

Comments from Belgium on the first compromise proposal for the revision of
DIRECTIVE 2009/21/EC

Belgium thanks the Presidency for its tireless work and for incorporating our comments into the current compromise proposal. In light of the numerous changes, there are several inconsistencies in the proposal, and a few more comments that we would like to clarify below.

- **Art. 3(h&i)**

In art. 3(h) it is unclear what is meant with “matters of employment compatibility” and in art. 3(i, point i) it is unclear what “employment compatibility certificates” entail. These need to be redefined to better reflect what is intended with the additions.

- **Art. 3(j)**

There is a need to expand the definition of “other personnel assisting in the performance of surveys” in order to create a better understanding on which profiles are included in this definition. Furthermore the term “contractual situation” remains unclear.

- **Art.3(k)**

Periodic flag State inspections are primarily designed to verify ships for which the Flag Administration has delegated all surveys en issue of certificates to the ROs. In cases where national administrations perform several statutory surveys and/or audits themselves and deliver the corresponding statutory certificates themselves, the periodic flag State inspections are not necessary and do not need to be carried out. The periodic Flag State inspections are understood as verification on a sampling basis of compliance with the international statutory instruments carried out outside the regular statutory surveys related to the certificates. It must be clear that the scope of the Flag State inspection should be clarified, but shall not require a full verification of compliance with all relevant instruments. As a reference, this could be aligned with the scope of the inspections of Article 13 of the PSC Directive 2009/16. As a result, Belgium proposes that the definition of periodic flag State inspections is adjusted to the definition used in the III Code (§ 22.2) and to reflect the above comments .

Text proposal

~~‘Periodic flag State inspection’ means an inspection to verify compliance of the ship with the international rules and regulations of the instruments under the scope of the III Code not leading to certification~~

‘Flag State inspection’ means a periodic inspection to verify that the actual condition of the ship and its crew is in conformity with the certificates it carries. Flag States who carry out surveys or audits in relation to the issue and maintenance of statutory certificates, are considered to have met the requirements to carry out the periodic flag state inspections.

- **Art. 4a(1)**

Belgium proposes to delete the reference to the III Code in this paragraph since the III Code is made mandatory through the IMO Conventions.

Editorial: remove square brackets

Text proposal

~~f1. 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, 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, 32, 34, 38, 39, 40 and 41]~~

- **Art. 4a(2)**

Editorial remark:

Text proposal

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:

- **4a(2b)** distorts the level-playing field between EU flag States. Belgium proposes to delete this addition.

Text proposal

(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,

- **Art. 4b(1)** Belgium does not support any reference in this directive relating to appropriate resources. The organisation of the flag State administration remains a prerogative of the member states. Again, we propose to delete this paragraph.

Text proposal

~~1. Each Member States shall ensure that its administration relies on appropriate resources, whether its own or outsourced, according 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.~~

- **Art. 6(1b)**

Removal of text in square brackets

Text proposal

(b) date of validity of statutory certificates (full or interim ~~or [temporary]~~)

- **Art. 6a(2)** While connecting to the inspection database is optional, the current wording of the proposal obligates MS to make certain information available and interoperable with EU-wide systems if choosing to connect to the database. Additionally, many of the data referred to in point a are already collected by THETIS-EU and the RO system. Furthermore, since art. 6(1g) has been deleted, point b is superfluous.

According to this analysis, we are sceptical about the development and use of said database if its use is voluntary, the information it will contain is already available on other existing platforms, and reciprocity between member states is not guaranteed. Belgium proposes to delete this paragraph

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

~~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.~~

- **Art. 7(1-2)**

Belgium proposes to delete part of paragraph 1 and paragraph 2 in its entirety since reports and corrective actions are already shared on a voluntary basis and moreover, additional observers can be invited on a voluntary basis to participate in the auditing process.

Text proposal

1. Member States shall take the necessary measures to undergo the IMO audit of their administration at least once in the cycle agreed at the IMO, subject to a positive reply of the IMO to a timely request of the Member State, ~~and 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.~~

~~2. Upon request of the Commission on a case by case basis Member States may allow that the Commission, assisted by EMSA, is allowed to participate 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.~~

- **Art. 7(3)**

Belgium finds it important that the collection of information and visits of the Commission are limited to the requirements and obligations deriving from this directive. To better reflect this, we propose to amend the text to read:

Text proposal

3. In order to ensure the effective implementation of this Directive and to monitor the overall functioning of flag State compliance with the Administrations legal duties pursuant to this directive Commission shall collect the necessary information when carrying out visits to Member States.

- **Art. 8**

Belgium prefers to rephrase the wording of the second paragraph of Article 8. There needs to be a clear understanding all requirements described in this particular part of the proposal shall apply to flag State personnel, as well as non-exclusively employed flag state inspectors. Including 'other personnel assisting in the performance of inspection surveys' makes the scope of the QMS too broad and would become burdensome to MS. We especially want to avoid including personnel such as VTEs, LRIs, service companies, ROs, into the QMS.

Text proposal

The quality management system shall include defined responsibilities, authority and interrelation of all flag State personnel, including a non-exclusively employed flag state inspector, ~~including other personnel assisting in the performance of inspections surveys~~ who manage, perform and verify work relating to and affecting the applicable Conventions. Such responsibilities shall be documented, specifying what type and scope of inspection work that may be performed by non-exclusively employed flag state inspectors, ~~other personnel assisting in the performance of inspections~~, and also specify how such personnel shall communicate and report.

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.



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General Secretariat

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