



Council of the European Union  
General Secretariat

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**Interinstitutional files:  
2023/0172 (COD)**

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**Brussels, 30 January 2024**

**WK 1397/2024 INIT**

**LIMITE**

**TRANS**

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**OMI**

**CODEC**

**IA**

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## **CONTRIBUTION**

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| 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<br>- Comments by Cyprus |

Delegations will find attached comments by **Cyprus** on the above proposal.

### Comments by the Republic of Cyprus

**Proposal for a Directive of the European Parliament and of the Council amending Directive 2009/21/EC on compliance with flag State requirements – 4 column document (doc. 16967/3/23 REV 3 dated 25 January 2024) and the Presidency Non -Paper, doc. WK 1100/2024 INIT dated 26 January 2024.**

Cyprus thanks the Presidency for its tireless efforts made and the compromise proposals presented. Following the discussions in the Shipping Working Party on 29 Jan. 2024 and our interventions, kindly view below our written comments for your consideration.

#### **On HSSC :**

**Line 14:** (4) As IMO Resolution A. 948 (23) has been revoked by IMO Resolution A. 1156(32), Member States should apply, to the ships flying their flag, harmonised requirements for certification and survey by the flag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 the flag State surveyors."~~

**And**

**Line 56:** **"(b) ensuring that the ships entitled to fly their flag have been surveyed in accordance with the survey guidelines under the Harmonised System of Survey and Certification (HSSC) and following its annexes as far as is deemed necessary** **having regard to flag State prerogatives; "**

Cyprus has a preference to the General Approach. Nonetheless, in the spirit of compromise and flexibility towards the EP position, Cyprus can agree with the proposal.

**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.

**Cyprus can , in the spirit of compromise agree with the proposal.**

**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."

**Cyprus can accept the proposal.**

**Risk Based Approach : Lines 57-57f:**

(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”.**

**Cyprus can in the spirit of compromise agree with the proposal on the Risk Based Approach, on the understanding that the option for 7 years inspection remains.**

**Capacity building and EMSA -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”.**

**Cyprus can accept the proposal.**

**Lines 79-84:** 1. Member States shall ensure that at least the following information concerning ships flying their flag is kept and is made accessible in an made available in electronic format compatible and interoperable with Union maritime safety databases:

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

Cyprus strongly disagrees with the proposal since the availability of flag State inspection reports in a common database would not be useful to improve the quality of FS inspections. FSI reports are used by the flag administration to assess the safety of the ships and the performance of the management Companies and Ro. Likewise, the availability of Statutory certificates in a common database does not appear to add value for FSI inspections, as each flag administration maintains the certificates in its own database.

**IMO audit and publication : 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”.

Cyprus cannot support the proposal on the basis that the outcome of the audit is confidential.

**III Code-Lines 13b, 29, 53, 164 and 177-332:** Cyprus maintains its position on the deletion of the III Code from the Annex.

**Line 13 a -Force majeure :** Cyprus has no comment on this line.

**High Level Expert Group- Lines 113-116 :** “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.”

Cyprus can in the spirit of compromise and limited flexibility towards the EP position agree with the proposal, with a strong preference to end the paragraph after the word “ guidance.

**Line 166** “Member States shall adopt and publish, by ... [OP: Please insert a date: **four years** from the date of entry into force of this amending Directive] the laws, regulations and administrative provisions necessary to comply with this Directive. They shall immediately inform the Commission thereof”  
**Cyprus thanks the Presidency for maintaining the general approach for a transposition period of four years.**

**Line 21(Recital 11) – Genuine link**

Cyprus maintains the position for complete deletion. **This is a red line for Cyprus.**  
We **cannot** support the EP’s proposed “compromise text” set out in WK 1260/2024 INIT.

**EP compromise proposals on 'working conditions' (WK 1260/2024)**

Cyprus maintains a scrutiny reservation as these proposals are still under examination.