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## WORKING DOCUMENT

From:	General Secretariat of the Council
To:	Working Party on Shipping
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Subject:	Proposal for a Directive of the European Parliament and of the Council amending Directive 2009/21/EC on compliance with flag State requirements - Comments by Germany

Delegations will find, in Annex, comments from GERMANY on the above mentioned subject.

## Comments from Germany

12.09.2023

Concerning Document ST 10103/23

Please find enclosed written comments from Germany containing proposed changes to Document ST 10103/23.

- I. Summary of critical points
- II. Table of Articles with suggested changes

### I. Summary

GER welcomes the fact that COM is explicitly committed to the national independence of flag state administration. However, there are some major concerns regarding the draft as follows:

- 1) **The objectives of many articles of the draft and the added value that the draft intends to achieve are unclear.** For example, the aim of the draft is to create a new European database (Article 6a), without the added value so far being visible. The financing of this database is not clear, would it mainly be national budgets or the EU? In addition, the draft contains too many vague legal terms such as “adequate resources” (Article 8b), “technical decision-making” (Article 4b III), “design review” (Article 4b III). The implementation of those terms may have a massive impact on human resources and financial resources. A general funding reservation is therefore put in place by GER. We also see various and major data protection issues.
- 2) The desired **transfer of competences to the COM/EMSA** and the interference with the MS national flag state responsibilities is also problematic.

For example:

- Transfer of competence concerning the IMO Instruments Implementation Code
- Extension of the scope of the directive to additional IMO agreements. We also consider the new obligation that IMO audits shall require the Commission to participate and publish the audit results to be critical.
- In the proposed capacity building scheme, we reject that EMSA assumes complete responsibility for the training of flag State inspectors, surveyors and auditors.

**More detailed, we see the following points as critical:**

- 1) *Article 3 g*: Transfer III code into EU law with the exception of certain rules and extension of the scope of the Directive to additional IMO conventions.  
**Problem:** Although a reference to the III Code of the IMO in the update of the Directive is in principle justified in order to bring EU law to the state of IMO law, GER has concerns about the way (selection of the rules). Furthermore, IMO conventions outside the scope of the existing Directives and III Codes are intended to fall within the scope of the Directive and thus significantly extend the transfer of competence. EU law would also go beyond developments in the IMO audit scheme. With regard to “delegated acts” (Article 10a), follow-up problems arise depending on the way in which the III code is implemented.
- 2) *Article 6*: electronic information and exchange: **Rejection** of the foreseen data transfer. It must be clear how and with which data such a transfer should take place from when and to what benefit.
- 3) *Article 6a*: Establishment of a new European database covering the vessels of the respective MS, their certificates and surveys **Rejection**: so far there is no justification for why it is needed. Double technical, financial and human resources (national and European), problem with data protection. The course of negotiations on Article 6a of the draft is to be seen in order to assess whether a compromise would be possible if the data transmission effort was reduced. The draft Directive also contains far-reaching new reporting obligations with considerable burden on the authorities.

- 4) *Article 7 (2):* IMO audit: Commission/EMSA participation in IMO audits or Member State visits" by COM/EMSA: As of today, COM already has the optional possibility of participating in IMO audits. An obligation in this regard is **rejected**, also because the Commission has only observer statutes at the IMO. However, if participation is foreseen by COM/EMSA, the scope of the audit for EMSA Visits should be reduced accordingly. Duplication of work must be avoided. The publication of the results of the audits and a publicly available website with MS performance is problematic. There is the impression that the EU intends a ranking of the flag states, which could prove to be harmful to the German flag.
- 5) *Article 8:* We **reject** the substantial extension of quality assurance requirements for the national administration. The relevant parts of the GER Flag State Administration are already quality assured via the ISO system. Enlargement is unclear and could include, for example, the ministerial level, which is rejected. The EU has no legislative competence in the field of maritime registers maintained by the Official Courts.
- 6) *Article 9a;* Establishment of a High Level group: Need for clarification, as it is unclear where EU competences and where and how MS rights will be ensured.
- 7) *There is ambiguity about the scope of the draft:* which ships are covered by the Directive (SOLAS, MARPOL, LOADLINE, HSC)? The extension of the scope is **rejected**: The Directive will also extend to previously not included IMO conventions: the 1992 International Convention on Civil Liability for Oil Pollution Damage (CLC 92), the International Convention on Prohibition and Restriction Measures for Hazardous Anti-fouling Systems for Ships of 2001 (AFS 2001), the International Convention on Civil Liability for Damage from Bunker Oil Pollution 2001 (Bunker Oil Convention 2001)
- 8) Unclear inclusion of aspects of the prevention of external hazards ("security") of ships in contrast to "safety and pollution prevention". *It is incorrect to include security under Safety*, as stated in footnote 5 of the Explanatory Memorandum to amending Directive 2009/21/EC: When 'safety' is referred to, this generally includes safety, security and pollution prevention. Accordingly, "security" should be deleted here.
- 9) There is a lack of sufficient transitional and implementation deadlines in view of the considerable additional administrative burden (particularly when adapting databases).

## II Table of Articles with suggested changes

Dircetive 2009/21/EC	St 101013/23	GER comments
<p><b>DIRECTIVE 2009/21/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL</b></p> <p>of 23 April 2009</p> <p>on compliance with flag State requirements</p>	<p>Proposal for a</p> <p><b>DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL</b></p> <p><b>amending Directive 2009/21/EC on compliance with flag State requirements</b></p>	
Recitals	Recitals	
<p>(2) In respect of international shipping a comprehensive framework enhancing maritime safety and the protection of the environment with regard to pollution from ships has been set up through the adoption of a number of conventions for which the International Maritime Organisation (hereinafter the IMO) is the depository.</p>	<p>New:</p> <p>(2) Under the provisions of the United Nations Convention on the Law of the Sea 1982 (UNCLOS) and of the Conventions for which the IMO is the depository, the States which are party to those instruments are responsible for promulgating laws and regulations and for taking all other steps which may be necessary to give those instruments full and complete effect so as to ensure that, from the point of view of safety of life at sea and protection of the marine environment, a ship is fit for the service for which it is intended.</p>	<p>GER-wording suggestion:</p> <p>Instead of „the IMO“: the international Maritime Organization (hereinafter: the IMO)</p>
<p>(3) Under the provisions of the United Nations Convention on the Law of the Sea, 1982 (UNCLOS) and of the conventions for which IMO is the depository (hereinafter the IMO Conventions), the States which are party to those instruments are responsible for promulgating laws and regulations and for taking all other steps which may be necessary to give those instruments full and complete effect so as to ensure that, from the point of view of safety of life at sea and protection of the marine environment, a ship is fit for the service for</p>	<p>New:</p> <p>(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 to discharge the obligations laid down in those conventions with respect to the ships flying their flag, the mandatory provisions of those Conventions should be incorporated in Union legislation. To this end Member States have to discharge their obligations as flag States effectively and consistently in accordance with IMO Resolution A.1070(28) (adopted on 4</p>	<p>GER:</p> <p>1) Change wording: "given that all Member States have to be party to the IMO Conventions" to rather: "given that all Member States shall take the necessary steps to deposit the instruments of ratification of, or accession to certain IMO Conventions in accordance with the relevant EU Council Decisions..."</p> <p>2) Change wording "the mandatory provisions of those Conventions should be incorporated in Union legislation" to rather: "with respect to the ships flying their flag, the Member States have to discharge their obligations as flag States effectively and consistently in</p>

which it is intended and is manned with competent maritime personnel.	December 2013) on the IMO Instruments Implementation Code (III CODE), which contains the mandatory provisions to be implemented by flag States.	accordance with IMO Resolution A.1070(28) (adopted on 4 December 2013) on the IMO Instruments Implementation Code (III CODE), which contains the mandatory provisions to be implemented by flag States."
(5) On 9 October 2008, the Member States adopted a statement in which they unanimously recognised the importance of the application of the international conventions related to flag States obligations in order to improve maritime safety and to contribute to preventing pollution by ships.	(5) At international level, the function of investigating maritime accidents is part of flag State responsibilities, while at the Union level it is made independent and regulated by Directive 2009/18/EC of the European Parliament and of the Council. This Directive should not affect Directive 2009/18/EC.	GER: wording suggestion: delete: "while at": And put: "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" before: "regulated by...".
(6) Implementation of the procedures recommended by the IMO in MSC/Circ.1140/MEPC/Circ.424 of 20 December 2004 on the transfer of ships between States should strengthen the provisions of the IMO Conventions and Community maritime safety legislation relating to a change of flag and should increase transparency in the relationship between flag States, in the interests of maritime safety.	(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.	GER: Wording: "The" instead of "Certain" plus "and" after "Directive 2009/21/EC" instead of using a comma.
(7) The availability of information on ships flying the flag of a Member State, as well as on ships which have left a register of a Member State, should improve the transparency of the performance of a high-quality fleet and contribute to better monitoring of flag State obligations and to ensuring a level playing field between administrations.	(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 the size and type of their fleet and based upon the relevant IMO requirements. In order to improve the overall qualitative performance of ships flying the flag of a Member State it is also necessary to harmonise the strict and thorough monitoring, including development of rules and design review, of the recognised organisations performing flag State duties on behalf of Member States.	GER: 1) wording: Delete "maritime" and keep only "administrations" Reasoning: no legal definition of the term „maritime administrations, different administrative structures in the MS. 2) <b>Reservation:</b> The term „adequate" resources“ is not clear enough and has far reaching financial impact in its implementation. The term "technical decision-making capability" is not clear. <b>Clarification is needed.</b>

		<p><b>3) Reservation:</b> delete "strict and thorough monitoring, including development of rules and design review, of the recognised organisations performing flag State duties on behalf of Member States " and instead add (8) into (7) as follows: "minimum criteria and inspection targets related to those resources should be established on the basis of the practical experience of the Member States, including the use of non-exclusive inspectors, via implementing measures in accordance with the IMO Instruments Implementation Code (A.1070(28)) (IMO III Code)".</p> <p><b>4) Clarification needed:</b> What does "design review" mean? The term is not clear.</p>
(9) A quality certification of administrative procedures in accordance with the standards of the International Organisation for Standardisation (ISO) or equivalent standards should further ensure a level playing field between administrations.	(9) The fulfilment of a harmonised capacity building scheme, post-qualification, by flag State surveyors and inspectors, should ensure a level playing field between maritime administrations and contribute to the qualitative performance of ships flying the flag of a Member State.	<p>GER: <b>Reservation:</b> no general and mandatory transfer of national flag State obligations like the training and certification of flag State inspectors/surveyors to EMSA. The role of EMSA in this context should be supporting the training. See also comments to Article 3.</p> <p>Delete: "maritime" before "administrations"</p>
(10) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission <sup>(1)</sup> .	(10) Member States <b>should</b> use the Union Maritime Information and Exchange System (SafeSeaNet) and services, established by Directive 2002/59/EC <b>for the purpose of</b> monitoring flagged ships, maritime surveillance and situational awareness at sea.	GER: wording: delete "should", insert "shall be encouraged to"
(11) Since the objectives of this Directive, namely the introduction and implementation of appropriate measures in the field of maritime transport policy, cannot be sufficiently achieved by the Member States and can therefore, by reason of its scale and effects, be better achieved at Community level, the	(11) The establishment and development of a database providing essential information, in an electronic format on ships flying the flag of a Member State should contribute to enhanced exchange of information, <b>further improve the transparency of the performance of a high quality fleet and allowing enhanced monitoring of flag State</b>	<p>GER:</p> <p><b>Reservation:</b> We don't understand the benefit of this database. There is a major implementation burden and we have major concerns regarding data protection. Double work on EU plus national level has to be avoided. <b>Clarification needed:</b> What is "essential information" we have "EQUASIS" (under EMSA chair) already.</p>

<p>Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. 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,</p>	<p>obligations to ensure a level playing field between maritime administrations.</p>	<p>Suggestion: Development of procedures according to the ones established for the IACS classes when changing flag. See also comment to Art. 4</p> <p>2) Wording: add after "high quality fleet" the wording: "under the flags of the EU Member States"</p> <p>3) Wording: Delete: „maritime“</p> <p>GER: proposal delete: " 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 Insert instead: "among Member States and between Member States and EMSA.</p>
	<p>(12) Essential information, including electronic reports and ship certificates following flag State inspections, should be available for all concerned authorities and the Commission, for monitoring purposes and for the enhancement of efficiency in carrying out any type of inspection.</p>	<p>GER: <b>Reservation:</b> there is no legal definition of "essential information", it is not clear what information is really needed. If this is clarified and consensus, it needs to be added "in accordance with data protection regulations".</p> <p>GER: Proposal: delete "Essential information, including electronic reports and ship certificates following flag State inspections"</p> <p>Insert: "Essential information meaning ship particulars, ISM-, MLC, and registered owner as well as ship's certificates..."</p> <p>Delete: "...and for the enhancement of efficiency in carrying out any type of inspection"</p>

	<p>(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, 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.</p>	<p>GER: <b>Reservation:</b> no additional role as an observer for EMSA, especially not IMO areas which are not under EU competency.</p>
	<p>(15) In order to further enhance quality of the flagged ships and ensure a level playing field between maritime administrations a quality certification of administrative procedures, included in the quality management system in accordance with ISO or equivalent standards, should be clarified to cover all registers, whether national (first registers) or international (second or overseas), under the responsibility of the Member State as flag State. Furthermore 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 inspections, other than statutory surveys, should be clarified. In order to ensure independence the absence of any conflict of interest of involved personnel should be documented.</p>	<p>GER: <b>Clarification needed:</b> What does „clarified“ mean here? The sentence should be edited, it is too long.</p> <p>Wording: delete: “cover all registers” and use instead: "sea-going vessels under the flag of the Member States"</p> <p>Alternatively use "established" instead of "clarified" here.</p> <p>GER: <b>Reservation:</b> Wording: instead of „related“ use “relevant” otherwise meaning too far reaching.</p> <p>Change wording to clarify (s.a.)</p> <p>Change word "any" to "relevant", too far-reaching and unclear meaning.</p>
	<p>(16) An evaluation and review of the performance scheme for flag States, based on common transparent, reliable and objective key</p>	<p>GER: <b>Reservation:</b> we need to first clarify what is really meant with "objective key performance criteria" before we can evaluate them.</p>



	performance criteria and building on current such similar schemes should support all Member States in their continuous compliance and improvement.	According to Art. 9a Nr. 1 g) those criteria should only be developed by COM together with the High Level Group.
	(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	GER: <b>Reservation:</b> what is the difference to the database mentioned under (11)? We need to understand the burden of implementing this tool, what is the benefit? Data protection issues.
Article 1	Article 1	
<b>Subject matter</b>	<b>Amendments to Directive 2009/21/EC</b>	
	Directive 2009/21/EC is amended as follows:	
1. The purpose of this Directive is:		
(b) to enhance safety and prevent pollution from ships flying the flag of a Member State.		GER: It needs to be clear that “safety” does not incorporate “security”. Footnote 5 of the explanatory memorandum (“When ‘safety’ is referred to, this generally includes safety, security and pollution prevention”) needs to delete the term “security”.
Article 2		
<b>Scope</b>		
This Directive shall apply to the administration of the State whose flag the <b>ship is flying</b> .		GER: which ships are concerned referred to which Conventions and EU regulations  Add wording "sea-going" before "ship" and "with regard to the applicable IMO Conventions and EU regulations" at the end.
Article 3		
<b>Definitions</b>		

For the purposes of this Directive, the following definitions shall apply:		
(a) 'ship' means a ship or craft flying the flag of a Member State <b>falling within the scope of the relevant IMO Conventions</b> , and for which a certificate is required;		GER: Reservation: "falling within the scope of the relevant IMO Conventions" in principle ok in this Article but not with regard to the information required to be transferred to the database, e.g. Ballast Water Convention is applicable for all ships. Range and scope of database, mandatory reports and audits should be clarified whenever reference is made to "ship" in this Directive with regard to these matters.
(e) 'IMO audit' means an audit conducted in accordance with the provisions of Resolution A.974(24) adopted by the IMO Assembly on 1 December 2005.	'(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 <b>Organisation</b> (IMO);'	
	'(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, with the exception of the Maritime Labour Convention, 2006 (MLC 2006);	GER: <b>Reservation</b> : the scope is not clear: which ships are addressed by the directive? GER is against extending the scope of this directive, but currently the draft incorporates additional IMO conventions such as the International Convention on Civil Liability for Oil Pollution Damage (CLC), the International Convention on the Control of Harmful Anti-Fouling Systems on Ships from 2001 (AFS 2001) and the international

		Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 ("Bunker Oil" Convention).
	(g) 'III-Code' means parts 1 and 2 of Resolution A.1070(28) ("IMO Instruments Implementation Code"), adopted by the International Maritime Organisation (IMO), with the exception of paragraphs 16.1, 18.1, 19, 29, 30, 31 and 32 of part 2;	<p>GER: <b>Reservation:</b> It is questionable whether the inclusion of the IMO III Code in the newly added annex or the reference to certain parts of the III code in this provision will create comprehensive EU competencies. For example, Part 1 para 3 of the III Code refers to an overall strategy which is exclusively under the regime of the MS.</p> <p>Further clarification is needed. We agree with the French and NL reservations on the implementation of III Code into this directive.</p>
	(h) 'flag State surveyor' means a public-sector employee, duly authorised by and working exclusively for the competent authority of a Member State to carry out surveys and audits related to the statutory certificates and fulfilling the independence requirement specified in Article 8(1);	<p>GER: Comment/Proposal: also for a flag State surveyor there should be minimum criteria with regard to experience and qualification as it is laid down in No. 2 of Annex XI of 2009/16/EC:</p> <p>"2. Inspectors must, as a minimum, have either:</p> <ul style="list-style-type: none"> <li>(a) appropriate qualifications from a marine or nautical institution and relevant seagoing experience as a certificated ship officer holding or having held a valid STCW II/2 or III/2 certificate of competency not limited as regards the operating area or propulsion power or tonnage; or</li> <li>(b) passed an examination recognised by the competent Authority as a naval architect, mechanical engineer or an engineer related to the maritime fields and worked in that capacity for at least five years; or</li> <li>(c) a relevant university degree or equivalent and have properly trained and qualified as ship safety inspectors"</li> </ul>
	(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	GER: The „RO-Surveyor“ needs to be defined as well

	inspections, and who fulfils the independence requirement specified in Article 8(1), and the minimum criteria specified in <b>Annex XI to Directive 2009/16/EC</b> ;	GER: Proposal: create own Annex to this directive instead of reference to other directive for the purpose of better legal clarity in the directive itself.
Article 4		
<b>Conditions for allowing a ship to operate upon granting the right to fly the flag of a Member State</b>		
1. Prior to allowing a ship to operate, which has been granted the right to fly its flag, the Member State concerned shall take the measures it deems appropriate to ensure that the ship in question complies with the applicable international rules and regulations. In particular, it shall verify the safety records of the ship by all reasonable means. 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.	‘1. Prior to allowing a ship to operate, which has been granted the right to fly its flag, the Member State concerned shall ensure that the ship in question complies with the applicable international rules and regulations. In particular, it shall verify the safety records of the ship using the inspection reports and certificates contained in database referred to in article 6a. 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.’	GER: <b>Reservation</b> : The database doesn’t even exist yet. Reference to transposition period needed. See also comment under (11)
	New: ‘Article 4a	
	Safety of ships flying the flag of a Member State	
	1. In respect of international shipping Member States shall apply in full the mandatory flag State related provisions laid down in the IMO Conventions in accordance with the conditions 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.	GER: <b>Reservation</b> : Article 29, 30,31 and 32 relate to minimum criteria regarding the FS-surveyor, here are via Dir. 2009/16 criteria already in place. To leave 16.1., 18.1. and 19 out is problematic: 16.1 "administrative instructions" –does COM want to give them? If so, problem with national legislation 18.1. "determine adequate resources of RO" - problematic 19 "no mandate of RO's beyond conventions – problematic

		Reasoning: The entire way of how to incorporate III Code and its exceptions is questionable. Administrative acts can only be issued under national legislation for example.  Proposal: Delete whole paragraph
	2. Member States shall take all necessary measures to ensure compliance with international rules and standards by ships entitled to fly their flag. Those measures shall include the following:	
	(c) carrying out supplementary flag State inspections of ships to verify that actual condition of the ship is in conformity with the certificates it carries.	GER: Instead of “that” use “the”
	4. On completion of any inspection carried out, the flag State inspector shall draw up a report on the basis of Annex IX to Directive 2009/16/EC.	GER: <b>Reservation:</b> does it mean that all reports should be published? Within which time? Data protection? How much cost is involved? The content of Annex IX of the PSC directive doesn’t fit the specifics of flagstate inspections. An independent format should be developed.  Proposal: On completion of any inspection carried out, the flag State inspector shall draw up a report.
	‘Article 4b	
	<b>Safety and pollution prevention requirements</b>	
	2. Each Member State shall ensure the oversight of the activities of flag State surveyors, flag state inspectors and recognised organisations and participate in the EU Recognised Organisation oversight scheme specified by the high level group on flag State matters referred to in Article 9a(1).	Proposal: Each Member State shall ensure the oversight of the activities of flag State surveyors, flag state inspectors and recognised organisations and participate in the EU Recognised Organisation oversight scheme

	3. Each Member State shall develop or maintain a design review and technical decision-making capability commensurate with the size and type of its fleet.	GER: Again: what is meant with “design review”?
	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).’	GER: Proposal: Delete whole paragraph
	‘Article 4c	
	<b>Common capacity building of flag State personnel</b>	
	1. Member States shall ensure that the personnel responsible for or performing surveys, inspections and audits on ships and companies undergo the harmonised scheme specified in paragraph 2.	GER: <b>Reservation:</b> We would strongly vote for keeping national independence here and support to further develop an additional voluntary training at EMSA.  Proposed wording: Delete: " undergo the harmonised scheme specified in paragraph 2." Insert: "undergo a standardized national training program which may be combined with and supported by training activities of the common capacity building scheme developed by EMSA."
Article 5		
<b>Detention of a ship flying the flag of a Member State</b>		

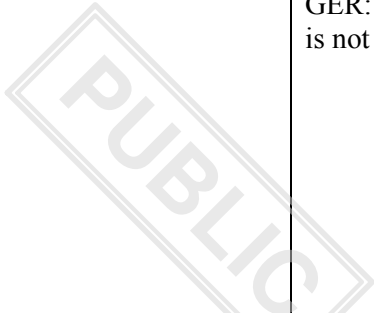
When the administration is informed that a ship flying the flag of the Member State concerned has been detained by a port State, it shall, according to the procedures it has established to this effect, oversee the ship being brought into compliance with the relevant IMO Conventions.	1. When the administration is informed that a ship flying the flag of the Member State concerned has been detained by a port State, it shall, according to the procedures it has established to this effect, oversee the ship being brought into compliance with the relevant IMO Conventions.	
	‘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 and Annex III thereto, for providing a timely response to situations in paragraph 1 of this Article as well as safety incidents and alleged pollution.’	GER: <b>Reservation:</b> Who should develop this and within which time frame? Is it really only regarding detention? Shift of national competencies to EU?  The content of this Article should be rather cited to be more clear: "When the administration is informed that a ship flying the flag of the Member State concerned has been detained by a port State, it shall, according to the procedures it has established to this effect, oversee the ship being brought into compliance with the relevant IMO Conventions."
Article 6	Article 6	
<b>Accompanying measures</b>	<b>Electronic information and exchange</b>	
Member States shall ensure that at least the following information concerning ships flying their flag is kept and remains readily accessible for the purposes of this Directive:	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:	GER: <b>Reservation:</b> The feasibility to transfer the data required under a) to g) depends on the time frame given for the transposition of the implementation of this directive in general. There are many technical issues regarding compatibility and transfer of data originally generated by RO's. <b>Proposal:</b> MS shall “cooperate in the development of an electronic format” instead of “ensure to be kept”.
(b) dates of surveys, including additional and supplementary surveys, if any, and audits;		Delete

(d) identification of the competent authority which has inspected the ship under port State control provisions and the dates of the inspections;		GER: THETIS or EQUASIS can be consulted
(e) outcome of the port State control inspections (deficiencies: yes or no; detentions: yes or no);	(e)	
(f) information on marine casualties;	(f) identification of ships which have ceased to fly the flag of the Member State concerned during the previous 12 months	GER: Is former (f) no longer needed?
(g) identification of ships which have ceased to fly the flag of the Member State concerned during the previous 12 months.	(g)	GER: <b>Reservation</b> : Difficult to keep the time restrictions since the report also depends on the classification companies reports.
	2. The information shall be communicated to the inspection database provided for in Article 6a.	GER: <b>Reservation</b> : The master is the wrong addressee.
	New: Article 6a	
	<b>Inspection database</b>	
	1. The Commission shall develop, maintain and update an inspection database containing the information specified in Article 6. All Member States shall be connected to that database. That database shall be based on the inspection database referred to in Article 24 of Directive 2009/16/EC and shall have similar functionalities to that database.	GER: <b>Reservation</b> : Competence issue, what is the benefit of this database? Financial concerns. Major need of clarification. What are the requirements for data transmission, how should the further implementation work? What kind of data is to be submitted? Who has access? What ships are addressed in the Article, how about the scope regarding SOLAS, MARPOL, Loadline for example? What is the meaning of "based". Same content and user interface or connection as THETIS?  Propose to delete: "That database shall be based on the inspection database referred to in Article 24 of Directive 2009/16/EC and shall have similar functionalities to that database" Belongs not to a main text of a directive



	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.	GER: Propose to delete: "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."
Article 7	Article 7	
<b>Flag State auditing process</b>	<b>Monitoring of compliance and performance of Member States</b>	
Member States shall take the necessary measures for an IMO audit of their administration at least once every seven years, subject to a positive reply of the IMO to a timely request of the Member State concerned, and shall publish the outcome of the audit in accordance with relevant national legislation on confidentiality.	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 the IMO. Member States shall also make the same information available to the public, in accordance with relevant national legislation on confidentiality.	GER: <b>Reservation:</b> only as consolidated audit summary reports (CASR) as it has been always done at IMO level, no individual reports should be published.
	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.	GER: <b>Reservation:</b> no further legal rights for the attendance of KOM at IMO audits
	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 the Commission shall collect the necessary information and carry out visits to Member States, in accordance with Article xx of Regulation (EU)	GER: <b>Reservation:</b> no additional EU audits on top of IMO audits.

	xx/xx of the European Parliament and of the Council <sup>37</sup> [EMSA Regulation to be adopted],’	
Article 8	Article 8	
<b>Quality management system and internal evaluation</b>		
<p>1. By 17 June 2012 each Member State shall develop, implement and maintain a quality management system for 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.</p>	<p>“Each Member State shall implement and maintain a quality management system covering all registers under its authority for all the flag State-related activities of its administration. Such quality management system shall be certified in accordance with the applicable international quality standards.</p> <p>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 who manage, perform and verify work relating to and affecting safety and pollution prevention. Such responsibilities shall be documented, specifying what type and scope of inspection work that may be performed by other personnel assisting in the performance of inspections, and also specify how such personnel shall communicate and report. Each Member State shall ensure that other personnel assisting in the performance of inspections have education, training and supervision commensurate with the tasks they are authorized to perform. All personnel performing a survey or an inspection shall sign a declaration of absence of conflict of interest attesting to their independence in relation to the work to be performed, which shall be kept by the Member State responsible authority.’</p>	<p>GER: Wording suggestion: instead of “covering all registers” it should be phrased “covering its flag state authorities”.</p> <p>Wording: delete: „all flag state personnel ....and pollution prevention” instead:</p> <p>"flag State personnel with regard to the implementaton of Article 4c paragraph 1"</p> <p>Wording: delete this far reaching obligation to sign a declaration, but rather phrase as follows:</p> <p>"The Member States shall take appropriate measures to prevent conflicts of interests of all personnel performing a survey or an inspection. A conflict of interest occurs when private interests interfere, or appear to interfere with, performing official duties."</p>

<p>2. Member States which appear on the black list or which appear, for two consecutive years, on the grey 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.</p>		<p>GER: <b>Reservation:</b> the correlation to Article 2a and 2c is not clear.</p>
	<p>‘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.</p>	<p>GER: <b>Reservation:</b> further clarification needed regarding the additional work for the implementation by the MS. What is the benefit?</p>
	<p>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.</p>	<p>GER:</p> <p>Reservation: what is meant with "revised performance scheme" in relation to Art. 8 (2)?</p>
	<p>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</p>	<p>GER: <b>Reservation:</b> does this mean that there will be a “ranking” between the MS in the future? It could lead to EMSA getting the powers of a “supervisor authority” above the MS.</p>

	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.';	GER: <b>Reservation:</b> too far reaching, unclear which criteria are taken, data protection issues
	Article 9a	
	<b>High level group on flag State matters</b>	
	1. The Commission shall establish a high level group on flag State matters for discussing flag State issues and facilitate exchanges of experience between the Member States' national authorities, flag State experts and inspectors, including as appropriate those from the private sector.	GER: <b>Reservation:</b> it needs to be clear what the purpose of this group is and who is supposed to attend this group?
	Article 9b	
	<b>Information and data</b>	
	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 once a year, inform the Commission, about:	GER: <b>Reservation:</b> further clarification needed, data protection issues, financial burden and additional personnel needed.
Article 11	Article 2	GER: Article 11?
<b>Transposition</b>	<b>Transposition</b>	
1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 17	1. Member States shall adopt and publish, by [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.	GER: <b>Reservation:</b> a much longer period than one year is needed.

June 2011 at the latest. They shall forthwith inform the Commission thereof.		
Article 12	Article 3	GER: Article 12?
<b>Entry into force</b>	<b>Entry into force</b>	
This Directive shall enter into force on the 20th day following its publication in the Official Journal of the European Union.	This Directive shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.	GER: Transition period needed for several requirements (e.g. data base and transfer of data by member states)