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General Secretariat

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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 - EP Compromise Proposal on the 'III Code'

Following the Shipping Working Party meeting on 5 February 2024, delegations will find attached the EP compromise proposal on the III Code, together with an analysis by the Presidency of this proposal.

EP Compromise proposal III Code:

Article 1, first paragraph, point (1)(b), amending provision, numbered paragraph (g)				
42	(g) ‘III-Code’ means parts 1 and 2 of Resolution A.1070(28) (“IMO Instruments Implementation Code”), adopted by the International Maritime Organisation (IMO), with the exception of paragraphs 16.1, 18.1, 19, 29, 30, 31 and 32 of part 2;	(g) ‘III-Code’ means parts 1 and 2 of Resolution A.1070(28) (“IMO Instruments Implementation Code”), adopted by the International Maritime Organisation (IMO), with the exception of paragraphs 16.1, 18.1, 19, 29, 30, 31 and 32 of part 2;	(g) ‘ III-Code III Code ’ means parts 1 and 2 of Resolution A.1070(28) (“IMO Instruments Implementation Code”), adopted by the International Maritime Organisation (IMO), Organization (IMO), Part 2 , with the exception of paragraphs 16.1, 18.1, 19, 20, 21, 29, 30, 31, 32, 34, 38, 39, 40 and 41, 16, 18, 19, 20, 21, 29, 30, 31, 32, 34, 38, 39, 40 and 41, in its up to date version and 32 of and 32 of part 2;	COMP. (g) ‘ III-Code III Code ’ means parts 1 and 2 of Resolution A.1070(28) (“IMO Instruments Implementation Code”), adopted by the International Maritime Organisation Organization (IMO), with the exception of paragraphs 3, 4, 5, 7, 8, 9 and 10 of part 1 and 16.1, 18.1, 19, 29, 30, 31, and 32, 38, 39, 40 and 41 of part 2, in its up to date version;

For **lines 41 and 53**, we would like to involve our legal services, to ensure a correct operational application of the III Code and the Conventions. The principle for the EP is that the III Code as defined in this Directive is applied.

For **line 154 (safeguard clause)**, we look forward to receiving Council’s proposal.

In exchange for our compromise proposal of L42 + safeguard clause, Parliament is willing to accept Council general approach (deletions) of **L29, 150-153, 164, 177-332**

ANALYSIS PCY

ADDITIONS PART I (COMMON AREAS)

Objective

1 The objective of this Code is to enhance global maritime safety and protection of the marine environment and assist States in the implementation of instruments of the Organization.

ANALYSIS: Is already covered in Art. 1(1b) - line 36d.

PCY PROPOSED WAY FORWARD: propose to not include this part, but should be no harm if done as a compromise.

2 Different States will view this Code according to their own circumstances and should be bound only for the implementation of those instruments to which they are Contracting Governments or Parties. By virtue of geography and circumstance, some States may have a greater role as a flag State than as a port State or as a coastal State, whilst others may have a greater role as a coastal State or a port State than as a flag State.

ANALYSIS: The added value of adding this part to the current directive is not clear, since it is not relevant and specific enough for Flag State.

PCY PROPOSED WAY FORWARD: could this be included as a compromise?

Scope

6 The Code seeks to address those aspects necessary for a Contracting Government or Party to give full and complete effect to the provisions of the applicable international instruments to which it is a Contracting Government or Party, pertaining to:

- .1 safety of life at sea;*
- .2 prevention of pollution from ships;*
- .3 standards of training, certification and watchkeeping for seafarers;*
- .4 load lines;*
- .5 tonnage measurement of ships; and*
- .6 regulations for preventing collisions at sea.*

ANALYSIS: This is covered in Art. 2 (line 36f-g), Art. 3f-g (line 41, 42) and Recital 3b (line 13b). Also, it is not for an EU directive to give an interpretation of the III Code. This can only lead to confusion. Furthermore, a directive is meant to impose rules and not to provide information. Paragraph 6 should also be taken out in this respect since it has no content, it simply explains what the III Code is.

PCY PROPOSED WAY FORWARD: Delete. Addition rejected.

Improvement

11 States should continually improve the adequacy of the measures which are taken to give effect to those conventions and protocols which they have accepted. Improvement should be made through rigorous and effective application and enforcement of national legislation, as appropriate, and monitoring of compliance.

ANALYSIS: Measures and compliance mentioned here are very problematic, since this will fall within the scope of the directive and can lead to COM visits being even more rigorous, or even

participating in IMSAS audits that verify this part of the Convention, which covers more than only the FS.

PCY PROPOSED WAY FORWARD: Adding this provision into the operative part of the directive may lead to many additional obligations and tasks for MS. A possible solution could be to reintroduce Recital 13 (line 23) so that the "damage" is limited, seeing recitals are not legally binding.

12 The State should stimulate a culture which provides opportunities for improvement of performance in maritime safety and environmental protection activities, which may include, inter alia:

- .1 continual training programmes relating to safety and pollution prevention;
- .2 regional and national drills on safety and pollution prevention, which engage a broad spectrum of maritime-related national, regional and international organizations, companies and seafarers; and
- .3 using reward and incentive mechanisms for shipping companies and seafarers regarding improving safety and pollution prevention.

ANALYSIS: all tasks fall under the sole competence of MS.

PCY PROPOSED WAY FORWARD: Delete.

13 Further, the State should take action to identify and eliminate the cause of any non-conformities in order to prevent recurrence, including:

- .1 review and analysis of non-conformities;
- .2 implementation of necessary corrective action; and
- .3 review of the corrective action taken.

14 The State should determine action needed to eliminate the causes of potential non-conformities in order to prevent their occurrence.

ANALYSIS: Already covered by the QMS.

PCY PROPOSED WAY FORWARD: can MS agree to add this as a part of a compromise?

DELETIONS PART II

- Instead of 16, EP deletes only 16.1

~~16 A flag State should establish resources and processes capable of administering a safety and environmental protection programme, which, as a minimum, should consist of the following:~~

~~.1 administrative instructions to implement applicable international rules and regulations as well as developing and disseminating any interpretative national regulations that may be needed including certificates issued by a classification society, which is recognized by the flag State in accordance with the provisions of SOLAS regulation XI-1/1, and which certificate is required by the flag State to demonstrate compliance with structural, mechanical, electrical, and/or other requirements of an international convention to which the flag State is a party or compliance with a requirement of the flag State's national regulations;~~

.2 compliance with the requirements of the applicable international instruments, using an audit and inspection programme, independent of any administrative bodies issuing the required certificates and relevant documentation and/or of any entity which has been delegated authority by the State to issue the required certificates and relevant documentation;

.3 compliance with the requirements related to international standards of training, certification and watchkeeping of seafarers. This includes, inter alia:

.1 training, assessment of competence and certification of seafarers;

.2 certificates and endorsements that accurately reflect the competencies of the seafarers, using the appropriate terminology as well as terms that are identical to those used in any safe manning document issued to the ship;

.3 impartial investigation to be held of any reported failure, whether by act or omission that may pose a direct threat to safety of life or property at sea or to the marine environment, by the holders of certificates or endorsements issued by the State;

.4 arrangements for the withdrawal, suspension or cancellation of certificates or endorsements issued by the State when warranted and when necessary to prevent fraud; and

.5 administrative arrangements, including those involving training, assessment and certification activities conducted under the purview of another State, which are such that the flag State accepts its responsibility for ensuring the competence of masters, officers and other seafarers serving on ships entitled to fly its flag;

.4 the conduct of investigations into casualties and adequate and timely handling of cases involving ships with identified deficiencies; and

.5 the development, documentation and provision of guidance concerning those requirements found in the relevant international instruments that are to the satisfaction of the Administration.

ANALYSIS: Is covered by other EU legislation, Directive 2022/993 on the minimum level of training of seafarers. Can lead to duplication and confusion if added to the scope of the FSD.

PCY PROPOSED WAY FORWARD: Delete.

- Instead of 18, EP refers to only deleting 18.1

~~18 With regard only to ships entitled to fly its flag a flag State authorizing a recognized organization to act on its behalf, in conducting the surveys, inspections and audits, issuing of certificates and documents, marking of ships and other statutory work required under the conventions of the Organization or under its national legislation, should regulate such authorization(s) in accordance with the applicable requirements of the international mandatory instruments to:~~

~~.1 determine that the recognized organization has adequate resources in terms of technical, managerial and research capabilities to accomplish the tasks being assigned, in accordance with the required standards for recognized organizations acting on behalf of the Administration set out in the relevant instruments of the Organization;~~

.2 have as its basis a formal written agreement between the Administration and the recognized organization which, as a minimum, includes the elements set out in the relevant instruments of the Organization, or equivalent legal arrangements, and which may be based on the model agreement for the authorization of recognized organizations acting on behalf of the Administration;

.3 issue specific instructions detailing actions to be followed in the event that a ship is found unfit to proceed to sea without danger to the ship or persons on board, or is found to present an unreasonable threat of harm to the marine environment;

.4 provide the recognized organization with all appropriate instruments of national law and interpretations thereof giving effect to the provisions of the conventions and specify, only for application to ships entitled to fly its flag, whether any additional standards of the Administration go beyond convention requirements in any respect; and

.5 require that the recognized organization maintain records, which will provide the Administration with data to assist in interpretation of requirements contained in the applicable international instruments.

ANALYSIS: Is covered by other EU (RO) legislation, Regulation 391/2009 on common rules and standards for ship inspection and survey organisations and Directive 2009/15 on common rules and standards for ship inspection and survey organisations and for the relevant activities of maritime administrations. Can lead to duplication and confusion if added to the scope of the FSD.

PCY PROPOSED WAY FORWARD: Delete.

- EP added 20 & 21

20 The flag State should establish or participate in an oversight programme with adequate resources for monitoring of, and communication with, its recognized organization(s) in order to ensure that its international obligations are fully met, by:

.1 exercising its authority to conduct supplementary surveys to ensure that ships entitled to fly its flag effectively comply with the requirements of the applicable international instruments;

.2 conducting supplementary surveys as it deems necessary to ensure that ships entitled to fly its flag comply with national requirements, which supplement the international mandatory requirements; and

.3 providing staff who have a good knowledge of the rules and regulations of the flag State and those of the recognized organizations and who are available to carry out effective oversight of the recognized organizations.

21 A flag State nominating surveyor(s) for the purpose of carrying out surveys, audits and inspections on its behalf should regulate such nominations, as appropriate, in accordance with the guidance provided in paragraph 18, in particular subparagraphs .3 and .4.

ANALYSIS: Is covered by other EU legislation, Regulation 391/2009 on common rules and standards for ship inspection and survey organisations and Directive 2009/15 on common rules and standards for ship inspection and survey organisations and for the relevant activities of maritime administrations.

PCY PROPOSED WAY FORWARD: Delete.

- EP added 34

“34 Previous relevant experience in the field of expertise is recommended to be considered an advantage; in case of no previous experience, the Administration should provide appropriate field training.”

ANALYSIS: prerogative of the MS how this is provided. Should not be covered by EU legislature, since EU could claim competence in this regard.

PCY PROPOSED WAY FORWARD: delete.