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REGULATORY SCRUTINY BOARD OPINION

Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE
COUNCIL amending Directive 2009/21/EC on compliance with flag State requirements

{COM(2023) 272 final}
{SWD(2023) 165 final}
{SWD(2023) 166 final}



EUROPEAN COMMISSION
Regulatory Scrutiny Board

Brussels,
RSB/

Opinion

Title: Impact assessment / Revision of the flag state Directive

Overall opinion: POSITIVE WITH RESERVATIONS

(A) Policy context

Vessel safety, pollution prevention and working and living conditions in ships are regulated at the international level by the UN International Maritime Organisation (IMO). The flag state Directive aims to ensure that EU Member States comply with their international obligations regarding ships flying their flags and to enhance safety and pollution prevention from those ships.

The Directive was subject to an evaluation and fitness check which identified areas for improvement. Accordingly, this report aims to support the revision of the flag state Directive, to ensure a high level of maritime safety and pollution protection across the Union.

(B) Summary of findings

The Board notes the additional information provided and commitments to make changes to the report.

However, the report still contains significant shortcomings. The Board gives a positive opinion with reservations because it expects the DG to rectify the following aspects:

- (1) The scale of the problems is not sufficiently clear, and the supporting evidence is missing, in particular concerning non-exclusive technical staff.**
- (2) The report does not clearly present the key policy choices, the different combinations of measures regarding inspections and how these compare in terms of effectiveness.**

This opinion concerns a draft impact assessment which may differ from the final version.

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(C) What to improve

(1) The report should better describe the magnitude of the problems and present the underlying evidence. It should explain the quality problems from the use of non-exclusive technical staff and whether staff shortages are a cause (or a result) of the use of non-exclusive staff. It should also clarify how extensive the use of non-exclusive technical staff among Member States is and explain why this is the case. The report should also assess how widespread the problems of inadequate oversight of recognised organisations and the lack of technical expertise are, identify their respective causes and describe the resulting consequences. It should be more specific on the evidence regarding the fragmentation of the internal market as well as the competitive advantage of the flag state doing fewer (than average) inspections.

(2) The report should better present the key policy choices and explain why the policy options are identical for three of the four specific objectives, based on a set of common measures with no alternatives, and clearly indicate the level of support for this common approach from different categories of stakeholders. The report should clarify whether other, potentially better performing combinations of measures (than options 1 to 4) were considered and what were the stakeholder views on alternative combinations of measures. The report should bring out more clearly the differences between the policy options regarding the specific objective on inspection and oversight, which seems to be the key policy choice.

(3) The report should justify its choice of assessment criteria for the comparison of options on effectiveness. For the specific objective on inspection and oversight, it should explain the causality between this objective and the selected criteria of fatalities and the tonnes of fuel lost at sea. For specific objective on uptake of digital solutions, the report should explain why it disregards parameters such as the number of Member States with digitalised flag registers, the use of e-certificates and common technical protocols for e-certificates, which reflect the aim to digitalise flag registers and enable interoperability. The report should explain how the effectiveness of options can differ regarding specific objectives 1, 3 and 4 given that all policy options contain exactly the same measures to tackle the problems related to these objectives. Based on such clarification, the report should present a comprehensive comparison table with clearly justified comparison criteria for effectiveness.

(4) The report should explain the need to maintain in EU law the requirement for International Maritime Organisation (IMO) audits, although this is already mandatory by the IMO rules. It should also better explain how the mandatory participation of the European Maritime Safety Agency in IMO audits would address the problem of legal uncertainty and the issues of duplication and transparency referred to.

(5) In the problem description the report should better discuss the link between the lack of harmonised inspections and the marine fatalities and pollution incidents. In the baseline scenario, it should explain why it does not consider any other relevant EU intervention, including the two linked initiatives of port state control and accident investigation. It should better present the complementarity and synergies with these two initiatives.

The Board notes the estimated costs and benefits of the preferred option in this initiative, as summarised in the attached quantification tables.

Some more technical comments have been sent directly to the author DG.

(D) Conclusion

The DG may proceed with the initiative.

The DG must revise the report in accordance with the Board's findings before launching the interservice consultation.

If there are any changes in the choice or design of the preferred option in the final version of the report, the DG may need to further adjust the attached quantification tables to reflect this.

Full title	Proposal for a Directive of the European Parliament and of the Council amending Directive 2009/21/EC on compliance with flag State requirements
Reference number	PLAN/2019/5434
Submitted to RSB on	18 January 2023
Date of RSB meeting	15 February 2023

ANNEX: Quantification tables extracted from the draft impact assessment report

The following tables contain information on the costs and benefits of the initiative on which the Board has given its opinion, as presented above.

If the draft report has been revised in line with the Board's recommendations, the content of these tables may be different from those in the final version of the impact assessment report, as published by the Commission.

I. Overview of Benefits (total for all provisions) – Preferred Option (Policy Option 2)		
Description	Amount	Comments
Direct benefits		
Improvement in the functioning of the internal market		Positive impact on the functioning of the internal market, both by improving overall maritime safety for the benefit of freight customers and passengers throughout the Union as well as by ensuring that the same safety level applies throughout the Union. The path towards digitalisation results in a high degree of harmonisation between Member States.
Enforcement costs savings for flag State authorities relative to the baseline (i.e. present value over 2025-2050)	EUR 48.8 to 52.9 million	Enforcement costs savings for flag State authorities are driven by measures related to the uptake of digital solutions. In terms of present value over 2025-2050, the enforcement costs savings are estimated at EUR 48.8 to 52.9 million.
Adjustment costs savings for ship operators relative to the baseline (i.e. present value over 2025-2050)	EUR 0.6 to 1.2 million	Adjustment costs savings for ship operators are driven by measures related to the uptake of digital solutions. In terms of present value over 2025-2050, the adjustment costs savings are estimated at EUR 0.6 to 1.2 million.

I. Overview of Benefits (total for all provisions) – Preferred Option (Policy Option 2)		
<i>Description</i>	<i>Amount</i>	<i>Comments</i>
Direct benefits		
Indirect benefits		
Reduction of external costs related to accidents relative to the baseline (i.e. present value over 2025-2050)	EUR 2,397.3 million	Indirect benefit to ships' crews, and to society at large, due to the lives saved and injuries avoided. As deficiencies identified during flag State inspections typically have to be rectified for the ships to maintain their certificates, flag State inspections are expected to lead to a reduction in the number of ship deficiencies over time and thereby to improve safety. The impacts are estimated at 69 lives saved and 810 injuries avoided relative to the baseline over 2025-2050 relative to the baseline. The reduction of the external costs related to accidents relative to the baseline (i.e. present value over 2025-2050) is estimated at EUR 2,397.3 million.
Reduction in the bunker fuel lost at sea, relative to the baseline over 2025-2050 (in tonnes)	1,418 tonnes of bunker fuel lost avoided	Indirect benefit to society at large. Preventing accidents from occurring in the future is projected to avoid 1,418 tonnes of bunker fuel lost at sea relative to the baseline. This is expected to have a positive impact on the quality of marine water and biodiversity.
Administrative cost savings related to the 'one in, one out' approach*		
-	-	Not relevant.

II. Overview of costs – Preferred option (<i>Policy Option 2</i>)							
		Citizens/Consumers		Businesses		Administrations	
		One-off	Recurrent	One-off	Recurrent	One-off	Recurrent
Direct adjustment costs relative to the baseline (i.e. present value over 2025-2050)		-	-	-	For ship operators: 3.2 million	For flag State authorities : EUR 3.3 million For EMSA: EUR 0.5 million	For flag State authorities: EUR 45.6 million For EMSA: EUR 5.9 to 6.5 million For the European Commission: EUR 0.6 to 1.1 million
Direct administrative costs		-	-	-	-	-	-
Direct enforcement costs relative to the baseline (i.e. present value over 2025-2050)		-	-	-	-	-	For flag State authorities: EUR 0.1 to 0.3 million
Costs related to the ‘one in, one out’ approach							
Total	Direct adjustment costs	-	-	-	Direct adjustment costs for ship operators are estimated at EUR 3.2 million. They are expected to be compensated by the adjustment costs		

II. Overview of costs – Preferred option (<i>Policy Option 2</i>)							
		Citizens/Consumers		Businesses		Administrations	
		One-off	Recurrent	One-off	Recurrent	One-off	Recurrent
					savings due to the digital solutions (EUR 0.6 to 1.2 million) and the safety benefits.		
	Indirect adjustment costs	-	-	-	-		
	Administrative costs (for offsetting)	-	-	-	-		