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WORKING DOCUMENT

From:	General Secretariat of the Council
To:	Working Party on Shipping
N° prev. doc.:	WK 10733/23
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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 - Consolidated version incorporating the Presidency compromise

Delegations will find attached a consolidated version of Directive 2009/21/EC with the amendments in the Commission proposal, which incorporates the Presidency compromise proposals in document 12982/23.

Compared to the consolidated text of the proposal (document WK 10733/23), changes are marked in **red bold underline** with yellow highlight (new text) and ~~red strikethrough~~ with yellow highlight (deleted text).

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 International Maritime Organisation (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 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 and have to discharge the obligations laid down in those conventions with respect to the ships flying their flag, with respect to the ships flying their flag, To this end Member States have to discharge their obligations as flag States effectively and consistently in accordance with IMO**

¹ OJ C , , p. .

² OJ C , , p. .

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.

- (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 the fundamental principles governing the investigation of maritime accidents, such as the independence of the investigative bodies in the Member States, is 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 The implementing acts that have been adopted following the entry into force of Directive 2009/21/EC and 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 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 in accordance with the IMO Instruments Implementation Code (A.1070(28)) (IMO III Code).
- (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 be encouraged to should use the Union Maritime Information and Exchange System (SafeSeaNet) and services, established by

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)

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 monitoring of flag State obligations to ensure a level playing field between maritime administrations,~~ among Member States
- (12) ~~Essential information meaning ship particulars registered owner as well as ship's certificates data~~ Essential information, including electronic reports and ship certificates following flag State inspections, ~~should be encouraged to 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) ~~as amended~~ 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 ~~the operational part of~~ registers ~~related to inspection and certification~~, whether national (first registers) or international (second or overseas), under the responsibility of the Member State as flag State. Furthermore all ~~relevant related~~ activities, including the responsibilities, authority, interrelation and, means of reporting and communication of all flag State personnel performing

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).

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).

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 assist to carry out certain inspections, other than statutory surveys or periodic inspections, should be clarified. In order to ensure independence the absence of any conflict of interest of involved personnel should ensured 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 an expert group on flag State matters consisting of Member States' national authorities, flag State experts and inspectors, as well as, as appropriate, experts from the private sector, should be established.

[(18) An electronic reporting tool for the purposes of further improving the consistent collection of relevant statistics and maritime data and information from Member States, should be established].

~~(19) In order to allow for an up-to date application of the provisions of this Directive to allow Member States to fulfil their obligations under international law in compliance with the Directive, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of updating the Annex. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law 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 2009/24/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~~

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).

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,

(24 (EG XX) In order not to impose a disproportionate administrative burden on landlocked Member States which have no ships flying their flag that fall within the scope of this Directive, such Member States should be allowed to derogate from the provisions of this Directive. This means that as long as this conditions are fulfilled, they are not obliged to transpose this Directive

Comment Pcy. *To be checked by the Council Legal Service*

HAVE ADOPTED THIS DIRECTIVE:

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 **seagoing** ships flying the flag of a Member State **with regards to the applicable IMO Conventions and EU legislation.**
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.

Comment Pcy: *COM to update legislation where needed.*

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., **for ships subject to certification and engaged in international voyages.**

Comment Pcy. *A threshold could be introduced so that the fleet covered is the one undergoing international voyage with or without tonnage, but this would introduce some inconsistencies. A simplified approach including ships on international voyages is applied.*

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 **under the scope of the III Code**, and for which a 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 **Part 1, paragraph 6 of the Resolution A.1070(28) (“IMO Instrument Implementation Code”) in its up to date version. Article 2(1) of Directive 2009/16/EC of the European Parliament and of the Council³⁴, with the exception of the Maritime Labour Convention, 2006 (MLC 2006).***

¹⁰ See page 11 of this Official Journal.

Comment Pcy. To put in line with the directive with the III Code. Not all the IMO Conventions are under the III Code. Some MS may have not ratified all the IMO Conventions under PSC regime (relevant conventions)

- (g) ‘III-Code’ means Resolution A.1070(28) (“IMO Instruments Implementation Code”), adopted by the International Maritime Organisation (IMO), parts 1 – limited to paragraphs 1, 2 and 6 – and part 2 with the exception of paragraphs 16.1, 18.1, 19, 21, 29, 30, 31 and 32, 34, 38, 39, 40 and 41 of part 2., in its up to date version.

Comments Pcy. We understand that there are two possible ways forward. One is to consider that this directive can overlap PSC, RO and Accident Investigation. The other is to consider it a separate issue. We consider that it is more simple to avoid overlaps and the more restrictive approach with flag state only issues could be possible way forward.

- (h) ‘flag State surveyor’ means a public-sector employee, duly authorised by and working exclusively for the competent authority of a Member State, without prejudice to the national legislation in matters of employment compatibility, responsible for or performing surveys, verifications and audits on ships and companies covered by the relevant international mandatory instruments to carry out surveys, audits related to the statutory certificates and fulfilling the independence requirement specified in Article 8(1)

Comments Pcy. To ensure compatibility at work as allowed by national legislation. Assess whether a recital is needed.

- (i) ‘flag State inspector’ means:

- i. a public-sector employee, working exclusively for and duly authorised by the competent authority of a Member State without prejudice to the national legislation in matters of employment compatibility and fulfilling the independence requirement specified in Article 8(1) or
 - ii. a person nonexclusively employed, authorised on an ad hoc basis by the Member State and
- (ii) who may carry out periodic supplementary flag State inspections, and the minimum criteria specified in Annex XI to Directive 2009/16/EC and fulfills the qualification and independence requirements specified in Article 8(1);

Comment Pcy. This definition is not established for IMO flag state requirements; however, the term inspection is used in the III Code. The possibility to establish criteria/decision for supplementary surveys should be decided by the MS. We open the door for these inspectors to be public sector employees or not but when these are carried out, due to the responsibility of the MS they need to comply with the same qualification criteria as the flag state inspector to

- (j) **‘other personnel assisting in the performance of surveys 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 assist flag state surveyors when carrying out surveys, other than statutory surveys, specified by the competent authority, and who fulfils the criteria of communication, qualification as specified in the implementation act of 10b, and independence specified in Article 8(1);**

Comment Pcy. Other Personnel is referred to in para 33 of the III Code. They cannot carry out by themselves the statutory surveys under IMO Conventions in the III Code, but may assist e.g., SOLAS radio inspections. Alignment has been made with para 33 which refers to sections 28 to 37 of the III Code. An implementation act may not be needed.

- (k) **‘Periodic flag State inspection’ means an on-board inspection to verify continuous compliance of the ship with the international rules and regulations of the instruments under the scope of the III Code** not leading to certification;

Comment Pcy. To align the text with enforcement provisions of the III Code. It does not always need to be done on board and does not limit future innovative techniques.

- (l) **‘HSSC’ means Resolution A. 1156(32) (“Survey Guidelines under the Harmonized System of Survey and Certification (HSSC), 2021, in its up-to-date version, adopted by the International Maritime Organisation (IMO);**

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 acting 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 may** verify the safety records of the ship **using, where available, the inspection reports and certificates contained in its own database, or, as applicable 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.

Comment Pcy. It is proposed that there are two possibilities, either the administration database or the database referred to in Art 6. It is understood that this article applies to EU flagged vessels. There are overlaps with Regulation 789/2004 article 4. A possibility could be to make it voluntary for EU flagged but mandatory for non-EU flag which are to be flagged in the EU.

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 under the scope of the III Code 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, paragraphs 1, 2 and 6 of part 1 and part 2 with the exception of paragraphs 16.1, 18.1, 19, 21, 29, 30, 31 and 32, 34, 38, 39, 40 and 41]

Comment Pcy. III Code is only mandated by a few IMO Conventions (SOLAS, MARPOL, LL66, 1988 Protocol to LL, Tonnage 69 and STCW). The implementation of the III Code is restricted to these. Other IMO Conventions may not even be ratified by the MS. Accident investigation and RO recognition/authorisation should also be excluded from the scope of this directive. This para does not refer to inspection and certification only.

2. Member States shall take all necessary measures to ensure compliance with international rules, regulations and standards related to the Conventions falling under the scope of the III Code by ships entitled to fly their flag. These measures shall include, in addition, the following:

~~(a) prohibiting ships from sailing until such ships can proceed to sea in compliance with international rules, and standards;~~

Comment Pcy. Already included in the III Code, section 22.1

(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 following its annexes as far as deemed necessary; and,

Comment Pcy. Annexes of HSSC are virtually impossible to deal in full with during statutory inspections. Flag State Surveyors need some flexibility.

(c) on a risk-based approach taking into account any serious incidents, accidents and generic performance criteria carrying out periodic supplementary surveys flag State inspections of ships to verify that the actual condition of the ship is in conformity with the certificates it carries.

Comment Pcy. Enforcement is up to MS in the III Code. Risk based approach is included here to assess its need. See new insertion in Article 9a.

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 **providing relevant information and outcome of verification of compliance with the Conventions on the basis of Annex IX to Directive 2009/16/EC, excluding any reference to port State inspections.**

Comment Pcy. No need to connect this with PSC directive and issue a report accordingly. MS may use its own forms.

Article 4b

Safety and pollution prevention requirements

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

Comment Pcy. This paragraph raises questions on resources. We are trying to clarify it.

2. Each Member State shall ensure the oversight of the activities of flag State surveyors, flag state inspectors, **other personnel assisting in the performance of surveys 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).**

Comment Pcy. Oversight limited to statutory surveys/inspections. No reference to RO directive /regulation.

3. Each Member State shall develop or maintain a design review and technical decision-making capability **commensurate whether its own or outsourced, according with the size and type of its fleet.**

4. In order to ensure harmonisation of the **periodic** flag State inspections referred to in article 4a(2) point (c), the Commission, after **agreeing with consulting** the **high level expert** group on flag State matters referred to in Article 9a(1), **shall adopt implementing acts may adopt recommendations** 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).**

Comment Pcy. Agreement would then be needed with regards to the establishment of the expert group, and whether these are implementing acts or recommendations.

Article 4c

Common capacity building of flag State personnel

1. **Member States shall ensure that** ~~the~~ **the** personnel responsible for or performing surveys, inspections and audits on ships and companies **shall undergo**

~~training the harmonised scheme specified in paragraph 2, relevant for the specific activities carried out by the flag State surveyors and inspectors.~~

Comment Pcy. Each MS to develop its own scheme.

2. The Commission, ~~seeking the advice with the agreement of [the high-level expert group on flag State matters referred to in Article 9a(1)], may shall develop a common non-mandatory 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 referred to in the III Code, for Member States flag State surveyors and inspectors. Compliance with this scheme shall be voluntary. By no means it shall restrict the capacity of Member States to nominate and deem qualified its flag state surveyors and inspectors.~~

Comment Pcy. *The scheme is voluntary, but MS may make it mandatory. It will not restrict the power of a MS to nominate and qualify its own surveyors. The scheme and agreement would also need to be agreed.*

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, ~~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 Council¹⁴ and Annex III thereto, for providing a timely response to situations in paragraph 1 as well as safety incidents and alleged pollution.~~

Comment Pcy. *Flexibility provided to MS to develop their own system.*

Article 6

~~Accompanying measures.~~ Electronic information and exchange

1. Member States ~~shall cooperate in the development of electronic information and exchange.~~ They shall ensure that at least the following information concerning ships

¹⁴ ~~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).~~

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:

Comment Pcy. *An electronic information exchange compatible and interoperable may be a burden, however members should be able to provide information in an electronic format.*

- (a) particulars of the ship (name, IMO number, etc.);
- (b) **date of validity of statutory certificates (full, interim or temporary) including dates of surveys, including additional and supplementary surveys, if any, and audits;**

Comment Pcy. *This information can be easily obtained by the MS or COM. The term temporary should be deleted unless it is clearly justified. It cannot be pre-empted that all MS will have electronic certificates. If we go into electronic certification and a mandatory use of the database, the comments provided by LV shall be incorporated and Article 6 a restructured.*

- (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);~~

Comment Pcy. *Information can be easily obtained by the MS or COM, therefore it is proposed to delete it*

- ~~(f) — information on marine casualties;~~
- ~~(gf) — 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);~~

Comment Pcy. *The inclusion of this information is not supported.*

2. The information shall be communicated to the inspection database provided for in Article 6a for those member states willing to use the database. The master shall also be provided with a copy of the report.

3. Landlocked Member States which have no ships flying their flag that fall under the scope of certification indicated in this directive are exempted from the implementation of this article.

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 may 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.~~

2. Member States, when using that database to exchange and transfer information, shall:

a) ensure that the information contained in Article 6 will be made compatible and interoperable with the Union maritime safety databases; and

b) ensure that the information related to inspections carried out in accordance with this Directive, [including information concerning deficiencies], is transferred to the inspection database compatible and interoperable with Union maritime safety.

Comment Pcy. *This inspection database is made optional. Conditions are drafted to delete Art 6 a 2 to be able to exchange information. A possible alternative may be just transferring data when needed using a protocol but keeping all the data under national databases.*

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 **using the database** 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 Council¹².

5. Member States **using the database** shall ensure that **the date of validity of the Statutory certificates referred to in Article 6(1) paragraph b, is shall be** transmitted

¹² 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).

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.

(5) The Commission shall develop, maintain and update an inspection database designated for issuance of electronic statutory certificates by Member States. This data base shall be connected to the data base referred to in paragraph 1 of this Article. Alternatively, Member States may use own databases of electronic certificates, in such case they shall use electronic reporting interface provided for in Article 24a of Directive 2009/16/EC.

Comments Pcy. *Only applicable to Members using the database. This requires a continuous update. Additional resources may be needed at the level of the Administration.*

[6. Landlocked Member States which have no ships flying their flag that fall under the scope of certification indicated in this directive are exempted from the implementation of this article.]

Comments Pcy. *Probably not needed here. Depending on the discussions this additional para could be deleted.*

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 **in the cycle agreed at the IMO every seven years**, ~~subject to a positive reply of the IMO to a timely request of the Member State concerned~~ **subject to a positive reply from the IMO to a timely request of the Member State concerned**, and ~~shall~~ **may** 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 may also make the same information available to the public~~, in accordance with relevant national legislation on confidentiality.

Comment Pcy. *If IMO changes the cycle, there won't be a need to this paragraph. The cycle is currently seven years but could change to five.*

~~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. **Upon request of the Commission on a case by case basis** Member States ~~shall ensure may allow that~~ **the Commission, assisted by EMSA, is allowed to participate participates** as an observer in the IMO auditing process and, **when agreed by the**

Member State that any Audit report and the information on subsequent action taken is immediately made available to the Commission.

Comment Pcy. Changed to voluntary, but based on the comments received it could be deleted.

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 when and carrying out visits to Member States, in accordance with Article xx of Regulation (EU) xx/xx of the European Parliament and of the Council¹³ [EMSA Regulation to be adopted].

Comment Pcy. The collection of information will allow COM to gather all the data needed for Art 9b. This paragraph that could be potentially deleted if the Commission attended IMO audits as their audit would be superfluous.

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 all registers under its authority for the operational parts of 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 such as ISO 9001 standards.

Comment Pcy. QMS only for operational parts. There are issues to restrict it to ships only used for commercial purposes because they may be subject to 1969 tonnage, 1966 lordliness or MARPOL Conventions. See the adjusted application in article 2.

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 the applicable Conventions 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.

Comment Pcy. To restrict to Conventions under the III Code.

Each Member States shall ensure that flag state inspectors non-exclusively employed and non-exclusive other personnel assisting in the performance of inspections have education, training and supervision commensurate with the tasks they are authorized to perform and can apply flag state instructions, procedures and criteria.

¹³ Regulation (EU) xx/xx of the European Parliament and of the Council ... [EMSA Regulation]

Comment Pcy. *The responsibility of the inspection and certification falls under the member state. Due to QMS personnel need to be able to achieve the same quality standard.*

Member States shall take appropriate measures and guarantees to prevent conflicts of interests of all personnel performing a survey or an inspection and is independent in relation to the work to be performed.

Comment Pcy. *To align conflict of interest with national legislation.*

All personnel performing a survey or an inspection referred to in the III Code and within the framework of their national legislation 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.

Comment Pcy. *To check whether a window for implementation is needed here e.g., 3 years.*

Three years after the date of transposition of this directive the quality management system shall cover the aspects related to this article

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.

Comment Pcy. *QMS and para 42 of the III Code already contains this. The expert group could help to develop key performance indicators.*

2b. In order to develop ensure a common harmonised performance scheme for the purposes of paragraph 2a, the Commission, after consulting the high-level expert group on flag State matters referred to in Article 9a(1) 1, may adopt recommendations shall adopt implementing acts to define the details for such a revised performance scheme, which will not be mandatory in paragraph 2 of this Article. Those implementing acts shall be adopted in accordance with Article 10.2.

Comment Pcy. *A common performance scheme may be needed. If that was the case if could be developed out in the group by means of recommendations.*

~~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.~~

Comment Pcy. *This is a copy of para 43 of the III Code.*

~~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

High-level Expert group on flag state matters

1. The Commission shall establish a high-level expert 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 expert group on flag State matters shall have the following tasks, inter alia:

(a) make recommendations for a common approach to flag State inspections; procedures and guidelines for the control of ships;

(b) assist the Commission in the development of a common reporting format, including timing for flag State inspections/ Recognised Organisation (RO) monitoring;

Comment Pcy. Directive not dealing with RO recognition and aligning with the text in Art 4a.

~~(bbis) develop a risk-based approach for carrying out periodic flag inspections as referred to in Article 4a.2(c)~~

Comment Pcy. Aligning with the text in Art 4a.

~~(c) assist the Commission in the development of the technical method a methodology to help to determine for what constitutes appropriate resources, commensurate with adequate to the size and type of fleet, referred to in Article 4b;~~

Comment Pcy. Aligning with the text in Art 4b.

~~(d) assist the Commission in identifying identify 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;~~

Comment Pcy. Overlapping RO regulations

~~(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;~~

Comment Pcy. Unclear

~~(g) develop recommendations assist the Commission in the technical development of the for 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;~~

Comment Pcy. The reporting obligations article might be deleted. The Commission may obtain the information during the course of the audits (depending on the outcome of the discussion for article 7) and develop their own database.

~~(i) assist in analysing flag State performance, QMS audits and, IMO Audits comparing findings and follow-up action, with a view to identifying best practices;~~

~~(j) assist the Commission in identifying measures that may be developed in order to establish;~~

~~(i) harmonised procedures for the application of exemptions and equivalents applied in accordance with the IMO Conventions;~~

Comment Pcy. *Exemptions and equivalences are a prerogative of the MS.*

~~(ii) harmonised interpretations of issues left to the discretion of the administrations in the Conventions;~~

~~(iii) apply unified interpretations for provisions laid down in the Conventions.]~~

Comment Pcy. *Application of IMO UIs is clear under the Vienna Convention*

Article 9b

Information and data

The Commission shall ~~use existing relevant union maritime databases~~ ~~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) the number of flag State inspectors/surveyors/auditors and other personnel assisting in the performance of inspections;~~

~~(iii) the number of flag State surveys, inspections, supplementary surveys and audits carried out as flag States;~~

~~(iv) the number of ships flagging-in and flagging-out by type of ship and by originating country or destination country;~~

~~(b) quality management and audits~~

~~(i) planned or confirmed dates for IMO Audit;~~

~~(ii) planned or confirmed dates for Quality Management System audit as well as scope of quality management system certification~~

(c) delegation of authority

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

Comment Pcy. *The aim of this article is unclear, and the Commission can collect the data when undergoing visits to MS (pending decision on Art 7.3)*

Article XX Derogations

Landlocked Member States which have closed their national register or have no ships flying their flag that fall within the scope of this Directive may derogate from the provisions of this Directive as long as the above mentioned requirements are fulfilled. Any Member State that intends to avail itself of that derogation shall notify the Commission at the latest on [to be defined]. Any subsequent change shall also be communicated to the Commission

Article 10

Committee procedure

1. The Commission shall be assisted by the Committee on Safe Seas and the Prevention of Pollution from Ships (COSS) established by ~~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 (II 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.~~

Comments Pcy. *Since implementation acts are changed to recommendations and the Annex is deleted, articles 10 and 10b would be deleted.*

(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 [OP: Please insert a date: **four 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 (IIC CODE)

PART 1—COMMON AREAS

Objective

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

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

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

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

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

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

General

4. — Under the general provisions of treaty law and of IMO conventions, States should be responsible for promulgating laws and regulations and for taking all other steps which may be necessary to give those instruments full and complete effect so as to ensure safety of life at sea and protection of the marine environment.

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

Scope

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

.1 safety of life at sea;

.2 prevention of pollution from ships;

.3 standards of training, certification and watchkeeping for seafarers;

.4 load lines;

.5 tonnage measurement of ships; and

.6 regulations for preventing collisions at sea.

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

.1 jurisdiction;

.2 organization and authority;

.3 legislation, rules and regulations;

.4 promulgation of the applicable international mandatory instruments, rules and regulations;

.5 enforcement arrangements;

.6 control, survey, inspection, audit, verification, approval and certification functions;

.7 selection, recognition, authorization, empowerment and monitoring of recognized organizations, as appropriate, and of nominated surveyors;

.8 investigations required to be reported to the Organization; and

.9 reporting to the Organization and other Administrations.

Initial actions

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

.1 the ability to promulgate laws, which permit effective jurisdiction and control

in administrative, technical and social matters over ships flying its flag and, in particular, provide the legal basis for general requirements for registries, the inspection of ships, safety and pollution prevention laws applying to such ships and the making of associated regulations;

.2 a legal basis for the enforcement of its national laws and regulations including the associated investigative and penal processes; and

.3 the availability of sufficient personnel with maritime expertise to assist in the promulgation of the necessary national laws and to discharge all the responsibilities of the State, including reporting as required by the respective conventions.

Communication of information

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

Records

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

Improvement

11. — States should continually improve the adequacy of the measures which are taken to give effect to those conventions and protocols which they have accepted.

Improvement

should be made through rigorous and effective application and enforcement of national legislation, as appropriate, and monitoring of compliance.

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

.1 continual training programmes relating to safety and pollution prevention;

~~.2 regional and national drills on safety and pollution prevention, which engage a broad spectrum of maritime-related national, regional and international organizations, companies and seafarers; and~~

~~.3 using reward and incentive mechanisms for shipping companies and seafarers regarding improving safety and pollution prevention.~~

~~13. — Further, the State should take action to identify and eliminate the cause of any~~

~~non-conformities in order to prevent recurrence, including:~~

~~.1 review and analysis of non-conformities;~~

~~.2 implementation of necessary corrective action; and~~

~~.3 review of the corrective action taken.~~

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

~~PART 2 – FLAG STATES~~

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

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

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

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

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

~~.2 compliance with the requirements of the applicable international instruments, using an audit and inspection programme, independent of any~~

administrative bodies issuing the required certificates and relevant documentation and/or of any entity which has been delegated authority by the State to issue the required certificates and relevant documentation;

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

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

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

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

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

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

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

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

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

Delegation of authority

18. — With regard only to ships entitled to fly its flag a flag State authorizing a recognized organization to act on its behalf, in conducting the surveys, inspections and audits, issuing of certificates and documents, marking of ships and other statutory work required under the conventions of the Organization or under its

national legislation, should regulate such authorization(s) in accordance with the applicable requirements of the international mandatory instruments to:

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

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

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

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

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

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

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

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

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

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

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

Enforcement

22. — A flag State should take all necessary measures to secure observance of international rules and standards by ships entitled to fly its flag and by entities and persons under its jurisdiction so as to ensure compliance with its international obligations. Such measures should include, inter alia:

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

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

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

.1 their specific duties; and

.2 ship arrangements, installations, equipment and procedures;

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

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

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

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

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

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

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

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

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

~~24. — Furthermore, the flag State should:~~

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

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

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

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

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

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

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

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

Flag State surveyors

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Flag State investigations

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

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

.1 navigation and the Collision Regulations;

.2 flag State regulations on certificates of competency;

.3 causes of marine pollution;

.4 interviewing techniques;

.5 evidence gathering; and

.6 evaluation of the effects of the human element.

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

41. — Ship casualties should be investigated and reported in accordance with the relevant international instruments, taking into account the Casualty Investigation Code, as may be amended, and guidelines developed by the Organization. The report on the investigation should be forwarded to the Organization together with the flag State's observations, in accordance with the guidelines referred to above.

Evaluation and review

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

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

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

.1 fleet loss and accident ratios to identify trends over selected time periods;

.2 the number of verified cases of detained ships in relation to the size of the fleet;

.3 the number of verified cases of incompetence or wrongdoing by individuals holding certificates or endorsements issued under the flag State's authority;

.4 responses to port State deficiency reports or interventions;

.5 investigations into very serious and serious casualties and lessons learned from them;

.6 technical and other resources committed;

~~.7 results of inspections, surveys and controls of the ships in the fleet;~~

~~.8 investigation of occupational accidents;~~

~~.9 the number of incidents and violations that occur under the applicable international maritime pollution prevention regulations; and~~

~~.10 the number of suspensions or withdrawals of certificates, endorsements, approvals, or similar.~~