

## Comments from Germany

22.09.2023

Concerning Document ST 10103/23

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

GER would like to take the opportunity to express its gratitude for the strenuous work done in compiling all the statements. The PCY Proposal is heading into the right direction.

GER supports that the national independence regarding the flag State personnels' qualification procedures are now clearly stated.

GER supports that the attendance of COM/EMSA at IMO audits is now at the MS discretion.

There are major concerns though towards the implementation of a database, the transmission of data to this database and the information exchange tools in general.

GER is hereby proposing the following changes to the PCY draft. We are only submitting comments concerning those articles, which we would like to amend.

### Article 3

#### Definitions

- (g) **'III Code' means Resolution A.1070(28) ("IMO Instruments Implementation Code"), adopted by the International Maritime Organization (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.**

*GER has a scrutiny reservation. The paragraphs of the III Code referred to here should be checked again against Council Decision 2013/268/EU, which deals with the III Code but leaves the competences with regard to its implementation to the EU MS as IMO MS.*

- (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)**

**(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 certificates 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**

*GER suggests to put the wording of (i)(ii) in accordance with (j) and rephrase (i)(ii) as follows:*

*“a person non-exclusively employed by, but authorised on an ad hoc basis by the Member State or in a contractual situation with the competent authority of the Member State- and duly authorised by the competent authority of the Member State.”*

*And rephrase (j) as follows:*

*“‘other personnel assisting in the performance of surveys~~inspections~~’ means a person not exclusively employed by, but authorised on an ad hoc basis by the Member State or in a contractual situation with the competent authority of the Member State” and duly authorised by the competent authority of the Member State.”*

- (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;

*GER could agree with the term “periodic” as long as it is clear that it is the MS competency to decide upon the periods and methods of inspections based on their national implementation regulations with regard to the IMO Conventions.*

#### 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, for, 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.

*GER suggests to delete “inspection reports” in (1). Justification: there is no common data format at EU level, a timely response from ROs and data maintenance is critical. GER prefers an exchange of inspection reports only on request and necessary, e.g. change of flag.*

#### Article 4a

##### Safety of ships flying the flag of a Member State

**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.**

*GER understands the obligation to draw up this report as general obligation of the MS without creating a reporting obligation. Is that understanding correct?*

*GER suggests to delete the reference to port State inspections and rephrase para (4) as follows:*

*“4. 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.”*

#### Article 4b

##### Safety and pollution prevention requirements

**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.**

*GER suggests to clarify the terms “design review” and “technical decision-making capability” and add those two terms to the definitions in Article 3.*

#### 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.**

*GER has major concerns regarding this database: What is the benefit of this database?*

- *financial concerns. What are the requirements for data transmission, how should the further implementation work? What kind of data is to be submitted by the MS? Who has access? What ships are addressed in the Article? Such an EU database would not replace the national MS databases for ships under their flags and would create a high amount of additional resources and costs at EU and MS level without clear added value.*
- *Data protection concerns: flag State obligations also concern national provisions and specifics.*

*The feasibility to transfer the data required under a) to g) depends on the allowed deadline in general and many technical plus data protection issues regarding compatibility and transfer of data originally generated by RO's.*

*In case of the introduction of such a data base against the GER concerns we strongly ask for it to be explicitly under voluntarily attendance of the MS.*

*Proposal:*

*The Expert Group defined under Article 9a) should be tasked with the discussion of the development of the database, making sure that common goals/benefits are clearly defined, which also justify the enormous financial burden upon the EU and the MS. The general architecture of this database should be agreed with by the Expert Group.*

*Furthermore, GER suggests a first demonstration of the database to MS, its acknowledgement by MS, and in a first step establish data exchange with ship particulars only.*

*Finally, GER suggests to rephrase Article 6a (1) as follows:*

*“The Commission in close cooperation with the Member States shall develop, maintain and update an inspection database”.*

## **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**

*GER has data protection concerns regarding this obligation.*

**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.**

*GER has data protection concerns regarding this obligation.*

**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.**

*GER has major concerns, this proposal seems much too indefinite. We would like to understand better, what “any relevant data” really means. GER has also major data protection concerns, it is too far reaching.*

**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 Council<sup>1</sup>.**

*GER sees this proposal as being far too indefinite. GER has major data protection concerns, especially with regard to data which goes beyond the scope of the Directive. This cannot be differentiated in the inspection reports. All EU Member States, COM, EMSA and other parties with access to the database would have access to sensitive data, which are not in EU competency and which would also potentially impair competition between the flag States with regard to their national requirements and e.g. flag State detentions.*

*The wording: "Nothing in this Directive" is much too indefinite – data protection is one of the major concerns which is not addressed here.*

**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 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 database 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.

*GER would like to get clarification whether Article 6a refers to only one or two databases. The double reference to para (5) is unclear.*

*GER would have major problems to implement this with regard to our national special requirements and our own electronic statutory certificate system. GER has major concerns regarding the resources needed. GER would like to clarify why an EU database*

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<sup>1</sup> **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).**

*for electronic certificates should be necessary when each electronic certificate of the MS can be verified with its TID on board. What is the benefit?*

#### Article 7

##### **Monitoring of compliance and performance of Member States**

**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 Council<sup>2</sup>~~ [EMSA Regulation to be adopted].'**

*GER has concerns regarding para (3): COM/EMSA attendance to IMO audits is now left to the discretion of the MS. What is the meaning of necessary information which COM shall collect? If there is any link to information obtained during an IMO audit attendance we object to this. It would be contradictory to the voluntary regime in par (2).*

#### 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.**

*GER asks to rephrase the first sentence as follows:*

*Each Member State shall implement and maintain a quality management system covering the operational parts of all flag State-related activities of its administration.*

*Justification: the current wording is not compatible with the German national system as regards registers, which are administered by courts.*

**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.**

<sup>2</sup> Regulation (EU) xx/xx of the European Parliament and of the Council ... [EMSA Regulation]

GER regards the proposal as too far reaching. GER would prefer some limitation here.

GER suggests to rephrase by putting a reference to Art. 4 c para. 1 (“The personnel responsible for or performing surveys, inspections and audits on ships and companies”) as follows:

“The quality management system shall include defined responsibilities, authority and interrelation of flag State personnel in accordance with Article 4c paragraph 1. 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.”

## 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:**

GER has a major reservation towards this proposal since the objective and benefit of such a data collection is unclear. What happens to all this data at EU level and with regard to the entities, which have access? It should be clearly regulated that such data is protected by the COM and not be published.

#### (a) administering safety and pollution prevention requirements

GER regards this as too far reaching. What does “administering” mean in this context?

- (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;**

GER sees competition questions! Data protection is needed.

## 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.**

*GER would like to leave the time given for transposing the directive open for the time being since it depends on the final outcome of the draft.*





Council of the European Union  
General Secretariat

Brussels, 22 September 2023

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## WORKING DOCUMENT

From:	General Secretariat of the Council
To:	Working Party on Shipping
N° prev. doc.:	WK 11659/23
N° Cion doc.:	10103/23
Subject:	Proposal for a Directive of the European Parliament and of the Council amending Directive 2009/21/EC on compliance with flag State requirements - Comments by Germany

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