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Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Directive 2009/21/EC on compliance with flag State requirements

(Text with EEA relevance)

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

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

This proposal concerns a modification of Directive 2009/21/EC of the European Parliament and of the Council of 23 April 2009 on compliance with flag State requirements¹.

Due to its history and international nature, maritime transport has developed a specific regulatory structure. Maritime safety and marine environmental protection are regulated under the United Nations Convention on the Law of the Sea (UNCLOS), to which the Union is also a contracting party². The Convention, also stipulating the responsibilities of a State as a flag State, is the basis for the formulation of detailed international rules and standards for the design, equipment, operation, management, maintenance, qualification and manning and disposal of ships. This is done at international level by the International Maritime Organisation (IMO)³.

Directive 2009/21/EC (hereinafter the Directive) regulates the enforcement of rules applicable to flag State at the Union level. The responsibility for monitoring the compliance of ships with particular IMO conventions⁴ lies with the State where the ship is registered and whose nationality the ship holds – the flag State. The Directive has the two-fold main objectives of enforcing safety rules and preventing pollution, as well as making sure that Member States comply with their obligations as flag States. The Directive therefore aims to ensure that ships flying EU Member States flags meet all safety⁵ and pollution prevention requirements and are fit for service⁶. The Directive also aims to ensure that EU Member States have adequate resources to correctly, effectively and consistently discharge their obligations as flag States⁷. This is the first line of defence in maritime safety.

However, as flag States rules only apply to vessels that fly that flag and as some flags are not willing or able to enforce the applicable rules on their fleets, port State control provides for inspections of foreign ships when they are in ports. It is a system of inspection of foreign ships in ports of States other than the flag State by Port State Control (PSC) officers to verify that the competency of the master, officers and crew on board, the condition of a ship, and its

¹ OJ L 131, 28.5.2009, p. 132–135

² UNCLOS was signed in 1982. The European Union ratified in 1984. https://www.un.org/Depts/los/convention_agreements/texts/unclos/UNCLOS-TOC.htm

³ While the jurisdiction and enforcement on board is that of the nation flag, the development of the rules and regulations are done at international level by the International Maritime Organization (www.imo.org). IMO is a United Nations specialised agency; all EU Member States are IMO members. The European Union is not a member but the Commission holds observer status as an Intergovernmental Organisation (IGO) among many other such.

⁴ International rules include for example the International Convention for the Safety of Life at Sea (SOLAS 74), International Convention for the Prevention of Pollution from Ships (MARPOL 73/78), Standards of Training, Certification and Watchkeeping (STCW), the International Convention on Load Lines, 1966, the Convention on the International Regulations for Preventing Collisions at Sea, 1972 (COLREG 72) etc. Rules related to working and living conditions on-board ships are promulgated by another UN agency, the International Labour Organisation (ILO).

⁵ When ‘safety’ is referred to, this generally includes safety, security and pollution prevention.

⁶ Have all relevant certificates issued by the flag State for the type of ships, before it starts operating.

⁷ The ‘flag State’ of a vessel is the jurisdiction under whose laws the vessel is registered, it is the nationality of the vessel. UNCLOS stipulates that a ship can fly only one flag of a State and is subject to the exclusive jurisdiction of that flag State which is responsible for its conduct and its compliance with safety and environmental protection requirements.

equipment comply with the requirements of international conventions - and in the European Union, applicable EU law. This is the second line of defence.

Notwithstanding these two layers of prevention, accidents can still occur, and their causes should be investigated to provide for continuous improvement and to avoid similar accidents happening again. Directive 2009/18/EC⁸ on maritime transport accident investigation is therefore the third line of defence.

The Directive incorporates rules aiming at a certain harmonisation for cases when a ship changes flag and when a ship (under a Member State flag) has been detained following a port State control inspection. It also sets the requirement for all EU Member States to undergo the IMO audit. The Directive also goes beyond what is required at international level by requiring Member States to have and maintain an internationally certified quality management system (QMS) for their flag-State related activities. Furthermore, it contains links to a performance measurement of the flagged fleet under the Paris Memorandum of Understanding (MoU) on port State control.

It is for each EU Member State as flag State to take all necessary measures, including on board inspection and/or survey, to establish that the ship meets all international rules and regulations, as well as regional and/or national rules and regulations as the case may be, before issuing the relevant ship certificates, or have them issued on their behalf, as proof of the ship's safety and that the ship is fit to proceed to sea. These surveys and certificates are therefore referred to as statutory⁹. It is for the shipowner to make the ship available for all surveys and inspections, and by carrying out all necessary upgrades and repairs, to maintain and have updated all statutory certificates which are a prerequisite for the ship to be able to sail¹⁰.

The international regime, as implemented also in the EU maritime safety acquis, allows a flag State to delegate the technical work to classification societies (non-governmental organisations that establish and maintain technical standards for the construction and operation of ships) to perform these statutory surveys required for verification that the ship is fit for purpose, on their behalf. When a classification society acts in this way it becomes a Recognised Organisation (RO) for that flag State. The flag State may also allow the RO to issue certificates on its behalf.

However, the responsibility incumbent on the flag State cannot be delegated. There is no obligation to use ROs; it is a choice that any flag State makes depending on the size and type of its fleet and on its own resources. Currently, almost all EU Member States as flag States have chosen to use ROs for various technical work. This is permitted and regulated under EU law¹¹ and the Commission has listed¹² the classification societies the Member States may choose from.

As the flag State's responsibilities cannot be delegated away, there is a need, *de jure* and *de facto*, for flag States to continue to inspect its flagged vessels and monitor the statutory work performed on their behalf by ROs. Member States do so but to a varying degree and also have discretion on the scope of flag State inspections. In essence, there are two main types of flag State control on board flagged ships: (1) statutory survey leading to the issuance of statutory certification of the ship and, (2) flag State inspection, called supplementary inspections, not leading to certification of the ship.

⁸ OJ L 131, 28.5.2009, p. 114

⁹ As required by the Harmonised System for Survey and Certification (HSSC, IMO Resolution A.1140(31), 2019)

¹⁰ It is only with such statutory safety certificates that the ship can get insurance; without insurance the ship can normally not sail.

¹¹ Regulation (EC) No 391/2009 and Directive 2009/15/EC

¹² OJ C 466, 7.12.2022, p. 24–24

Flag State inspections are only to be carried out by the flag State. This is why, flag State inspections are a fundamental part of ensuring compliance and monitoring safety aspects. They require technical resources with adequate expertise, and form a core part of any maritime administration. The underlying international assumption is that all flag States have resources and meet the requirements incumbent on them. This to ensure that flag States worldwide correctly implement their international obligations and therefore provide for a level playing field. However, this is not always the case.

To counter this, IMO has, since the adoption of the Directive, made the “IMO Instruments Implementation code” (III-Code) and IMO audit mandatory¹³ as of 2016 for all flag States in the world, including EU Member States. The III-Code and the IMO audit aims to ensure that States take all necessary steps to correctly implement and apply the Conventions and have the resources and powers needed as a flag State to assume their international obligations and ensure compliance of their flagged ships with these rules. The IMO audit scheme requires IMO parties to undergo an audit every 7 years. During these audits, it is verified that all IMO States with a flag register implement the III-Code and relevant conventions. However, the IMO has no enforcement powers. The EU Maritime safety legislation, within the maritime safety policy since 1992, implements the rules and regulation agreed by the IMO flag States, including all EU Member States with a flagged fleet, to ensure enforceability and allow for compliance checks. In difference to the IMO, something happens, the recourse to infringement procedures, at EU level when a State as flag State is in breach of the rules.

The Directive consequently needs to be revised and incorporate the flag State relevant parts of the III-Code into EU legislation, to make it enforceable under the EU legal order.

In recognition of the importance of the Maritime Labour Convention, which falls outside the scope of the audits carried by IMO since it falls, under the remit and control of the International Labour Organisation the Directive has been complemented in 2013 by a separate Directive to provide for the enforcement by flag States of the Maritime Labour Convention, 2006 (MLC, 2006)¹⁴.

Furthermore, since the Directive was adopted in 2009, there have been technological advancements in particular related to digitalisation such as electronic reporting of ship related certificates and electronic reporting following ship inspections. Some initiatives have been taken for the exchange of such information between EU Member States and with relevant systems, including the Union Maritime Information and Exchange System¹⁵ hosted in the European Maritime Safety Agency (EMSA), both as regards sharing e-reports following inspections of roll-on, roll-off passenger ships in regular service¹⁶, and as regards some details of statutory certificates when issued by an RO. These should be captured and further built upon in the flag State directive for all surveys, inspections and audits on flagged ships. This is also where efficiency gains can be made and reduction of administrative burden, since sharing of such information within one system, hosted in EMSA, allows for better preparation and targeting of which ship to inspect and more focus during inspections, making them more

¹³ However, the IMO has no enforcement powers.

¹⁴ Directive 2013/54/EU of the European Parliament and of the Council of 20 November 2013 concerning certain flag State responsibilities for compliance with and enforcement of the Maritime Labour Convention, 2006 (OJ L 329, 10.12.2013, p. 1–4)

¹⁵ Established by Directive 2002/59/EC

¹⁶ Directive (EU) 2017/2110 of 15 November 2017 on a system of inspections for the safe operation of ro-ro passenger ships and high-speed passenger craft in regular service and amending Directive 2009/16/EC and repealing Council Directive 1999/35/EC (OJ L 315, 30.11.2017)

effective. This is also where the synergies with the port State control Directive lays.

The Directive was subject to an ex-post evaluation and Maritime Transport Fitness Check (alongside other pieces of EU legislation), which concluded in 2018. The Directive has also been subject to continuous monitoring by the Commission and over this time a certain number of issues have been identified as being problematic. These concern (1) the legal uncertainty on the implementation of new international rules at EU level and (2) the lack of harmonised approach to inspections, control, monitoring and information sharing of flagged fleet. The evaluation and the fitness check also underscored that national authorities should have the necessary resources and powers to assume their international obligations as flag States and ensure compliance of their flagged ships.

In the light of this, a proposal to amend Directive 2009/21/EC has been prepared. The specific objectives of its revision are:

- The update and alignment of the Directive with the international rules to provide better consistency and legal clarity, in particular as regards the III-Code.
 - Ensuring adequate inspections of flagged ships and monitoring oversight of ROs working on behalf of the flag State. This includes ensuring more harmonised inspection levels and consistent oversight of ROs involving all Member States in an EU-wide oversight scheme;
 - Ensure a higher uptake of digital solutions. In particular, ensuring the reporting, use and sharing of electronic certificates, interoperable with EMSA hosted databases, moving away from cumbersome paper-based certification systems towards higher efficiency for both administrations and ships;
 - Ensure a harmonised approach in the understanding, reporting and measuring of the performance of flag States fleets and duties. This involves enhanced cooperation between relevant national authorities in a specific forum, as well as capacity building and flag State training. Furthermore, an update and modernisation of the performance measurement scheme is necessary for more effective continuous improvement.
- **Consistency with existing policy provisions in the policy area**

The proposal is fully consistent with the Directives 2009/16/EC¹⁷ on port State control and Directive 2009/18/EC¹⁸ on accident investigation. The three Directives - which are all being amended at the same time - have to be coherent with each other and any proposed change to one has to take the other two Directives and the broader international regulatory environment into account.

- **Consistency with other Union policies**

The proposal forms part of the Commission's REFIT programme and delivers on its Better Regulation agenda by ensuring that the existing legislation is simple and clear, does not create unnecessary burden and keeps pace with evolving political, societal and technological developments, in particular digitalisation. Simplification via the use of e-certificates and e-flag State reporting can be made reducing the administrative burden. Sharing of such information within one system, hosted in EMSA, also allows for better preparation and targeting of which ship to inspect and more focus during inspections, making them more

¹⁷ OJ L 131, 28.5.2009, p. 57

¹⁸ OJ L 131, 28.5.2009, p. 114

efficient. That may reduce the time spent on board and consequently the time the ship is spending not sailing (improved turn-around time) to the benefit of quality operators. This proposal for an amendment as well as those for the other maritime safety Directives are also part of and have significant interaction with the larger maritime safety acquis which includes elements such as the EU legislation relating to Recognised Organisations¹⁹, the EU vessel traffic monitoring and information system (SafeSeaNet)²⁰, the EMSA founding Regulation²¹ and, the Roll-on Roll-off Passenger ship Directive²².

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

• Legal basis

The legal basis of the Amending Directive is Article 100(2) TFEU, providing for measures to improve transport safety and for specific provisions for sea transport.

• Subsidiarity (for non-exclusive competence)

As the international instruments in the field of flag State compliance in the maritime transport sector are an exclusive Union competence pursuant to Article 3(2) TFEU, the subsidiarity principle does not apply, either to those instruments or to Union rules implementing those agreements.

• Proportionality

The proposal has been prepared in view of the latest developments at the international level and the results of the REFIT exercises previously mentioned. The Commission has also carried out an impact assessment to identify, assess and evaluate alternative measures to achieve the same objectives.

The objective of the proposed amendment is to improve maritime safety by having an up-to-date, coherent and harmonised system of flag State compliance and monitoring, including via flag State inspections and RO oversight across the EU. This has by large already been agreed to by the Member States when adopting²³ the mandatory III-Code and IMO audit that came into effect in 2016. The proposed measure should further improve the safety and environmental performance of EU Member State flagged vessels and rebalance responsibilities towards the flag States, possibly reducing the burden on port States control.

The move towards digitalisation and the use of e-certificates will create costs but these will be limited and will be offset by the positive safety and efficiency benefits they can yield.

• Choice of the instrument

¹⁹ Regulation (EC) No 391/2009 on common rules and standards for ship inspection and survey organisations (OJ L 131, 28.5.2009, p.11) and Directive 2009/15/EC on common rules and standards for ship inspection and survey organisations and for the relevant activities of maritime administrations (OJ L131, 28.5.2009, p.47)

²⁰ Directive 2002/59/EC establishing a Community vessel traffic monitoring and information system (OJ L 208, 5.8.2002, p. 10)

²¹ OJ L 208, 5.8.2002, p. 1

²² Directive (EU) 2017/2110 on a system of inspections for the safe operation of ro-ro passenger ships and high-speed passenger craft in regular service (OJ L 315, 30.11.2017, p. 61)

²³ The matter is formally and legally Union exclusive competence as recognised by Council Decision 2013/268/EU, setting out the Union position that had to be followed by Member States in IMO at the time (in 2013) of agreeing the III-Code and IMO audit.

As only several amendments need to be done with respect to Directive 2009/21/EC, an amending Directive is the most appropriate legal instrument.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

• Ex-post evaluations/fitness checks of existing legislation

The 2018 ex-post evaluation²⁴ and the Maritime Transport Fitness Check²⁵ concluded that the added value of EU action lies in the harmonised implementation and enforcement of international rules into and under EU legislation, as well as requiring and encouraging cooperation among Member States. The evaluation highlighted the contribution of the flag State Directive in providing for a high and uniform level of safety and a level playing field between Member States, which in turns has contributed to achieving a safe, secure and sustainable maritime transport.

In addition, the Commission has actively followed-up on cases where the performance of Member States as flag States fell below the requirements established under international and EU law. In those cases, the Commission requested the concerned Member States to carry out a detailed root-cause analysis of the problems and to adopt an action plan to correct them. This encouraged many flag States to pay more attention to the quality of their fleet.

However, the fitness check highlighted the need for a broader rebalancing of EU maritime safety policy. This means above all reinforcing the EU layer for the “first line of defence”, compliance and preventive action which befalls on flag States. The evaluation concluded that current policies focus on Member States as port and coastal States, and less so on flag States. The Fitness Check concluded that what is missing within the FSD are the relevant flag State related parts of the mandatory III-Code. At the same time the importance of maintaining the IMO audit was highlighted. At the same time, the fitness check identified several areas where flag State compliance could be improved.

• Stakeholder consultations

The main consultation activities included:

- Four scoping interviews were conducted between March and April 2021 with EU level representatives of key stakeholders, particularly to support and refine the overall problem definition and possible policy options.
- Twenty three targeted interviews were carried out by the consultant in charge of the external support study to the Impact Assessment between April and September 2021, with the following stakeholder categories: national authorities (19), industry representatives (3), experts (1).
- A targeted survey was organised by the consultant in charge of the external support study to the Impact Assessment, running between December 2021 and February 2022, addressing both national administrations and industry stakeholders categories. An additional targeted request for data and statistics, especially as regards flag State inspectors and number of inspections was carried out in September 2022.
- A dedicated Workshop took place on 21 October 2021 with Flag State administrations (17) and representatives of the sector (8) – ship owners, classification societies, ports

²⁴ SWD (2018) 232 final

²⁵ SWD (2018) 228 final

organisations, workers' representatives, which covered possible changes in measuring flag State performance (the paradigm shift in KPIs from fleet to governance).

- A final workshop was organised on 20 January 2022. The event was divided into two sessions with different stakeholder groups – one with flag State authorities in the EU Member States (23 Member States represented) and one with maritime industry stakeholders. The workshop focused specifically on gathering views on the final version of policy measures, as well as on the assessment of the various impacts. Additional consultation activities organised by DG MOVE and the consultant in charge of the external support study to the Impact Assessment in order to consult the Member States and key stakeholders by providing their views on the different policy measures but also to validate the emerging and final results of the support study to the Impact Assessment in terms of the quantification of the impacts. These activities took place in the context of an informal meeting of the EU/EEA Maritime Transport Directors (30 November 2021) and meetings of the EU Committee on Safe Seas and the Prevention of Pollution from Ships (17 May 2021, 11 November 2021 and 31 May 2022). All confirmed the need to align with IMO rules (III-Code).
- Bilateral discussions with both Member States and Industry in the autumn 2022 (August-October), at their request. They expressed overall support, mostly focussing on the digitalisation aspects and the need to include this in the preferred policy choice; some raised a concern regarding the approach to shift statutory surveys back to flag States (in terms of safety impact).
- The information collected from stakeholders was key in allowing the Commission to refine the design of the policy options as well as to assess their economic, social and environmental impacts, compare them and determine which policy option is likely to maximize the benefits/costs ratio for the society and fully contribute to achieving a measured but more effective and efficient flag State control ensuring compliance. The consultations also supported the Commission in gauging how to consider a measured approach that would maximize safety but minimize the risk of putting EU Member States flags at a competitive disadvantage that would risk flagging out from EU Member States flags to third country flags. Findings from those processes complemented the desk research carried out in the context of the external support study.

- All flag State administrations and industry stakeholders are in favour of a clear, coherent and aligned legal framework that incorporates the international rules: the III-Code and IMO audit. The preferred policy option is supported by national administrations as it ensures a high degree of internal and external coherence. This option is considered measured and proportional with regards to the great variety in size and type of fleet in the EU Member States. The flag State administrations are supportive of the use of digitalisation e.g. e-flag State inspection reports and electronic certificates and for sharing those with other EU Member States and with port State control. Industry stakeholders consider such digitalisation an advantage. EU Member States fully support further harmonisation of inspections and oversight of ROs as well as capacity building and training. The Member States with the biggest fleets (in terms of number of ships) also support the measured approach in the preferred policy option over the other as it is considered less disruptive and ensures the competitiveness of the EU Member States flagged fleet and therefore its reliance and resilience.

- **Collection and use of expertise**

This review builds primarily on the data collected during the 2018 ex-post evaluation and Maritime Transport Fitness Check exercises previously referred to.

In addition to the data collected and consultation carried out in this framework, the preparation of this proposal necessitated input from technical and legal experts regarding the concrete formulation of technical definitions and clear legal drafting. This expertise was gathered within the Commission and the European Maritime Safety Agency (EMSA). It is reported on in the Staff Working Document accompanying the proposal.

- **Impact assessment**

The proposal is based on the results of an impact assessment which was informed by a support study carried out by an external consultant having specific knowledge in this area.

The impact assessment examined four policy options for revising the Directive, based on the following guiding principles:

- (1) The need for incorporation of and alignment to the international rules and procedures developed after the adoption of the Directive in 2009 and agreed upon by EU Member States.
- (2) Ensuring cooperation, continuous improvement and performance by reflecting on the lessons learnt during the implementation of the Directive.
- (3) Increasing the digitalisation to allow for enhanced and focussed flag State inspections and RO monitoring. The Directive should also facilitate the use of electronic certificates;
- (4) Ensuring an efficient and harmonised approach to capacity building, inspections and monitoring of flagged fleet, with the aim to ensure technical and operational capability in EU flag administrations to perform the obligations incumbent upon them.

All options propose solutions to the identified problems, but vary in terms of the level and ambition of harmonization and control for ensuring compliance, while some discretion is left to the Member State regarding inspection and monitoring of the flagged fleet. In all policy options amendments to the Directive are foreseen by incorporating the now mandatory relevant flag State parts of the III-Code and maintaining the IMO Audit mandatory.

Option 1, additionally, would propose measures that prevent the use of non-exclusive technical staff from doing any type of work for the flag State administrations. Administrations would need to get resources to recruit, employ and retain relevant technical staff to undertake flag State inspections and RO monitoring.

Option 2 would not prohibit the use of non-exclusive technical staff but would ‘ring-fence’ when and for what type of surveys and under exceptional circumstances such non-exclusive personnel could be allowed. This option introduces specific requirements regarding inspections, commensurate with the size and type of fleet to ensure that all EU flag administrations retain core technical staff within the administration. A flag State expert group would be established. Requirements regarding digitalisation would be introduced on the exchange of ship related information such as electronic flag State inspection reports and e-certificates. Finally, it would also address the issue of common capacity building and harmonised training (post-qualification) for flag State inspectors.

Option 3 would also prevent the use of non-exhaustive technical staff and additionally require the Member States flag administrations to have the capacity to do the statutory work and issue the statutory certificates related to the International Safety Management Code. Any subsequent audits could then be performed by ROs. Finally, Option 4 would also require Member States flags to have the capacity to do the statutory survey work and issue the related

statutory certificates concerning ‘high-risk’ ships, prior to allowing them to operate under a Member State flag. It would therefore also prohibit the use of non-exclusive technical staff.

Any measures at EU level must be balanced with the possible impact on the EU Member State flagged fleet and therefore strategic resilience and impacts on trade to/from the EU as a whole (avoiding flagging out to non-EU flags). The impact assessment concluded that the preferred policy option is option 2.

The impact assessment was submitted to the Regulatory Scrutiny Board for approval in January 2023. The Board issued a positive opinion with reservations. These comments were addressed in the Staff Working Document which accompanies this legislative proposal.

- **Regulatory fitness and simplification**

The initiative has a REFIT dimension in terms of alignment and simplification of safety legislation, and of assisting Member State authorities to better fulfil their inspection and reporting obligations.

In addition, the preferred policy option includes elements of simplification, as it will clarify the issuing, use and exchange of electronic documents related - for instance – to flag State inspections carried out and e-certificates related to the ship. This will allow a more efficient preparation and focus of flag State inspections (as well as port State control inspections) and enhanced monitoring of the ship and any work carried out on behalf of the flag State. It supports the control of compliance of the ships under flag at all times. The provision by EMSA of assistance to national flag State authorities with capacity building and training on how to carry out flag State inspections, and the provision of a dedicated inspection database to report inspections will increase the harmonization and standardisation across the EU.

- **Fundamental rights**

The proposal has no consequences for the protection of fundamental rights.

4. BUDGETARY IMPLICATIONS

The proposal has net present costs for the Union Budget of EUR 7 to 8.1 million over the period 2025-2050. The budget impact of the proposal is described in more detail in the Legislative Financial Statement annexed to this proposal for information. The budget impact of the proposal is already included in the Commission’s Proposal for a Regulation of the European Parliament and of the Council on the European Maritime Safety Agency and repealing Regulation (EC) No 1406/2002.

The budget impact beyond the current MFF is an indicative overview, without prejudice to the future MFF Agreement.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

The proposal is accompanied by an implementation plan that lists the actions needed to implement the measures and identifies the main technical, legal and time-related implementation challenges.

Adequate monitoring and reporting arrangements have been identified. EMSA will play an important role in this process, as the Agency is in charge of the development and operation of electronic data systems for maritime transport, in particular the inspection reporting database.

The implementation will be monitored by the Commission, with the assistance of EMSA. EMSA also carries out cycles of visits to Member States to verify operations on the ground as part of EMSA's support role to the Commission²⁶. Member States will have to continue have a quality management system (QMS) to certify that their organisation, policies, processes, resources and documentation are appropriate to fulfil their responsibilities. This will have to be certified and subsequently subject to periodic audit. Member States will have to share with Commission and/or EMSA the results of the audits carried out by the IMO and accredited body such that the national flag State authorities can retain their QMS certification. The revised performance scheme, together with the inspection reports and e-certificates uploaded to the database, will allow purposeful monitoring.

- **Explanatory documents (for directives)**

Explanatory documents are not required as the proposal aims to simplify and clarify the existing regime.

- **Detailed explanation of the specific provisions of the proposal**

Article 1 of the draft amending Directive forms its main part and contains amendments to numerous provisions of Directive 2009/21/EC.

Subject-matter, scope and definition

In point 1, Article 3 is amended to update some references to IMO instruments in the existing definitions and to include further definitions relevant for the Directive, notably the III-Code.

Conditions for allowing a ship to sail

In Point 2, Article 4 is amended to introduce the use of the database for verification of the condition of the ship (transferring in, as the case may be) before the ship is allowed to operate.

Point 3 inserts Articles 4a – 4c.

New Article 4a requires the Member State as flag State to adhere to the III-Code and the requirement to carry out supplementary flag State inspections to ensure the safety of ships flying the flag of a Member State.

New Article 4b, introduces the requirement on administrations to have the appropriate resources, commensurate with the size and type of fleet (ships registered under the flag) to meet the supplementary inspection obligation and the EU RO oversight and monitoring requirements. The precise details of such resources for carrying out inspections of flagged fleet and RO monitoring will be laid down via an implementing measure. New Article 4c is laying down responsibilities and common capacity building of the flag State personnel. This includes the continuous development of training schemes and material reflecting updates in the international IMO Conventions as well as possible new requirements following on from environmental considerations especially as regards new technologies (e.g. propulsion, new types of fuel etc).

Actions in relation to or following monitoring of flagged ships

In Point 4, Article 5 is amended to require the Member States as flag States to use the Union Maritime Information Exchange System (SafeSeaNet) to control and monitor ships under their flag and check e.g. whether they are being detained under port State control. This

²⁶ EMSA carries out such visits under Article 3 of Regulation (EC) No 1406/2002 establishing a European Maritime Safety Agency as part of its core tasks; therefore, no additional costs are expected to arise.

amendment also addresses the lack of flexibility of the flag State regime in cases of crisis or unexpected events, such as the COVID-19 pandemic.

Electronic information and inspection database

In Point 5, Article 6 is amended to introduce e-documents that are to be recorded, kept, reported and shared via a national e-certification registry compatible with the inspections database in the new Article 6a. E-documents concern among others e-inspection reports and e-certificates.

Pont 6 introduces a new Article 6a and the establishment of the inspection database to be hosted by the Commission. It is based on the inspection database already in operation for PSC and passenger ship inspection reporting and will use the same technical features. As regards electronic transmissions of e-certificates, these will be using the same technical solutions as established by the PSC Directive, based on the technical solution already in operation for ROs to meet the requirements for sharing e-certificates, as stipulated in the EU RO legislation.

The approach is one of building on the existing systems, creating further synergies, avoiding duplication and re-using information as far as possible, relying on one interoperable system.

Monitoring of compliance and performance

In point 7, Article 7 is amended to clarify what information shall be published following an IMO Audit. It also introduces the requirement that the Member State as auditee shall allow for the possibility of the Commission, assisted by EMSA, to observe such IMO audits. The aim is to ensure transparency and facilitate synergies between IMO Audits and EMSA visits.

Quality Management and performance of flag States

In Point 8, Article 8 is amended and the scope and coverage of the Quality Management System is clarified to cover all registries, whether it is the traditional (so-called first registers), international or overseas or similar (called second registers) under the authority of the flag State and flying the flag of that State as well as coverage of all flag State-related activities.

It further introduces the conditions for control if the flag State is, or will be, using non-exclusive inspectors, and introduces the requirement for all involved to ensure the absence of conflict of interest.

Finally, the current performance measurement should be revised and modernised, via an implementing act, taking into account a number of further criteria as well as similar performance scheme for ROs. The requirements to be applied by the Member States for their own assessment of performance as well as the requirement for the Commission to make overall results publicly available is introduced.

In point 9, Article 9 is deleted.

Cooperation and exchange of information

Point 10 introduces Articles 9a and 9b.

New Article 9 and establishes a high level group on flag State matters, composed of Member States' Flag State authorities and experts for discussing all flag State related and pertinent issues.

New Article 9b establishes a dynamic electronic reporting tool for gathering information and statistics.

Committee Procedure

In point 11, article 10 is updated with the most recent text regarding committee procedures for implementing acts.

Delegated acts

Point 12 provides that the Commission is empowered to adopt delegated acts to update the Annex and that any updates to are subject to the standard non-regression clause. This means that if there are changes at the international level, the standards in the EU instrument are at least maintained at the current level.

Exercise of the delegation

Point 13 sets out the standard text for the exercise of delegation.

Annexes

Point 14 sets out one new Annex with the flag State parts 1 and 2 of Resolution A.1070(28) IMO Instruments Implementation Code (III CODE).

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Directive 2009/21/EC on compliance with flag State requirements

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 100(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee²⁷,

Having regard to the opinion of the Committee of the Regions²⁸,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) The safety of Union shipping and of citizens using it and the protection of the environment should be ensured at all times.
- (2) Under the provisions of the United Nations Convention on the Law of the Sea 1982 (UNCLOS) and of the Conventions for which the IMO is the depository, the States which are party to those instruments are 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 that, from the point of view of safety of life at sea and protection of the marine environment, a ship is fit for the service for which it is intended.
- (3) To ensure the effectiveness of the IMO Conventions in the Union, given that all Member States have to be party to the IMO Conventions and have to discharge the obligations laid down in those conventions with respect to the ships flying their flag, the mandatory provisions of those Conventions should be incorporated in Union legislation. To this end Member States have to discharge their obligations as flag States effectively and consistently in accordance with IMO Resolution A.1070(28) (adopted on 4 December 2013) on the IMO Instruments Implementation Code (III CODE), which contains the mandatory provisions to be implemented by flag States.
- (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 Assembly resolution A. 1156(32) on survey guidelines under the harmonised system of survey and certification.

²⁷ OJ C , , p. .

²⁸ OJ C , , p. .

- (5) At international level, the function of investigating maritime accidents is part of flag State responsibilities, while at the Union level it is made independent and regulated by Directive 2009/18/EC of the European Parliament and of the Council²⁹. This Directive should not affect Directive 2009/18/EC.
- (6) Certain implementing acts that have been adopted following the entry into force of Directive 2009/21/EC, already in part implement aspects relating to delegation of authority to recognised organisations should be taken into account.
- (7) The maritime administrations of the Member States should be able to rely on adequate resources, including technical decision-making capability, for the implementation of their flag State obligations, commensurate with the size and type of their fleet and based upon the relevant IMO requirements. In order to improve the overall qualitative performance of ships flying the flag of a Member State it is also necessary to harmonise the strict and thorough monitoring, including development of rules and design review, of the recognised organisations performing flag State duties on behalf of Member States.
- (8) Minimum criteria and inspection targets related to those resources should be established on the basis of the practical experience of the Member States, including the use of non-exclusive inspectors, via implementing measures.
- (9) The fulfilment of a harmonised capacity building scheme, post-qualification, by flag State surveyors and inspectors, should ensure a level playing field between maritime administrations and contribute to the qualitative performance of ships flying the flag of a Member State.
- (10) Member States should use the Union Maritime Information and Exchange System (SafeSeaNet) and services, established by Directive 2002/59/EC³⁰ for the purpose of monitoring flagged ships, maritime surveillance and situational awareness at sea.
- (11) The establishment and development of a database providing essential information, in an electronic format on ships flying the flag of a Member State should contribute to enhanced exchange of information, further improve the transparency of the performance of a high quality fleet and allowing enhanced monitoring of flag State obligations to ensure a level playing field between maritime administrations.
- (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.
- (13) The mandatory IMO Member State Audit Scheme follows the standard quality management approach, to determine to what extent Member States are implementing and enforcing the flag State obligations and responsibilities contained in mandatory IMO conventions to which they are parties and thus, ensure a consistent and effective implementation of applicable IMO instruments and to assist Member States to improve their capabilities. The Member States should therefore continue to

²⁹ Directive 2009/18/EC of the European Parliament and of the Council of 23 April 2009 establishing the fundamental principles governing the investigation of accidents in the maritime transport sector and amending Council Directive 1999/35/EC and Directive 2002/59/EC of the European Parliament and of the Council (OJ L 131, 28.5.2009, p. 114)

³⁰ Directive 2002/59/EC of the European Parliament and of the Council of 27 June 2002 establishing a Community vessel traffic monitoring and information system and repealing Council Directive 93/75/EEC (OJ L 208 5.8.2002, p. 10).

demonstrate their compliance with the mandatory IMO instruments, as required by Resolution A 1067(28) on the framework and procedures for the IMO Member State Audit Scheme, adopted by the IMO Assembly on 4 December 2013.

- (14) The Commission, assisted by the European Maritime Safety Agency (EMSA) established by Regulation (EC) No 1406/2002 of the European Parliament and of the Council³¹, should be invited and involved as observer by the auditee Member State as flag State for the purpose of ensuring consistency between IMO audit and Commission assessments, executed by EMSA to check the implementation of Union maritime safety legislation via its visit and inspection scheme, on behalf of the Commission.
- (15) In order to further enhance quality of the flagged ships and ensure a level playing field between maritime administrations a quality certification of administrative procedures, included in the quality management system in accordance with ISO or equivalent standards, should be clarified to cover all registers, whether national (first registers) or international (second or overseas), under the responsibility of the Member State as flag State. Furthermore all related activities, including the responsibilities, authority, interrelation and, means of reporting and communication of all flag State personnel performing or involved in surveys or inspections, as well as other personnel assisting in the performance of inspections, not exclusively employed by the competent authority of the Member State, and who may carry out certain inspections, other than statutory surveys, should be clarified. In order to ensure independence the absence of any conflict of interest of involved personnel should be documented.
- (16) An evaluation and review of the performance scheme for flag States, based on common transparent, reliable and objective key performance criteria and building on current such similar schemes should support all Member States in their continuous compliance and improvement.
- (17) In order to discuss flag State matters, including technical, issues and facilitate exchange of expertise and information, a high level group on flag State matters consisting of Member States' national authorities, flag State experts and inspectors, as well as, as appropriate, experts from the private sector, should be established.
- (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.
- (19) In order to allow for an up-to date application of the provisions of this Directive to allow Member States to fulfil their obligations under international law in compliance with the Directive, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of updating the Annex. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making³². In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the

³¹ Regulation (EC) 1406/2002 of the European Parliament and of the Council of 27 June 2002 establishing a European Maritime Safety Agency (OJ L 208 5.8.2002, p. 1).

³² OJ L 123, 12.5.2016, p. 1.

same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

- (20) The measures necessary for the implementation of this Directive should be adopted in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council³³. In order to ensure uniform conditions for the implementation Directive 2009/21/EC concerning uniform measures to determine the minimum requirements for appropriate resources, commensurate with the size and type of its fleet and for a common harmonised scheme for measuring of flag State performance, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council.
 - (21) The European Maritime Safety Agency (EMSA) should provide the necessary support to ensure the implementation of Directive 2009/21/EC.
 - (22) In accordance with the principle of proportionality, as set out in Article 5 of the Treaty, this Directive does not go beyond what is necessary in order to achieve those objectives.
 - (23) Directive 2009/21/EC should therefore be amended accordingly,
- HAVE ADOPTED THIS DIRECTIVE:

Article 1

Amendments to Directive 2009/21/EC

Directive 2009/21/EC is amended as follows:

- (1) Article 3 is amended as follows:
 - (a) point (e) is replaced by the following:

‘(e) ‘IMO audit’ means an audit conducted in accordance with the provisions of Resolution A 1067(28) (“Framework and Procedures for the IMO Member State Audit”), in its up-to-date version, adopted by the International Maritime Organisation (IMO);’
 - (b) the following points are added:
 - ‘(f) ‘Conventions’ means the Conventions, with the Protocols and amendments thereto, and related codes of mandatory status, in their up-to-date version, as defined in Article 2(1) of Directive 2009/16/EC of the European Parliament and of the Council³⁴, with the exception of the Maritime Labour Convention, 2006 (MLC 2006);
 - (g) ‘III-Code’ means parts 1 and 2 of Resolution A.1070(28) (“IMO Instruments Implementation Code”), adopted by the International

³³ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

³⁴ Directive 2009/16/EC of the European Parliament and of the Council of 23 April 2009 on port State control (OJ L 131, 28.5.2009, p. 57).

Maritime Organisation (IMO), with the exception of paragraphs 16.1, 18.1, 19, 29, 30, 31 and 32 of part 2;

- (h) ‘flag State surveyor’ means a public-sector employee, duly authorised by and working exclusively for the competent authority of a Member State to carry out surveys and audits related to the statutory certificates and fulfilling the independence requirement specified in Article 8(1);
- (i) ‘flag State inspector’ means a public-sector employee, working exclusively for and duly authorised by the competent authority of a Member State to carry out supplementary flag State inspections, and who fulfils the independence requirement specified in Article 8(1), and the minimum criteria specified in Annex XI to Directive 2009/16/EC;
- (j) ‘other personnel assisting in the performance of inspections’ means a person not exclusively employed by, but in a contractual situation with the competent authority of the Member State, and duly authorised by the competent authority of the Member State who may carry out certain inspections, other than statutory surveys, specified by the competent authority, and who fulfils the criteria of communication, qualification and independence specified in Article 8(1);
- (k) ‘Supplementary flag State inspection’ means an on-board inspection not leading to certification;
- (j) ‘HSSC’ means Resolution A. 1156(32) (“Survey Guidelines under the Harmonized System of Survey and Certification (HSSC), 2021, in its up-to-date version, adopted by the International Maritime Organisation (IMO);’

- (2) In article 4, paragraph 1 is replaced by the following:

‘1. Prior to allowing a ship to operate, which has been granted the right to fly its flag, the Member State concerned shall ensure that the ship in question complies with the applicable international rules and regulations. In particular, it shall verify the safety records of the ship using the inspection reports and certificates contained in database referred to in article 6a. It shall, if necessary, consult with the losing flag State in order to establish whether any outstanding deficiencies or safety issues identified by the latter remain unresolved.’

- (3) The following Articles 4a to 4c are inserted:

‘Article 4a

Safety of ships flying the flag of a Member State

1. In respect of international shipping Member States shall apply in full the mandatory flag State related provisions laid down in the IMO Conventions in accordance with the conditions and in respect of the ships referred to therein and shall apply the III-Code in Annex to this Directive, with the exception of paragraphs 16.1, 18.1, 19, 29, 30, 31 and 32 of part 2.

2. Member States shall take all necessary measures to ensure compliance with international rules and standards by ships entitled to fly their flag. Those measures shall include the following:

- (a) prohibiting ships from sailing until such ships can proceed to sea in compliance with international rules and standards;
 - (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,
 - (c) carrying out supplementary flag State inspections of ships to verify that the actual condition of the ship is in conformity with the certificates it carries.
3. Member States shall ensure that any deficiencies confirmed or revealed by an inspection carried out in accordance with paragraph 2(c) are rectified.
 4. On completion of any inspection carried out, the flag State inspector shall draw up a report on the basis of Annex IX to Directive 2009/16/EC.

‘Article 4b

Safety and pollution prevention requirements

1. Each Member States shall ensure that its administration relies on appropriate resources, commensurate with the size and type of its fleet, in particular for meeting the obligations provided for in Article 4a and paragraphs 2 and 3 of this Article.
2. Each Member State shall ensure the oversight of the activities of flag State surveyors, flag state inspectors and recognised organisations and participate in the EU Recognised Organisation oversight scheme specified by the high level group on flag State matters referred to in Article 9a(1).
3. Each Member State shall develop or maintain a design review and technical decision-making capability commensurate with the size and type of its fleet.
4. In order to ensure harmonisation of the supplementary flag State inspections referred to in Article 4a(2) point (c), the Commission, after consulting the high level group on flag State matters referred to in Article 9a(1), shall adopt implementing acts to define the uniform measures to determine the minimum requirements for the implementation of the obligations provided for by paragraph 1. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 10(2).’

‘Article 4c

Common capacity building of flag State personnel

1. Member States shall ensure that the personnel responsible for or performing surveys, inspections and audits on ships and companies undergo the harmonised scheme specified in paragraph 2.
2. The Commission, seeking the advice of the high level group on flag State matters referred to in Article 9a(1), shall develop a common capacity building scheme (post-qualification at national level) and keep it updated, considering new technologies and in relation to new or additional obligations arising from the relevant international instruments, for Member States flag State surveyors and inspectors.

(4) Article 5 is amended as follows:

- (a) the sole paragraph is numbered as paragraph 1.

(b) the following paragraph 2 is added:

‘2. Member States shall develop and implement an appropriate control and monitoring programme, using, as appropriate, the Union Maritime Information and Exchange System (‘SafeSeaNet’) referred to in Article 22a(3) of Directive 2002/59/EC of the European Parliament and of the Council³⁵ and Annex III thereto, for providing a timely response to situations in paragraph 1 of this Article as well as safety incidents and alleged pollution.’

(5) Article 6 is replaced by the following:

‘Article 6

Electronic information and exchange

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

- (a) particulars of the ship (name, IMO number, etc.);
- (b) statutory certificates (full, interim or temporary) including dates of surveys, additional and supplementary surveys, if any, and audits;
- (c) identification of the recognised organisations involved in the certification and classification of the ship;
- (d) identification of the competent authority which has inspected the ship under port State control provisions and the dates of the inspections;
- (e) outcome of the port State control inspections (deficiencies: yes or no; detentions: yes or no);
- (f) identification of ships which have ceased to fly the flag of the Member State concerned during the previous 12 months
- (g) report(s) following a flag State survey or inspection carried out in accordance with Article 4a(2) paragraphs (b) or (c).

2. The information shall be communicated to the inspection database provided for in Article 6a. The master shall also be provided with a copy of the report.’

(6) The following Article 6a is inserted:

‘Article 6a

Inspection database

1. The Commission shall develop, maintain and update an inspection database containing the information specified in Article 6. All Member States shall be connected to that database. That database shall be based on the inspection database referred to in Article 24 of Directive 2009/16/EC and shall have similar functionalities to that database.

³⁵ Directive 2002/59/EC of the European Parliament and of the Council of 27 June 2002 establishing a Community vessel traffic monitoring and information system and repealing Council Directive 93/75/EEC (OJ L 208 5.8.2002, p. 10).

2. 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.

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

4. Member States shall have access to all the information recorded in the inspection 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 Council³⁶.

5. Member States shall ensure that Statutory certificates referred to in Article 6(1) paragraph b, shall be transmitted electronically to the inspection database referred to in paragraph 1 of this Article using the functional and technical specifications for a harmonised electronic reporting interface provided for in Article 24a of Directive 2009/16/EC.’

(7) Article 7 is replaced by the following:

‘Article 7

Monitoring of compliance and performance of Member States

1. Member States shall take the necessary measures to undergo the IMO audit of their administration at least once every seven years, and shall publish the outcome of the audit as well as any corrective actions in the Global Integrated Shipping Information System (GISIS) database set up by the IMO. Member States shall also make the same information available to the public, in accordance with relevant national legislation on confidentiality.

2. Member States shall ensure that the Commission, assisted by EMSA, is allowed to participate as an observer in the IMO auditing process and, that any Audit report and the information on subsequent action taken is immediately made available to the Commission.

3. In order to ensure the effective implementation of this Directive and to monitor the overall functioning of flag State compliance and the EU Recognised Organisation oversight scheme the Commission shall collect the necessary information and carry out visits to Member States, in accordance with Article xx of Regulation (EU) xx/xx of the European Parliament and of the Council³⁷ [*EMSA Regulation to be adopted*],’

(8) Article 8 is amended as follows:

(a) paragraph 1 is replaced by the following:

‘Each Member State shall implement and maintain a quality management system covering all registers under its authority for all the flag State-related

³⁶ Regulation (EC) 1406/2002 of the European Parliament and of the Council of 27 June 2002 establishing a European Maritime Safety Agency (OJ L 208 5.8.2002, p. 1).

³⁷ Regulation (EU) xx/xx of the European Parliament and of the Council ... [EMSA Regulation]

activities of its administration. Such quality management system shall be certified in accordance with the applicable international quality standards.

The quality management system shall include defined responsibilities, authority and interrelation of all flag State personnel, including other personnel assisting in the performance of inspections who manage, perform and verify work relating to and affecting safety and pollution prevention. Such responsibilities shall be documented, specifying what type and scope of inspection work that may be performed by other personnel assisting in the performance of inspections, and also specify how such personnel shall communicate and report.

Each Member State shall ensure that other personnel assisting in the performance of inspections have education, training and supervision commensurate with the tasks they are authorized to perform.

All personnel performing a survey or an inspection shall sign a declaration of absence of conflict of interest attesting to their independence in relation to the work to be performed, which shall be kept by the Member State responsible authority.'

(b) the following paragraphs are added:

'2a. Member States shall evaluate their performance annually and identify areas for possible improvement, based on results of the activities performed in the framework of the quality management system referred to in paragraph 1 of this Article and the flag State performance referred to in paragraph 2b of this Article, as well as Article 7.

2b. In order to ensure a common harmonised performance scheme for the purposes of paragraph 2a, the Commission, after consulting the high level group on flag State matters referred to in Article 9a(1), shall adopt implementing acts to define the details for a revised performance scheme in paragraph 2 of this Article. Those implementing acts shall be adopted in accordance with Article 10.2.

Measures to evaluate the performance of the flag States, shall take into consideration, inter alia, flag State inspection results, port State control detention rates, casualty statistics, communication and information processes, annual loss statistics (excluding constructive total losses) and other performance indicators as may be appropriate, to determine whether staffing, resources and administrative procedures are adequate to fulfil the flag State obligations.

2c. The Commission shall make available and maintain on a public website information about the performance of flag States.';

(9) Article 9 is deleted.

(10) The following new Articles are inserted:

'Article 9a

High level group on flag State matters

1. The Commission shall establish a high level group on flag State matters for discussing flag State issues and facilitate exchanges of experience between the

Member States' national authorities, flag State experts and inspectors, including as appropriate those from the private sector.

The high level group on flag State matters shall be composed of representatives of the Member States and of the Commission, assisted by EMSA.

It shall adopt its rules of procedure.

2. The high level group on flag State matters shall have the following tasks, inter alia:

- (a) make recommendations for a common approach to flag State inspections; procedures and guidelines for the control of ships;
- (b) assist the Commission in the development of a common reporting format, including timing for flag State inspections/ Recognised Organisation (RO) monitoring;
- (c) assist the Commission in the development of the technical method for what constitutes appropriate resources, commensurate with the size and type of fleet, referred to in Article 4b;
- (d) assist the Commission in identifying measures that may be developed in order to improve the capacity building referred to in Article 4c, in particular as regards keeping up-to-date knowledge about changes in conventions and emanating due to new technologies;
- (e) develop and implement the EU RO oversight and monitoring scheme referred to in Article 7;
- (f) provide guidance on how to use the information in the relevant Union maritime databases for preparation of flag State inspections/RO monitoring, with a view to increase efficiency in the use/pooling of resources for ROs monitoring e.g. by focus areas;
- (g) assist the Commission in the technical development of the performance criteria referred to in Article 8(2b);
- (h) assist the Commission in developing guidance, templates and similar for the reporting obligations referred to in Article 9b;
- (i) assist in analysing flag State performance, QMS audits and, IMO Audits comparing findings and follow-up action, with a view to identifying best practices;
- (j) assist the Commission in identifying measures that may be developed in order to establish:
 - (i) harmonised procedures for the application of exemptions and equivalents applied in accordance with the IMO Conventions;
 - (ii) harmonised interpretations of issues left to the discretion of the administrations in the Conventions;
 - (iii) apply unified interpretations for provisions laid down in the Conventions.

'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. Member States shall periodically, and at least once a year, inform the Commission, about:

- (a) administering safety and pollution prevention requirements
 - (i) size and age of flagged fleet in terms of number and gross tonnes of conventional ships;
 - (ii) the number of flag State inspectors/surveyors/auditors and other personnel assisting in the performance of inspections;
 - (iii) the number of flag State surveys, inspections and audits carried out as flag States;
 - (iv) the number of ships flagging-in and flagging-out by type of ship and by originating country or destination country;
 - (b) quality management and audits
 - (i) planned or confirmed dates for IMO Audit;
 - (ii) planned or confirmed dates for Quality Management System audit as well as cope of quality management system certification
 - (c) delegation of authority
 - (i) Recognised Organisations authorised, functions delegated and certificates issued on behalf of the Member State
- (11) Article 10 is replaced by the following:

‘Article 10

Committee procedure

1. The Commission shall be assisted by the Committee on Safe Seas and the Prevention of Pollution from Ships (COSS) established by Regulation (EC) No 2099/2002. That Committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.’

- (12) The following Article 10a is inserted:

‘Article 10a

Delegated Acts

The Commission shall be empowered to adopt delegated acts in accordance with Article 10b, concerning amendments to Annex 1, in order to take account of new flag State related provisions and commitments developed at international level, in particular, in the IMO.

The amendments to the IMO Conventions and to the IMO Instruments Implementation Code (III CODE) may be excluded from the scope of this Directive pursuant to Article 5(2) of Regulation (EC) No 2099/2002.’

- (13) The following Article 10b is inserted:

‘Article 10b

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
 2. The power to adopt delegated acts referred to in Article 10a shall be conferred on the Commission for a period of five years from [xx] 202X. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.
 3. The delegation of power referred to in Article 10a may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
 4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.
 5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
 6. A delegated act adopted pursuant to Article 10a shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.’
- (14) The text set out in the Annex to this Directive is added as Annex to Directive 2009/21/EC.

Article 2

Transposition

1. Member States shall adopt and publish, by [*OP: Please insert a date: one year from the date of entry into force of this amending Directive*] the laws, regulations and administrative provisions necessary to comply with this Directive.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such reference on the occasion of their official publication. Member States shall determine how such reference is to be made.
2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 3

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 4

Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President

LEGISLATIVE FINANCIAL STATEMENT 'AGENCIES'

1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

1.1. Title of the proposal/initiative

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

1.2. Policy area(s) concerned

Mobility and Transport – Maritime Safety

1.3. The proposal relates to

☐ a new action

☐ a new action following a pilot project/preparatory action³⁸

☒ the extension of an existing action ☐ a merger of one or more actions towards another/a new action

1.4. Objective(s)

1.4.1. General objective(s)

The general objectives of amending Directive 2009/21/EC are to: (1) maintain a level playing field and avoid market distortions; (2) ensure high levels of maritime safety; and (3) ensure prevention of maritime pollution due to marine casualties. This revision should thus also contribute towards Sustainable Development Goal (SDG) 3 (“Ensure healthy lives and promote well-being for all at all ages”) and SDG 14 (“Conserve and sustainably use the oceans, seas and marine resources for sustainable development”).

1.4.2. Specific objective(s)

The specific objectives of the Directive are to:

Align the flag State Directive with new international rules.

Ensure adequate inspections and monitoring/oversight.

Ensure higher uptake of digital solutions.

Ensure a harmonized approach in the understanding, reporting and measuring performance of flag State fleets and duties.

³⁸

As referred to in Article 58(2)(a) or (b) of the Financial Regulation.

1.4.3. *Expected result(s) and impact*

Specify the effects which the proposal/initiative should have on the beneficiaries/groups targeted.

The proposal is expected harmonise high safety levels of flag state control across the Union and introduce digitalised solutions in support of efficiency in ship monitoring, carrying out any ship inspection for flag State control and in sharing pertinent information. It is also expected to improve the functioning of the internal market by increasing the clarity and removing any ambiguity for flag States authorities.

The proposal is also expected to result in a decrease in the lives lost and injuries sustained, as well as to the bunker fuel lost at sea.

1.4.4. *Indicators of performance*

Specify the indicators for monitoring progress and achievements.

The effectiveness of the proposed Directive, with respect to the specific objective no. 1, will be determined based on IMO Audits, monitored through IMO GISIS, and EMSA visits to MS for verifying the implementation of the Directive, on behalf of the Commission.

The effectiveness of the proposed Directive, with respect to the specific objective no. 2, will be determined based on the number of flag State inspection reports shared, the use of findings, the follow-up with the Recognised Organisations, any safety recommendations issued for flag administrations, the number of vessels accepted onto Flag registers and the number of vessels suspended or deleted from Flag registers monitored through THETIS system and, the Flag State administrations reports. It will also be determined based on the number of technical staff and inspections, on the share of inspections for the Member State's flagged fleet and the number of flag State inspectors per ship reported into the dedicated reporting tool system.

The effectiveness of the proposed Directive, with respect to the specific objective no. 3, will be determined based on the number of e-Certificates and e-Flag State reports submitted in the reporting module (THETIS).

The effectiveness of the proposed Directive, with respect to the specific objective no. 4, will be determined based on the performance measurement indicators in the performance measurement system.

1.5. Grounds for the proposal/initiative

1.5.1. *Requirement(s) to be met in the short or long term including a detailed timeline for roll-out of the implementation of the initiative*

EMSA will be required to implement technical solutions for e-certificate registry, reporting of e-certificates and e-Flag State inspection reports, as well as tools for validation, and developing new modules. EMSA will also be required to develop a mechanism and template for reporting information and statistics and introduce common capacity building and harmonised training (post-qualification) for Flag State inspectors and/or surveyors and/or auditors, by developing a common curricula for Flag State inspectors and training of flag State inspectors to new technologies, including but not limited to renewable and low carbon fuels, which are particularly relevant in view of the "Fit for 55" package, and automation.

By 2025, 1 additional FTE will be required to develop the new module for the e-certificates and 1 additional FTE to provide specialist IT skills and maritime knowledge in the Maritime Support Services.

- 1.5.2. *Added value of Union involvement (it may result from different factors, e.g. coordination gains, legal certainty, greater effectiveness or complementarities). For the purposes of this point 'added value of Union involvement' is the value resulting from Union intervention which is additional to the value that would have been otherwise created by Member States alone.*

Reasons for action at European level (ex-ante)

In absence of EU action, the current legal uncertainty would remain and the EU Member States would be transposing international obligations into national legislation in an uncoordinated way. Ultimately, this would lead to less protection for EU citizens, maritime safety and the environment. The incorporation of the international rules within EU law also provides for the essential support that EMSA offers the Member States in terms of targeting, recording and sharing inspection results and training for the flag State inspections they perform. Travelers and citizens in general can be reassured that a similar safety standard exists across the Union and the results of inspections (both by flag States and port States) are shared and monitored so that there is no weak link in terms of maritime safety.

Expected generated Union added value (ex-post)

The effective implementation of international rules, in particular the IMO III-Code, should be ensured through the Directive. The legal obligations and enforcement that the flag State Directive brings allow for more harmonisation, consistency, and coherence between Member States and their responsibilities.

The Directive ensures a harmonised and coherent approach towards ships flagged in EU Member States, by incorporating and consolidating mandatory international rules, and bringing legal certainty under the EU legal order.

- 1.5.3. *Lessons learned from similar experiences in the past*

The Flag State Directive ensures the harmonised implementation and enforcement of international rules into and under EU legislation, as well as requiring and encouraging cooperation among Member States. However, the evaluation of the Directive showed that there is need for a broader rebalancing of EU maritime safety policy. This means reinforcing the EU layer for the “first line of defence”, compliance and preventive action which befalls on flag States. The current policies focus on Member States as port and coastal States, and less so on flag States. Therefore, the relevant flag State related parts of the mandatory III-Code are missing.

The results of the ex-post evaluation are reflected in the impact assessment accompanying this initiative (summarised in its Annex 7).

- 1.5.4. *Compatibility with the Multiannual Financial Framework and possible synergies with other appropriate instruments*

The proposed revision is a key deliverable of the Communication from the Commission on a Sustainable and Smart Mobility Strategy, which sets out the EU vision for the transport system of the future. The strategy announced that the Commission is planning to initiate a major review of existing legislation on flag State responsibilities, port State control and accident investigation in 2021 (under Flagship 10 - Enhancing transport safety and security).

The proposed revision will create synergies with other pieces of EU regulatory framework, notably the Directive 2009/16/EC on port State control and Directive 2009/18/EC on accident investigation.

The proposal is compatible with the current Multiannual Financial Framework, although it will require reprogramming within Heading 1 as regards the annual contribution to EMSA (budgetary offsetting by a compensatory reduction of programmed spending under CEF Transport (02 03 01)). The budget impact of the current proposal is already included in the budget for the Commission proposal for a Regulation of the European Parliament and of the Council on the European Maritime Safety Agency and repealing Regulation (EC) No 1406/2002.

The budget impact beyond the current MFF is an indicative overview, without prejudice to the future MFF Agreement.

1.5.5. Assessment of the different available financing options, including scope for redeployment

The budgetary impact of this initiative refers to the additional resources necessary for the increasing role of EMSA to facilitate the Flag State's obligations (i.e. in relation to the e-certificates, develop and maintain a reporting module (THETIS) for use of electronic certificates across flag States and Recognised Organisations, as well as tools for validation and inspection, as well as a module for e-Flag inspection reports, in relation to reporting statistics, further develop a reporting tools/gateway to support the applications, and in relation to the capacity building, develop a common curricula for Flag State inspectors and provide training in new technologies, including but not limited to renewable and low carbon fuels, and automation) under the proposed Directive.

The additional need of human resources cannot be met by redeployment, while the additional budgetary needs will be met through offsetting by existing programmes managed by DG MOVE under the current multiannual financial framework.

The increase in appropriations for EMSA will be offset by a compensatory reduction of programmed spending under CEF Transport (02 03 01). The budget impact of the current proposal is already included in the budget for the Commission proposal for a Regulation of the European Parliament and of the Council on the European Maritime Safety Agency and repealing Regulation (EC) No 1406/2002.

The budget impact beyond the current MFF is an indicative overview, without prejudice to the future MFF Agreement.

1.6. Duration and financial impact of the proposal/initiative

☐ limited duration

- ☐ Proposal/initiative in effect from [DD/MM]YYYY to [DD/MM]YYYY
- ☐ Financial impact from YYYY to YYYY

☒ unlimited duration

- Implementation with a start-up period from YYYY to YYYY [*n.a.*]
- followed by full-scale operation.

1.7. Method(s) of budget implementation planned³⁹

☐ Direct management by the Commission through

- ☐ executive agencies

☐ Shared management with the Member States

☒ Indirect management by entrusting budget implementation tasks to:

- ☐ international organisations and their agencies (to be specified);
- ☐ the EIB and the European Investment Fund;
- ☒ bodies referred to in Articles 70 and 71;
- ☐ public law bodies;
- ☐ bodies governed by private law with a public service mission to the extent that they are provided with adequate financial guarantees;
- ☐ bodies governed by the private law of a Member State that are entrusted with the implementation of a public-private partnership and that are provided with adequate financial guarantees;
- ☐ bodies or persons entrusted with the implementation of specific actions in the CFSP pursuant to Title V of the TEU, and identified in the relevant basic act.

Comments

Management of the proposed Directive will be done overall by the Commission services assisted by the European Maritime Safety Agency as appropriate.

Member States will be required to transpose the provisions of the Directive by the respective deadline.

³⁹ Details of budget implementation methods and references to the Financial Regulation may be found on the BUDGpedia site: <https://myintracomm.ec.europa.eu/corp/budget/financial-rules/budget-implementation/Pages/implementation-methods.aspx>

2. MANAGEMENT MEASURES

2.1. Monitoring and reporting rules

Specify frequency and conditions.

The Commission will be overall accountable for implementing the proposed Directive.

EMSA, on behalf of the Commission, carries out visits to Member States to verify operations on the ground. The respective visits reports will identify any shortcomings and areas for improvement.

The Commission and/or EMSA will participate as observers in the International Maritime Organisation Audit, complementary to EMSA's visits and inspections on behalf of the Commission. EMSA will also carry out a horizontal analysis, giving an indication of how the legislation is functioning and identifying gaps and what can be done to address them, and report to the Commission and Member States, probably discussing the findings in workshops.

The Commission will also establish the flag State expert group to promote the cooperation between the Member States and the Commission.

2.2. Management and control system(s)

2.2.1. *Justification of the management mode(s), the funding implementation mechanism(s), the payment modalities and the control strategy proposed*

The Commission will be overall accountable for implementing the proposed Directive. The Commission will be assisted by EMSA as appropriate in providing the IT services and developing the IT tools necessary for the reporting, monitoring and verification provisions of the proposed Directive, as well as organising trainings. Member States will be required to carry out the transposition of the Directive to their national legislation by the deadline mentioned in the Directive. Enforcement activities will be carried out as part of the existing controls, in particular during flag State Control and via the flag performance scheme.

2.2.2. *Information concerning the risks identified and the internal control system(s) set up to mitigate them*

While the Commission will be overall accountable for implementing the proposed Directive, the European Maritime Safety Agency will be responsible for the performance of its operation and for the implementation of its internal control framework. It will be required to develop IT tools and modules, as well as provide training to the Flag State Control officers, and the Member States will be required to carry out enforcement.

EMSA is best placed to carry out reporting and assessment of compliance tasks, as this will be technical work, requiring strong expertise in data management, as well as in-depth understanding of complex technical matters related to electronic certificates and training.

Member States are best placed, also under international law obligations, to carry out the enforcement of the proposed Directive, notably by continuing enforcing Flag State control in a harmonized way.

DG MOVE apply the necessary controls in line with the supervision strategy adopted in 2017 on the DG's relations with decentralised agencies and JUs. Under the strategy, DG MOVE monitors performance indicators for the implementation of the budget, the audit recommendations and administrative matters. A report is provided by the Agency on a bi-

annual basis. The controls performed on the supervision of the Agency as well as on the related financial and budgetary management are in accordance with DG MOVE's Control Strategy, updated in 2022.

The additional resources put at the disposal of EMSA will be covered by EMSA's internal control and risk management system that is aligned with the relevant international standards and includes specific controls to prevent conflict of interests and ensure the protection of whistle-blowers.

2.2.3. *Estimation and justification of the cost-effectiveness of the controls (ratio of "control costs ÷ value of the related funds managed"), and assessment of the expected levels of risk of error (at payment & at closure)*

Under the proposed revision, additional financing will be provided both to EMSA, which will be developing IT tools and modules, as well as providing training to the Flag State Control officers, and to the Commission.

EMSA has full responsibility for the implementation of their budget, while DG MOVE is responsible for the regular payment of the contributions established by the Budgetary Authority. The expected level of risk of error at payment and at closure is similar to that attached to the budget subsidies provided to the Agency.

The additional tasks resulting from the proposed Directive are not expected to generate specific additional controls. Therefore, the cost of control for DG MOVE (measured against the value of funds managed) is expected to remain stable.

2.3. Measures to prevent fraud and irregularities

Specify existing or envisaged prevention and protection measures, e.g. from the Anti-Fraud Strategy.

The proposed revision contains several provisions specifically targetted at preventing fraud and irregularities. Member States will have to have a Quality Management System (QMS) to certify their organisation, policies, processes, resources and documentation are appropriate to fulfil their responsibilities. This will have to be certified and subsequently subject to periodic audit. Member States will have to share with Commission and/or EMSA the results of the audits carried out by the International Maritime Organisation and accredited body such that the national flag State authorities can retain their QMS certification.

EMSA applies the anti-fraud principles of decentralised EU Agencies, in line with the Commission approach. In March 2021, the Agency adopted an updated Anti-Fraud Strategy, based on the methodology and guidance for anti-fraud strategy presented by OLAF as well as on the Anti-Fraud Strategy of DG MOVE. It provides a framework addressing the issues of prevention, detection and conditions for investigations of fraud at Agency level. EMSA continuously adapts and improves its policies and actions to promote the highest level of integrity of EMSA staff, support effective prevention and detection of fraud risk and establish the appropriate procedures to report and handle potential fraud cases and their outcome. Furthermore, EMSA adopted in 2015 its Conflict of Interest policy for the Management Board.

EMSA cooperates with the Commission services on matters relating to preventing fraud and irregularity. The Commission will ensure that this cooperation will continue and will be strengthened.

3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE

3.1. Heading(s) of the multiannual financial framework and expenditure budget line(s) affected

- Existing budget lines

In order of multiannual financial framework headings and budget lines.

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Number	Diff./Non-diff. ⁴⁰	from EFTA countries ⁴¹	from candidate countries and potential candidates ⁴²	From other third countries	other assigned revenue
1	02 10 02	Non-diff.	YES	NO	NO	NO

- New budget lines requested

⁴⁰ Diff. = Differentiated appropriations / Non-diff. = Non-differentiated appropriations.

⁴¹ EFTA: European Free Trade Association.

⁴² Candidate countries and, where applicable, potential candidates from the Western Balkans.

In order of multiannual financial framework headings and budget lines.

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Number	Diff./non-diff.	from EFTA countries	from candidate countries and potential candidates	from other third countries	other assigned revenue
	[XX.YY.YY.YY]		YES/NO	YES/NO	YES/NO	YES/NO

3.2. Estimated impact on expenditure

3.2.1. Summary of estimated impact on expenditure

EUR million (to three decimal places)

Heading of multiannual financial framework	1	Single Market, Innovation and Digital
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European Maritime Safety Agency (EMSA)			Year 2025	Year 2026	Year 2027	Year 2028-2034	TOTAL
Title 1:	Commitments	(1)	0.171	0.342	0.342	2.394	3.249
	Payments	(2)	0.171	0.342	0.342	2.394	3.249
Title 2:	Commitments	(1a)					
	Payments	(2a)					
Title 3:	Commitments	(3a)	0.368	1.041	1.266	4.412	7.087
	Payments	(3b)	0.368	1.041	1.266	4.412	7.087
TOTAL appropriations for EMSA	Commitments	=1+1a +3a	0.539	1.383	1.608	6.806	10.336
	Payments	=2+2a +3b	0.539	1.383	1.608	6.806	10.336

The budget impact beyond the current MFF is an indicative overview, without prejudice to the future MFF Agreement.

Heading of multiannual financial framework	7	‘Administrative expenditure’
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EUR million (to three decimal places)

		Year N	Year N+1	Year N+2	Year N+3	Enter as many years as necessary to show the duration of the impact (see point 1.6)			TOTAL
DG: <.....>									
• Human Resources									
• Other administrative expenditure									
TOTAL DG <.....>	Appropriations								

TOTAL appropriations under HEADING 7 of the multiannual financial framework	(Total commitments = Total payments)								
--	---	--	--	--	--	--	--	--	--

EUR million (to three decimal places)

		Year 2025	Year 2026	Year 2027	Year 2028-2034	TOTAL
TOTAL appropriations under HEADINGS 1 to 7 of the multiannual financial framework	Commitments	0.539	1.383	1.608	6.806	10.336
	Payments	0.539	1.383	1.608	6.806	10.336

The budget impact beyond the current MFF is an indicative overview, without prejudice to the future MFF Agreement.

3.2.2. Estimated impact on EMSA's appropriations

- ☒ The proposal/initiative does not require the use of operational appropriations
- ☐ The proposal/initiative requires the use of operational appropriations, as explained below:

Amounts in EUR million (to three decimal places)

Indicate objectives and outputs ↓			Year N		Year N+1		Year N+2		Year N+3		Enter as many years as necessary to show the duration of the impact (see point 1.6)						TOTAL	
	OUTPUTS																	
	Type ⁴³	Average cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	Total No	Total cost
SPECIFIC OBJECTIVE No 1 ⁴⁴ ...																		
- Output																		
- Output																		
- Output																		
Subtotal for specific objective No 1																		
SPECIFIC OBJECTIVE No 2 ...																		
- Output																		
Subtotal for specific objective No 2																		
TOTAL COST																		

Where applicable, amounts reflect the sum of the Union contribution to the agency and other revenue of the agency (fees and charges).

⁴³ Outputs are products and services to be supplied (e.g.: number of student exchanges financed, number of km of roads built, etc.).

⁴⁴ As described in point 1.4.2. 'Specific objective(s)...

3.2.3. Estimated impact on EMSA's human resources

3.2.3.1. Summary

- ☐ The proposal/initiative does not require the use of appropriations of an administrative nature
- ☒ The proposal/initiative requires the use of appropriations of an administrative nature, as explained below:

EUR million (to three decimal places) Where applicable, amounts reflect the sum of the Union contribution to the agency and other revenue of the agency (fees and charges).

	Year 2025	Year 2026	Year 2027	Year 2028-2034	TOTAL
--	--------------	--------------	--------------	-------------------	-------

Temporary agents (AD Grades)	0.171	0.342	0.342	2.394	3.249
Temporary agents (AST grades)					
Contract staff					
Seconded National Experts					

TOTAL	0.171	0.342	0.342	2.394	3.249
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The budget impact beyond the current MFF is an indicative overview, without prejudice to the future MFF Agreement.

Staff requirements (FTE):

	Year 2025	Year 2026	Year 2027	Year 2028-2034	TOTAL
--	--------------	--------------	--------------	-------------------	-------

Temporary agents (AD Grades)	2	2	2	2	2
Temporary agents (AST grades)					
Contract staff					
Seconded National Experts					

TOTAL	2	2	2	2	2
--------------	----------	----------	----------	----------	----------

The budget impact beyond the current MFF is an indicative overview, without prejudice to the future MFF Agreement.

EMSA will start preparing the recruitment as soon as the proposal is adopted. The costs are estimated based on the assumption that the 2 FTEs are recruited as of 1st July 2025. So only 50% of the HR costs are needed for the first year.

3.2.3.2. Estimated requirements of human resources for the parent DG

- ☒ The proposal/initiative does not require the use of human resources.
- ☐ The proposal/initiative requires the use of human resources, as explained below:

Estimate to be expressed in full amounts (or at most to one decimal place)

	Year N	Year N+1	Year N+2	Year N+3	Enter as many years as necessary to show the duration of the impact (see point 1.6)		
• Establishment plan posts (officials and temporary staff)							
20 01 02 01 and 20 01 02 02 (Headquarters and Commission's Representation Offices)							
20 01 02 03 (Delegations)							
01 01 01 01 (Indirect research)							
10 01 05 01 (Direct research)							
• External staff (in Full Time Equivalent unit: FTE)⁴⁵							
20 02 01 (AC, END, INT from the 'global envelope')							
20 02 03 (AC, AL, END, INT and JPD in the Delegations)							
Budget line(s) (specify) ⁴⁶	- at Headquarters ⁴⁷						
	- in Delegations						
01 01 01 02 (AC, END, INT – Indirect research)							
10 01 05 02 (AC, END, INT – Direct research)							
Other budget lines (specify)							
TOTAL							

⁴⁵ AC = Contract Staff; AL = Local Staff; END = Seconded National Expert; INT = agency staff; JPD = Junior Professionals in Delegations.

⁴⁶ Sub-ceiling for external staff covered by operational appropriations (former 'BA' lines).

⁴⁷ Mainly for the EU Cohesion Policy Funds, the European Agricultural Fund for Rural Development (EAFRD) and the European Maritime Fisheries and Aquaculture Fund (EMFAF).

The human resources required will be met by staff from the DG who are already assigned to management of the action and/or have been redeployed within the DG, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

Description of tasks to be carried out:

Officials and temporary staff	
External staff	

Description of the calculation of cost for FTE units should be included in the Annex V, section 3.

3.2.4. Compatibility with the current multiannual financial framework

- ☒ The proposal/initiative is compatible the current multiannual financial framework.
- ☒ The proposal/initiative will entail reprogramming of the relevant heading in the multiannual financial framework.

The tasks allocated to EMSA will require reprogramming of the budget line for the annual contribution to the Agency (02 10 02) under the current multiannual financial framework. The increase in appropriations for EMSA will be offset by a compensatory reduction of programmed spending under CEF Transport (02 03 01) under the current multiannual financial framework. The budget impact beyond the current MFF is an indicative overview, without prejudice to the future MFF Agreement.

- ☐ The proposal/initiative requires application of the flexibility instrument or revision of the multiannual financial framework⁴⁸.

Explain what is required, specifying the headings and budget lines concerned and the corresponding amounts.

3.2.5. Third-party contributions

- The proposal/initiative does not provide for co-financing by third parties.
- The proposal/initiative provides for the co-financing estimated below:

EUR million (to three decimal places)

	Year N	Year N+1	Year N+2	Year N+3	Enter as many years as necessary to show the duration of the impact (see point 1.6)			Total
Specify the co-financing body								
TOTAL appropriations co-financed								

⁴⁸ See Articles 12 and 13 of Council Regulation (EU, Euratom) 2020/2093 of 17 December 2020 laying down the multiannual financial framework for the years 2021 to 2027.

3.3. Estimated impact on revenue

– ☒ The proposal/initiative has no financial impact on revenue.

– ☐ The proposal/initiative has the following financial impact:

☐ on own resources

☐ on other revenue

please indicate, if the revenue is assigned to expenditure lines ☐

EUR million (to three decimal places)

Budget revenue line:	Appropriations available for the current financial year	Impact of the proposal/initiative ⁴⁹						
		Year N	Year N+1	Year N+2	Year N+3	Enter as many years as necessary to show the duration of the impact (see point 1.6)		
Article								

For miscellaneous ‘assigned’ revenue, specify the budget expenditure line(s) affected.

Specify the method for calculating the impact on revenue.

⁴⁹ As regards traditional own resources (customs duties, sugar levies), the amounts indicated must be net amounts, i.e. gross amounts after deduction of 20 % for collection costs.



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

‘ANNEX

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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