



Council of the European Union
General Secretariat

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Brussels, 15 September 2023

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LIMITE

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WORKING DOCUMENT

From:	General Secretariat of the Council
To:	Working Party on Shipping
N° 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 - Comments by Denmark

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



Council of the European Union
General Secretariat

Brussels, 30 August 2023

WK 10733/2023 INIT

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INFORMATION

From:	General Secretariat of the Council
To:	Working Party on Shipping
N° prev. doc.:	ST 10103 2023 INIT
N° Cion doc.:	COM(2023) 272 final
Subject:	Proposal for a Directive of the European Parliament and of the Council amending Directive 2009/21/EC on compliance with flag State requirements - Consolidated text of Directive 2009/21/EC with the proposed amendments

Delegations will find attached a consolidated text of Directive 2009/21/EC which includes the proposed amendments, as provided by the Commission.

Unofficial consolidated

DIRECTIVE 2009/21/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 23 April 2009

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 Committee¹,

Having regard to the opinion of the Committee of the Regions²,

Acting in accordance with the ordinary legislative procedure

Whereas:

(1) The safety of Union shipping and of citizens using it and the protection of the environment should be ensured at all times.

(2) Under the provisions of the United Nations Convention on the Law of the Sea 1982 (UNCLOS) and of the Conventions for which the IMO is the depository, the States which are party to those instruments are responsible for promulgating laws and regulations and for taking all other steps which may be necessary to give those instruments full and complete effect so as to ensure that, from the point of view of safety of life at sea and protection of the marine environment, a ship is fit for the service for which it is intended.

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

¹ OJ C , , p. .

² OJ C , , p. .

(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 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 Council³. This Directive should not affect Directive 2009/18/EC.

(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 the size and type of their fleet and based upon the relevant IMO requirements. In order to improve the overall qualitative performance of ships flying the flag of a Member State it is also necessary to harmonise the strict and thorough monitoring, including development of rules and design review, of the recognised organisations performing flag State duties on behalf of Member States.

(8) Minimum criteria and inspection targets related to those resources should be established on the basis of the practical experience of the Member States, including the use of non-exclusive inspectors, via implementing measures.

(9) The fulfilment of a harmonised capacity building scheme, post-qualification, by flag State surveyors and inspectors, should ensure a level playing field between maritime administrations and contribute to the qualitative performance of ships flying the flag of a Member State.

(10) Member States should use the Union Maritime Information and Exchange System (SafeSeaNet) and services, established by Directive 2002/59/EC⁴ 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 electronic format on ships flying the flag of a Member State should contribute to enhanced exchange of information, further improve the transparency of the performance of a high quality fleet and allowing enhanced

³ Directive 2009/18/EC of the European Parliament and of the Council of 23 April 2009 establishing the fundamental principles governing the investigation of accidents in the maritime transport sector and amending Council Directive 1999/35/EC and Directive 2002/59/EC of the European Parliament and of the Council (OJ L 131, 28.5.2009, p. 114)

⁴ 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).

monitoring of flag State obligations to ensure a level playing field between maritime administrations.

(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.

(13) The mandatory IMO Member State Audit Scheme follows the standard quality management approach, to determine to what extent Member States are implementing and enforcing the flag State obligations and responsibilities contained in mandatory IMO conventions to which they are parties and thus, ensure a consistent and effective implementation of applicable IMO instruments and to assist Member States to improve their capabilities. The Member States should therefore continue to demonstrate their compliance with the mandatory IMO instruments, as required by Resolution A 1067(28) 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 Council⁵, should be invited and involved as observer by the auditee Member State as flag State for the purpose of ensuring consistency between IMO audit and Commission assessments, executed by EMSA to check the implementation of Union maritime safety legislation via its visit and inspection scheme, on behalf of the Commission.

(15) In order to further enhance quality of the flagged ships and ensure a level playing field between maritime administrations a quality certification of administrative procedures, 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.

(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

⁵ 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).



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-Making⁶. 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 Council⁷. In order to ensure uniform conditions for the implementation Directive 2009/21/EC concerning uniform measures to determine the minimum requirements for appropriate resources, commensurate with the size and type of its fleet and for a common harmonised scheme for measuring of flag State performance, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council.

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

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

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

HAVE ADOPTED THIS DIRECTIVE:

⁶ OJ L 123, 12.5.2016, p. 1.

⁷ 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).

Article 1

Subject matter

1. The purpose of this Directive is:

- (a) to ensure that Member States effectively and consistently discharge their obligations as flag States; and
- (b) to enhance safety and prevent pollution from ships flying the flag of a Member State.

2. This Directive is without prejudice to Community maritime legislation, as listed in Article 2(2) of Regulation (EC) No 2099/2002 of the European Parliament and of the Council of 5 November 2002 establishing a Committee on Safe Seas and the Prevention of Pollution from Ships (COSS)⁸, and, to Council Directive 1999/63/EC of 21 June 1999 concerning the Agreement on the organisation of working time of seafarers concluded by the European Community Shipowners' Association (ECSA) and the Federation of Transport Workers' Unions in the European Union (FST)⁹.

⁸ OJ L 324, 29.11.2002, p. 1.

⁹ [OJ L 167, 2.7.1999, p. 33.](#)

Article 2

Scope

This Directive shall apply to the administration of the State whose flag the ship is flying.



Article 3

Definitions

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 falling within the scope of the relevant IMO Conventions, and for which a statutory certificate is required;
- (b) 'administration' means the competent authorities of the Member State whose flag the ship is flying;
- (c) 'recognised organisation' means an organisation recognised in accordance with Regulation (EC) No 391/2009 of the European Parliament and of the Council of 23 April 2009 on common rules and standards for ship inspection and survey organisations (recast)¹⁰;
- (d) 'certificates' means statutory certificates issued in respect of the relevant IMO Conventions;
- (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. 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);
- (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 Council¹¹, with the exception of the Maritime Labour Convention, 2006 (MLC 2006);
- (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;
- (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);
- (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 flag State inspections, and who fulfils the independence requirement specified in Article 8(1), and the minimum criteria specified in Annex XI to Directive 2009/16/EC;

¹⁰ See page 11 of this Official Journal.

¹¹ 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).

(j) ‘other personnel assisting in the performance of surveys or inspections’ means a person not exclusively employed by, but in a contractual situation with the competent authority of the Member State, and duly authorised by the competent authority of the Member State who may carry out certain surveys or inspections, specified by the competent authority, and who fulfils the criteria of communication, qualification and independence specified in Article 8(1);

(k)

(l) ‘Supplementary flag State survey, inspection or audit’ means an on-board inspection not leading to certification;

‘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);

Article 4

Conditions for allowing a ship to operate upon granting the right to fly the flag of a Member State

1. Prior to allowing a ship to operate, which has been granted the right to fly its flag, the Member State concerned or the RO on its behalf, shall ~~take the measures it deems appropriate to~~ ensure that the ship in question complies with the applicable international rules and regulations. In particular, it shall verify the safety records of the ship using, where available, the inspection reports and certificates contained in database referred to in article 6a 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.

2. Whenever another flag State requests information concerning a ship which was previously flying the flag of a Member State, that Member State shall promptly provide details of outstanding deficiencies and any other relevant safety-related information to the requesting flag State.

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.

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

(c) On a risk based approach, taking into consideration any serious incidents, accidents and generic performance criterias, carry out supplementary flag State inspections of ships to verify that the actual condition of the ship is in conformity with the certificates it carries.

(d) Supplementary flag State inspections under 2.(c) shall, but may not be limited to be carried out following the risk based selection criteria's listed in Annex XX

3. Member States shall ensure that any deficiencies confirmed or revealed by an inspection carried out in accordance with paragraph 2(c) are rectified.

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.

Article 4b

Safety and pollution prevention requirements

1. Each Member States shall ensure that its administration relies on appropriate resources, commensurate with the size and type of its fleet, in particular for meeting the obligations provided for in Article 4a and paragraphs 2 and 3 of this Article.

2. Each Member State shall ensure the oversight of the activities of flag State surveyors, flag state inspectors and 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.

4.

Article 4c

Common capacity building of flag State personnel

1. Member States shall ensure that the personnel responsible for or performing surveys, inspections and audits on ships and companies may participate in the harmonised scheme specified in paragraph 2 as appropriate.

2.

3. The Commission, seeking the advice of the high level group on flag State matters referred to in Article 9a(1), shall develop a common capacity building scheme (post-qualification at national level) and keep it updated, considering new technologies and in relation to new or additional obligations arising from the relevant international instruments, for Member States flag State surveyors and inspectors.

Article 5

Detention of a ship flying the flag of a Member State

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., for providing a timely response to situations in paragraph 1 as well as safety incidents and alleged pollution.

¹² 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).

Article 6
~~Accompanying measures~~

Electronic information and exchange

1. Member States shall ensure that at least the following information concerning ships flying their flag is kept and ~~remains readily~~ **is made accessible in an electronic format compatible and interoperable with Union maritime safety databases; for the purposes of this Directive:**

- (a) particulars of the ship (name, IMO number, etc.);
- (b) **statutory certificates (full, interim or temporary) including** dates of surveys, ~~including~~ 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) information on marine casualties;~~
- ~~(g)~~ 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 shall be communicated to the inspection database provided for in Article 6a. The master shall also be provided with a copy of the report.**

Article 6a

Inspection database

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.**

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.**

3. The Commission shall ensure that the inspection 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 shall have access to all the information recorded in the inspection database referred to in paragraph 1 of this Article and the inspection system provided for in Directive 2009/16/EC. Nothing in this Directive shall prevent the sharing of such information between relevant competent authorities within and between Member States, with the Commission or with the European Maritime Safety Agency (EMSA) established by Regulation (EC) No 1406/2002 of the European Parliament and of the Council¹³.

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.

¹³ 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).

Article 7

Monitoring of compliance and performance of Member States

Flag State auditing process

1. Member States shall take the necessary measures ~~for an~~ **to undergo the** 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 **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.

~~This Article shall expire at the latest on 17 June 2017 or at an earlier date, as established by the Commission in accordance with the regulatory procedure referred to in Article 10(2), if a mandatory IMO Member State Audit Scheme has entered into force.~~

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 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 Council¹⁴ [EMSA Regulation to be adopted].**

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

Article 8

Quality management system and internal evaluation

1. ~~By 17 June 2012 each~~ **Each** Member State shall ~~develop~~, implement and maintain a quality management system **covering registers under its authority containing ships or crafts under either IMO and/or EU regulation used for commercial purposes for the operational parts of all** the flag State-related activities of its administration. Such quality management system shall be certified in accordance with the applicable international quality 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 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 States 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, verification, audit 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.

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.

The report shall identify and analyse the main reasons for the lack of compliance that led to the detentions and the deficiencies resulting in black or grey status.

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.

Article 9

Reports

~~Every five years, and for the first time by 17 June 2012 the Commission shall present a report to the European Parliament and to the Council on the application of this Directive.~~

~~This report shall contain an assessment of the performance of the Member States as flag States.~~

Article 9a

Expert group on flag state matters

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.

The high level group on flag State matters shall be composed of representatives of the Member States and of the Commission, assisted by EMSA.

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, for flag State inspections/ Recognised Organisation (RO) monitoring;

(c)

(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, OMS 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 EU legislation;

(ii) harmonised interpretations of issues left to the discretion of the administrations in EU legislation;

(iii) apply unified interpretations for provisions laid down in EU legislation.

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 once a year, inform the Commission, about:

(a) administering safety and pollution prevention requirements

(i) type, size and age of flagged fleet in terms of number and gross tonnes of conventional ships;

(ii)

(iii)

(iv)

(v) 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)

(c) delegation of authority

(i) Recognised Organisations authorised, functions delegated and types of certificates issued on behalf of the Member State

(ii)

Committee procedure

1. The Commission shall be assisted by the Committee on Safe Seas and the Prevention of Pollution from Ships (COSS) established by ~~Article 3 of~~ 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, Articles 5 ~~and 7 of Decision 1999/468/EC~~ shall apply, ~~having regard to the provisions of Article 8 thereof~~ Regulation (EU) No 182/2011 shall apply.

~~The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at two months.~~

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.

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.

(the rest of the Article's numbering comes from the Commission's proposal for amendment of the Directive)

Article 2

Transposition

1. Member States shall adopt and publish, by [QP: 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.

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

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

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 For the Council

The President The President

ANNEX

Resolution A.1070(28)

(adopted on 4 December 2013)

IMO INSTRUMENTS IMPLEMENTATION CODE (III 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.