Compliance with flag State requirements

2023/0172(COD) - 01/06/2023 - Legislative proposal

PURPOSE: to update certain provisions of Directive 2009/21/EC on compliance with flag State requirements.

PROPOSED ACT: Directive of the European Parliament and of the Council.

ROLE OF THE EUROPEAN PARLIAMENT: the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with the Council.

BACKGROUND: Directive 2009/21/EC on compliance with flag State requirements regulates the enforcement of rules applicable to flag State at the Union level. The responsibility for monitoring the compliance of ships with particular IMO conventions lies with the State where the ship is registered and whose nationality the ship holds - the flag State. The Directive therefore aims to ensure that ships flying the flags of EU Member States meet all safety and pollution prevention requirements and are fit for service.

The International Maritime Organisation (IMO) has, since the adoption of the Directive, made the IMO Instruments Implementation code (III-Code) and IMO audit mandatory as of 2016 for all flag States in the world, including EU Member States. The III-Code and the IMO audit aims to ensure that States take all necessary steps to correctly implement and apply the Conventions and have the resources and powers needed as a flag State to assume their international obligations and ensure compliance of their flagged ships with these rules.

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

This initiative is part of a package to modernise EU rules on maritime safety.

CONTENT: in the light of this, a proposal to amend Directive 2009/21/EC has been prepared.

The main changes concern the following:

Subject-matter, scope and definition

The proposal updates some references to IMO instruments in the existing definitions and includes further definitions relevant for the Directive, notably the III-Code.

Conditions for allowing a ship to sail

The Directive is amended to introduce the use of the **database for verification** of the condition of the ship (transferring in, as the case may be) before the ship is allowed to operate. A new article requires the Member State as flag State to adhere to the III-Code and the requirement to carry out supplementary flag State inspections to ensure the safety of ships flying the flag of a Member State.

Administrations should have the **appropriate resources**, commensurate with the size and type of fleet (ships registered under the flag) to meet the supplementary inspection obligations.

The proposal lays down responsibilities and common capacity building of the flag State personnel. This includes the **continuous development of training schemes** and material reflecting updates in the international IMO Conventions as well as possible new requirements following on from environmental considerations especially as regards new technologies (e.g. propulsion, new types of fuel etc).

Actions in relation to or following monitoring of flagged ships

The proposal requires Member States as flag States to use the Union Maritime Information Exchange System (SafeSeaNet) to control and monitor ships under their flag and check e.g. whether they are being detained under port State control. This amendment also addresses the lack of flexibility of the flag State regime in cases of crisis or unexpected events, such as the COVID-19 pandemic.

Electronic information and inspection database

The proposal introduces **e-documents** that are to be recorded, kept, reported and shared via a national e-certification registry compatible with the inspections database. E-documents concern among others e-inspection reports and e-certificates. The information will be communicated to the inspection database developed by the Commission. Electronic transmissions of electronic certificates will use the same technical solutions as those established by the Port State Control Directive.

Monitoring of compliance and performance

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

Quality Management and performance of flag States

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

Moreover, the current performance measurement should be revised and modernised, via an implementing act. The requirements to be applied by the Member States for their own assessment of performance as well as the requirement for the Commission to make overall results publicly available is introduced.

Cooperation and exchange of information

The proposal establishes a **high-level group** on flag State matters, composed of Member States' Flag State authorities and experts for discussing all flag State related and pertinent issues. It also establishes a dynamic **electronic reporting tool** for gathering information and statistics.

Budgetary implications

The proposal has net present costs for the Union Budget of EUR 7 to 8.1 million over the period 2025-2050.