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NOTE

From:	General Secretariat of the Council
To:	Delegations
Subject:	Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directive 2009/21/EC on compliance with flag State requirements [doc ST 10103/23 - COM(2023)272- final Interinstitutional file -2023/172 (COD)] – Opinion of the European Economic and Social Committee

Delegations will find, in annex, the opinion of the European Economic and Social Committee on the above-mentioned proposal.

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OPINION

European Economic and Social Committee

Compliance with flag State requirements

Revision of Directive on compliance with flag State requirements
[COM(2023)272- final-2023/172 (COD)]

TEN/819

Rapporteur: **Tanja BUZEK**

Referral	European Parliament, 10/07/2023 Council of the European Union, 18/07/2023
Legal basis	Articles 100(2) and 304 of the Treaty on the Functioning of the European Union
Section responsible	Transport, Energy, Infrastructure and the Information Society
Adopted in section	06/09/2023
Adopted at plenary	20/09/2023
Plenary session No	581
Outcome of vote (for/against/abstentions)	218/0/5

1. Conclusions and recommendations

1.1 The European Economic and Social Committee (EESC) welcomes the initiative of the European Commission to revise Directive 2009/21/EC to ensure high quality and competitive shipping operating under EU Member State flags in a uniform manner, as well as that Member States comply with their obligations as flag States.

1.2 The EESC stresses the importance of ensuring clarity and consistency between International Maritime Organisation (IMO) regulations and the relevant EU legislative framework, in particular the port State control and the proposal to update Directive 2009/18/EC to increase maritime safety and the protection of the marine environment, which are also proposed to be revised.

1.3 The EESC underlines the importance of developing a Quality Management System (QMS) to ensure procedures are systematically followed.

1.4 The EESC would strongly welcome substantial participation and contribution of the social partners and other relevant maritime industry stakeholders through their participation in the high level group on flag State matters that will be established.

1.5 The EESC believes that the revision of the flag State requirements Directive must ensure that flag States fully implement seafarers' rights onboard their ships. The real challenges are strong flag State control, as well as strong port State control in relation to the requirements of the Maritime Labour Convention (MLC) 2006 which goes hand in hand with technical assistance and training provided by the European Maritime Safety Agency (EMSA), International Labour Organization (ILO), World Maritime University (WMU), International Training Centre of the ILO, International Maritime Law Institute etc.

1.6 The EESC suggests that EU flag States should be more engaged with the recommendations of the Commission's study on social aspects within the maritime transport sector (published in 2020)¹, including to achieve a common approach in the implementation and enforcement of the MLC 2006.

1.7 The EESC in particular recommends that training provided by EMSA to EU flag State authorities be continued, reinforced and extended to cover MLC 2006-related aspects in more detail. The EESC believes that the Agency could play a substantial role in supporting the training of officials of the flag State administrations, as well as port State control inspectors of the Member States, to conduct targeted inspections in this particular regard as well as within its wider training mandate².

¹ European Commission, Directorate-General for Mobility and Transport, *Study on social aspects within the maritime transport sector: final report*, Publications Office, 2020, <https://data.europa.eu/doi/10.2832/49520>.

² The EESC opinion TEN/810 on *the European Maritime Safety Agency* deals more specifically with the Agency's activities.

- 1.8 The EESC believes that the new proposal should encourage the European flag States to enhance their control level. The European Union should take the lead against flags of convenience by showing an excellence level of requirements and control over its vessels. The sector's intrinsic global character underlines the importance of a flag-neutral approach and of a favourable regulatory environment, which is a precondition for creating a level playing field and avoiding unwanted practices.
- 1.9 The EESC regrets the missed opportunity to lead beyond international minimum requirements and create a European maritime space for more competitive and economically, environmentally and socially sustainable shipping with clear and transparent rules. The EESC asks the Commission to explore further EU initiatives in this direction.
- 1.10 The EESC calls on the Commission to adopt implementing acts to ensure proper monitoring of the recognised organisations (ROs). The EESC believes that the effectiveness of the current system can be put into question because of the involvement and double role of the classification societies. EU Member State flags are increasingly delegating their surveying responsibilities to ROs and this raises the question of whether flag States are fulfilling their obligation.

2. Background

- 2.1 On 1 June 2023, the Commission published its 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). It is part of the Commission's Maritime safety package to support clean and modern shipping³.
- 2.2 The proposal concerns a modification of the existing Directive of 2009 and is fully consistent with Directive 2009/16/EC on port State control and Directive 2009/18/EC on accident investigation. All three Directives are being amended at the same time.
- 2.3 This legislative proposal is part of a set of revision proposals by the Commission to 'ensure efficient, sustainable, and safe maritime traffic and transport in EU waters and beyond, for the benefit of our citizens, coastal communities, marine environment, and healthy oceans'.
- 2.4 The specific objectives of the revision are:

- Update and alignment of the Directive with the international rules to provide better consistency and legal clarity, in particular as regards the IMO Instruments Implementation Code (III-Code);

³ EESC opinions related to the Maritime safety package include: TEN/809 – *Revision of the Directive on Ship-Source Pollution*, TEN/810 – *European Maritime Safety Agency*, TEN/817 – *Revision of the Directive on Maritime accident investigation*, TEN/818 – *Revision of the Port state control Directive* and TEN/819 – *Revision of the Directive on compliance with flag State requirements*.

- Ensuring adequate inspections of flagged ships and monitoring oversight of ROs working on behalf of the flag State;
- Ensuring a higher uptake of digital solutions by using and sharing electronic certificates, interoperable with EMSA-hosted databases, moving away from cumbersome paper-based certification systems for both administrations and ships;
- Ensuring a harmonised approach in the understanding, reporting and measuring of the performance of flag States fleets and duties.

3. General comments

3.1 The EESC shares the Commission's assessment that the COVID-19 pandemic was a stark reminder of the key role that maritime transport and, in particular, its workers play. Revamped EU policies need to support the industry and its workers and consider the importance of a sector that operates 75% of the EU's external trade, with global shipping even moving 90% of world trade. While the maritime sector has proved considerably resilient during the pandemic, it has nonetheless revealed substantial challenges of disrupted supply chains in global trade and an unacceptable crew-change crisis stranding half a million seafarers on board their ships.

3.2 The new geopolitical realities triggered by the Russian war of aggression against Ukraine further pose a substantial menace to international maritime security and the safety of seafarers⁴. Faced with both challenges and opportunities with the various transitions underway, the maritime sector has to drive the decarbonisation and digitalisation of the industry, with ensuring a just transition and advancing its competitiveness in mind.

3.3 The EESC welcomes the update and alignment of the Directive on flag State requirements with the international rules to provide better consistency and legal clarity, in particular as regards the III-Code. The incorporation of the flag-State-relevant parts of the III-Code into EU legislation was necessary to make it enforceable under the EU legal order, as the IMO has no enforcement power.

3.4 The EESC considers this proposal to be an important further step in improving maritime safety and sustainability and to ensure high quality and competitive shipping operating under EU Member State flags in a uniform manner, as well as that Member States comply with their obligations as flag States.

3.5 The EESC, however, regrets the missed opportunity to lead beyond international minimum requirements and create a European maritime space for more competitive and economically, environmentally and socially sustainable EU shipping with clear and transparent rules, with this providing a good example of high quality shipping services for others to follow.

3.6 The EESC stresses the importance of a coherent approach in amending the Directives on flag State requirements, on port State control and on maritime transport accident investigation at the same time. The proposals have to ensure coherence with each other and any proposed change to

⁴ The EESC opinion REX/576 deals with the recommendations for the new EU Maritime Security Strategy.

one has to take the other two Directives and the broader international regulatory framework into account.

3.7 The EESC welcomes the provision for the establishment of a high level group on flag State matters under the provisions of the new Article 9a for discussing flag State issues and facilitating exchanges of experience between the Member States' national authorities, flag State experts and inspectors. However, the EESC would also strongly welcome a substantial contribution from the social partners through their participation in this group, as well as other relevant maritime industry stakeholders.

3.8 The EESC welcomes the provision for the introduction of electronic documents that are to be recorded, kept, reported and shared as well as being interoperable with EMSA-hosted databases, moving away from paper-based certification systems towards higher efficiency.

3.9 The EESC believes that any revision of the flag State requirements Directive must ensure that flag States fully implement seafarers' rights onboard their ships and underlines the importance of enforcing Directive 2013/54/EU concerning certain flag State responsibilities for compliance with and enforcement of the MLC 2006 and the Directive 2009/13/EC implementing the sectoral social partner agreement concluded by the European Community Shipowners' Associations (ECSA) and the European Transport Workers' Federation (ETF) on the MLC 2006.

3.10 The EESC believes that the new proposal should encourage the European flag States to enhance their control level. The European Union should take the lead against flags of convenience by showing an excellence level of requirements and control over its vessels.

3.11 The maritime sector is characterised by international competition with major regulatory differences across flag States that have exacerbated unwanted practices such as the reflagging of vessels. The sector's intrinsic global character underlines the importance of a flag-neutral approach and of a favourable regulatory environment, which is a precondition for creating a level playing field and avoiding unwanted practices.

3.12 The EESC believes that it is high time to prevent unfair competition by some companies, as well as inept flag States. There should be a 'genuine link' between the real owner of a vessel and the flag the vessel flies, in accordance with the UN Convention on the Law of the Sea (UNCLOS supra note 1, Art. 91(1)). In many cases, the registries themselves are not even run from the country of the flag and this makes it more difficult for unions, industry stakeholders and the public to hold ship owners to account.

3.13 The Commission should adopt implementing acts to ensure that administrations operate on sufficient resources and to ensure the proper monitoring of the ROs. The EESC believes that the effectiveness of the current system can be put into question because of the involvement and double role of the classification societies.

3.14 The EU maritime safety acquis allows a flag State to delegate the technical work to classification societies, to perform the statutory surveys required for verification that the ship is fit for purpose, on their behalf. A classification society acting in this way becomes an RO. The flag State may also allow the RO to issue certificates on its behalf. As a result, EU Member State flag authorities are increasingly delegating their surveying responsibilities to ROs. This results in a gradual transfer of knowledge and experience from public administrations to private entities.

3.15 Classification societies and ROs are private entities that work for profit but are tasked with public entities' duties. While classification societies and ROs are responsible for checking whether ships are safe and clean, they can also be influenced by individuals to provide more lenient treatment because strict surveys may result in higher costs and ship detention. This raises the question of whether flag States are fulfilling their obligation and whether this double role of classification societies is the correct approach.

4. Specific comments

4.1 Fatigue and deterioration of the working and living conditions on board are directly linked to risks to safety. Having mentally and physically exhausted seafarers on board increases not only the risk of human error but is putting the safety of lives and ships at sea as well as the marine and coastal environment at risk.

4.2 A recent report⁵ of the IMO-founded WMU has shown that there is a culture of systematic adjustment of work and rest hours and a great need for systematic verification of the records and port State control inspectors to be adequately trained to conduct targeted inspections in such crucial areas. Flag States should also review the guidance given to their surveyors and those authorised to act on their behalf to include systematic verification of records' accuracy.

4.3 In this regard, the EESC suggests that EU flag States and EMSA be more engaged with the recommendations of the Commission's 2020 study on social aspects within the maritime transport sector, in particular:

- Achieve a common approach in the implementation and enforcement of the MLC 2006 by increasing levels of cooperation and exchange of information between EU port and flag State authorities, and doing so through:
 - Publication of a guidance document by EMSA offering advice on how to address the vague or ambiguous provisions of the MLC 2006. It could also provide a list of the most frequent problems detected during port State inspections of ships under each flag, as well as explanations and clarifications on each flag State's specific documentation and certificates;
 - Reinforcement of training provided by EMSA to EU flag State administrations and officials as well as port State control officers, ensuring that it covers aspects related to the

⁵ World Maritime University (2020), *A culture of adjustment, evaluating the implementation of the current maritime regulatory framework on rest and work hours (EVREST)*, https://commons.wmu.se/lib_reports/66/.

MLC 2006 in enough detail. It is important to focus on those MLC 2006 deficiencies that are more serious, such as non-payment of salaries, social security issues and other detainable deficiencies. Moreover, training sessions could include activities that encourage discussions between EU flag State authorities to improve communication and exchange of information and good practices.

Brussels, 20 September 2023

Oliver Röpke

The president of the European Economic and Social Committee
