



Council of the European Union  
General Secretariat

Brussels, 02 February 2024

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## MEETING DOCUMENT

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 - Presidency non-paper

In view of the Shipping Working Party meeting on 5 February 2024, delegations will find attached a Presidency non-paper accompanying the four-column document 16967/4/23 REV 4.

## Presidency Non-paper

### INTRODUCTION

1. Technical exchanges between the Council and the European Parliament (EP) continued on 31 January. Following internal consultations, the Parliament confirmed its agreement with the Council text on several lines marked now with green background in the 4 column table.

### MAIN OUTCOMES

2. The discussions then focused on the following issues:

- Line 79 – eCertificates – the EP continues to be convinced of the added value of eCertificates. Both the EP and COM consider that the full certificates should be available, not only the date of validity, and that this information has to be available in an up-to-date form. This would be particularly useful to flag and port State inspectors in the exercise of their duties.

In a similar way, inspection reports in line 84 (or a subset of the information from those reports) would be useful for inspectors. As an example, if a flag State inspection reveals certain structural deficiencies in the statutory work of a RO, this information could be useful for other flag States which have ships with similar certificates issued by the same RO – these flag States could then prioritise inspections on those ships, in an effort to ensure their own flagged ships are up to standard.

- Line 97 – IMO audit and publication - COM explained that the IMO audit reports are not automatically published on GISIS. As a possible compromise, the Parliament insisted that at least the wording of the directive already in force should be maintained. The Presidency notes that the current wording in Article 7(1) of the Directive currently in force is “*shall publish the outcome of the audit, in accordance with relevant national legislation on confidentiality*”.
- Lines 13b, 29, 53, 164 and 177 – 332 – the III Code – This is a political issue on which the EP seems to become more flexible. There is indication that they could accept the deletion of the III Code from the annex if the Council agrees to reintroduce some additional elements in the definition in Article 3(g). The EP proposed the following text for line 42 (changes to the general approach are highlighted):

(g) 'III Code' means **parts 1 and 2 of** Resolution A.1070(28) (IMO Instruments Implementation Code), adopted by the International Maritime Organization (IMO), **Part 2**, with the exception of paragraphs **3, 4, 5, 7, 8, 9 and 10 of part 1 and 16.1, 18.1, 19, 20, 21, 29, 30, 31, 32, 34, 38, 39, 40 and 41 of part 2**, in its up to date version;

- Lines 11a, 25a, 49, 58, 69, 78a, 93 – social provisions – the EP considers that all these additions are important from a political point of view, even if they go beyond the scope and objectives of this proposal. They proposed to test some more simplified and noncontroversial texts internally, but this issue is likely going to be solved in trilogue, due to its political nature.
- Line 21 – genuine link – the EP explained that this recital is the result of a compromise which was very difficult to achieve; even if this text has no correspondence in the articles, it remains important for the EP, which is however willing to consider alternative wording that would be less controversial. The Presidency was very clear that such a recital is completely unacceptable for the Council.

### **CONCLUSION AND WAY FORWARD**

3. Following these discussions, the Presidency identified possible compromises that could be explored on the main points above and would like to invite delegations to indicate whether they could provide flexibility as regards the following:

- a) **Digitalisation** seems to be one of the main concerns of the EP. For this reason, the Presidency is considering a compromise solution that would, at the same time, take into consideration the concerns of Member States (no additional administrative burden, no duplication of work and no additional cost), while at the same time making sure that all the information listed in Article 6 is available online, in an up-to-date form, to all port State and flag State inspectors in the Union.

The Presidency is therefore suggesting, as a possible way forward, to introduce in the text an obligation for the Commission to set up **a digital portal**, which could provide access to the information listed in Article 6, from all Member States, to port State and flag State inspectors throughout the Union. This digital portal will not store the data locally, but would only be a 'bridge' to the information that is stored at national level, in already existing databases of Member States. There will be no new obligation on the Member States, other than the one already in Article 6(1) of the general approach: to make the information available in an electronic format. There is no need to send

information or to do any additional work, as the digital portal would basically provide a view to well-delineated elements in the national databases.

However, this approach is incompatible with the concept of communicating the information to the Commission at least on a yearly basis (as currently provided in Article 6a, para 2a of the general approach). That second sentence should therefore be deleted.

What would be the impact of this approach for Member States in respect to the eCertificates?

- MS which delegated the issuing of certificates to ROs: no additional burden, since the ROs already provide that data electronically to EMSA;
- MS which issue their own electronic certificates – no additional burden – COM will have to build the ‘bridge’(/interface) between the digital portal and their national database;
- MS which issue certificates, but not ‘electronic certificates’ – no additional burden, they can use the database in Art. 6a to start issuing electronic certificates – then the ‘bridge’(/interface) is done between the DB in 6a and the digital portal – again, COM will develop it.

This Presidency compromise would only need limited changes to the text of the GA – see details in the annex.

As part of this ‘digitalisation package’, the Presidency also suggests to keep the first paragraph of Article 9b in the text, as this is an already existing system (DONA) and it would not bring any additional burdens for MS or for the Commission.

## Digitalisation – Flag State Directive

Article 6 - Electronic information and exchange	Keep GA
1. Member States shall ensure that at least the following information concerning ships flying their flag is <del>kept and is made accessible in an</del> <b>made available in</b> electronic format <del>compatible and interoperable with Union maritime safety databases</del> :	Keep GA
(a) particulars of the ship (name, IMO number, etc.);	Keep GA
(b) <del>date of validity of</del> <b>statutory certificates (full or interim) including dates of surveys, additional and supplementary surveys, if any, and audits;</b>	Initial COM proposal
(c) identification of the recognised organisations involved in the certification <del>and classification of</del> the ship;	Keep GA
(f) identification of ships which have ceased to fly the flag of the Member State concerned during the previous 12 months;	Keep GA
(g) <b>extract(s) of the report(s) following a flag State inspection containing only the following information:</b>	new
(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.	
2. The Commission shall develop, maintain and update a digital portal allowing Member States' flag and port State inspectors to access this information in the performance of their duties.	new

+ recital 12 – line 22:

(12) ~~Essential information, including electronic reports and ship certificates following flag State inspections, should be available for all concerned authorities and the Commission, for monitoring purposes and for the enhancement of efficiency in carrying out any type of inspection.~~ **For monitoring and inspection purposes, it is to be encouraged that essential information, such as the ship's particulars, registered owner and data relating to the ship's certificates should be available to all authorities concerned and to the Commission.**

*'Digital portal' is different from 'database' in the fact that the data is not stored locally, but it remains in the national database (or the one referred to in Art. 6a). + It is only for inspectors 'in the performance of their duties'. But, in order for the portal to be useful, inspectors need up-to-date information. This means we have to take out the sentence with 'on a yearly basis' from Art. 6a(2a)*

Article 6a - Ships information database	Keep GA
1. The Commission shall develop, maintain and update <del>an inspection</del> <b>a ships information</b> database containing the information <del>specified</del> <b>referred to in Article 6. All and providing services for</b> Member States <del>shall be connected</del> <b>on issuing and controlling of electronic certificates. Member States may connect</b> to that database. That database <del>shall</del> <b>may</b> be based on the <del>inspection</del> database referred to in Article 24 of Directive 2009/16/EC and <del>shall</del> <b>may</b> have similar functionalities to that database.	Keep GA
2. <del>Member States shall ensure that the information related to inspections carried out in accordance with this Directive, including information concerning deficiencies, is transferred without delay to the inspection database as soon as the report(s) according to Article 4a(4) is completed. Without</del>	Keep GA

prejudice to national data protection requirements, Member States opting to use the ships information database:

- a) shall communicate the information contained in Article 6; and Keep GA
- b) may transfer to the ships information database information related to inspections carried out in accordance with this Directive, including information concerning deficiencies and certificates; and Keep GA
- c) may use this database to issue, sign, endorse, extend and withdraw electronic certificates for their ships, ensuring that the information is compatible and interoperable. Keep GA

2a. Member States may use their own databases to collect the information referred to in Article 6. ~~That information shall be communicated to the Commission at least on a yearly basis.~~ *Deleted one sentence from GA*  
The Commission shall integrate the data into the ships information database.

3. The Commission shall ensure that the ~~inspections~~ **ships information** database makes it possible to retrieve ~~any~~ relevant data concerning the implementation of this Directive based on inspection data provided by Member States. Keep GA

4. Member States ~~that have opted to use the database~~ shall have access to all the information recorded in the ~~inspections~~ **ships information** 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>. Keep GA

5. Member States ~~that have opted to use the database~~ shall ensure that ~~the date of validity of the statutory certificates referred to in Article 6(1) paragraph b, shall be~~ **point (b) of Article 6(1)** is transmitted electronically to the ~~inspections~~ **ships information** database referred to in paragraph 1 of this Article, using the functional and technical specifications for ~~the~~ harmonised electronic reporting interface provided for in Article 24a of Directive 2009/16/EC. Keep GA

5a. The Commission shall adopt implementing acts to define the functioning and the capacities of the database referred to in Article 6a(2)(a). Member States communicating data in accordance with paragraph 2a of this Article shall have access to the database information submitted in accordance with Article 6a(2)(a), under the conditions defined in those implementing acts. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 10(2).; Keep GA

+ recital ... ..:

...

*We have the obligation for MS to make available the information in art. 6.1. + we have the proposed digital portal in the new Article 6.2. But in order for the portal to be useful, it needs to be able to provide up-to-date information. For this reason, we need to delete the 'yearly basis' here - then the information in art. 6.1 is 'made available' basically continuously.*

DONA

Article 9b - Information and data

The Commission shall establish an electronic reporting tool for the purposes of gathering information and data from the Member States in relation to this Directive.  
(delete the rest of Art. 9b)

*Initial COM proposal  
Initial COM proposal*

+ recital 18 – line 28 – re-introduce COM proposed text:

(18) An electronic reporting tool for the purposes of further improving the consistent collection of relevant statistics and maritime data and information from Member States, should be established.

## 2. What does this mean for MS?

- MS which delegated the issuing of certificates to ROs – no additional burden, since the ROs already provide that data electronically to EMSA;
- MS which issue their own electronic certificates – no additional burden – COM will have to build the ‘bridge’(/interface) between the digital portal and their national database;
- MS which issue certificates, but not ‘electronic certificates’ – no additional burden, they can use the database in Art. 6a to issue electronic certificates – then the ‘bridge’(/interface) is done between the DB in 6a and the digital portal – again, COM will develop it.