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CONTRIBUTION

From:	General Secretariat of the Council
To:	Working Party on Shipping
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 attached comments by **Italy** on the above proposal.

Italy's comments on document ST16967/Rev.03/23 and WK 1100.en24

Italy thanks the Presidency and its team for the efforts made in the negotiations within SWP and European Parliament and for the compromise proposals contained in documents [st16967/Rev.03/23](#) and [WK1100.en24](#), respectively.

Please find below our comments in relation to both documents.

• **ST16967/Rev.03/23**

⇒ Recital 4 (Line 14):

4) As IMO Resolution A. 948 (23) has been revoked by IMO Resolution A. 1156(32), Member States should apply, to the ships flying their flag, harmonised requirements for certification and survey by the flag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 Resolution A. 1156(32) on survey guidelines under the harmonised system of survey and certification, **having regard to flag State prerogatives in situations where it may be manifestly impossible to do so.** ~~The annexes to the survey guidelines should be followed as far as is deemed necessary by flag State surveyors.~~

Italy's comment:

Italy can accept the proposal.

⇒ Recital 9 (Line 19):

(9) Flag State inspectors, surveyors and other personnel assisting in the performance of surveys should have the education, training and supervision necessary to carry out the tasks they are authorised to perform. **The Commission, assisted by** the European Maritime Safety Agency (EMSA), **and in cooperation with Member States** should develop a voluntary training programme to support flag State administrations in this respect.

Italy's comment:

Italy has no comments on the new text of recital 9 which can be accepted since the training to be developed by EMSA is voluntary.

⇒ Recital 21 (Line 31):

The European Maritime Safety Agency (EMSA) should provide support for the implementation of Directive 2009/21/EC. Such support may include the provision of voluntary training for flag State administrations. EMSA should facilitate coordination and exchange of information and good practices between flag State administrations in respect to their training activities.

Italy's comment:

Italy has no comments on the additional text where the proposal of the EP is included. The new recital 21 can be accepted.

⇒ Article 1, eighth paragraph, point (3), amending provision, numbered paragraph (2), point (b) (Line 56):

(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 is deemed necessary having regard to flag State prerogatives;**

Italy's comment:

Italy can accept the proposal.

⇒ Article 1, eighth paragraph, point (3) – (Line 57 to 57f):

(c) carrying out flag State inspections to verify that the actual condition of the ship is in conformity with the certificates it carries; such inspections may be carried out using a risk-based approach, which ~~may~~ **shall** include the following criteria:

(i) records of deficiencies and non-conformities from statutory surveys, audits and verifications performed by the flag;

(ii) reports of very serious accidents relevant safety recommendations from accident investigation reports;

(iii) ~~ships that have been detained or issued with a~~ **detentions or** prohibition of operation notices issued by a port State control authority;

(iv) ~~ships that exceed a port State control deficiency ratio~~ **surpassing a specific number of port State control deficiencies in a single inspection, defined by the flag State for the respective ship types flying their flag** established by each Member State;

(v) records of deficiencies from inspections carried out according to national legislation as deemed appropriate by each Member State.

~~(vi) Member States shall, on a rolling 3 year period, perform inspections on at least 30 percent of the 40 % lowest performing ships according to the risk profile it established;~~

(vi) other relevant information deemed necessary by the Member State.

Member States using a risk-based approach shall ensure that ships for which there is no sufficient data available for the calculation of the risk rating are inspected at least once every [7] years.

Member States ~~may depart from the~~ **not using** a risk-based approach ~~and~~ **shall** carry out flag State inspections using their own procedures, instructions and relevant information in compliance with the III Code. **They shall ensure that every ship is inspected at least once every [7] years.**

Italy's comment:

In general, Italy can accept the changes proposed by the Presidency regarding the criteria to be used for the selection of inspections based on the risk-based approach. However, we believe that the new letter (ii), as it stands, is unclear.

As a matter of fact, the previous formulation referred to accident reports, in a generic manner, which is related to very serious accidents happened on a specific vessel. With the current wording it is not clear which element should be taken into consideration for the calculation of the ship's risk profile considering that the recommendations may be addressed also to other Entities responsible to cause the accident, in addition to the ship. In this respect, we still prefer the criteria of the General Approach (GA).

⇒ Article 1, eighth paragraph, point (3), amending provision, numbered paragraph (2)– (Line 69):

Member States may develop a capacity-building scheme for their flag State inspectors and surveyors and keep it up to date, taking into account new or additional obligations arising from the Conventions and instruments-referred to in the III Code.

The Commission, assisted by EMSA, may develop a voluntary training programme to support flag State administrations in this respect, and keep it updated, taking into account new technologies and other relevant developments.

Italy's comment:

Italy can accept the proposal.

⇒ Article 1, eighth paragraph, point (5), amending provision, numbered paragraph (1), point (b)– (Alinea 79):

(b) ~~date of validity of~~ statutory certificates (full or interim) including dates of surveys, additional and supplementary surveys, if any, and audits;

Italy's comment:

Italy can accept the proposal.

⇒ Article 1, eighth paragraph, point (5), amending provision, numbered paragraph (1), point (g)– (Alinea 84):

(g) an extract of the report(s) following a flag State inspection containing only the following information:

- (i) Date and place of the inspection,**
- (ii) IMO number and ship particulars,**
- (iii) Name of Recognised Organisation, if delegated to act on behalf of the flag State,**
- (iv) Exemptions or exceptions, if any and**
- (v) Scope of inspection.**

Italy's comment:

Italy can accept the proposal related to the flag State inspections' information to be kept available in electronic format.

⇒ Article 1, eighth paragraph, point (7), amending provision, numbered paragraph (1)– (Line 97):

1. Member States shall take the necessary measures to undergo the IMO audit of their administration according to the cycle adopted at the IMO. **Member States shall publish the outcome of the audit, in accordance with relevant national legislation on confidentiality.**

Italy's comment:

Italy can accept the proposal.

⇒ Article 1, eighth paragraph, point (10) - (Line 114 to 116):

Exchange of ~~information~~ best practice and experience

The Commission shall provide for the organisation of exchange of experiences and best practices between Member States' national authorities and experts, including, as appropriate, other relevant stakeholders, those from the private sector, with a view to reach a common understanding and consider common practices for the implementation of this Directive.

Member States' national authorities and experts shall explore, together with the Commission, the possibility to develop common guidance on elements such as the methodology to perform flag State inspections, content and format of reporting or capacity building.

Italy's comment:

In general, Italy can accept the Presidency's proposal if the text "**for the implementation of this Directive**" is deleted from the end of the first paragraph.

⇒ Article 2(1), first subparagraph - (Line 166):

Italy's comment:

Italy thanks the Presidency to have maintained the GA for the period for transposition of the directive, which is accepted.

- **WK 1100.en24**
(only for lines non-commented under ST16967)

⇒ Lines 79 and 84

Italy's comment:

In general, Italy can accept the PSY proposal provided that EMSA will develop the functionality for issuing electronic certificates in the EU database.

⇒ Lines line 13b, 29, 53, 164 and 177 – 332

Italy's comment:

Italy strongly prefers the GA approach on the deletion of the III Code from the Annex.

⇒ Line 36e-g – scope

Italy's comment:

Italy has no additional comments.

⇒ Lines 11a, 25a, 49, 58, 69, 78a, 93

Italy's comment:

Italy still considers that the social aspects are falling outside the scope of the Directive. In addition, and as already highlighted for the aspects related to the Recognized Organisation, we are not in favour of the duplication of requirements that are already covered by other EU instruments on social aspects.

⇒ Line 13a

Italy's comment:

Italy has no comments on this line.

⇒ Line 21

Italy's comment:

Italy prefers the GA text.