

Italy's comments with reference to the compromise text (WK 11940/23) and the informal "ideas text"

Italy wishes to thank the Presidency for the proposed compromise contained in the document WK 11940/23 and the informal "ideas text".

In this context, Italy would also like to thank the Presidency for the many efforts made to accommodate comments and suggestions from Member States in the compromise text, including ours.

In general, we can accept, as they stand, the following articles: 1, 3g, 4a.3, 4a.4, 4b, 4c, 5, 6, 7, 8

As to articles 9a and 9b, since there is a different way forward in the informal "ideas text", we believe the Presidency can find the right approach to accommodate the different inputs from the Member States.

Below, some comments and proposed modifications.

Article 3 **Definitions**

Comment on article 3 – letter (d)

(d) 'certificates' means statutory certificates issued in respect of the relevant IMO Conventions;

Justification

Italy is of the opinion that it could be useful to incorporate the Continuous Synopsis Record (CSR), which would slightly modify the definition.

Proposal

Considering the above, Italy suggests the following modification (in **red bold underlined**):

... 'certificates' means statutory certificates **and documents** issued in respect of the IMO Conventions".

Comment on article 3 – letter (f)

(f) *'Conventions' means the Conventions, with the Protocols and amendments thereto **making the use of the III-Code mandatory**, and **the** related codes of mandatory status, in their up-to-date version, **as defined in Article 2(1) of Directive 2009/16/EC of the European Parliament and of the Council³⁴, with the exception of the Maritime Labour Convention, 2006 (MLC 2006).***

Proposal

Italy thanks the Presidency for the proposal and can agree with the current definition of "Conventions" in paragraph (f).

Nevertheless, Italy would suggest to harmonise the text, i.e. using the term "Conventions" throughout, instead of

Comment on article 3 – letter (h)

(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, audits and verifications 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). A surveyor nominated by a recognized organization may perform the same tasks indicated herein when so authorised by the flag state.~~

Consideration

Italy thanks the Presidency for the proposed definition that can be accepted.

However, we would like to point out that the sentence added in the last part of the definition appears to be a redundancy of the statutory requirements already contained in the Conventions. In our view, the additional text should be deleted, but we could also accept it if it is considered useful by others.

Comment on article 3 – letter (i)

- 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 by the competent authority of a Member State 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.**
- 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);**

Consideration

This definition, as a whole, would significantly impact on our Registry in terms of competitiveness, since Italy has only exclusive inspectors according to the national law.

In this context, Italy would agree with this definition if the current flexibility ("ideas' text") in article 4a.2(c) is kept so that the inspections' efforts can be concentrated only on low performance ships.

Article 4

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

Comment on article 4 – paragraph 1

Consideration and justification

Italy thanks the Presidency for the proposal in paragraph 1.

In this respect, we confirm our comment in document WK11254/23 asking for alignment between this text and the requirements contained in article 4 of Regulation (EC) No.789/2004 applicable to the transfer of cargo and passenger vessels between registers within the Union.

The current text (of the Directive) seems to be less restrictive for non-EU vessels, considering that article 4(4), of the regulation gives the possibility to the Member State of the receiving register to carry out an inspection before registering an EU-ship, whereas this is not possible (in the directive) in the case of a non-EU ship.

In our opinion, more clarity and alignment between the two legislations is needed.

Last but not least, Italy agrees on deleting "[for the RO...]".

Proposal

Considering the above, Italy suggests the following modification (in **red bold underlined**):

*"Prior to allowing a ship to operate, which has been granted the right to fly its flag, the Member State concerned shall take the measures it deems appropriate to ensure that the ship in question complies with the applicable international rules and regulations. **In particular, Article 4 of the Regulation (EC) No.789/2004 is applied.**"*

Article 4a
Safety of ships flying the flag of a Member State

Comment on article 4a – paragraph 2 – letter (c)

(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** to verify that the actual condition of the ship is in conformity with the certificates it carries, including the following non-exhaustive criteria: ~~of:~~

1. ~~records from statutory surveys, audits and verifications performed by the flag state~~
2. ~~reports of “very serious accidents”~~
3. ~~inspection following a detention or prohibition of operation issued by the Port State Control~~
4. ~~inspection exceeding a Port State Control deficiency ratio established by each Member State~~
5. ~~records of inspections carried out according to national legislation and other relevant information as deemed appropriate by each Member State~~

Member states may depart from the risk based approach and carry out periodic flag state inspections using their own procedures, criteria and instructions in compliance with the IICode.

Consideration and justification

Italy thanks the Presidency for the proposal in paragraph 2, letter (c).

We agree in general with the risk-based approach determining the inspections' efforts. Nevertheless, we are of the view that the criteria for risk-based approach are strategic for the competitiveness of the EU fleet, and should be developed at high level (e.g. COSS) considering their potential impacts.

In fact, Italy considers that the definition of the risk level of the ship – for flag State matter - is a complex and crucial process. Finding a suitable model/criterion that can accurately represent the level of risk on a ship is not an easy task. Such level depends on a series of factors that need to be in correlation to form a validated algorithm.

The above factors, in our view, are substantially different from those applied to the field of port State to define the ship's risk profile.

Considering the above, Italy is of the view that the criteria in this article should be drafted in a generic manner, as they stand, in order not to be binding for future developments.

Article 6a
Inspection database

Comment on article 6a

Consideration

Regarding the database, we were in favour of a fully harmonised system where all Member States would participate in a common Union database.

Since most member States are still in favour of a voluntary approach and full harmonisation cannot be achieved, we accept to align to the majority view.

Article 2
Transposition

Comment on article 2

Proposal

Italy still prefers 5 years as a transposition period.

Last but not least, we support the deletion of the Annex.



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General Secretariat

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WORKING DOCUMENT

From:	General Secretariat of the Council
To:	Working Party on Shipping
N° prev. doc.:	WK 11940/23
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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 - Comments by Italy

Delegations will find, in Annex, comments from **Italy** on the second compromise proposal of the Presidency.