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INFORMATION NOTE

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| From: | General Secretariat of the Council |
| To: | Permanent Representatives Committee/Council |
| Subject: | Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directive 2009/21/EC on compliance with flag State requirements - Outcome of the European Parliament's first reading and Corrigendum procedure (Strasbourg, 10 April 2024 and 22 October 2024) |

I. INTRODUCTION

In accordance with the provisions of Article 294 of the TFEU and the Joint Declaration on practical arrangements for the co-decision procedure¹, a number of informal contacts have taken place between the Council, the European Parliament and the Commission with a view to reaching an agreement on this legislative file at first reading.

This file was expected² to undergo the Corrigendum procedure³ in the European Parliament after adoption by the outgoing European Parliament of its position at first reading.

¹ OJ C 145, 30.6.2007, p.5.

² 10819/24 + COR 1.

³ Rule 251, EP Rules of Procedure.

II. VOTES

At its sitting of 10 April 2024, the European Parliament adopted amendment 34 (without legal linguistic revision) to the Commission proposal and a legislative resolution, constituting the European Parliament's position at first reading. It reflects what had been provisionally agreed between the Institutions.

After finalisation of the adopted text by the legal linguists, the European Parliament approved on 22 October 2024 a corrigendum to the position adopted at first reading.

With this corrigendum, the Council should be able to approve the position of the European Parliament as set out in the Annex⁴ hereto, thus bringing to a close the first reading for both Institutions.

The act would then be adopted in the wording which corresponds to the European Parliament's position.

⁴ The text of the corrigendum is set out in the Annex. It is presented in the form of a consolidated text, where changes to the Commission's proposal are highlighted in bold and italics. The symbol "■" indicates deleted text.

P9_TA(2024)0203

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

European Parliament legislative resolution of 10 April 2024 on the 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)0272 – C9-0188/2023 – 2023/0172(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2023)0272),
- having regard to Article 294(2) and Article 100(2) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C9-0188/2023),
- having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
- having regard to the opinion of the European Economic and Social Committee of 20 September 2023¹,
- after consulting the Committee of the Regions,
- having regard to the provisional agreement approved by the committee responsible under Rule 74(4) of its Rules of Procedure and the undertaking given by the Council representative by letter of 15 March 2024 to approve Parliament's position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,
- having regard to Rule 59 of its Rules of Procedure,
- having regard to the opinion of the Committee on Fisheries,
- having regard to the report of the Committee on Transport and Tourism (A9-0418/2023),

¹ OJ C, C/2023/877, 8.12.2023, ELI: <http://data.europa.eu/eli/C/2023/877/oj>.

1. Adopts its position at first reading hereinafter set out;
2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Position of the European Parliament adopted at first reading on 10 April 2024 with a view to the adoption of Directive (EU) 2024/... 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 Committee⁶,

After consulting the Committee of the Regions **■** ,

Acting in accordance with the ordinary legislative procedure⁷,

⁶ OJ C, C/2023/877, 8.12.2023, ELI: <http://data.europa.eu/eli/C/2023/877/oj>.

⁷ Position of the European Parliament of 10 April 2024.

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) *It is important to take into account the on-board living and working conditions of seafarers and the training and qualifications of seafarers, in line with Directive 2013/54/EU of the European Parliament and of the Council⁸ and Directive (EU) 2022/993 of the European Parliament and of the Council⁹, 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.*
- (3) Under the provisions of the United Nations Convention on the Law of the Sea of 1982 (UNCLOS) and of the conventions for which the *International Maritime Organization (IMO)* is the depository (“IMO Conventions”), the States which are party to those instruments are responsible for *adopting* laws and regulations and for taking all other *measures* which may be necessary to give those instruments full effect so as to ensure that, *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.

⁸ 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).

⁹ Directive (EU) 2022/993 of the European Parliament and of the Council of 8 June 2022 on the minimum level of training of seafarers (OJ L 169, 27.6.2022, p. 45).

- (4) To ensure the effectiveness of the IMO Conventions in the Union, ■ all Member States *should take the necessary measures* to discharge the responsibilities and obligations laid down in those conventions with respect to ■ ships flying their flag. *To that end*, Member States *should* discharge their responsibilities and obligations as flag States effectively and consistently in accordance with IMO Resolution A.1070(28) ■ on the IMO Instruments Implementation Code (the ‘III 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.*
- (5) *Without prejudice to the 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.*

- (6) *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 of 1974; the International Convention for the Prevention of Pollution from Ships of 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 of 1973, as modified by the Protocol of 1978 relating thereto; the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers of 1978; the International Convention on Load Lines of 1966, and the Protocol of 1988 relating thereto; the International Convention on Tonnage Measurement of Ships of 1969; and the Convention on the International Regulations for Preventing Collisions at Sea of 1972.*
- (7) *Flag State surveyors are authorised by the administrations of the Member States to survey and certify ships. Such surveyors may be assisted by other personnel, for instance personnel 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.*

- (8) *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.*

- (9) At international level, the *responsibility to investigate* maritime accidents *falls on the* flag State **■** , 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* regulated by Directive 2009/18/EC of the European Parliament and of the Council¹⁰. This Directive applies without prejudice to Directive 2009/18/EC.

¹⁰ 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).

- (10) The ■ administrations of the Member States should be able to rely on adequate resources ■ for carrying out their flag State obligations, *according to* the size and type of their fleet and based upon the relevant IMO requirements. *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-exclusively employed inspectors, in accordance with the III Code.*
- (11) *Without prejudice to the relevant national legislation, Member States may allow flag State surveyors and flag State inspectors who work exclusively for the competent authority of a Member State to carry out other work, such as scientific or academic activities, provided that it does not give rise to conflicts of interest or impede their independence.*
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- (12) *Flag State surveyors, flag State inspectors and other personnel who assist in the performance of surveys should have the education, training and supervision necessary to carry out the tasks that they are authorised to perform. The Commission, assisted by the European Maritime Safety Agency (EMSA), and in cooperation with Member States should develop a voluntary training programme to support flag State administrations in this respect and should facilitate coordination and exchange of information and best practices. Such training programme should be kept updated and take into account new or additional obligations arising from the instruments and Conventions, such as those relating to new technologies, social matters and other relevant developments.*

- (13) The establishment and development of a database providing essential information *in* electronic format on ships flying the flag of a Member State *and ensuring the possibility of issuance of electronic certificates* should contribute to *an* enhanced exchange of information *among Member States. The development of a common 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 digitalisation within the Union. Such a database would support the operational needs of its users, in particular those Member States that have not been in a position to develop their own systems for electronic certificates, and also contribute to a more efficient use of available limited resources.*

- (14) *For monitoring and inspection purposes*, essential information, *such as the particulars of the ship, its registered owner and its certificates*, should be available *to all* authorities *concerned and to the Commission*.
- (15) ■ Member States should ■ continue to 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, *in its up-to-date version*, adopted by the IMO on 4 December 2013.
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- (16) In order to further enhance **the** quality of the ships flying the flag of a Member State and **to** ensure a level playing field between administrations **of the Member States**, a quality certification of administrative procedures, that is included in the quality management system in accordance with ISO or equivalent standards, is needed. **It** should **cover the operational parts of the activities of the administration related to survey, flag State inspection, audit, verification and certification** under the responsibility of the Member State as flag State, **whether national (first registers) or international (second or overseas registers)**. Furthermore, **all relevant** activities, including the details of the responsibilities, of the authority and of the interrelation of personnel, and **■** means of reporting and communication of all flag State personnel who perform or are involved in surveys or inspections, as well as other personnel who assist in the performance of inspections, who are non-exclusively employed by the competent authority of the Member State, and who may **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 Directive 2009/21/EC of the European Parliament and of the Council¹¹ are carried out in compliance with the flag State's instructions, and should include the necessary control measures in that respect.** In order to ensure the independence of personnel concerned, **Member States should take appropriate measures to prevent conflicts** of interest of such personnel **in relation to the work they are to perform**.

¹¹ Directive 2009/21/EC of the European Parliament and of the Council of 23 April 2009 on compliance with flag State requirements (OJ L 131, 28.5.2009, p. 132).

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

- (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) The measures necessary for the implementation of this Directive *with regard to the ship information database should be adopted*. In order to ensure uniform conditions for the implementation 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 Council¹².

¹² *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).*

- (20) *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 Directive 2009/21/EC.*
- (21) *In order to avoid a disproportionate administrative burden in the transposition of this Directive, Member States may, as long as the relevant conditions are fulfilled, apply certain exemptions. Member States which do not have ships flying their flag that fall within the scope of Directive 2009/21/EC should not be obliged to transpose and implement Article 6 of Directive 2009/21/EC as regards the sharing of information related to ships. Member States which do not have ships flying their flag that fall within the scope of Directive 2009/21/EC and have closed their register for such ships should not be obliged to transpose and implement Directive 2009/21/EC.*

- (22) EMSA should provide ■ support *for* the implementation of Directive 2009/21/EC, *notably by providing relevant training for flag State surveyors and flag State inspectors , if so requested by Member States.*
- (23) *Since the objectives of this Directive, namely to enhance maritime safety and to 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 *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.
- (24) Directive 2009/21/EC should therefore be amended ■ ,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Amendments to Directive 2009/21/EC

Directive 2009/21/EC is amended as follows:

(1) *in Article 1, paragraph 1 is replaced by the following:*

‘1. The purpose of this Directive is:

- (a) to ensure that Member States effectively and consistently discharge their responsibilities and obligations as flag States; and***
- (b) to enhance safety and living and working conditions, and to prevent pollution from ships flying the flag of a Member State.’;***

(2) *Article 2 is replaced by the following:*

‘Article 2

Scope

This Directive shall apply to the administration of the Member State whose flag the ship is flying in respect of ships subject to certification and engaged in any type of international voyages.’;

(3) Article 3 is amended as follows:

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

‘(a) “ship” means a ship or craft to which one or more Conventions apply, flying the flag of a Member State and in respect of which a certificate is required;’;

(b) point (e) is replaced by the following:

‘(e) “IMO audit” means an audit conducted in accordance with the provisions of Resolution A.1067(28) on the Framework and Procedures for the IMO Member State Audit Scheme, in its up-to-date version, adopted by the International Maritime Organisation (IMO);’;

(c) the following points are added:

*‘(f) ■ “Conventions” means the conventions, with the Protocols and amendments thereto, **making the use of the III Code mandatory, and the related codes of mandatory status, in their up-to-date versions;***

- (g) “**III Code**” means ■ Resolution A.1070(28) (■ the IMO Instruments Implementation Code ■), adopted by the **IMO, Part 2**, with the exception of paragraphs **16, 18, 19, 20.3, 21, 29, 30, 31, 32, 34, 38, 39, 40 and 41 of that Part, in its up-to-date version**;
- (h) “flag State surveyor” means a **public sector** employee, working exclusively for and duly authorised by the competent authority of a Member State, **responsible for or performing** surveys, **verifications** and audits **of ships and companies covered by the relevant international mandatory instruments** and fulfilling the independence requirement **laid down** in Article 8(1);
- (i) “flag State inspector” means:
- (i) **a public sector employee, working exclusively for and duly authorised by the competent authority of a Member State; or**

(ii) *a person who is non-exclusively employed and who is 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 who fulfils the qualification and independence requirements laid down in Article 8(1);

- (j) “other personnel who assist in the performance of *surveys*” means *persons duly authorised by the administration of the Member State or by a recognised organisation acting on its behalf*, who may *assist flag State surveyors when carrying out surveys*, as specified by the administration, and who *fulfil* the communication, qualification and independence requirements *laid down* in Article 8(1);
- (k) “**■** flag State inspection” means an **■** inspection not leading to certification, *conducted to verify that the actual condition of the ship and its crew is in conformity with the certificates that it carries.*’;

■

(4) in Article 4, paragraph 1 is replaced by the following:

- ‘1. Prior to allowing a ship ■ 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. Measures may be taken by a recognised organisation, acting on behalf of the Member State, when it has been duly authorised by the competent authority to do so.* In particular, the Member State concerned or the recognised organisation acting on its behalf, as applicable, shall verify the safety records of the ship using, *where available*, the flag State inspection reports and certificates contained in *its own database or, for Member States that have opted to use the ship information* database referred to in Article 6a, *in that database*. The Member State concerned 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.’;

(5) the following Articles ■ 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 ■ Conventions in accordance with the conditions *laid down*, and in respect of the ships referred to, *therein*.

2. Member States shall take all necessary measures to ensure compliance with international rules, *regulations* and standards *under the Conventions* by ships entitled to fly their flag, *including* the following:

■

- (a) *ensuring that a surveyor employed by a recognised organisation may perform the same tasks as flag State surveyors when authorised to do so by the competent authority of the Member State; and*
- (b) carrying out ■ flag State inspections ■ to verify that the actual condition of the ship is in conformity with the certificates that it carries.

The flag State inspections referred to in point (b) of the first subparagraph may be carried out using a risk-based approach, which shall include the following criteria:

- (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 flag State inspections carried out in accordance with national legislation as deemed appropriate by each Member State;*
- (vi) other relevant information considered to be necessary by the Member State.*

Member States using a risk-based approach shall ensure that ships in respect of which no sufficient data is 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, social and environmental concerns***, confirmed or revealed by a flag State inspection carried out in accordance with paragraph 2, point (b) are rectified ***within an appropriate timeframe, to be determined by the flag State***.

4. On completion of *a flag State inspection*, the flag State inspector shall draw up a report setting out its *outcomes*.

Article 4b

Safety and pollution prevention requirements

1. Each Member *State* shall ensure that resources, appropriate *for* the size and type of its fleet *and for 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 *other personnel who assist* in the *performance of surveys, and recognised organisations*.
3. Each Member State shall *ensure that* a design review and technical decision-making capability *according to* the size and type of its fleet, *are developed or maintained*.

■

Training and capacity building ■

1. ■ The personnel responsible for or performing surveys, flag State inspections, *audits and verifications of ships and companies shall undergo training relevant to the specific activities carried out.*
2. *Member States may develop a capacity-building scheme for their flag State inspectors and flag State surveyors and keep it up to date, taking into account new or additional obligations arising from the Conventions.* ■
3. *The Commission, with the assistance of the European Maritime Safety Agency (EMSA), established by Regulation (EC) No 1406/2002 of the European Parliament and of the Council*, and in cooperation with Member States, shall organise, where appropriate and based on Member States' requests for support, relevant training activities for flag State inspectors and flag State surveyors.*

* *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).';*

(6) Article 5 is replaced by the following:

‘Article 5

Detention of a ship flying the flag of a Member State

1. When the administration is informed that a ship flying the flag of the Member State concerned has been detained by a port State, it shall, according to the procedures it has established to this effect, oversee the ship being brought into compliance with the relevant IMO Conventions.
2. Member States shall develop and implement an appropriate control and monitoring programme *in order to provide a timely response to the situations referred to* in paragraph 1 ■ .’;

(7) Article 6 is replaced by the following:

‘Article 6

Electronic information and exchange

1. Member States shall ensure that ■ the following information concerning ships flying their flag is *made available in electronic format in its up-to-date version at the latest by ... [6 years from the date of entry into force of this Directive]*:

■

- (a) statutory certificates (full *or interim*) including dates of surveys, additional and supplementary surveys, if any, and audits;

■

- (b) identification of ships which ceased to fly the flag of the Member State concerned during the previous 12 months.

■

2. *The Commission shall develop, maintain and update a digital interoperable portal providing a single point of access for the information referred to in paragraph 1 and allowing Member States' flag State inspectors and port State inspectors to access that 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 that portal with the ship information database referred to in Article 6a.

That portal shall be established by ... [3 years from the date of entry into force of this Directive] at the latest.

3. *The Commission shall adopt implementing acts laying down the technical functioning of the 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).';*

(8) The following Article ■ is inserted:

‘Article 6a

Ship information database

1. The Commission shall develop, maintain and update ***a ship information*** database containing the information ***referred to*** in Article 6 ***and providing services for*** Member States ***on issuing and controlling of electronic certificates. That ship information database*** shall be ***established by ... [5 years from the date of entry into force of this Directive]. Member States may connect*** to that database. That database ***may*** be based on the ■ database referred to in Article 24 of Directive 2009/16/EC of the European Parliament and of the Council* and ***may*** have similar functionalities to that database.
2. ***Without prejudice to national data protection requirements, Member States opting to use the ship information database:***
 - (a) ***may transfer to the ship information database information related to flag State inspections carried out in accordance with this Directive, including information concerning deficiencies and certificates; and***
 - (b) ***may use that database to issue, sign, endorse, extend and withdraw electronic certificates for their ships.***

Such Member States shall ensure that the information referred to in the first subparagraph is compatible with the requirements of that database and interoperable.

3. The Commission shall ensure that the *ship information* database makes it possible to retrieve **■** relevant data concerning the implementation of this Directive based on inspection data provided by Member States.
4. Member States *that have opted to use the database* shall have access to all the information recorded in the *ship information* database referred to in paragraph 2, point (a) of this Article and in 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 EMSA.
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5. *The Commission shall adopt implementing acts laying down the technical functioning of the database referred to in this Article, including conditions for access to the information submitted by Member States in accordance with paragraph 2 of this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 10(2).*

* *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).’;*

(9) 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 for an IMO audit of their administration *in accordance with the cycle adopted by* the IMO. Member States shall *publish the outcome of the audit*, in accordance with relevant national legislation on confidentiality.

■


2. In order to ensure the effective implementation of this Directive and to monitor the overall functioning of flag State compliance *with the legal duties of the administrations pursuant to this Directive*, the Commission shall collect the necessary information *when carrying* out visits to Member States ■ .’;

(10) Article 8 is

replaced by the following:

‘Article 8

Quality management system and internal evaluation

1. Each Member State shall implement and maintain a quality management system covering *the operational parts of* the flag State-related activities of its administration. Such quality management system shall be certified in accordance with  applicable international quality *standards, such as ISO 9001*.

The quality management system shall include the details of the responsibilities, of the authority and of the interrelation of *personnel who perform surveys, inspections, audits and verifications and the flag State personnel* who manage, perform and verify work relating to and affecting *the flag State obligations*. Such responsibilities shall be documented, specifying *the* type and scope of inspection work that may *also* be performed by *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 who assist in the performance of surveys.*

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

Member States shall take appropriate measures to prevent conflicts of interests of all personnel who perform surveys, inspections, audits and verifications and regarding independence in relation to the work to be performed ■ .

By ... [3 years from the date of transposition of this Directive], the quality management system shall cover the aspects referred to in this paragraph.

2. *Member States which appear on the low performance list or which appear, for two consecutive years, on the medium performance list as published in the most recent annual report of the Paris Memorandum of Understanding on Port State Control (the “Paris MOU”) shall provide the Commission with a report on their flag State performance no later than four months after the publication of the Paris MOU report.*

The report shall identify and analyse the main reasons that led to the detentions and the deficiencies resulting in a low or medium performance status.’;

■

- (11) Article 9 is *replaced by the following*:

‘Article 9

Reports and Review

Every five years, and for the first time by ... [3 years from the date of entry into force of this Directive], the Commission shall present a report to the European Parliament and to the Council on the application of this Directive.’;

- (12) the following Articles are inserted:

‘Article 9a

Exchange of best practices and experience

The Commission shall ***organise the exchange of best practices and experiences*** between
■ Member States’ administrations ***and*** flag State experts and flag State inspectors,
including, as appropriate, ***other relevant stakeholders, for the implementation of
this Directive.***

***Member States’ administrations, flag State experts and flag State inspectors shall
explore, together with the Commission, the possibility to develop guidance on
elements such as the methodology for performing flag State inspections, the
content and format of reporting or capacity building.***

■

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 under this Directive.

Member States shall *inform the Commission* once a year *of the number of flag State inspections performed in accordance with Article 4a, indicating, for each flag State inspection, the IMO number of the ship, the date and the place.*’;

■

- (13) 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 of the European Parliament and of the Council*.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

* 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 Member States of the Commission’s exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).’;

■

(14) *the following Article is inserted:*

‘Article 10a

Amendments to the Conventions and the III Code

The Commission may exclude amendments to the Conventions and the III Code from the scope of this Directive in accordance with the Conformity checking procedure set out in Article 5 of Regulation (EC) No 2099/2002.’;

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(15) *in Article 11 the following paragraph is added:*

‘3. By way of derogation from the first subparagraph of paragraph 1,

(a) the Member States which do not have ships flying their flag and 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 that 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 such ships may derogate from the obligation to transpose and implement this Directive for as long as that condition is fulfilled.

Any Member State that intends to avail itself of one of the derogations referred to in the first subparagraph shall notify the Commission by ... [30 months from the date of entry into force of this Directive]. 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 or register such ships in their national registry until they have completely transposed and implemented this Directive.’.

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Article 2

Transposition

Member States shall adopt and publish, by ... [*30 months from the date of entry into force of this 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 *measures*, they shall contain a reference to this Directive or *shall* be accompanied by such reference on the occasion of their official publication. *The methods of making* such reference *shall be laid down by the Member States.*

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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 ...

For the European Parliament

The President

For the Council

The President

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