Compliance with flag State requirements

2023/0172(COD) - 10/04/2024 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 590 votes to 20, with 10 abstentions, a legislative resolution 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.

The position adopted by the European Parliament at first reading under the ordinary legislative procedure is as follows:

Subject matter and scope

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

This Directive should 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.

Conditions for allowing a ship to operate upon granting the right to fly the flag of a Member State

Prior to allowing a ship which has been granted the right to fly its flag to operate, the Member State concerned should 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.

Safety of ships flying the flag of a Member State

Member States should take all necessary measures to ensure compliance with international rules, regulations and standards related to the Conventions by ships entitled to fly their flag, including the following:

- ensuring that a surveyor employed by a recognised organisation may perform the same tasks as flag State surveyors when so authorised by the competent authority of the Member State; and

- carrying out flag State inspections to verify that the actual condition of the ship is in conformity with the certificates it carries; such inspections may be carried out using a **risk-based approach**, which should 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.

Member States using a risk-based approach should 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 should carry out flag State inspections using their own procedures, instructions and relevant information in compliance with the III Code. They should ensure that every ship is inspected at least once every 5 years.

Member States should ensure that any deficiencies requiring corrective measures, including safety, environmental and social concerns, confirmed or revealed by an inspection carried out are rectified within an appropriate timeframe, as determined by the flag State.

Safety and pollution prevention requirements

Each Member State should: (i) ensure that appropriate resources, according to the size and type of its fleet and with respect to the implementation of the administrative processes, procedures and resources necessary; (ii) ensure the oversight of the activities of flag State surveyors, flag State inspectors and other personnel assisting in the performance of surveys, and recognised organisations; (iii) ensure that a design review and technical decision-making capability according to the size and type of its fleet, are developed or maintained.

The personnel responsible for or performing surveys, inspections, audits and verifications of ships and companies should undergo **training** relevant to the specific activities carried out.

Electronic information and exchange

Information concerning ships flying their flag should be 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.

The Commission should develop, maintain and update a **digital interoperable portal** providing for a single point of access for the information and allowing Member States' flag and port State inspectors to access this information in the performance of their duties. The Commission should make that portal electronically accessible and free of charge for Member States. The portal should not contain personal data or confidential information. It should be established by 3 years from the date of entry into force of this Directive at the latest.

Ships information database

The Commission should develop, maintain and update a ships information database containing the information and providing services for Member States on issuing and controlling of electronic certificates. The ships information database should be established by **5 years** from the date of entry into force of this Directive at the latest. Member States may connect to that database.

Quality management systems

Each Member State should implement and maintain a quality management system covering the operational parts of the flag State-related activities of its administration.

The quality management system should include defined responsibilities, authority and interrelation of personnel performing surveys, inspections, audits and verifications and the flag State personnel who manage, perform and verify work relating to and affecting the flag State obligations.

Member States should 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.

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 should 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 Commission should provide for the organisation of **exchange of best practices and experiences** between Member States' national authorities and flag State experts and inspectors, including, as appropriate, other relevant stakeholders, for the implementation of this Directive.