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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

- Letter to the Chair of the European Parliament Committee on Transport and Tourism

Following the Permanent Representatives Committee meeting of 15 March 2024 which endorsed the final compromise text with a view to agreement, delegations are informed that the Presidency sent the attached letter, together with its Annex, to the Chair of the European Parliament Committee on Transport and Tourism (TRAN).



Brussels, 15 March 2024

Ms Karima DELLI
Chair of the Transport and Tourism Committee

European Parliament
Rue Wiertz 60
B-1047 BRUSSELS

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

Dear Ms DELLI,

Following the informal contacts on this proposal between the representatives of the three institutions, the Permanent Representatives Committee today agreed with the final compromise text.

I am therefore now in a position to confirm that, should the European Parliament adopt its position at first reading, in accordance with Article 294(3) TFEU, in the form of the compromise text as set out in the Annex to this letter (subject to revision by the lawyer-linguists of the two institutions), the Council, in accordance with Article 294(4) TFEU, will approve the European Parliament's position and the act shall be adopted in the wording which corresponds to the position of the European Parliament.

On behalf of the Council, I also wish to thank you for your close cooperation which should enable us to reach agreement on this file at first reading.

Yours sincerely

Pierre CARTUYVELS
Chair of the
Permanent Representatives Committee (Part 1)

Copy:

- Ms Adina VĂLEAN, Commissioner
- Ms Caroline NAGTEGAAL, European Parliament Rapporteur

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2023/0172 (COD)

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 Committee¹,

~~Having regard to the opinion of~~ **After consulting** the Committee of the Regions²,

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.
 - (1a) *It is important to take into account the on-board working and living conditions of the crew and the training and qualifications of crew members, in line with Directive 2013/54/EU and Directive 2022/993 of the European Parliament and of the Council, given that health, safety, security and the human factor are closely interlinked and that it is of utmost importance to prevent any damage caused by human error.*
- (2) Under the provisions of the ~~1982~~ United Nations Convention on the Law of the Sea-1982 (UNCLOS) and of the Conventions for which the *International Maritime Organization (IMO)*IMO is the depository, the States which are party to those instruments are responsible for ~~promulgating~~**adopting** laws and regulations and for taking all other ~~steps~~**measures** which may be necessary to give those instruments full ~~and complete~~ effect so as to ensure that,

¹ OJ C , , p. .

² OJ C , , p. .

from the point of view *in terms* of safety of life at sea and *the* 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~~ ***should take the necessary measures*** 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.~~ ***To that end***, Member States have ~~to~~ ***should*** 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~~ Code), ***adopted on 4 December 2013***, which contains the mandatory provisions to be implemented by flag States. ***In accordance with Article 91(1) of UNCLOS, there must be a genuine link between a vessel and its flag State, as interpreted by international jurisprudence that is reflected in the duties of a flag State.***
- (3a) ***Without prejudice to provisions concerning force majeure laid down in the IMO Conventions, Member States should be able to, in crisis situations that may endanger the physical integrity of personnel responsible for or performing surveys, inspections, audits and verifications, introduce restrictions on such activities, while allowing ships to continue to operate.***
- (3b) ***The following international instruments in their latest versions refer to the application of the III Code: the International Convention for the Safety of Life at Sea, 1974; the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto; the Protocol of 1997 to amend the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto; the International Convention on Standards of Training, Certification and Watchkeeping, 1978; the International Convention on Load Lines, 1966, and the Protocol of 1988 relating thereto; the International Convention on Tonnage Measurement of Ships, 1969; and the Convention on the International Regulations for Preventing Collisions at Sea, 1972.***
- (3c) ***Flag State surveyors are those authorised by the competent authorities of the Member States to survey and certify ships. Such personnel may be assisted by other personnel, for instance those inspecting radio installations. However, such personnel should not include technicians involved in the servicing of life-saving appliances or surveyors that are not directly involved in the survey of the merchant shipping fleet.***

- (3d) *Section 22 of the III Code states that a flag State should take all necessary measures to ensure compliance with 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. In particular, section 22.2 refers to inspections to verify that the actual condition of the ship and its crew is in conformity with the certificates it carries. The periodicity of such inspections should be established by the Member States either by using a risk-based approach or by using their own procedures and instructions, including quantitative or qualitative criteria.*
- (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.~~
- (5) ~~At international level, the function of investigating~~ *responsibility to investigate* maritime accidents ~~is part of~~ *falls on the* flag State responsibilities, while at *Union level the fundamental principles governing the investigation of maritime accidents, such as the independence of the investigative bodies in the Member States, are* ~~the Union level it is made independent and regulated by Directive 2009/18/EC of the European Parliament and of the Council³. 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~~ *according to* 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~~ *Minimum criteria and inspection targets related to those resources should be established on the basis of the practical experience of the Member States,* including development of rules and design review, ~~of the recognised organisations~~

³ 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).

and uniform database for issuance of electronic certificates, including the tools for checking the validity of those certificates, would facilitate and contribute to a tangible breakthrough towards maritime digitalization within the Union. It would support operational needs of its actors, in particular those Member States that have not been in a position to develop their own systems for electronic certificates, and also attend to a more efficient use of available limited resources.

- (12) *For monitoring and inspection purposes, essential information, including electronic reports and ship certificates following flag State inspections, such as the ship's particulars, registered owner and ship's certificates should be available for all concerned to all authorities and the Commission, for monitoring purposes and for the enhancement of efficiency in carrying out any type of inspection concerned and to the Commission.*
- (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 demonstrate their compliance with the mandatory IMO instruments, as required by Resolution A 1067(28) in its up-to-date version 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 Council⁵, 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 *the* quality of the flagged ships and *to* ensure a level playing field between maritime administrations *of the Member States*, a quality certification of administrative procedures, included in the quality management system in accordance with ISO or equivalent standards, *It* should be clarified to cover all registers, whether national (first registers) or international (second or overseas), *cover the operational parts of the maritime administration related to survey, inspection, audit, verification and certification*

⁵ 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).

under the responsibility of the Member State as flag State, *whether national (first registers) or international (second or overseas registers)*. Furthermore, *all relevant*-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~~ *assist in carrying out* inspections, other than statutory surveys *or flag State inspections*, should be clarified. *The quality management system should ensure that the tasks assigned to recognised organisations under the scope of this Directive should comply with the flag State's instructions, and should include the necessary control measures in that respect.* In order to ensure *their* independence, *Member States should take appropriate measures to prevent conflicts*-the absence of any conflict of interest of involved personnel ~~should be documented~~*in relation to the work they are to perform.*

- (15a) *In coordination with the International Labour Organisation (ILO), the Commission and the Member States are encouraged to continue to advocate for the improvement of seafarers' working and living conditions.*
- (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 these~~

consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law Making⁶. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the 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 Council *with regard to the ships information database should be adopted*. 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 of Directive 2009/21/EC, 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 Council⁷.
- (20a) *The Commission should set up a forum for Member State experts dealing with flag State matters, as well as other stakeholders, when necessary, to regularly exchange information and best practices and to develop guidance on issues such as procedures for ship inspections, training resources for inspectors, risk-based criteria that can be used to improve the effectiveness of inspections, the possible development of a common harmonised performance scheme, criteria for analysing flag State performance with a view to identifying best practices and any other issue relevant to the implementation of this Directive.*
- (20b) *In order to avoid a disproportionate administrative burden in the transposition of this Directive, Member States may, as long as the conditions defined below are fulfilled, apply the following exemptions. The Member States which do not have ships flying their flag that fall within the scope of this Directive should not be obliged to transpose and implement Article 6 of this Directive as regards the sharing of information related to ships. The Member States which do not have ships flying their flag that fall within the*

⁶ OJL 123, 12.5.2016, p. 1.

⁷ 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. 13.13).

scope of this Directive and have closed their register for these ships should not be obliged to transpose and implement this Directive.

- (21) The European Maritime Safety Agency (EMSA) should provide the necessary support to ensure for the implementation of Directive 2009/21/EC, notably by providing relevant training for flag State inspectors and surveyors, if so requested by Member States.
- (22) *Since the objectives of this Directive, namely to enhance maritime safety and prevent pollution from ships, cannot be sufficiently achieved by the Member States but can rather, by reason of its scale or effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of proportionality, subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, 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) in Article 1(1), points (a) and (b) are replaced by the following:

'(a) to ensure that Member States effectively and consistently discharge their responsibilities and obligations as flag States; and

(b) to enhance safety, working and living conditions, and to prevent pollution from ships flying the flag of a Member State.'

(0) Article 2 is replaced by the following:

'Article 2 Scope

This Directive shall apply to the administration of the State whose flag the ship is flying, for ships subject to certification and engaged in any type of international voyages.'

(1) Article 3 is amended as follows:

(-a) point (a) is replaced by the following:

'(a) 'ship' means a ship or craft flying the flag of a Member State falling within the scope of the Conventions and for which a certificate is required;'

(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 Council⁸, with the exception of the Maritime Labour Convention, 2006 (MLC 2006) making the use of the III Code mandatory, and the related codes of mandatory status, in their up-to-date version;

(g) 'III Code' means parts 1 and 2 of Resolution A.1070(28) ("IMO Instruments Implementation Code"), adopted by the International Maritime Organisation (IMO), Organization (IMO), Part 2, with the exception of paragraphs 16.1, 18.1, 19.16, 18, 19, 20.3, 21, 29, 30, 31, 32, 34, 38, 39, 40 and 41, in its up to date version 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, responsible for or performing to carry out surveys, verifications and audits related to the statutory certificates of ships and companies covered by the relevant international mandatory instruments and fulfilling the independence requirement specified laid down 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

⁸ 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).

fulfils the independence requirement specified in Article 8(1), and the minimum criteria specified in Annex XI to Directive 2009/16/EC;

- (i) *a public sector employee, working exclusively for and duly authorised by the competent authority of a Member State; or*
- (ii) *a person non-exclusively employed and duly authorised by the competent authority of a Member State, on an ad hoc basis or in a contractual situation with the competent authority of the Member State,*

who may carry out flag State inspections, and fulfils the qualification and independence requirements laid down in Article 8(1);

- (j) ‘other personnel assisting in the performance of inspections ~~surveys~~’ means a person not exclusively employed by, but in a contractual situation with persons *duly authorised by* the competent authority of the Member State, and duly authorised by the competent authority of the Member State *or by a recognised organisation acting on its behalf*, who may carry out certain inspections, other than statutory *assist flag State surveyors when carrying out surveys, as* specified by the competent authority, and who ~~fulfils~~ *fulfil* the criteria of communication, qualification and independence ~~specified~~ *laid down* in Article 8(1);
- (k) ‘~~Supplementary~~ flag State inspection’ means an ~~on-board~~ inspection, not leading to certification; *conducted to verify that the actual condition of the ship and its crew is in conformity with the certificates it carries*
- (l) ‘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 *to operate*, the Member State concerned shall ensure that the ship in question complies with the applicable international rules and regulations, *including safety, social and environmental standards. Those measures may be taken by a recognised organisation, acting on behalf of the Member State, when duly authorised by the competent authority.* In particular, it shall verify

- (i) *records of deficiencies and non-conformities from statutory surveys, audits and verifications performed by the flag State;*
- (ii) *relevant accident investigation reports*
- (iii) *detentions or prohibition of operation notices issued by a port State control authority*
- (iv) *exceeding a port State control deficiency ratio established by each Member State*
- (v) *records of deficiencies from inspections carried out according to national legislation as deemed appropriate by each Member State.*
- (vi) *other relevant information deemed necessary by the Member State*

Member States using a risk-based approach shall ensure that ships for which there is no sufficient data available for the calculation of the risk rating are inspected at least once every 5 years.

Member States not using a risk-based approach shall carry out flag State inspections using their own procedures, instructions and relevant information in compliance with the III Code. They shall ensure that every ship is inspected at least once every 5 years.

3. Member States shall ensure that any deficiencies *requiring corrective measures, including safety, environmental and social concerns*, confirmed or revealed by an inspection carried out in accordance with paragraph 2(c) are rectified *within an appropriate timeframe, as determined by the flag State*.
4. On completion of ~~any inspection carried out~~ *flag State inspection*, the flag State inspector shall draw up a report on the ~~basis of Annex IX to Directive 2009/16/EC~~ *outcome of this task*.

'Article 4b

Safety and pollution prevention requirements

1. Each Member States ~~State~~ shall ensure that ~~its administration relies on~~ appropriate resources, ~~commensurate with~~ *according to* the size and type of its fleet *and with respect to the implementation of the administrative processes, procedures and resources necessary*, in particular, for meeting the obligations

provided for in Article 4a and paragraphs 2 and 3 of this Article, *are available to its administration.*

2. Each Member State shall ensure the oversight of the activities of flag State surveyors, flag State inspectors and recognised organisations and ~~participate~~ *other personnel assisting* in the EU-Recognised Organisation oversight scheme specified by the high level group on flag State matters referred to in Article 9a(1) *performance of surveys, and recognised organisations.*
3. Each Member State shall ~~develop or maintain~~ *ensure that* a design review and technical decision-making capability ~~commensurate with~~ *according to* the size and type of its fleet, *are developed or maintained.*
4. ~~In order to ensure harmonisation of the supplementary flag State inspections referred to in Article 4a(2) point (e), 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).²~~

‘Article 4c

~~Common~~ *Training and* capacity building of flag State personnel

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

- (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~~**Commission** shall be communicated to the inspection database provided for ~~develop, maintain and update a digital interoperable portal providing for a single point of access for the information in paragraph 1 and allowing Member States' flag and port State inspectors to access this information in the performance of their duties.~~
The Commission shall make that portal electronically accessible and free of charge for Member States.
That portal shall not contain personal data or confidential information.
The Commission shall ensure the interoperability of the portal with the ship information database referred to in Article 6a.
This digital portal~~The master~~ shall also be provided with a copy of the report ~~be established [three] years from the date of entry into force of this amending Directive, at the latest.~~
- 2a. *The Commission shall adopt implementing acts to define the technical functioning of the digital portal referred to in paragraph 2 of this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 10(2).'*
- (6) The following Article 6a is inserted:
- ' Article 6a
~~Inspection.~~**Ships information** database
 - 1. The Commission shall develop, maintain and update ~~an inspection~~**a ships information** database containing the information specified ~~referred to~~ in Article 6 ~~All and providing services for Member States on issuing and controlling of electronic certificates. The ships information database~~ shall be

~~specifications for a harmonised electronic reporting interface provided for in Article 24a of Directive 2009/16/EC.~~

5a. The Commission shall adopt implementing acts to define the technical functioning of the database referred to in Article 6a. Member States communicating information in accordance with paragraph 2 of this Article shall have access to the database information submitted, under the conditions defined in those implementing acts. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 10(2).

(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 **according to the cycle adopted at** the IMO. Member States shall also ~~make the same information available to the public~~ **publish the outcome of the audit**, 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~~ **with the Administration legal duties pursuant to this Directive**, the Commission shall collect the necessary information and ~~carry~~ **when carrying** out visits to Member States, in accordance with Article xx of Regulation (EU) xx/xx of the European Parliament and of the Council^H ~~{EMSA Regulation to be adopted},;~~

(8) Article 8 is amended as follows:

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

(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 operational parts of* the flag State-related activities of its administration. Such quality management system shall be certified in accordance with the applicable international quality *standards such as ISO 9001* 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 *personnel performing surveys, inspections, audits and verifications and the flag State personnel* who manage, perform and verify work relating to and affecting safety and pollution prevention *the flag State obligations*. Such responsibilities shall be documented, specifying ~~what~~ *the* type and scope of inspection work that may also be performed by other personnel assisting in the performance of inspections, and also specify *non-exclusively employed flag State inspectors, and* how such personnel shall communicate and report. *The quality management system shall indicate the tasks that can be carried out by other personnel assisting in the performance of surveys.*

Each Member State shall ensure that *flag State inspectors non-exclusively employed, and* other personnel assisting in the performance of inspections *surveys*, have education, training and supervision commensurate with the tasks they are authorized *authorised* to perform, *and that they are able to apply flag State instructions, procedures and criteria.*

All personnel performing a survey or an inspection shall sign a declaration of absence of conflict of interest attesting to their *Member States shall take appropriate measures to prevent conflicts of interests of all personnel performing a survey, verification or inspection and regarding* independence in relation to the work to be performed, which shall be kept by the Member State responsible authority.

Three years after the date of transposition of this Directive, the quality management system shall cover the aspects related to this Article.'

(a2) paragraph 2 is replaced by the following:

Reports and Review

Every five years, and for the first time by [three years from the date of entry into force of this amending Directive] the Commission shall present a report to the European Parliament and to the Council on the application of this Directive.'

(10) The following new Articles are inserted:

⁴ Article 9a

*High level group on flag State matters****Exchange of best practice and experience***

1. The Commission shall establish a high level group on flag State matters for discussing flag State issues and facilitate exchanges of experience***provide for the organisation of exchange of experiences and best practices*** between the Member States' national authorities, ***and*** flag State experts and inspectors, including, as appropriate, ***other relevant stakeholders, for the implementation of this Directive*** those from the private sector.

~~The high level group on~~***Member States' national authorities and flag State mattersexperts and inspectors*** shall be composed of representatives of the Member States and of the Commission, assisted by EMSA***explore, together with the Commission, the possibility to develop guidance on elements such as the methodology to perform flag State inspections, content and format of reporting or capacity building.***

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 4e, 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 *inform the Commission* once a

year of the number of flag State inspections performed in accordance with Article 4a indicating, for each inspection, the IMO number of the ship, the date and the place., 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 State²

(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

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.

(13a) In Article 11 the following paragraph is added:

3. *By derogation from the first subparagraph of paragraph 1, a) the Member States which do not have ships flying their flag that fall within the scope of this Directive may derogate from the obligation to transpose and implement Article 6 of this Directive as long as this condition is fulfilled. b) the Member States which do not have ships that fall within the scope of this Directive and have closed their register for these ships may derogate from the obligation to transpose and implement this Directive as long this condition is fulfilled. Any Member State that intends to avail itself of one of these derogations shall notify the Commission by [date of transposition]. Any subsequent change shall also be communicated to the Commission.*

Those Member States may not allow ships falling within the scope of this Directive to fly their flag nor register such ships in their national registry until they have completely transposed and implemented this Directive.'

- (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: 30 months from the date of entry into force of this amending Directive*~~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. ***They shall immediately inform the Commission thereof.***

When Member States adopt those ~~provisions~~**measures**, they shall contain a reference to this Directive or ***shall*** be accompanied by such reference on the occasion of their official publication. ~~Member States shall determine how~~**The methods of making such reference is to be made**~~shall be laid down by Member States.~~

- ~~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

ANNEX

'ANNEX

Resolution A.1070(28)

(adopted on 4 December 2013)

IMO INSTRUMENTS IMPLEMENTATION CODE (III CODE)

PART I—COMMON AREAS

Objective

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

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.

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.²~~
-