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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 France

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

Paris, le 15 septembre 2023

NOTE DES AUTORITÉS FRANÇAISES

Objet : Commentaires écrits des autorités françaises à la suite du groupe de travail Transport maritime du 13 septembre sur la proposition de directive du Parlement européen et du Conseil modifiant la directive 2009/21/CE concernant le respect des obligations des États du pavillon

Réf. : Documents st10103.en23, st10103-ad01.en23 et wk11057.en23

Les autorités françaises ont l'honneur de transmettre à la Présidence, suite à la réunion du groupe Transport maritime du 13 septembre 2023, les propositions rédactionnelles ci-dessous concernant la proposition de directive du Parlement européen et du Conseil modifiant la directive 2009/21/CE concernant le respect des obligations des États du pavillon.

En premier lieu, les autorités françaises rappellent soutenir globalement les objectifs suivants auxquels répond la proposition initiale de la Commission :

- mettre à jour les exigences en matière d'inspection qui incombent aux États du pavillon ;
- moderniser les outils de contrôles (par la mise en place de certificats et de rapports électroniques, d'une base de données gérée par l'Agence européenne pour la sécurité maritime – AESM –, etc.) ;
- harmoniser les pratiques en matière de contrôle des sociétés de classification habilitées et de renforcement des inspections « pavillon » afin d'atteindre un plus haut niveau de sécurité à bord des navires battant pavillon d'un État membre.

Elles soulignent également que le délai de transposition proposé à l'article 2 de la proposition de directive modificative, à savoir un an à compter son entrée en vigueur, ne semble pas réaliste au regard des évolutions importantes que cette révision implique. Elles proposent alors de fixer au moins à 5 ans ce délai.

Sur le fond des dispositions, les autorités françaises proposent les modifications rédactionnelles ci-dessous.

Article 2 (Champ d'application) :

Certaines conventions – telle que la Convention internationale pour la prévention de la pollution par les navires, dite Convention MARPOL – s'appliquent à tous les navires. Les autorités françaises souhaitent donc préciser le champ d'application de la directive, notamment en ce qui concerne la certification qualité ISO 9001, afin que celle-ci ne s'applique qu'aux navires de jauge de plus de 500 opérant sur une navigation internationale (soit le champ d'application de la Convention internationale de 1974 pour la sauvegarde de la vie humaine en mer, dite Convention SOLAS).

Elles proposent ainsi de modifier la rédaction de cet article de la manière suivante :

*« This Directive shall apply to the administration of the State whose flag the ship is flying, **for ships over 500 tonnage engaged in international navigation.** »*

Art. 4 bis (Sécurité d'un navire battant le pavillon d'un État membre) :

À l'alinéa 2.(c), les autorités françaises s'opposent à la mise en place d'inspections supplémentaires si l'État du pavillon effectue déjà des visites et délivre des certificats aux navires battant leur pavillon. Elles proposent par conséquent de modifier la rédaction de cet alinéa de la façon suivante :

*« (c) carrying out supplementary flag State inspections of ships to verify that the actual condition of the ship is in conformity with the certificates it carries, **when these have been issued by recognised organisations.** »*

Par ailleurs, les autorités françaises souhaitent apporter les clarifications suivantes au paragraphe 4 :

*« 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 **excluding any reference to port State inspections.** »*

Art. 5 (Immobilisation d'un navire battant le pavillon d'un État membre) :

Au paragraphe 2, les autorités françaises proposent l'ajout suivant visant à préciser que l'obligation pour les États membres de développer un programme approprié de contrôle et de surveillance des situations de détention par un État du port de navires battant son pavillon s'applique bien à l'État du pavillon :

*« 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 Council¹² and Annex III thereto, for providing a timely response **on ships flying their flag** to situations in paragraph 1 as well as safety incidents and alleged pollution. »*

Art. 6 (Informations et échanges électroniques) :

Les autorités françaises sont défavorables à la transformation selon un format nouveau, à des fins d'interopérabilité, des bases de données nationales existantes.

Elles estiment que la charge administrative induite serait disproportionnée par rapport au but poursuivi ; but dont la justification n'est d'ailleurs pas étayée.

En guise de compromis, elles proposent d'instaurer un système de coopération mutuelle par lequel les États membres, sur requête d'un d'entre eux ou de la Commission, transmettent les informations visées au paragraphe 1.

Les autorités françaises proposent ainsi de modifier la rédaction de cet article de la manière suivante :

*« 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, additional and supplementary surveys, if any, and audits;

- (c) *identification of the recognised organisations involved in the certification and classification of the ship;*
 - (d) *identification of the competent authority which has inspected the ship under port State control provisions and the dates of the inspections;*
 - (e) *outcome of the port State control inspections (deficiencies: yes or no; detentions: yes or no);*
 - (f) *identification of ships which have ceased to fly the flag of the Member State concerned during the previous 12 months;*
 - (g) *report(s) following a flag State survey or inspection carried out in accordance with Article 4a(2) paragraphs (b) or (c).*
2. *The information shall be communicated to the inspection database provided for in Article 6a **referred to in paragraph 1 is made accessible, upon request by Member States or Commission, for the purposes of this Directive.** The master shall also be provided with a copy of the report **mentioned in paragraph 1.g.** »*

Art. 6 bis (Base de données des inspections) :

Les autorités françaises ne peuvent soutenir l'introduction de cette disposition liée à celle proposée à l'article 6.

Art. 7 (Contrôle de la conformité et de la performance des États membres) :

Au paragraphe 2, les autorités françaises s'opposent à l'obligation de participation de la Commission aux audits de l'OMI compte tenu d'une part du champ d'application de ces derniers qui couvre également les responsabilités au titre de l'État du port et de l'État côtier et d'autre part de la charge administrative et organisationnelle que cela impliquerait pour l'État audité. Elles proposent toutefois que cette participation puisse se faire à la demande de l'État membre auprès de l'OMI, en charge de l'audit, et formulent ainsi la proposition de modification suivante :

- « 2. **Upon request**, Member States ~~shall ensure~~ **may ask the IMO** 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. »

Art. 8 (Système de gestion de la qualité et évaluation interne) :

Les autorités françaises proposent de modifier la rédaction du paragraphe 1 de la manière suivante, en cohérence notamment avec la proposition à l'article 2 de clarification du champ d'application de la directive :

- « 1. Each Member State shall **develop**, implement and maintain a quality management system covering all registers under its authority for **the operational parts of all the flag State-related activities of its administration, concerning ships over 500 tonnage engaged in international navigation**. Such quality management system shall be certified in accordance with the applicable international quality **ISO 9001** standards. »

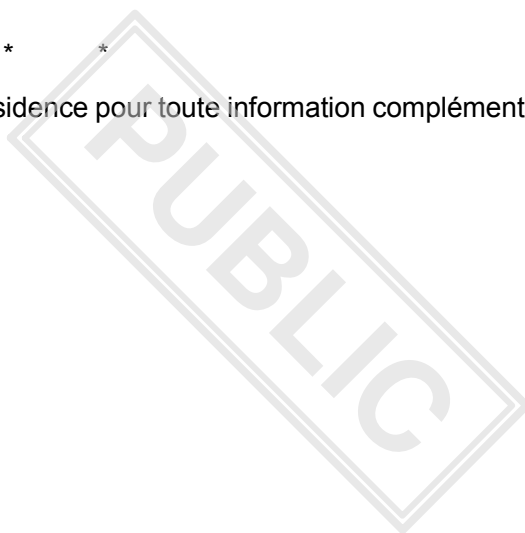
Annexe

Les autorités françaises demandent enfin la suppression de l'annexe reprenant le code d'application des instruments de l'OMI (Code III) compte-tenu d'une part des questions de compétences soulevées par la

définition insérée à l'article 3 alinéa (g) et d'autre part de la nécessaire adoption d'actes délégués pour mettre à jour l'annexe si le Code III venait à être amendé.

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Les autorités françaises se tiennent à la disposition de la Présidence pour toute information complémentaire.



Courtesy translation

Following up the meeting of the Working Party on Shipping on September 13th 2023, the French authorities have the honour to transmit to the Presidency the drafting proposals below concerning the proposal for a Directive of the European Parliament and of the Council amending Directive 2009/21/EC on compliance with flag State requirements.

First, the French authorities reiterate their overall support to the following objectives of the European Commission's initial proposal:

- to update the inspection requirements incumbent on flag States;
- to modernise inspection tools (by introducing electronic certificates and reports, a database managed by EMSA, etc.);
- to harmonise practices for monitoring authorised classification societies and reinforce "flag" inspections in order to achieve a higher level of safety on board ships flying the flag of a Member State.

The French authorities also would like to point out that the transposition deadline suggested in Article 2 of the proposal for an amending directive, namely one year from its entry into force, does not seem realistic given the major changes that this revision implies. Therefore, they propose the deadline to be established in 5 years at least.

With regard to the substance of the proposal's provisions, the French authorities suggest the amendments below.

Article 2 (Scope):

Certain conventions – such as the MARPOL Convention – apply to all ships. Therefore, the French authorities would like to clarify the scope of the directive, particularly with regard to ISO 9001 quality certification, so that it only applies to ships over 500 tonnage operating on international voyages (thus corresponding to the scope of the SOLAS Convention).

To this end, they propose the following wording:

*« This Directive shall apply to the administration of the State whose flag the ship is flying, **for ships over 500 tonnage engaged in international navigation.** »*

Art. 4a (Safety of ships flying the flag of a Member State):

In paragraph 2.(c), the French authorities oppose the introduction of additional inspections if the flag State already carries out surveys and issues certificates to ships flying their flag. Therefore, they suggest the following amendment:

*« (c) carrying out supplementary flag State inspections of ships to verify that the actual condition of the ship is in conformity with the certificates it carries, **when these have been issued by recognised organisations.** »*

Moreover, the French authorities would like to clarify the drafting of paragraph 4 as such:

*« 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 **excluding any reference to port State inspections.** »*

Art. 5 (Detention of a ship flying the flag of a Member State):

In paragraph 2, the French authorities propose to add the following wording to specify that the obligation for Member States to develop an appropriate control and monitoring programme for situations where a port State detains ships flying its flag applies specifically to the flag State:

- « 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 Council¹² and Annex III thereto, for providing a timely response **on ships flying their flag** to situations in paragraph 1 as well as safety incidents and alleged pollution. »

Art. 6 (Electronic information and exchange):

The French authorities do not support the transformation of existing national database into a new format for the purposes of interoperability.

They consider the administrative burden to be disproportionate considering the aim pursued, for which there is no justification.

As an alternative, they suggest to set a system of mutual cooperation whereby Member States, at the request of one of them or the European Commission, address the information referred to in paragraph 1.

Therefore, they propose the following changes in paragraphs 1 and 2:

- « 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, additional and supplementary surveys, if any, and audits;
 - (c) identification of the recognised organisations involved in the certification and classification of the ship;
 - (d) identification of the competent authority which has inspected the ship under port State control provisions and the dates of the inspections;
 - (e) outcome of the port State control inspections (deficiencies: yes or no; detentions: yes or no);
 - (f) identification of ships which have ceased to fly the flag of the Member State concerned during the previous 12 months;
 - (g) report(s) following a flag State survey or inspection carried out in accordance with Article 4a(2) paragraphs (b) or (c).
2. ~~The information shall be communicated to the inspection database provided for in Article 6a referred to in paragraph 1~~ **is made accessible, upon request by Member States or Commission, for the purposes of this Directive**. The master shall also be provided with a copy of the report **mentioned in paragraph 1.g.** »

Art. 6a (Inspection database):

The French authorities cannot support the introduction of this provision, which relates to the provision proposed in Article 6.

Art. 7 (Monitoring of compliance and performance of Member States):

In paragraph 2, the French authorities oppose the obligation for the Commission to participate to the IMO audits considering, on the one hand, the scope of the latter which also covers port State and coastal State responsibilities and, on the other hand, the administrative and organisational burden that this provision would imply for the audited State. However, they propose that this participation should be possible at the request of the Member State to the IMO, which is in charge of the audit, and thus suggest the following amendment to this effect:

- « 2. **Upon request, Member States shall ensure may ask the IMO** 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. »

Art. 8 (Quality management system and internal evaluation):

The French authorities propose to modify the wording of paragraph 1 as follows, in line with notably the proposed clarification of the scope of the Directive in Article 2:

- « 1. Each Member State shall **develop**, implement and maintain a quality management system covering all registers under its authority for **the operational parts of all the flag State-related activities of its administration, concerning ships over 500 tonnage engaged in international navigation**. Such quality management system shall be certified in accordance with the applicable international quality **ISO 9001** standards. »

Annex

Finally, the French authorities request the deletion of the annex containing the IMO Code III, considering on the one hand the questions of competence raised by the definition inserted in article 3.(g) and on the other hand the need to adopt delegated acts to update the annexe should Code III be amended.

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The French authorities are at the Presidency's disposal for any further information.