7 results of inspections, surveys and controls of the ships in the fleet;~~
- ~~.8 investigation of occupational accidents;~~
- ~~.9 the number of incidents and violations that occur under the applicable international maritime pollution prevention regulations; and~~
- ~~.10 the number of suspensions or withdrawals of certificates, endorsements, approvals, or similar.<sup>2</sup>~~