



Council of the European Union
General Secretariat

Brussels, 06 September 2023

Interinstitutional files:

2023/0164 (COD)

2023/0165 (COD)

2023/0172 (COD)

WK 11057/2023 INIT

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CONTRIBUTION

From:	General Secretariat of the Council
To:	Working Party on Shipping
Subject:	<p>Maritime Safety Package</p> <ul style="list-style-type: none">- Proposal for a Directive of the European Parliament and of the Council amending Directive 2009/21/EC on compliance with flag State requirements- Proposal for a Directive of the European Parliament and of the Council amending Directive 2009/16/EC on port State control- Proposal for a Directive of the European Parliament and of the Council amending Directive 2009/18/EC establishing the fundamental principles governing the investigation of accidents in the maritime transport sector <p>- Position-paper of Germany, Greece, Malta and the Netherlands</p>

Delegations will find attached a joint position-paper of Germany, Greece, Malta and the Netherlands on the above-mentioned proposals.

**Position-paper on the directives of:
Flag State Responsibilities, Port State Control and Accident Investigation**

From: Germany, Greece, Malta and the Netherlands.

Flag State directive:

- We support in principle the specification of an oversight program of the member states flagged fleet and registered organisations (RO). Having said that, we would reiterate the importance of a goal-based approach in drafting this requirement. Prescriptive articles for these programs may limit the MS in the development of such programs catered for their fleet and needs and could have negative consequences for the most effective use of resources, available in any MS. Hence the new directive should, in our view, cater for generic information (risk)based principals, which in the end guide flag state surveyors to the right ship and/or RO at the right time. This risk-based approach has proven its effectiveness in the Paris MoU port state inspections, where substandard shipping is almost banned from our ports.
- At this stage the co-sponsors would not support the introduction of a specific requirement defining appropriate resources, corresponding with type and size of fleet. This may lead to a disproportionate demand of staff for those MS having larger fleets. Moreover, we believe that this requirement may lead to an administrative burden for the industry with a negative effect on the choice of shipowners for an EU flag. This should not be the consequence of an EU directive.
- Regarding common capacity building we agree that a high level of knowledge throughout the Union is a cornerstone for the quality of certification, inspections and surveys. And that the EMSA Academy courses are useful tools for the MS to gain and keep this knowledge. However, we would like to stress that the training of surveyors and inspectors in the first place is (and should remain) a responsibility and prerogative of MS. Different MS have different programs in place for becoming a flag- and/or port state inspector. The minimum criteria for inspectors stipulated in par. 29 – 36 of the III-Code in our view serves this purpose well. A combination of national training programs including on the job training, voluntary virtual- and on-site training courses for Flag State Surveyors through the EMSA Academy would be in our view the best solution. Especially for the possibility for MS to differentiate within the curriculums and learning needs per individual candidate. The flag state related activities comprise a broader (and in some cases more profound) framework of knowledge (e.g. certification services and RO monitoring), that should not be taken lightly and requires specific skills and expertise.
- It should be clear that bringing relevant FS parts I and II of the III-Code under this directive does not mean that all agenda items at IMO will fall under EU exclusive competence as a consequence.

Port State Control directive

- We support development of a PSC regime for fishing vessels but not to incorporate this in the current Directive. The fishing industry differs significantly from the international merchant shipping industry. Both from a regulatory as well as a practical point of view. E.g. fishery on the North Atlantic cannot be compared with fishery in the Mediterranean. In our view regulations in place and Conventions ratified (or not) are too wide spread for the current EU PSC workforce to handle. PSC authorities may also lack basic knowledge from the fishing industry. Moreover, existing EU legislation (Directive 97/70/EC), substantially incorporates the provisions of Torremolinos Convention and its 1993 Protocol in the EU acquis. The relevant legislative framework is also coupled by international circulars which further enhance the safety and social protection levels of the fishing sector. The existing framework should first be evaluated and in case it is considered to be ineffective, then the MS might consider to support a separate voluntary similar PSC system for fishing vessels outside the current directive and preferably based on developments in the Paris MoU.
- The current PSC regime is an inspection regime with the goal of eliminating substandard shipping. To achieve this goal a well-founded and balanced risk-based regime has been developed, based on the work of the Paris MoU. We are reluctant to incorporate specific operational enforcement tasks stemming from other maritime (environmental) directives. Factors contributing to the selection of ships can be very different from the risk factors required for a risk-based approach on other (specific) requirements. Furthermore, each task added during a PSC inspection in the end has consequences for the quality of the inspection.

**Position-paper on the directives of:
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- Finally, the PSC directive requires inspectors with a certain background, knowledge and level of training which are not necessary for other specific enforcement subjects (for example sulphur in fuel, waste under the PRF directive, ship recycling etc.). By incorporating various enforcement matters into the PSC directive, the MS are restricted in the risk-based approach and in the recruitment and assignment of inspectors. We acknowledge that the PSC directive is very successful in achieving its goal but stress that the principles of the directive, which is aligned with the work of the Paris MoU (hybrid solution of the NIR), should not be affected. Enforcement of other (specific) requirements under EU legislation should be so arranged, preferably under their specific legislation, that the MS have flexibility in recruitment and assignment of inspectors and/or delegation of tasks to other departments or authorities. With regard to the training regime of the PSC inspectors we are in favour to keep the requirements of the directive as they are laid down already in par. 3 of annex XI.

Accident Investigation directive

- It is necessary to align the directive with casualty investigation related IMO regulations, so that the same terms and definitions are used. The directive should also be sufficiently flexible so that when IMO regulations are updated, the directive is adjusted accordingly. The use of dynamic references within the directive could be an effective approach.
- At this stage, without a further impact analysis done, the co-sponsors cannot support extending the applicability of the directive to fishing vessels below 15 metres. Investigation obligations for these types of ships may have severe consequences for adequate resources of MS investigation authorities. Another issue is that after accidents involving small fishing vessels, there may be no witnesses, technical records or the vessel itself available to determine the causes of the accident. If, nevertheless, the directive would become applicable to these type of vessels, it should be left to the investigating authority to decide, taking into account the expected lessons to be drawn for the improvement of maritime safety/regulations and/or the possibility to identify the causes of accidents, whether or not to investigate a very serious accident involving small fishing vessels. However, we do see added value in investigating accidents involving smaller off-shore support vessels. Especially in the light of the current development of the off-shore windfarms within EU waters.
- The requirement to implement a quality management system focused on maritime investigations is difficult to achieve for a multimodal investigation authority that strives to have the same practices throughout the organisation for all modes of transport. There is also a risk that specifications on the type, scope or content of a quality management system will impair the independence of the investigative bodies.