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PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
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To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2023) 272 final - ANNEX
Subject:	ANNEX to the Proposal for a Directive of the European Parliament and of the Council amending Directive 2009/21/EC on compliance with flag State requirements

Delegations will find attached document COM(2023) 272 final - ANNEX.

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EUROPEAN
COMMISSION

Brussels, 1.6.2023
COM(2023) 272 final

ANNEX

ANNEX

to the

**Proposal for a Directive of the European Parliament and of the Council
amending Directive 2009/21/EC on compliance with flag State requirements**

{SEC(2023) 210 final} - {SWD(2023) 165 final} - {SWD(2023) 166 final}

ANNEX

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Resolution A.1070(28)

(adopted on 4 December 2013)

IMO INSTRUMENTS IMPLEMENTATION CODE (III CODE)

PART 1 – 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.
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.

Strategy

3. In order to meet the objective of this Code, a State is recommended to:
 - .1 develop an overall strategy to ensure that its international obligations and responsibilities as a flag, port and coastal State are met;
 - .2 establish a methodology to monitor and assess that the strategy ensures effective implementation and enforcement of relevant international mandatory instruments; and
 - .3 continuously review the strategy to achieve, maintain and improve the overall organizational performance and capability as a flag, port and coastal State.

General

4. Under the general provisions of treaty law and of IMO conventions, States should be responsible for promulgating laws and regulations and for taking all other steps which may be necessary to give those instruments full and complete effect so as to ensure safety of life at sea and protection of the marine environment.
5. In taking measures to prevent, reduce and control pollution of the marine environment, States should act so as not to transfer, directly or indirectly, damage or hazards from one area to another or transform one type of pollution into another.

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.

7. The following areas should be considered and addressed in the development of policies, legislation, associated rules and regulations and administrative procedures for the implementation and enforcement of those obligations and responsibilities by the State:

- .1 jurisdiction;
- .2 organization and authority;
- .3 legislation, rules and regulations;
- .4 promulgation of the applicable international mandatory instruments, rules and regulations;
- .5 enforcement arrangements;
- .6 control, survey, inspection, audit, verification, approval and certification functions;
- .7 selection, recognition, authorization, empowerment and monitoring of recognized organizations, as appropriate, and of nominated surveyors;
- .8 investigations required to be reported to the Organization; and
- .9 reporting to the Organization and other Administrations.

Initial actions

8. When a new or amended instrument of the Organization enters into force for a State, the Government of that State should be in a position to implement and enforce its provisions through appropriate national legislation and to provide the necessary implementation and enforcement infrastructure. This means that the Government of the State should have:

- .1 the ability to promulgate laws, which permit effective jurisdiction and control in administrative, technical and social matters over ships flying its flag and, in particular, provide the legal basis for general requirements for registries, the inspection of ships, safety and pollution prevention laws applying to such ships and the making of associated regulations;
- .2 a legal basis for the enforcement of its national laws and regulations including the associated investigative and penal processes; and
- .3 the availability of sufficient personnel with maritime expertise to assist in the promulgation of the necessary national laws and to discharge all the responsibilities of the State, including reporting as required by the respective conventions.

Communication of information

9. The State should communicate its strategy, as referred to in paragraph 3, including information on its national legislation to all concerned.

Records

10. Records, as appropriate, should be established and maintained to provide evidence of conformity to requirements and of the effective operation of the State. Records should remain legible, readily identifiable and retrievable. A documented procedure should be established to define the controls needed for the identification, storage, protection, retrieval, retention time and disposition of records.

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.

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.

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.

PART 2 - FLAG STATES

15. In order to effectively discharge their responsibilities and obligations, flag States should:

- .1 implement policies through issuing national legislation and guidance, which will assist in the implementation and enforcement of the requirements of all safety and pollution prevention conventions and protocols to which they are parties; and
- .2 assign responsibilities within their Administrations to update and revise any relevant policies adopted, as necessary.

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.

17. A flag State should ensure that ships entitled to fly its flag are sufficiently and efficiently manned, taking into account relevant and existing measures such as the Principles of Safe Manning adopted by the Organisation.

Delegation of authority

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.

19. No flag State should mandate its recognized organizations to apply to ships, other than those entitled to fly its flag, any requirement pertaining to their classification rules, requirements, procedures or performance of other statutory certification processes, beyond convention requirements and the mandatory instruments of the Organization.

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.

Enforcement

22. A flag State should take all necessary measures to secure observance of international rules and standards by ships entitled to fly its flag and by entities and persons under its jurisdiction so as to ensure compliance with its international obligations. Such measures should include, inter alia:

.1 prohibiting ships entitled to fly its flag from sailing until such ships can proceed to sea in compliance with the requirements of international rules and standards;

.2 the periodic inspection of ships entitled to fly its flag to verify that the actual condition of the ship and its crew is in conformity with the certificates it carries;

- .3 the surveyor to ensure, during the periodic inspection referred to in subparagraph .2, that seafarers assigned to the ships are familiar with:
 - .1 their specific duties; and
 - .2 ship arrangements, installations, equipment and procedures;
 - .4 ensuring that the ship's complement, as a whole, can effectively coordinate activities in an emergency situation and in the performance of functions vital to safety or to the prevention or mitigation of pollution;
 - .5 providing, in national laws and regulations, for penalties of adequate severity to discourage violation of international rules and standards by ships entitled to fly its flag;
 - .6 instituting proceedings, after an investigation has been conducted, against ships entitled to fly its flag, which have violated international rules and standards, irrespective of where the violation has occurred;
 - .7 providing, in national laws and regulations, for penalties of adequate severity to discourage violations of international rules and standards by individuals issued with certificates or endorsements under its authority; and
 - .8 instituting proceedings, after an investigation has been conducted, against individuals holding certificates or endorsements who have violated international rules and standards, irrespective of where the violation has occurred.
23. A flag State should develop and implement a control and monitoring programme, as appropriate, in order to:
- .1 provide for prompt and thorough casualty investigations, with reporting to the Organization as appropriate;
 - .2 provide for the collection of statistical data, so that trend analyses can be conducted to identify problem areas; and
 - .3 provide for a timely response to deficiencies and alleged pollution incidents reported by port or coastal States.
24. Furthermore, the flag State should:
- .1 ensure compliance with the applicable international instruments through national legislation;
 - .2 provide an appropriate number of qualified personnel to implement and enforce the national legislation referred to in subparagraph 15.1, including personnel for performing investigations and surveys;
 - .3 provide a sufficient number of qualified flag State personnel to investigate incidents where ships entitled to fly its flag have been detained by port States;
 - .4 provide a sufficient number of qualified flag State personnel to investigate incidents where the validity of a certificate or endorsement or of the competence of individuals holding certificates or endorsements issued under its authority are questioned by port States; and
 - .5 ensure the training and oversight of the activities of flag State surveyors and investigators.
25. When a flag State is informed that a ship entitled to fly its flag has been detained by a port State, the flag State should oversee that appropriate corrective measures are taken to

bring the ship in question into immediate compliance with the applicable international instruments.

26. A flag State, or a recognized organization acting on its behalf, should only issue or endorse an international certificate to a ship after it has determined that the ship meets all applicable requirements.

27. A flag State should only issue an international certificate of competency or endorsement to a person after it has determined that the person meets all applicable requirements.

Flag State surveyors

28. The flag State should define and document the responsibilities, authority and interrelation of all personnel who manage, perform and verify work relating to and affecting safety and pollution prevention.

29. Personnel responsible for, or performing surveys, inspections and audits on ships and companies covered by the relevant international mandatory instruments should have as a minimum the following:

.1 appropriate qualifications from a marine or nautical institution and relevant seagoing experience as a certificated ship's officer holding or having held a valid management level certificate of competency and having maintained their technical knowledge of ships and their operation since gaining their certificate of competency; or

.2 a degree or equivalent from a tertiary institution within a relevant field of engineering or science recognized by the flag State; or

.3 accreditation as a surveyor through a formalized training programme that leads to the same standard of surveyor's experience and competency as that required in paragraphs 29.1, 29.2 and 32.

30. Personnel qualified under paragraph 29.1 should have served for a period of not less than three years at sea as an officer in the deck or engine department.

31. Personnel qualified under paragraph 29.2 should have worked in a relevant capacity for at least three years.

32. In addition, such personnel should have appropriate practical and theoretical knowledge of ships, their operation and the provisions of the relevant national and international instruments necessary to perform their duties as flag State surveyors obtained through documented training programmes.

33. Other personnel assisting in the performance of such work should have education, training and supervision commensurate with the tasks they are authorized to perform.

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.

35. The flag State should implement a documented system for qualification of personnel and continuous updating of their knowledge as appropriate to the tasks they are authorized to undertake.

36. Depending on the function(s) to be performed, the qualifications should encompass:

.1 knowledge of applicable, international and national, rules and regulations for ships, their companies, their crew, their cargo and their operation;

- .2 knowledge of the procedures to be applied in survey, certification, control, investigative and oversight functions;
- .3 understanding of the goals and objectives of the international and national instruments dealing with maritime safety and protection of the marine environment, and of related programmes;
- .4 understanding of the processes both on board and ashore, internal as well as external;
- .5 possession of professional competency necessary to perform the given tasks effectively and efficiently;
- .6 full safety awareness in all circumstances, also for one's own safety; and
- .7 training or experience in the various tasks to be performed and preferably also in the functions to be assessed.

37. The flag State should issue an identification document for the surveyor to carry when performing his/her tasks.

Flag State investigations

38. Marine safety investigations should be conducted by impartial and objective investigators, who are suitably qualified and knowledgeable in matters relating to the casualty. Subject to any agreement on which State or States will be the marine safety investigating State(s), the flag State should provide qualified investigators for this purpose, irrespective of the location of the casualty or incident.

39. The flag State is recommended to ensure that individual investigators have working knowledge and practical experience in those subject areas pertaining to their normal duties. Additionally, in order to assist individual investigators in performing duties outside their normal assignments, the flag State is recommended to ensure ready access to expertise in the following areas, as necessary:

- .1 navigation and the Collision Regulations;
- .2 flag State regulations on certificates of competency;
- .3 causes of marine pollution;
- .4 interviewing techniques;
- .5 evidence gathering; and
- .6 evaluation of the effects of the human element.

40. It is recommended that any accident involving personal injury necessitating absence from duty of three days or more and any deaths resulting from occupational accidents and casualties to ships of the flag State should be investigated, and the results of such investigations made public.

41. Ship casualties should be investigated and reported in accordance with the relevant international instruments, taking into account the Casualty Investigation Code, as may be amended, and guidelines developed by the Organization. The report on the investigation should be forwarded to the Organization together with the flag State's observations, in accordance with the guidelines referred to above.

Evaluation and review

42. A flag State should, on a periodic basis, evaluate its performance with respect to the implementation of administrative processes, procedures and resources necessary to meet its obligations as required by the international instruments to which it is a party.

43. Measures to evaluate the performance of flag States should include, inter alia, port State control detention rates, flag State inspection results, casualty statistics, communication and information processes, annual loss statistics (excluding constructive total losses (CTLs)) and other performance indicators as may be appropriate, in order to determine whether staffing, resources and administrative procedures are adequate to meet its flag State obligations.

44. Areas recommended for regular review may include, inter alia:

- .1 fleet loss and accident ratios to identify trends over selected time periods;
- .2 the number of verified cases of detained ships in relation to the size of the fleet;
- .3 the number of verified cases of incompetence or wrongdoing by individuals holding certificates or endorsements issued under the flag State's authority;
- .4 responses to port State deficiency reports or interventions;
- .5 investigations into very serious and serious casualties and lessons learned from them;
- .6 technical and other resources committed;
- .7 results of inspections, surveys and controls of the ships in the fleet;
- .8 investigation of occupational accidents;
- .9 the number of incidents and violations that occur under the applicable international maritime pollution prevention regulations; and
- .10 the number of suspensions or withdrawals of certificates, endorsements, approvals, or similar.'

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