



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 23.11.2005  
COM(2005) 586 final

2005/0236 (COD)

Proposal for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**on compliance with flag State requirements**

(presented by the Commission)

{SEC(2005) 1497}

## EXPLANATORY MEMORANDUM

### 1) CONTEXT OF THE PROPOSAL

- **Grounds for and objectives of the proposal**

The Commission proposal is set in a rapidly evolving international and European context and embodies a general reflection on the responsibilities of States in implementing the international conventions which they have ratified and which have entered into force.

The proposal also reports on the ever-growing need to develop the existing rules still further and to ensure their correct application by remedying any incidence of shortcomings through the introduction of adequate levels of self-help and cooperation among States, by enabling them to exchange their practices and know-how.

The proposal likewise reports on the obligation incumbent on the Commission to put into practice Article 3(1) of Directive 94/57/EC, which already provides for the flag State compliance requirements. It is not a question, therefore, of adopting new rules imposing new constraints but rather of ensuring that the rules currently in force provide effective support for the more general measures associated with maritime safety and with the protection of the seas and the environment.

It is disturbing to find that, despite ratification by 164 countries which are members of the International Maritime Organization and the undertakings they have given to apply the conventions relating to maritime safety and the prevention of pollution caused by ships, the effective level of safety and prevention of pollution from ships varies considerably from one flag to another. Hence, substandard ships which continue in use around the world pose a permanent risk for European coastlines and make for unfair competition among the maritime transport undertakings. This sad reality was underlined in 2003 by the maritime industry (Shipping Industry Guidelines on Flag State performance, Marisec 2003) and, in particular, by the Ministers representing 34 States in the Pacific and Atlantic region at their meeting in Vancouver in late 2004 (Second Joint Ministerial Conference of the Paris and Tokyo Memoranda of Understanding on Port State Control, "Strengthening the circle of responsibility", Inter-regional Action to Eliminate Substandard Shipping - (British Columbia) Canada, 2 and 3 November 2004).

For its part, the industry, in its choice-of-flag recommendations to the shipping companies owning or operating merchant ships, has highlighted the disparities between flag States.

In their Vancouver Joint Declaration the Ministers stress that nevertheless substandard shipping still persists in some areas and that further action is necessary to combat those shipowners and operators that continue to conduct their business in an irresponsible manner with disregard for international rules and safe practices. Since the first Conference, held in March 1998, there have been further alarming maritime accidents and incidents, which have resulted in loss of life and pollution of the oceans. These maritime accidents and incidents caused substantial economic losses, environmental damage and public concern, highlighting the need for further measures to enhance

safety and prevent pollution (...). Substandard ships are, in the main, operated by those who seek a commercial advantage by operating their ships below internationally accepted standards (...). Some flag State administrations still ignore their prime responsibility to ensure that ships entitled to fly their flags are in compliance with international conventions. Some flag State administrations fail to provide adequate monitoring and supervision of the organisations that act on their behalf and whose performance does not ensure the completeness and effectiveness of audit and certification activity (...). The continuing loss of ships, with the resulting loss of life, and the resulting pollution, requires further action to improve the overall safety of shipping and the prevention of the pollution of the marine environment.”

At European Union level this flagrant disparity has given rise to significant differences in the vessel detention rate depending on the flag flown. The port State control data in the Paris Memorandum illustrate this phenomenon.

Over the period 2002-2004, the detention rate for vessels from Member States with a very large fleet under their flag has fluctuated between 1.1% and 7.3%. It has to be recognised that, following the enlargement of the European Community, the average detention rate for European vessels has grown significantly. This average stood at 4.6% for the period 2002-2004 for all vessels from the 25 Member States, whereas the average for the initial 15 Member States was 2.9%. As far as the Commission is concerned (and this is borne out by statistics), the obligations of the flag States still constitute the missing link in the panoply of maritime safety regulations.

In practical terms, the Commission proposal seeks to alleviate two of the IMO's principal weaknesses other than that of a lack of power of control over the application of the rules which it lays down, namely:

- the existence of a high degree of discretion accorded to each contracting party enabling them to benefit from exemptions or derogations from the basic rules of the conventions;
- the non-mandatory character of the accompanying measures adopted in the form of an IMO Resolution but regarded as essential for the effective application of the said obligations.

To a large extent, these weaknesses explain the differences in quality among the various flags, while at the same time reducing the legal capacity of countries to take action (port State control) against substandard ships. This is why the present proposal seeks to enumerate in a Community Directive the obligations which are incumbent on the Member States in their capacity as flag States, taking account of the clarifications made by the IMO.

The principle of having to comply with the rules laid down in the international maritime safety conventions already features in Article 3 of Directive 94/57/EC which, as far as the Member States are concerned, involves implementing IMO Resolution A. 847(20) on guidelines to assist flag States in the application of IMO instruments.

Given this Resolution's lack of detail and at times lack of precision, the IMO has undertaken to transcribe its guidelines in the form of a Code dedicated to the

implementation of its obligatory instruments. As with the initial Resolution, this Code will be non-binding on IMO members. In parallel, the IMO was eager to supplement the Code with an audit scheme for the national administrations. The purpose of the IMO audit scheme is not to punish States which fail to comply, or which comply only in part, with the obligations incumbent on them in their capacity as contracting parties to the IMO conventions, but rather to assist them in improving their performance in implementing the conventions listed in the Code.

Both the Code and the audit scheme are due to be adopted at the IMO General Assembly in November 2005.

The Commission lost no time in grasping the lessons to be drawn at Community level from the international work, all the more so as the Council itself had already delivered its opinion on the course of action to be followed. Indeed, in its conclusions of 6 December 2002 relating to the action to be taken following the sinking of the *Prestige*, the Council had expressed its support for the work of the IMO which sought to draw up a flag State Code and a compulsory Audit Scheme designed to ensure that the flag States discharged their obligations under the international conventions.

This political commitment on the part of the Council explains why the United Kingdom, Cyprus and France already agreed, of their own volition, to subject themselves to the audit of their flag in 2004.

While taking account of the IMO's new guidelines, the Commission is also seeking to transpose into Community law that part of the Code that is aimed at the flag States, while at the same time attempting to ensure that the Member States discharge their international obligations in an effective and coordinated way.

In its proposal for a Directive, the Commission is seeking to introduce Community incentive measures in the absence of ratification of certain international conventions having important implications for maritime safety and the prevention of pollution. The Commission is also recommending the establishment of a mechanism which, under the comitology procedure, will have the task of ensuring, where necessary, the harmonised application of standards and provisions currently left to the discretion of the Member States.

The Commission's ultimate objective is to make the flags of the Member States more attractive, thereby transforming the European fleet into a quality fleet, while at the same time maintaining a competitive environment vis-à-vis third countries. This will depend on whether those third countries guaranteeing a comparable system of quality are able to conclude agreements with the Member States of the European Community in exchange for access to the same advantages as the Member States.

- **General context**

It should be stressed that the Code for the implementation of the IMO mandatory instruments gives concrete form to, and supplements, IMO Resolution A.847 (20) concerning the guidelines to assist flag States in the implementation of IMO instruments; particular attention, moreover, should be drawn to the fact that, at present, the Member State maritime administrations are already required, under Article 3.1 of

Directive 94/57/EC, to operate in the context of the process of inspections and certifications of their vessels in line with the relevant provisions set out in the Annex and the Appendix to this Resolution.

As far as flag State responsibility is concerned, shortcomings on the part of certain Member States with regard to the application of and compliance with international instruments create various types of distortion, namely:

- economic distortion between States that observe higher ship inspection standards before allowing their flag to be used and States that observe much laxer standards. This degree of observance has repercussions as far as ship maintenance costs are concerned;
- social distortion: failure on the part of the flag States to observe their international obligations has implications as regards the employment of less qualified and, consequently, less expensive crews, and constitutes a major social dumping practice resulting in job losses for qualified personnel. Furthermore, it has the effect of making maritime careers less and less attractive at a time when Community law in the maritime safety sector requires the implementation of on-board safety management systems by qualified personnel, the recognition of seafarers' qualifications and the verification of certificates (Directive 2001/25/EC);
- lastly, these economic and social issues have a direct impact on environmental protection inasmuch as the use of substandard ships manned by underqualified crews increases the risks of loss of life at sea and of damage to the environment, along with the repair costs incurred as a result.

- **Provisions in force in the field covered by the proposal**

An explicit reference to IMO Resolution A. 847(20) is contained in Article 3.1 of Directive 94/57/EC requiring this Resolution to be implemented.

- **Coherence with other policies and objectives of the Union**

The proposal represents the missing link in relation to the other legislative instruments dealing with maritime safety. The proposal reflects the wishes expressed by the Member States for a Community system to be put in place in order to monitor Member State obligations arising from the international instruments to which they are party, notably through the transposition into Community law of the Code on the implementation of the responsibilities of the flag States and the Member State Audit Scheme. All in all, these measures will help to reinforce the European Union's role on the international scene.

## 2) CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

- **Consultation of interested parties**

*Consultation methods, main sectors targeted and general profile of respondents*

In May 2004, and subsequently in February 2005, the Commission held consultations with representatives of the Member States and the shipping industry on the basis of staff working papers dealing with detailed aspects of the projects under consideration. In addition, the Commission called on the participants who had been consulted to submit their detailed comments in writing.

On the shipping industry side, the sectors consulted represent the interests of the shipowners, the shippers, the oil companies, the port authorities, the classification societies, the insurers, the shipbuilders, the ship's pilots and the seafarers' representatives. The organisations concerned are usually professional associations at European, and sometimes international, level.

According to the Member States, compliance with the standards applicable to the flag States' obligations creates direct costs (qualified inspectors, setting up of administrative systems, qualified auditors) as well as indirect costs (certain States delegate verification and certification to the classification societies) for the countries concerned. However, those Member States that have already introduced these standards are agreed that the investment costs are largely offset by the rationalisation of their activities and, over the longer term, by economies of scale.

On the basis of the consultations and of various studies, the Commission has come to the conclusion that steps should be taken to introduce, in the form of a Directive, the Code for implementing the IMO obligatory instruments for the attention of the flag States.

Details of the options envisaged, as well as the choice of instrument, feature in the impact study (SEC(2005) 1497). This study found in favour of the regulatory measures proposed.

*Summary of responses and how they have been taken into account*

The representatives of the industry reacted favourably to the Commission's initiative, while at the same time recommending a certain degree of prudence over an initiative which would provide support only for the flags of the Member States of the European Union. The industry, moreover, called on the Commission to transpose as scrupulously as possible the work carried out by the IMO on this issue.

Due account has been taken of these requirements of a general or specific nature. Thus the IMO texts are annexed to the proposal for a Directive, and the Commission has proposed that some of these provisions should be made binding on the Member States. Furthermore, incentives are being offered to ships registered under one of the European flags, and should later on result in an easing of controls by the port State in respect of

European flags that comply with their obligations. Subject to the conclusion of external agreements, third countries will be eligible to enjoy the same advantages, provided that they achieve the same quality results. Lastly, for Member States that so wish, the Commission will provide assistance with the audit itself (preparation and conduct of the audit).

- **Obtaining and using expertise**

Scientific/expertise domains concerned

Maritime safety, the safeguarding of human life and the protection of the environment.

Methodology used

The methodology used is the same as that employed by the International Maritime Organization, based on performance self-assessments by the flag States. The Member States have accepted that the self-assessments relating to their flags should be the subject of additional criteria and that they should undergo more detailed analysis at European level.

Main organisations/experts consulted

Expert reports by the European Maritime Safety Agency were required.

Summary of advice received and used

The existence of potentially serious risks with irreversible consequences has been mentioned. There was unanimous agreement on the existence of such risks.

The opinions received are set out in the report of the MARE Committee of the European Parliament and can be consulted on the following website: [http://www.europarl.eu.int/tempcom/mare/default\\_en.htm](http://www.europarl.eu.int/tempcom/mare/default_en.htm)

Means used to make the expert advice publicly available

The Agency's Internet website: <http://www.emsa.eu.int/end802.html>

- **Impact analysis**

Two options were considered: individual action on the part of the Member States and a proposal for a Directive on the flag State compliance requirements.

As regards option 1, an analysis of the economic, social and environmental effects led to the following conclusion: any individual action, no matter whether it is rigorous or disparate, on the part of the Member States (and, even more so, failure on their part to take action) will not help to achieve objectives in the Community as a whole and will not bring about the added value that Community action is capable of achieving through the uniform application throughout the Union of the international regulatory framework established by the IMO. Moreover, there is a risk that individual action may lead to

different levels of safety and protection among the various flag States, coupled with the risk of economic distortion.

An analysis of the second option, in contrast, leads to the conclusion that incorporation of the IMO Code into Community law will not impose new obligations on Member States, provided that their maritime administrations abide by the commitments entered into under the international conventions. Consequently, this action should not give rise to additional budget costs, but rather should prove beneficial to maritime safety and hence the environment, as well as to the social conditions of seafarers.

The Commission has carried out an impact analysis under its legislative and work programme, and the report is available at:

[http://europa.eu.int/comm/secretariat\\_general/impact/index\\_en.htm](http://europa.eu.int/comm/secretariat_general/impact/index_en.htm).

### 3) LEGAL ELEMENTS OF THE PROPOSAL

- **Summary of the proposed action**

The avowed aim is to improve safety at sea and to protect seafarers and the environment by conferring greater responsibility on the flag States as regards the obligations they have incurred at international level. These States must exercise this responsibility both before and after granting flag rights.

More specifically, steps must be taken to make the provisions of the Code compulsory in respect of the implementation of the mandatory IMO instruments relating to the flag States and also to introduce a flag State Audit Scheme.

- **Legal basis**

The proposal is based on Article 80(2) of the Treaty and Article 3(1) of Directive 94/57/CE.

- **Principle of subsidiarity**

The principle of subsidiarity applies in so far as the proposal does not concern an area where the Community has exclusive competence.

The objectives of the proposal cannot be adequately achieved solely by the action of Member States for the following reasons:

Whereas the practice of flagging is still a sovereign right enjoyed by States, the conditions for granting and maintaining the flag are determined according to international conventions that have been ratified by the Member States. Responsibility for the harmonised application of these rules on granting and maintaining flagging rights rests with the Community to the extent that no international control system already exists.

Measures taken by States acting in isolation are not enough to achieve the target objectives, inasmuch as maritime transport is international by nature and the obligations that flow from international instruments and that seek collectively to combat flags of convenience would have no effect if the Member States acted individually.

Individual actions undertaken by Member States would conflict with Directive 94/57/EC, which provides for the implementation at Community level of IMO Resolution A.847 (20) and serves as a basis for the present proposal.

The objectives of the proposal may be better achieved through Community action for the following reasons.

Following scrutiny of the Member States' self assessment forms relating to the implementation of international obligations arising from the conventions to which those States are party, evidence has appeared of numerous disparities, from one Member State to another, affecting the security of navigation. These disparities relate, in particular, to the extent of the control exercised over the classification societies, the handling of accidents, the structuring of the maritime administrations and the establishment of a quality system. This is why European Union action is necessary, particularly from a methodological and practical point of view.

The proposal for a Directive urges the Member States to ratify the international conventions - something that can be better achieved by the Member States themselves than by the Community – in so far as the latter does not have exclusive competence in the areas covered by these conventions. The proposal provides for the establishment of a quality system by the national maritime administrations based on quality objectives and enabling the Member States to choose either ISO standard 9001:2000 or equivalent standards, with a view to achieving those objectives. Only the Member States are in a position to put these systems in place, in keeping with the standards best adapted to their respective maritime administrations in so far as the fixed objectives are achieved.

The proposal also provides for an audit of the flags of the Member States and leaves it up to those States to fix the date of the audit and decide whether to approach the Commission for assistance.

The proposal therefore complies with the subsidiarity principle.

- **Principle of proportionality**

The proposal complies with the proportionality principle for the following reasons.

The Member States have committed themselves to implementing the IMO provisions relating to the responsibilities of the flag States and have undertaken to subject their flag to audits by the IMO. The Commission's reply is therefore proportional to the Member States' expectations.

Furthermore, no additional costs will be incurred by the Member States as a result of implementing the proposed Directive, since the point of the exercise is to rationalise the expenditure of the maritime administrations. The fact that the resources being used are those available under the Treaty provides a guarantee of quality and harmonisation as regards the implementation of obligations incumbent on the flag States in their capacity as Member States of the European Union.

- **Choice of instruments**

Proposed instrument(s): directive.

Other instruments would have been unsatisfactory for the reasons set out below.

Indeed, the need to transpose the IMO obligations into Community law is attributable to the following two factors: on the one hand, the absence of monitoring arrangements and penalties under international maritime law and, on the other, the high incidence of disparities in quality noted among the European flag States.

Under the obligations arising from the IMO conventions to which all the Member States are contracting parties, all of these States have already transposed - or are presumed to have transposed - into national law the rules laid down in the Code for the implementation of the IMO mandatory instruments. The Directive option is inevitable inasmuch as the Commission is proposing that the Member States should ratify, where appropriate, the conventions referred to in the Code and that they should set up a quality control system.

Other resources would not have been adequate, nor would simple cooperation among the Member States. Indeed, the latter have already ratified the conventions referred to in the Code for the implementation of the IMO mandatory instruments. What needs to be done, therefore, is to take a qualitative step forward towards harmonisation and the implementation of these mandatory international instruments. Above all, there is no way at international level, and in particular in the context of the International Maritime Organisation, to ensure that the international conventions are applied and that any shortcomings are penalised.

The Commission wishes to stress that the Member States, which by virtue of their national legislation ensure the effective discharge of their convention obligations in their capacity as flag States, will not be required to adopt new legislation. Accordingly, in the context of their obligations under Article 19 of the Directive, Member States will only be required to notify the Commission of their existing legislation and to submit a copy thereof.

#### **4) BUDGETARY IMPACT**

The proposal has no implications for the Community budget.

## 5) ADDITIONAL INFORMATION

- **Simulation, pilot phase and transitional period**

The proposal has been, or will be, the subject of a transitional period.

- **Review/revision/sunset clause**

The proposal includes a revision clause.

- **Correlation table**

The Member States are required to communicate to the Commission the text of national provisions transposing the Directive as well as a correlation table between those provisions and this Directive.

- **European Economic Area**

This draft instrument concerns an area covered by the EEA Agreement and must therefore be extended to the European Economic Area.

- **Detailed explanation of the proposal, by chapter or by article**

Article 1 defines the objectives: to ensure that the Member State rules comply with the IMO conventions, to strengthen security and to prevent pollution by ships flying a Member State's flag.

Article 2 provides a list of definitions of the terms, concepts and references used in the proposal for a Directive.

Article 3 seeks to ensure the implementation of the international framework regulating the obligations incumbent on the flag States under the IMO Conventions and calls on the Member States to become party to these conventions.

Article 4 reiterates the obligations incumbent on the flag State administrations to have at their disposal administrative structures backed by proper resources and adequate procedures.

Article 5 sets out, in keeping with the IMO guidelines on the subject, the obligations and procedures to be complied with prior to and at the time of registration of a ship under the flag of a Member State of the European Union.

Article 6 sets out the compulsory provisions of the Code with a view to ensuring harmonisation with regard to inspections and certifications involving these vessels, based on the relevant IMO rules.

Article 7 clarifies the obligations incumbent on the flag States regarding the effective and ongoing control of the recognised organisations to which they have delegated statutory tasks involving the inspection and certification of their vessels.

Article 8 defines the obligations incumbent on States towards staff involved in the management of work linked to safety and pollution prevention, as well as relations between members of staff.

Article 9 introduces the obligation to conduct an inquiry following an accident at sea or a pollution incident.

Article 10 requires the Member States to man their vessels with a sufficient number of high-quality staff and makes mandatory IMO Resolution A.890 (21) on the principles to be observed when taking decisions relating to safe manning.

Article 11 lists a number of accompanying measures.

Article 12 requires the Member States to carry out annual flag performance assessments and examinations.

Article 13 seeks to introduce an independent audit of the port State's administration and recognises the Audit Scheme developed by the IMO.

Article 14 requires the Member States to subject their maritime administration to ISO certification with a view to obtaining a quality label.

Article 15 advocates the possibility of concluding cooperation agreements with third countries.

Article 16 provides for the Commission to be supplied with essential information so as to enable it to assess the application of the Directive and draw up a report.

Article 17 introduces the possibility for the Commission to amend the Directive in the light of decisions taken by the IMO and the ILO.

Article 18 entrusts COSS with the implementing tasks referred to in various articles of the Directive.

Articles 19 and 20 fix the time limits for the transposition and entry into force of the provisions of the Directive.

Proposal for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**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 establishing the European Community, and in particular Article 80(2) thereof,

Having regard to the proposal from the Commission<sup>1</sup>,

Having regard to the opinion of the European Economic and Social Committee<sup>2</sup>,

Having regard to the opinion of the Committee of the Regions<sup>3</sup>,

Acting in accordance with the procedure laid down in Article 251 of the Treaty<sup>4</sup>,

Whereas:

- (1) The safety of Community shipping and of citizens using it and the protection of the environment should be ensured at all times.
- (2) In respect of international shipping a comprehensive framework enhancing maritime safety and the protection of the environment with regard to pollution from ships has been set up through the adoption of a number of conventions for which the International Maritime Organization (IMO) is the depository.
- (3) Under the provisions of the United Nations Convention on the Law of the Sea 1982 (UNCLOS) and of the Conventions for which the IMO is the depository, the States which are party to those instruments are 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 that, from the point of view of safety of life at sea and protection of the marine environment, a ship is fit for the service for which it is intended and is manned with competent maritime personnel.
- (4) Due account has to be taken of the ongoing major consolidation by the International Labour Organization (ILO) of the existing body of the maritime labour instruments

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<sup>1</sup> OJ C [...], [...], p. [...].

<sup>2</sup> OJ C [...], [...], p. [...].

<sup>3</sup> OJ C [...], [...], p. [...].

<sup>4</sup> OJ C [...], [...], p. [...].

into a single instrument. That work will also address flag State related obligations, which in a later stage, should be embodied in this Directive.

- (5) To ensure the effectiveness of the IMO Conventions in the Community, given that all Member States have to be party to the IMO Conventions and have 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 Community legislation.
- (6) Those mandatory provisions have to be implemented together with the relevant Community legislation relating to the safety of ships, their crew, their passengers and their cargo and to the prevention of pollution from ships and to seafarers' working time.
- (7) A few Member States have not yet completed the process of becoming a contracting party to some of the IMO Conventions, such as the 1988 SOLAS and Load Line Protocols, MARPOL Annexes IV and VI, or to specific IMO Conventions explicitly quoted in Community legislation and should be stimulated to finalise this process.
- (8) Under [Directive .../.../EC of the European Parliament and of the Council on common rules and standards for ship inspection and survey organisations and for the relevant activities of maritime administrations<sup>5</sup>], Member States have to act in accordance with the relevant provisions of the Annex and the Appendix to IMO Resolution A.847 (20) on guidelines to assist flag States in the implementation of IMO instruments in order to ensure that their competent administrations are able to assure an appropriate enforcement of the provisions of the international conventions, in particular with regard to the inspection and survey of ships and the issue of statutory certificates and exemption certificates.
- (9) IMO Resolution A.847 (20) has been revoked by IMO Resolution A.973 (24) on the Code for the implementation of mandatory IMO instruments, which contains the mandatory provisions to be implemented by flag States.
- (10) Member States have to discharge their obligations as flag States effectively and consistently in accordance with the IMO Conventions and taking account of IMO Resolution A.973 (24).
- (11) The IMO Conventions give flag States the right to exempt ships from the application of basic flag State rules laid down in the IMO Conventions and to apply equivalent provisions and have left an important number of requirements to the discretion of the administrations. Leaving this possibility to the sole and entire discretion of the individual administration could result in different levels of safety being achieved in different Member States and might possibly distort competition between flag States.
- (12) The Community has committed itself to initiate harmonised interpretations of technical safety standards with regard to passenger ships engaged on international voyages in Article 12 of Council Directive 98/18/EC of 17 March 1998 on safety rules

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<sup>5</sup> OJ L [...], [...], p. [...].

and standards for passenger ships<sup>6</sup>. The same approach should be followed, if necessary and without prejudice to the adoption of harmonised interpretations by the IMO, with regard to similar provisions related to other types of ships to which the IMO Conventions apply.

- (13) The maritime administrations of the Member States should be able to rely on appropriate resources for the implementation of their flag State obligations commensurate with the size and nature of their fleet and based upon the relevant IMO requirements.
- (14) Minimum criteria related to those resources should be established on the basis of the practical experience of the Member States.
- (15) Mandatory implementation of the procedures recommended by the IMO in MSC/Circ.1140/ MEPC/Circ.424 of 20 December 2004 on the transfer of ships between States should strengthen the provisions relating to a change of flag in the IMO Conventions and in the Community maritime safety legislation and should increase transparency in the relationship between flag States, in the interest of maritime safety.
- (16) 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. 948 (23) on survey guidelines under the harmonised system of survey and certification.
- (17) Strict and thorough monitoring of the recognised organisations performing flag State duties on behalf of Member States commensurate with the size and nature of Member States' fleets should improve the overall qualitative performance of ships flying the flag of a Member State.
- (18) The fulfilment of minimum criteria by flag State surveyors should ensure a level playing field between maritime administrations and contribute to the qualitative performance of ships flying the flag of a Member State.
- (19) Member States have an obligation as flag States with regard to the investigation of casualties and incidents involving their ships.
- (20) Specific rules to be followed by the Member States for the investigation of accidents in the maritime transport sector are laid down in Directive (.../.../EC).
- (21) Mandatory implementation of the IMO principles of safe manning should contribute to the qualitative performance of ships flying the flag of a Member State.
- (22) The development of a database providing essential information on ships flying the flag of a Member State, as well as on ships which have left a register of a Member State should improve the transparency of the performance of a high quality fleet and contribute to better monitoring of flag State obligations and to ensuring a level playing field between maritime administrations.

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<sup>6</sup> OJ L 144, 15.5.1998, p. 1. Directive as last amended by Commission Directive 2003/75/EC (OJ L 190, 30.7.2003, p. 6).

- (23) An evaluation and review of the performance of flag States and, where necessary, corrective measures, should ensure that all Member States appear on the white list of the Paris Memorandum of Understanding (MOU) on Port State Control.
- (24) The Member States have committed themselves to demonstrating their compliance with the mandatory IMO instruments, as requested in Resolution A. 974 (24) on the framework and procedures for the Voluntary IMO Member State Audit Scheme, adopted by the IMO Assembly on 1 December 2005.
- (25) The Voluntary IMO Member State Audit Scheme follows the standard quality management approach, which includes principles, criteria, audit areas, audit process and procedures, which are suitable to be used 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. This auditing process could therefore already be introduced into Community maritime safety law.
- (26) A quality certification of administrative procedures in accordance with ISO or equivalent standards should further ensure a level playing field between maritime administrations.
- (27) To ensure a level playing field between the ship-owners operating ships under the flag of a Member State and those operating ships under other flags, synergies should be established between flag States which commit themselves to implement in a mandatory way the Code for the implementation of mandatory IMO instruments, adopted by the International Maritime Organisation (IMO) through Assembly Resolution A. 973 (24) of 1 December 2005, and agree to be audited in accordance with the provisions of Resolution A. 974 (24) adopted by IMO Assembly on 1 December 2005.
- (28) The establishment of a Flag State Memorandum of understanding to establish flag State synergies should be promoted by the Commission.
- (29) The European Maritime Safety Agency (EMSA) established by Regulation (EC) No 1406/2002 of the European Parliament and of the Council<sup>7</sup> should provide the necessary support to ensure the implementation of this Directive.
- (30) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission<sup>8</sup>.
- (31) Since the objectives of the action to be taken, namely the introduction and implementation of appropriate measures in the field of maritime transport policy, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale of the action, be better achieved at Community level, the Community may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that

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<sup>7</sup> OJ L 208, 5.8.2002, p. 1. Regulation as last amended by Regulation (EC) No 724/2004 (OJ L 129, 29.4.2004, p. 1).

<sup>8</sup> OJ L 184, 17.7.1999, p. 23.

Article, this Directive does not go beyond what is necessary in order to achieve those objectives,

HAVE ADOPTED THIS DIRECTIVE:

*Article 1*  
*Subject-matter*

1. The purpose of this Directive is:
  - (a) to ensure that Member States effectively and consistently discharge their obligations as flag States in accordance with the IMO Conventions;
  - (b) to enhance safety and prevent pollution from ships flying the flag of a Member State and engaged in international trade;
  - (c) to provide a mechanism for harmonised interpretations of the measures laid down in the IMO Conventions which have been left to the discretion of the Contracting Parties to those Conventions.
  
2. This Directive is without prejudice to the Community maritime legislation, as listed in Article 2 (2) of Regulation (EC) No 2099/2002 of the European Parliament and of the Council<sup>9</sup>, and to Council Directive 1999/63/EC<sup>10</sup>.

*Article 2*  
*Definitions*

1. For the purpose of this Directive, the following definitions shall apply:
  - (a) “IMO Conventions” means the following Conventions, together with the Protocols and amendments thereto and related codes of mandatory status adopted in the framework of the International Maritime Organisation (IMO), in their up-to-date version:
    - (i) the 1974 International Convention for the Safety of Life at Sea (SOLAS 74);
    - (ii) the International Convention on Load Lines, 1966 (LL 66);
    - (iii) the International Convention on Tonnage Measurement of Ships, 1969 (Tonnage 69);
    - (iv) the International Convention for the Prevention of Pollution from Ships;
    - (v) the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW 1978);

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<sup>9</sup> OJ L 324, 29.11.2002, p. 1.

<sup>10</sup> OJ L 167, 2.7.1999, p. 33.

- (vi) the Convention on International Regulations for Preventing Collisions at Sea, 1972 (COLREG 72);
  - (b) “specific IMO Conventions” means the 1993 Torremolinos Protocol relating to the Torremolinos International Convention for the Safety of Fishing Vessels 1977, and the 2001 International Convention on the control of harmful anti-fouling systems on ships;
  - (c) “flag State Code (FSC)” means parts 1 and 2 of the “Code for the implementation of mandatory IMO instruments”, adopted by the International Maritime Organisation (IMO) through Assembly Resolution A.973 (24) on 1 December 2005;
  - (d) “ships” means ships and crafts to which one or more of the IMO Conventions is applicable;
  - (e) “Administration” means the competent maritime authorities of the Member State whose flag the ship or craft is entitled to fly;
  - (f) “qualified flag State surveyor” means a public-sector employee or other person, duly authorised by the competent authority of a Member State to carry out surveys and inspections related to the certificates and fulfilling the criteria of qualification and independence specified in Annex II;
  - (g) “recognised organisation” means an organisation recognised in accordance with [Directive .../.../EC (on common rules and standards for ship inspection and survey organisations and for the relevant activities of maritime administrations)];
  - (h) “certificates” means statutory certificates related to the IMO Conventions.
2. Measures to amend the definitions in points (a), (b) and (c) of paragraph 1 in the light of new Conventions or provisions may be adopted in accordance with the procedure referred to in Article 18(2).

### *Article 3*

#### *Implementation of the international framework*

1. Member States shall become party to the IMO Conventions and to the specific IMO Conventions. However, this obligation only refers to the Conventions in their version at the date of the entry into force of this Directive.
2. Member States, which at the date of entry into force of this Directive are not yet party to all of the IMO Conventions and the specific IMO Conventions, shall start the procedures for the ratification of or accession to the Conventions in question, according to their national law. They shall notify the Commission within ninety days after the entry into force of this Directive of the expected date on which they will deposit the instrument of ratification or accession to those conventions with the Secretary-General of the International Maritime Organization.

3. Each Member State shall clearly assign within its Administration tasks related to the setting-up and development of policies to implement the flag State related obligations of the IMO Conventions and ensure that its Administration is able to properly contribute to the issuance of national legislation and to provide guidance for its implementation and enforcement.
4. In respect of international shipping Member States shall apply in full the mandatory flag State related provisions laid down in the IMO Conventions in accordance with the conditions and in respect of the ships referred to therein and shall take due account of the provisions of the Flag State Code (FSC) in Annex I to this Directive.
5. Member States shall continually improve the adequacy of the measures which are taken to give effect to the IMO Conventions. Improvement shall be made through rigorous and effective application and enforcement of national legislation, as appropriate, and continuous monitoring of compliance.
6. In accordance with the procedure referred to in Article 18(2) measures may be adopted in order to:
  - (a) develop harmonised procedures for the application of exemptions and equivalents applied in accordance with the IMO Conventions;
  - (b) establish harmonised interpretations of issues left to the discretion of the Administrations in the IMO Conventions;
  - (c) apply unified interpretations for provisions laid down in the Conventions.

#### *Article 4*

##### *Resources and processes for administering safety and pollution prevention requirements*

1. Each Member States shall ensure that its Administration relies on appropriate resources, commensurate with the size and nature of its fleet. These resources shall:
  - (a) ensure compliance with the requirements of the IMO Conventions;
  - (b) ensure the conduct of investigations into casualties and adequate and timely handling of cases of ships with identified deficiencies; and
  - (c) ensure the development, documentation and provision of guidance concerning those requirements that are to the satisfaction of the Administration, found in the relevant IMO Conventions;
  - (d) comprise an appropriate number of qualified personnel to implement and enforce the national legislation implementing the IMO Conventions, including personnel for performing investigations and surveys;
  - (e) comprise a sufficient number of qualified flag State personnel to investigate incidents where ships entitled to fly the flag of the Member State concerned have been detained by port States; and

- (f) comprise a sufficient number of qualified flag State personnel to investigate incidents where the validity of a certificate or endorsement or competence of individuals holding certificates or endorsements issued under the authority of the Member State concerned is questioned by port States.
- 2. Each Member State shall ensure the training and oversight of the activities of flag State surveyors and investigators.
- 3. Each Member State shall develop or maintain a design review and technical decision-making capability commensurate with the size and nature of its fleet.
- 4. Minimum requirements for the implementation of the obligations provided for by paragraphs 1 and 2 shall be established in accordance with the procedure referred to in Article 18(2).

#### *Article 5*

##### *Registration of a ship under a the flag of a Member State*

- 1. Prior to registration of any ship, the Member State concerned shall verify the identity of the ship, including the IMO Ship Identification Number, where appropriate, and other records of the ship, so that the ship does not fly the flags of two or more States simultaneously. Evidence shall be obtained that a ship previously registered under another State's flag has been deleted from that State's register, or that consent to the transfer of the ship has been obtained from that State's register.
- 2. When registering a ship in its register for the first time the Member State concerned shall endeavour to ensure that the ship in question complies with the applicable international rules and regulations. It shall liaise with the previous flag State, if necessary.
- 3. Whenever another flag State requests information concerning a ship which has left the register of a Member State, that Member State shall promptly provide details of deficiencies, non-conformities with the applicable timescales and any other safety related information to the other flag State.
- 4. Paragraphs 1, 2 and 3 shall apply without prejudice to Article 4 of Regulation (EC) No 789/2004 of the European Parliament and of the Council<sup>11</sup>.

#### *Article 6*

##### *Ensuring the safety of ships flying the flag of a Member State*

- 1. Member States shall take all necessary measures to secure compliance with international rules and standards by ships entitled to fly their flag. These measures shall in particular include the following:
  - (a) prohibiting ships from sailing until such ships can proceed to sea in compliance with international rules and standards;

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<sup>11</sup> OJ L 138, 30.4.2004, p. 19.

- (b) ensuring the periodic inspection of ships to verify that the actual condition of the ship and its crew is in conformity with the certificates it carries;
  - (c) ensuring that, during the periodic inspection referred to in point (b), the surveyor checks that seafarers assigned to the ships are familiar with their specific duties and ship arrangements, installations, equipments and procedures;
  - (d) ensuring that the ship's complement, as a whole, can effectively co-ordinate their activities in an emergency situation and in performing functions vital to safety or to the prevention or mitigation of pollution;
  - (e) providing, in national laws and regulations, for penalties of adequate severity to discourage violation of international rules and standards by ships;
  - (f) instituting proceedings, after an investigation has been conducted, against ships which have violated international rules and standards, irrespective of where the violation has occurred;
  - (g) 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 their authority; and
  - (h) 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.
2. Member States shall develop and implement an appropriate control and monitoring programme to provide for a timely response to deficiencies and alleged pollution incidents reported by port or coastal States.
  3. Member States, or recognised organisations acting on their behalf, shall only issue or endorse certificates to a ship after they have determined that the ship meets all applicable requirements.
  4. Member States shall only issue an international certificate of competency or endorsement to a person after it has determined that the person meets all applicable requirements.
  5. Member States shall ensure that their ships have been surveyed in accordance with the relevant procedures and guidelines under the harmonised system of survey and certification as annexed to IMO Assembly Resolution A.948 (23), in its up-to-date version.
  6. When a ship flying the flag of a Member State is detained by a port State, the flag State shall take action in accordance with the guidance set out in Annex III.
  7. Annex III may be amended in accordance with the procedure referred to in Article 18(2) in order to improve the guidance in the light of the experience gained in the implementation of the existing arrangements.

*Article 7*  
*Delegation of authority for statutory tasks*

1. Without prejudice to [Directive 94/57/EC or Directive .../.../EC (on common rules and standards for ship inspection and survey organisations and for the relevant activities of maritime administrations)], Member States relying upon recognised organisations for the certification of their ships shall develop or maintain a capability, commensurate with the size and nature of their fleet, to continuously monitor the survey and certification process of the recognised organisations acting on their behalf.

They shall ensure that a direct Internet communication link is established between the Administration and the recognised organisations, and that the staffs involved in the monitoring of the recognised organisations have a good knowledge of the rules of those organisations and of the flag State and are available to carry out effective field oversight of the recognised organisations.

2. Member States to whom paragraph 1 applies shall ensure that each ship flying their flag is subject to a supplementary survey at intervals not exceeding 12 months, in order to ensure that it complies with the IMO Conventions and national requirements.
3. The supplementary survey referred to in paragraph 2 shall not be required for ships which:

- (a) have been in the Member State's register for at least two years;
- (b) have been inspected at least once in the previous 12 months in accordance with Directive 95/21/EC<sup>12</sup> or [Directive .../.../EC of the European Parliament and of the Council on port State control]<sup>13</sup>; and
- (c) have not been detained pursuant to Directive 95/21/EC or to [Directive.../.../EC (on port State control)] in the last 12 months.

4. Once detailed rules of inspection adopted under Article 5(2) of [Directive .../.../EC on Port State Control] have entered into force, the supplementary survey referred to in paragraph 2 shall not be required for ships to which a low risk profile has been assigned under that Directive at its the most recent inspection.

5. Member States to whom paragraph 1 applies shall further:

- (a) issue to their recognised organisations specific instructions detailing actions to be taken 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; and,
- (b) provide their recognised organisations with all appropriate instruments of national law and interpretations thereof giving effect to the provisions of the

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<sup>12</sup> OJ L 157, 7.7.1995, p. 1.

<sup>13</sup> OJ L [...], [...], p. [...].

IMO conventions or specify whether the Administration's standards go beyond convention requirements in any respect.

6. Procedures and guidelines for supplementary surveys and minimum criteria for surveyors and inspectors performing supplementary surveys shall be established in accordance with the procedure referred to in Article 18(2).

*Article 8*  
*Flag State surveyors*

1. Member States shall define and document the responsibilities, authority and interrelation of all flag State personnel who manage, perform and verify work relating to and affecting safety and pollution prevention.
2. Member States shall ensure that the personnel responsible for or performing surveys, inspections and audits on ships and companies comply with the minimum criteria laid down in Annex II.
3. Member States shall ensure that the personnel, other than that referred to in paragraph 2, assisting in the performance of flag State obligations have the education, training and supervision commensurate with the tasks they are authorised to perform.
4. Member States shall ensure the implementation of a documented system for qualification of personnel and continuous updating of their knowledge as appropriate to the tasks they are authorised to undertake.
5. The flag State shall issue an identification document to all surveyors carrying out tasks on its behalf on board ships.
6. Minimum qualification requirements for the personnel referred to in paragraph 3 may be established in accordance with the procedure referred to in Article 18(2).

*Article 9*  
*Flag State investigations*

Without prejudice to responsibilities under the Code for the Investigation of Marine Casualties and Incidents, adopted by the IMO by resolution A. 849(20), as annexed to IMO Assembly Resolution A. 884(21), in its up-to-date version, Member States shall carry out an investigation following a marine casualty or pollution incident involving a ship flying their flag. Such casualty investigations shall be conducted by suitably qualified investigators, competent in matters relating to the casualty. For this purpose Member States shall provide qualified investigators, irrespective of the location of the casualty or incident.

*Article 10*  
*Safe manning*

Member States shall ensure that the ships flying their flags are adequately manned from the point of view of safety of life at sea and observe the principles of safe manning, as laid down

in IMO Assembly Resolution A.890 (21) on Principles of safe manning, in its up-to-date version, taking into account the relevant guidelines attached to that Resolution.

*Article 11*  
*Accompanying measures*

1. Member States shall develop or maintain a fleet database for their ships, with the main technical details of each ship and the information listed in paragraph 2, or ensure that they have direct access to a database providing similar information. Member States shall grant the Commission the right to extract data from their databases and to exchange data with them .
2. The following information shall be included in the database:
  - (a) particulars of the ship (Name, IMO number, etc.);
  - (b) dates of the surveys, including additional and supplementary surveys, if any, and audits;
  - (c) identification of the recognised organisations involved in the certification and classification of the ship;
  - (d) identification of the body which has inspected the ship under Port State control provisions and dates of the inspections;
  - (e) outcome of the port State control inspections (Deficiencies: Yes or No, detentions Yes or No);
  - (f) information on casualties;
  - (g) information on infringements under MARPOL and under Directive 2005/35/EC of the European Parliament and of the Council of 7 September 2005 on ship-source pollution and on the introduction of penalties for infringements<sup>14</sup>;
  - (h) identification of the ships which have left the register during the previous 12 months.
3. The list of information in paragraph 2 may be amended in the light of developments related to new databases in accordance with the procedure referred to in Article 18(2).

Harmonised formats for the provision of data may be established in accordance with the procedure referred to in Article 18(2).

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<sup>14</sup> OJ L 255, 30.9.2005, p. 11.

*Article 12*  
*Evaluation and review of the performance of flag States*

1. Member States shall annually evaluate their performance with respect to the provisions of this Directive.
2. Measures to evaluate the performance of the flag States shall 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, and other performance indicators as may be appropriate, to determine whether staffing, resources and administrative procedures are adequate to meet the flag State obligations.
3. A common methodology for evaluating flag State performance shall be established in accordance with the procedure referred to in Article 18(2).
4. Member States which on 1 July of any calendar year appear on the black or grey list as published in the annual report of the Paris Memorandum of Understanding (MOU) on Port State Control, shall provide the Commission before 1 September of the same year with an extensive report on their lack of performance as flag State. That report shall identify and analyse the main reasons for the lack of performance and identify the categories of ships leading to that result. The report shall also comprise a plan for remedial action, including supplementary surveys when appropriate, that will be implemented at the earliest opportunity.

*Article 13*  
*Flag State auditing process*

1. Each Member State shall ensure that an independent audit of its compliance with this Directive is carried out within three years of the entry into force of this Directive and at regular intervals thereafter.
2. The framework and the procedures for the audit referred to in paragraph 1 shall be established in accordance with the procedure referred to in Article 18(2).

However, audits conducted in accordance with the provisions of Resolution A. 974 (24) adopted by the IMO Assembly on 1 December 2005 shall be accepted as the audit referred to in paragraph 1, if the conditions laid down in paragraph 3 have been fulfilled. The acceptance is without prejudice to any additional inspection undertaken by the Commission or upon its request in order to check compliance with Community maritime legislation.

3. The Member States shall ensure:
  - (a) that compliance with the provisions of this Directive will also be audited;
  - (b) that the Commission is given the possibility to participate as an observer, in the IMO auditing process;
  - (c) that the report and the information on subsequent action taken is immediately made available to the Commission.

4. In accordance with the procedure referred to in Article 18(2):
  - (a) a timetable shall be established for the performance of the audits referred to in paragraph 1;
  - (b) the conditions for the publicity to be given to audit results shall be defined.
5. If necessary, the Community shall develop recommendations for measures and proposals improving the effectiveness of the IMO auditing system referred to in paragraph 2.

*Article 14*  
*Quality certification*

1. Each Member State shall develop, implement and maintain a quality management system for its Administration. Such quality management system shall be certified in accordance with the ISO 9001:2000 standards or an equivalent standard fulfilling at least all aspects of ISO 9001:2000, and it shall be audited in accordance with the guidelines of the ISO 19011:2002 or equivalent standard fulfilling all aspects of ISO 19011:2002. Directive 98/34/EC of the European Parliament and of the Council<sup>15</sup> shall be complied with in relation to the said equivalent standards.
2. The quality management system shall be set up within a period of three years from the entry into force of this Directive.
3. The quality management system shall be certified within a period of four years from the entry into force of this Directive.
4. The references in paragraph 1 to ISO standards may be updated in accordance with the procedure referred to in Article 18(2).

*Article 15*  
*Co-operation agreements*

The Commission shall, before the end of [2007], submit to the European Parliament and the Council a report on the feasibility of establishing a Memorandum of Understanding on flag State control obligations, aiming at ensuring a level playing field between flag States, which have committed themselves to implement in a mandatory way the Code for the implementation of mandatory IMO instruments, adopted by the International Maritime Organisation (IMO) through Assembly Resolution A. 973 (24) of 1 December 2005, and agreed to be audited in accordance with the provisions of Resolution A. 974 (24) adopted by the IMO Assembly on 1 December 2005.

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<sup>15</sup> OJ L 204, 21.7.1998, p. 37.

*Article 16*  
*Communication of information and reporting*

1. Each Member State shall communicate to the IMO the information required by the provisions of the IMO Conventions.
2. Each year the Member States shall inform the Commission about:
  - (a) the number of inspections and audits they have carried out as flag States;
  - (b) the resources allocated to the tasks referred to in Article 4(1) and (2) as well as in Article 7(1);
  - (c) the measures taken to comply with Articles 6 to 11, Article 12(1) and Article 15.
3. A harmonised specimen form for the reporting obligations referred to in paragraph 2 may be established in accordance with the procedure referred to in Article 18(2).
4. The Commission shall, after having received reports from Member States, prepare a consolidated report concerning the implementation of this Directive. This report shall be addressed to the European Parliament and the Council.

*Article 17*  
*Amendments*

In addition to the amendments provided for in Article 2(2), Article 6(7) and Article 11(3), this Directive may be amended in accordance with the procedure referred to in Article 18(2) in order to take account of new flag State related provisions and commitments developed at international level, in particular, in the IMO and the ILO.

The amendments to the IMO Conventions and to the Code for the implementation of mandatory IMO instruments may be excluded from the scope of this Directive pursuant to Article 5(2) of Regulation (EC) No 2099/2002.

*Article 18*  
*Committee*

1. The Commission shall be assisted by the Committee on Safe Seas and the Prevention of Pollution from Ships (COSS) established by Article 3 of Regulation (EC) No 2099/2002.
2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at two months.
3. The Committee shall adopt its Rules of procedure.

*Article 19*  
*Transposition*

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [...] at the latest. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

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

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 20*  
*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*.

This Directive is addressed to the Member States.

Done at Brussels, [...]

*For the European Parliament*  
*The President*  
[...]

*For the Council*  
*The President*  
[...]

## **ANNEX I**

### **FLAG STATE CODE (FSC)**

#### **PARTS 1 AND 2 OF THE CODE FOR THE IMPLEMENTATION OF MANDATORY IMO INSTRUMENTS**

##### **PART 1 – COMMON AREAS**

###### **Objective**

1. The objective of this Code is to enhance global maritime safety and protection of the marine environment.
2. Different Administrations will view this Code according to their own circumstances and will be bound only for the implementation of those instruments referred to in paragraph 6 to which they are Contracting Governments or Parties. By virtue of geography and circumstance some Administrations 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 port State than as a flag State. Such imbalances do not diminish, in any way, their duties as a flag, port or coastal State.

###### **Strategy**

3. In order for a State to meet the objective of this Code a strategy should be developed, covering the following issues:
  - (1) implementation and enforcement of relevant international mandatory instruments;
  - (2) adherence to international recommendations, as appropriate;
  - (3) continuous review and verification of the effectiveness of the State in respect of meeting its international obligations; and
  - (4) the achievement, maintenance and improvement of overall organisational performance and capability.

In implementing the aforementioned strategy, the guidance given in this Code should be adhered to.

###### **General**

4. Under the provisions of the United Nations Convention on the Law of the Sea 1982 (UNCLOS) and of IMO conventions, Administrations are responsible for promulgating laws and regulations and for taking all other steps which may be necessary to give these instruments full and complete effect so as to ensure that, from the point of view of safety of life at sea and protection of the marine environment, a ship is fit for the service for which it is intended and is manned with competent maritime personnel.

5. In taking measures to prevent, reduce and control pollution of the marine environment, States shall 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. (UNCLOS, Article 195).

## Scope

6. The mandatory IMO instruments addressed in this Code are:
  - (1) the International Convention for the Safety of Life at Sea, 1974, as amended (SOLAS 74);
  - (2) the Protocol of 1978 relating to the International Convention for the Safety of Life at Sea 1974, as amended, (SOLAS PROT 1978);
  - (3) the Protocol of 1988 relating to the International Convention for the Safety of Life at Sea, 1974, as amended, (SOLAS PROT 1988);
  - (4) the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 (MARPOL 73/78);
  - (5) 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 (MARPOL PROT 1997);
  - (6) the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended (STCW);
  - (7) the International Convention on Load Lines, 1966 (LL 66);
  - (8) the Protocol of 1988 relating to the International Convention on Load Lines, 1966 (LL PROT 1988);
  - (9) the International Convention on Tonnage Measurement of Ships, 1969 (Tonnage 69); and
  - (10) the Convention on the International Regulations for Preventing Collisions at Sea, 1972, as amended (COLREG 72);

as well as all instruments made mandatory through these conventions and protocols. Non-exhaustive lists of obligations under the above mandatory instruments are found in Annexes 1 to 4. A list of the relevant instruments is given in Annex 5 and a summary of amendments to mandatory instruments reflected in the Code is given in Annex 6<sup>1</sup>.

## Initial actions

7. When a new or amended IMO mandatory instrument enters into force for a State, the Government of that State must be in a position to implement and enforce its

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<sup>1</sup> These Annexes will be filled in at the occasion of MSC 80 (May 2005). Only Annexes 1, 2 and 5 are relevant for the flag State obligations.

provisions through appropriate national legislation and to provide the necessary implementation and enforcement infrastructure. This means that a Government of the State must 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.

8. A possible framework for national legislation to give effect to the provisions of relevant IMO instruments can be found in “Guidelines for Maritime Legislation”, a United Nations publication<sup>2</sup>.

#### **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 to people for improvement of performance in maritime safety and environmental protection activities.
13. Further, the State should take action to identify and eliminate the cause of any non-conformities in order to prevent recurrence, including:

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<sup>2</sup> ST/ESCAP/1076.

- (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 to eliminate the causes of potential non-conformities in order to prevent their occurrence.

## **PART 2 – FLAG STATES**

### **Implementation**

15. In order to effectively discharge their responsibilities and obligations, flag States should:
- (1) implement policies through the issuance of national legislation and guidance which will assist in the implementation and enforcement of the requirements of all safety and pollution prevention conventions and protocols they are party to; and
  - (2) assign responsibilities within their Administration to update and revise any relevant policies adopted, as necessary.
16. Flag States should establish resources and processes capable of administering a safety and environmental protection program which, as a minimum, should consist of the following:
- (1) administrative instructions to implement applicable international rules and regulations as well as develop and disseminate any interpretative national regulations that may be needed;
  - (2) resources to ensure compliance with the requirements of the mandatory IMO instruments listed in paragraph 6 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 flag States to issue the required certificates and relevant documentation;
  - (3) resources to ensure compliance with the requirements of the 1978 STCW Convention, as amended. This includes resources to ensure, *inter alia*, that:
    - 3.1 training, assessment of competence and certification of seafarers are in accordance with the provisions of the Convention;
    - 3.2 STCW certificates and endorsements accurately reflect the competencies of the seafarers, using the appropriate STCW terminology as well as terms which are identical to those used in any safe manning document issued to the ship;
    - 3.3 impartial investigation can 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 that Party;

3.4 certificates or endorsements issued by the flag State can be effectively withdrawn, suspended or cancelled when warranted, and when necessary to prevent fraud; and

3.5 administrative arrangements, including those involving training, assessment and certification activities conducted under the purview of another State, 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<sup>3</sup>;

(4) resources to ensure the conduct of investigations into casualties and adequate and timely handling of cases of ships with identified deficiencies; and

(5) the development, documentation and provision of guidance concerning those requirements that are to the satisfaction of the Administration, found in relevant mandatory IMO instruments.

17. Flag States shall ensure that ships entitled to fly their flag are sufficiently and efficiently manned, taking into account the Principles of Safe Manning adopted by IMO.

#### **Delegation of authority**

18. Flag States authorising recognised organisations to act on their behalf in conducting the surveys, inspections, the issue of certificates and documents, the marking of ships and other statutory work required under the IMO conventions must regulate such authorisation in accordance with SOLAS regulation XI-1/1 to:

(1) determine that the recognised organisation has adequate resources in terms of technical, managerial and research capabilities to accomplish the tasks being assigned, in accordance with the Minimum standards for recognised organisations acting on behalf of the Administration set out in the relevant IMO resolution<sup>4</sup>;

(2) have as its basis a formal written agreement between the Administration and the recognised organisation which, as a minimum, includes the elements set out in the relevant IMO resolution<sup>5</sup>, or equivalent legal arrangements, and which may be based on the model agreement for the authorisation of recognised organisations acting on behalf of the Administration<sup>6</sup>;

(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

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<sup>3</sup> Regulations I/2, I/9, I/10 and I/11 of the 1978 STCW Convention, as amended.

<sup>4</sup> Appendix 1 of Resolution A.739 (18) "Guidelines for the authorization of organizations acting on behalf of the Administration".

<sup>5</sup> Appendix 2 of Resolution A.739 (18) "Guidelines for the authorization of organizations acting on behalf of the Administration".

<sup>6</sup> (MSC/Circ.710 – MEPC/Circ.307).

board, or is found to present an unreasonable threat of harm to the marine environment;

- (4) provide the recognised organisation with all appropriate instruments of national law and interpretations thereof giving effect to the provisions of the conventions or specify whether the Administration's standards go beyond convention requirements in any respect; and
  - (5) require that the recognised organisation must maintain records which will provide the Administration with data to assist in interpretation of convention regulations.
19. Flag States nominating surveyors for the purpose of carrying out surveys and inspections on their behalf should regulate such nominations, as appropriate, in accordance with the guidance provided in paragraph 18, in particular subparagraphs 3 to 4.
20. The flag State should establish or participate in an oversight programme with adequate resources for monitoring of, and communication with, its recognised organisations 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 in fact comply with mandatory IMO 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 IMO convention requirements; and
  - (3) providing staff who have a good knowledge of the rules and regulations of the flag State and the recognised organisations and who are available to carry out effective field oversight of the recognised organisations.

## **Enforcement**

21. Flag States should take all necessary measures to secure observance of international rules and standards by ships entitled to fly their flag and by entities and persons under their jurisdiction so as to ensure compliance with their international obligations. Such measure should, *inter alia*, include:
- (1) prohibiting ships entitled to fly their 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 their flag to verify that the actual condition of the ship and its crew is in conformity with the certificates it carries;
  - (3) the surveyor ensuring, during the periodic inspection referred to in subparagraph 2, that seafarers assigned to the ships are familiar with:
    - 3.1 their specific duties; and

3.2 ship arrangements, installations, equipments and procedures.

- (4) ensuring that the ship's complement, as a whole, can effectively co-ordinate their activities in an emergency situation and in performing 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 their flag;
- (6) instituting proceedings – after an investigation has been conducted - against ships entitled to fly their 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 their 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.

22. A flag State should consider developing and implementing a control and monitoring programme, as appropriate, in order to:

- (1) provide for prompt and thorough casualty investigations, with reporting to IMO 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.

23. Furthermore, the flag State should:

- (1) ensure compliance with applicable IMO 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; and
- (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 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.
24. When a 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 to bring the ship in question into immediate compliance with the applicable international conventions are taken.
25. A flag State, or a recognised organisation acting on its behalf, should only issue or endorse an international certificate to a ship after it has determined that the ship meets all applicable requirements.
26. A flag State should only issue an international certificate of competency or endorsement to a person after it has determined that the person meets all applicable requirements.

### **Flag State surveyors**

27. The flag State should define and document the responsibilities, authority and interrelation of all personnel who manage, perform and verify work relating to and affecting safety and pollution prevention.
28. Personnel responsible for, or performing, surveys, inspections and audits on ships and companies covered by the relevant IMO mandatory instruments should have as a minimum the following:
  - (1) appropriate qualifications from a marine or nautical institution and relevant sea-going experience as a certificated ship officer holding or having held a valid STCW II/2 or III/2 certificate of competency and have maintained their technical knowledge of ships and their operation since gaining their certificate of competency; or
  - (2) a degree or equivalent from a tertiary institution within a relevant field of engineering or science recognised by the State.
29. Personnel qualified under 28(1) should have served for a period of not less than three years at sea as officer in the deck or engine department.
30. Personnel qualified under 28(2) should have worked in a relevant capacity for at least three years.
31. In addition such personnel should have appropriate practical and theoretical knowledge of ships, their operation and the provisions of the relevant national and international instruments necessary to perform their duties as flag State surveyors obtained through documented training programmes.
32. Other personnel assisting in the performance of such work should have education, training and supervision commensurate with the tasks they are authorised to perform
33. Previous relevant experience in the field of expertise should be considered an advantage; in case of no previous experience the Administration should provide appropriate field training

34. Flag States may accredit surveyors through a formalised, detailed training programme that leads to the same standard of knowledge and ability as that required in paragraphs 29 to 32.
35. The flag State should have implemented a documented system for qualification of personnel and continuous updating of their knowledge as appropriate to the tasks they are authorised to undertake.
36. Depending on the function(s) to be performed the qualifications should encompass:
- (1) knowledge of applicable international and national rules and regulations for ships, their companies, their crew, their cargo and their operation;
  - (2) knowledge of the procedures to be applied in survey, certification, control, investigative and oversight functions;
  - (3) understanding of the goals and objectives of the international and national instruments dealing with maritime safety and protection of the marine environment, and of related programmes;
  - (4) understanding of the processes both on board and ashore, internal as well as external
  - (5) possession of professional competency necessary to perform the given tasks effectively and efficiently;
  - (6) full safety awareness in all circumstances, also for one's own safety; and
  - (7) training or experience in the various tasks to be performed and, preferably, also in the functions to be assessed.
37. The flag State should issue an identification document for the surveyor to carry when performing his/her tasks.

### **Flag State investigations**

38. Investigations should be carried out following a marine casualty or pollution incident. Casualty investigations should be conducted by suitably qualified investigators, competent in matters relating to the casualty. The flag State should be prepared to provide qualified investigators for this purpose, irrespective of the location of the casualty or incident
39. The flag State should ensure that individual investigators have working knowledge and practical experience in those subject areas pertaining to their normal duties. Additionally, to assist individual investigators in performing duties outside their normal assignments, the flag State should 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. Any accidents 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 upon in accordance with relevant IMO conventions, and the guidelines developed by IMO<sup>7</sup>. The report on the investigation should be forwarded to IMO together with the flag State's observations, in accordance with the guidelines referred to above.

### **Evaluation and review**

42. The flag States should, on a periodic basis, evaluate their performances with respect to the implementation of administrative processes, procedures and resources necessary to meet their obligations as required by the conventions to which they are party.
43. Measures to evaluate the performance of the flag States may 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, to determine whether staffing, resources and administrative procedures are adequate to meet their flag State obligations.
44. Measures may include a regular review of:
- (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 its authority;
  - (4) responses to port State deficiency reports or interventions;
  - (5) investigations into serious casualties and lessons learned there from;
  - (6) financial, technical and other resources committed;
  - (7) results of inspections, surveys and controls of the ships in the fleet;

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<sup>7</sup> Refer to the Code for the Investigation of Marine Casualties and Incidents, adopted by the Organization by Resolution A.849 (20), as amended by resolution A. 884 (21).

- (8) investigation of occupational accidents;
- (9) the number of incidents and violations under MARPOL 73/78, as amended;  
and
- (10) the number of suspensions or withdrawals of certificates, endorsements,  
approvals, etc.

## **ANNEX II**

### **MINIMUM CRITERIA FOR FLAG STATE SURVEYORS**

**(as referred to in Article 8)**

1. Surveyors must be authorised to carry out the surveys referred to in this Directive by the competent authority of the Member State.
2. Surveyors must have appropriate theoretical knowledge and practical experience of ships, their operation and of the provisions of the relevant national and international requirements. This knowledge and experience must be acquired through documented training programmes.
3. Surveyors must, as a minimum have, either:
  - (1) appropriate qualifications from a marine or nautical institution and relevant sea-going experience as a certificated ship officer holding or having held a valid STCW II/2 or III/2 certificate of competency; or
  - (2) passed an examination recognised by the competent Authority as a naval architect, mechanical engineer or an engineer related to the maritime fields and worked in that capacity for at least five years; or
  - (3) a relevant university degree or equivalent and been trained and qualified at a training institute for surveyors, and served at least two years with the competent authority of a Member State in a position as a trainee Flag State Surveyor.
4. Surveyors qualified under 3(1) must have served for a period of not less than five years at sea as an officer in the deck or engine department, respectively.
5. Surveyors qualified under 3(1) and 3(2) must have maintained their technical knowledge of ships and their operation since gaining their certificate of competency or qualifications.
6. Surveyors qualified under 3(3) must have the same standard of knowledge and ability as that required for surveyors qualified under 3(1) and 3(2).
7. Surveyors must have the ability to communicate orally and in writing with seafarers in the language most commonly spoken at sea.
8. Surveyors must not have a commercial interest in the ship surveyed and must not be employed by or undertake work on behalf of non-governmental organisations which carry out statutory or classification surveys or issue certificates for ships.
9. Surveyors not fulfilling the above criteria are also accepted if they were employed by a competent authority for statutory surveys or port state control inspections at the date of adoption of this Directive.

## ANNEX III

### **GUIDANCE ON FOLLOW UP ACTIONS ON SHIPS DETAINED BY A PORT STATE**

**(as referred to in Article 6)**

#### **1. DETENTION BY A PORT STATE**

1. When the competent authority of a Member State (hereinafter called the flag State) is informed that a ship flying its flag has been detained by a port State it should oversee the appropriate corrective measures to bring the ship into compliance with the applicable regulations and international conventions. Such measures should include the following.

#### **2. IMMEDIATE ACTIONS**

1. As soon as the flag State is informed of the detention it should make contact with the company (the company for ISM purposes) and the port State to establish, as far as possible, the full circumstances of the detention.
2. Based on this information the flag State should consider what immediate action is necessary to bring the ship into compliance. It may consider that some deficiencies can be readily rectified and confirmed by the port State (for example a life-raft which needs servicing). In such cases the flag State should seek confirmation from the port State that the deficiencies have been rectified.
3. For more serious deficiencies, particularly structural ones and others covered by certificates issued on the flag State's behalf by a recognised organisation (RO), the flag State should require an inspection by one of its surveyors or appoint a surveyor from the RO to carry one out on its behalf. Initially this inspection should focus on those areas where deficiencies have been recorded by the port State. If deemed necessary by the flag State or RO surveyor it may then be extended to a full re-survey for those areas covered by the relevant statutory certificates.
4. In cases where the RO has carried out the inspection in 2.3 above its surveyor should report to the flag State on the actions taken and the condition of the ship following this inspection so that the flag State may determine what further action, if any, is necessary.
5. If the inspection by the port State has also been suspended in accordance with [Article 9(4) of Directive 95/21/EC or Article 13(5) of Directive .../.../EC (on port State control)] the flag State should arrange for re-survey of the ship for those certificates covering the areas where deficiencies have been recorded by the port State and for any other areas that are subsequently found to be deficient. The flag State should either conduct this survey themselves or require a full report from the surveyor from the RO and, when appropriate, confirmation that a satisfactory survey has been completed and that all deficiencies have been rectified. When content, the

flag State should confirm to the port State that the ship complies with the requirements of the relevant regulations and international conventions.

6. In cases of the most serious non-compliance with regulations and international conventions the flag State should always send its own surveyor, rather than a surveyor from the RO, to conduct or oversee the inspections and surveys mentioned in paragraphs 2.3 – 2.5.
7. Unless paragraph 2.10 applies, the flag State shall require that corrective measures are taken by the company to bring the ship into compliance with the applicable regulations and international conventions before the ship is allowed to sail from the port of detention (in addition to the corrective action required by the port State). If such corrective action is not taken the relevant certificates should be withdrawn.
8. The flag State should consider the extent to which the deficiencies recorded by the port State and found following a flag State inspection/survey indicate a failure of the safety management system of the ship and the company. As necessary the flag State should arrange for the re-audit of the ship and/or company and in liaison with the port State, consider whether this re-audit should take place before the ship is allowed to leave the port of detention.
9. At all times the flag State should liaise and cooperate with the port State to help ensure the rectification of deficiencies found and respond as quickly as possible to any requests for clarification from the port State.
10. If deficiencies cannot be rectified in the port of detention and the port State, in accordance with [Article 11(1) of Directive 95/21/EC or Article 15(1) of Directive .../.../EC (on port State control)], allows the ship to proceed to a repair yard the flag State should liaise with the port State to determine the conditions under which this voyage may take place and confirm these conditions in writing.
11. If the ship does not comply with the conditions referred to in paragraph 2.10 above or fails to call at the agreed repair yard the flag State should immediately seek an explanation from the company and consider withdrawing the ship's certificates. In addition the flag State should carry out an additional survey at the first available opportunity.
12. If from the information available the flag State considers that the detention is unjustified it should make its concerns known to the port State and liaise with the company to consider whether to use the appeal procedure available in the port State.

### **3. SUBSEQUENT ACTIONS**

1. Depending on the seriousness of the deficiencies found and the immediate follow up action taken, the flag State should in addition consider carrying out a additional survey of the ship after it has been released from detention. This additional survey should include an assessment of the effectiveness of the safety management system. As a guide an additional survey of the ship should be carried out by the flag State within [6] weeks of its being informed of the detention. This additional survey should be at the company's expense. If the flag State is scheduled to carry out a

statutory survey on the ship within [3] months it may consider delaying the additional survey until that time.

2. Additionally the flag State should consider whether a re-audit of the company involved should be carried out. The flag State should also review the inspection history of other ships under the responsibility of the same company in order to identifying whether there are any common failings throughout that company's fleet.
3. If the ship has been justifiably detained more than once in the previous 2 years the follow up action should be more urgent and in any case an additional survey by the flag State should be carried out within [4] weeks of the flag State being informed of the detention.
4. If the detention also leads to the banning of the ship in accordance with [Article 7b of Directive 95/21/EC or Article 10 of Directive .../.../EC (on port State control)] the flag State must carry out an additional survey and take all the necessary steps to ensure that the company brings the ship into full compliance with all of the relevant conventions and regulations. When content, the flag State should provide to the company a document to this effect.
5. In all cases the flag State should consider what legal action, including fines, against the company may be appropriate. In the case of a ship which persistently fails to comply with the requirements of the applicable regulations and international conventions the flag State should consider what additional sanctions may be necessary including the deletion of the ship from its registry.
6. When all corrective measures to bring the ship into compliance with the applicable regulations and international conventions have been completed the flag State should send a report to IMO in accordance with SOLAS 74 as amended, Chapter I, Regulation 19(d) and paragraph 5.2 of IMO Resolution A. 787 (19) as amended.

#### **4. ADDITIONAL SURVEY**

1. The additional survey as referred to above should include an examination of the following areas to sufficient depth to satisfy the flag State surveyor that the ship, its equipment and its crew comply with all regulations and international conventions applicable to them:
  - Certificates and documents
  - Hull Structure and equipment
  - Conditions of assignment of loadlines
  - Main machinery and systems
  - Cleanliness of machinery spaces
  - Life-saving appliances
  - Fire safety

- Navigation equipment
  - Cargo handling equipment
  - Radio equipment
  - Electrical equipment
  - Pollution prevention
  - Living and working conditions
  - Manning
  - Crew certification
  - Passenger safety
  - Operational requirements including crew communication, drills, training, bridge and engine room operations and security.
2. It should also include, but not be limited to, the relevant items for an expanded inspection specified in [Part C of Annex V to Council Directive 95/21/EC or Part C of Annex VIII to Directive .../.../EC (on port State control)]. Flag State surveyors should not refrain from including, where deemed necessary, functional tests of items such as survival craft and their launching arrangements, main and auxiliary machinery, hatch covers, main electrical power and bilge systems.

## LEGISLATIVE FINANCIAL STATEMENT

### 1. NAME OF THE PROPOSAL:

Proposal for a Directive of the European Parliament and of the Council on compliance with flag State requirements.

### 2. ABM / ABB FRAMEWORK

Policy area: Energy and transport

Activities: Maritime and river transport, intermodality

### 3. BUDGET LINES

**3.1. Budget lines (operational lines and related technical and administrative assistance lines (ex- BA lines)) including headings: Not applicable**

**3.2. Duration of the action and of the financial impact: not applicable**

**3.3. Budgetary characteristics (*add rows if necessary*): not applicable**

Budget line	Expenditure type		New	EFTA contribution	Contributions from applicant countries	Heading in financial perspective
	Comp/ Non-comp	Diff <sup>1</sup> / Non-diff <sup>2</sup>	YES/ NO	YES/ NO	YES/ NO	No
	Comp/ Non-comp	Diff/Non-diff	YES/ NO	YES/ NO	YES/ NO	No

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<sup>1</sup> Differentiated appropriations.

<sup>2</sup> Non-differentiated appropriations.

## 4. SUMMARY OF RESOURCES

### 4.1. Financial resources

#### 4.1.1. Summary of commitment appropriations (CA) and payment appropriations (PA)

EUR million (to 3 decimal places)

Expenditure type	Section No		Year n	n +1	n + 2	n +3	n +4	n + 5 and later	Total
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#### Operational expenditure<sup>3</sup>

Commitment appropriations (CA)	8.1	a	0	0	0	0	0	0	None
Payment appropriations (PA)		b	0	0	0	0	0	0	None

#### Administrative expenditure within reference amount<sup>4</sup>

Technical & administrative assistance (NDA)	8.2.4	c	0	0	0	0	0	0	None
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#### TOTAL REFERENCE AMOUNT

Commitment appropriations		a+c	0	0	0	0	0	0	Not applicable.
Payment appropriations		b+c	0	0	0	0	0	0	Not applicable.

#### Administrative expenditure not included in reference amount<sup>5</sup>

Human resources and associated expenditure (NDA)	8.2.5	d	0.054	0.054	0.054	0.054	0.054	0.054	0.324
Administrative costs, other than human resources and associated costs, not included in reference amount (NDA)	8.2.6	e	0	0	0	0	0	0	0

#### Total indicative financial cost of action

TOTAL CA including cost of human resources		a+c+d+e	0.054	0.054	0.054	0.054	0.054	0.054	0.324
TOTAL PA including cost of human resources		b+c+d+e	0.054	0.054	0.054	0.054	0.054	0.054	0.324

<sup>3</sup> Expenditure that does not fall under Chapter xx 01 of the Title xx concerned.

<sup>4</sup> Expenditure within article xx 01 04 of Title xx.

<sup>5</sup> Expenditure within chapter xx 01 other than articles xx 01 04 or xx 01 05.

## Co-financing details

The legislative proposal does not involve co-financing by Member States

EUR million (to 3 decimal places)

Co-financing body		Year n	n + 1	n + 2	n + 3	n + 4	n+5 and later	Total
.....	f	0	0	0	0	0	0	0
TOTAL CA including co-financing	a+c+d+e+f	0	0	0	0	0	0	0

### 4.1.2. Compatibility with financial programming

- Proposal is compatible with existing financial programming.
- Proposal will entail reprogramming of the relevant heading in the financial perspective.
- Proposal may require application of the provisions of the Interinstitutional Agreement<sup>6</sup> (flexibility instrument or revision of the financial perspective).

### 4.1.3. Financial impact on revenue

- Proposal has no financial implications on revenue
- Proposal has financial impact – the effect on revenue is as follows:

**NB: All details and observations relating to the method of calculating the effect on revenue should be shown in a separate annex.**

EUR million (to one decimal place)

		Prior to action [Year n-1]	Situation following action					
Budget line	Returns		[Year n]	[n+1]	[n+2]	[n+3]	[n+4]	[n+5] <sup>7</sup>
	a) Revenue in absolute terms		0	0	0	0	0	0
	b) Change in revenue	Δ	0	0	0	0	0	0

<sup>6</sup> See points 19 and 24 of the Interinstitutional Agreement.

<sup>7</sup> Additional columns should be added if necessary, i.e. if the duration of the action exceeds 6 years.

4.1.4. *Human resources FTE (including officials, temporary and external staff) – see details under point 8.2.1.*

(Management by existing staff).

<b>Annual requirements</b>	Year n (2007*)	n + 1	n + 2	n + 3	n + 4	n+5 and later
Total number of human resources	0.5	0.5	0.5	0.5	0.5	0.5

## **5. CHARACTERISTICS AND OBJECTIVES**

### **5.1. Need to be met in the short or long term**

Resolution A. 847 (20) of the IMO seeks to promote the effective discharge of the obligations incumbent on the flag States under the international conventions and to assist the States in applying these conventions. However, given this Resolution's lack of detail, the IMO has undertaken to transcribe it in the form of a Code for States whenever they act in the capacity of flag States, coastal States and port States.

The IMO Code, in conjunction with a flag State Audit Scheme, will be formally adopted at the next IMO General Assembly, due to be held in November 2005. The Code and the Audit Scheme are the result of a process of reflection, embarked on by high-level IMO experts, regarding the need to provide for measures to be implemented by the States that are party to the international maritime conventions.

The object of the proposed action is to provide the European Commission with a new legislative act designed to make the Code and the Audit Scheme compulsory, with a view to harmonising the methods of implementing the conventions in the Member States.

### **5.2. Value-added of Community involvement and coherence of the proposal with other financial instruments and possible synergy**

The proposal represents the missing link in relation to the other legislative instruments dealing with maritime safety.

Furthermore, the proposal reflects the wishes expressed by the Member States at the Copenhagen European Council held in December 2002 for a Community system to be put in place in order to monitor Member State obligations arising from the international instruments to which they are party, notably through the transposition into Community law of the Code on the implementation of the responsibilities of the flag States and the Member State Audit Scheme.

Lastly, this proposal will ensure better prevention of environmental damage. All in all, these measures will help to reinforce the European Union's role on the international scene.

### 5.3. Objectives, expected results and related indicators of the proposal in the context of the ABM framework

The objectives of the proposal are set out in the box below:

- Improving safety at sea, protecting seafarers and the environment
- Promoting a flag of quality
- Encouraging the Member States to ratify the international conventions
- Setting up efficient high-quality maritime administrations
- Providing for an effective Audit Scheme for the flag States

### 5.4. Method of implementation (indicative)

**Centralised management**

Directly by the Commission

Indirectly by delegation to:

Executive Agencies,

bodies set up by the Communities, as referred to in Art. 185 of the Financial Regulation,

national public-sector bodies/bodies with a public-service mission.

**Shared or decentralised management**

with Member States

with third countries

**Joint management with international organisations (please specify)**

Comments:

## 6. MONITORING AND EVALUATION

The draft Directive contains a provision requiring the Member States to notify the Commission of the national implementing measures to be adopted with a view to transposing the Directives into national law.

In the event of failure to notify these national implementing measures (or in the event of incomplete notification), the infringement procedures will automatically be launched in accordance with Article 226 of the Treaty.

Monitoring by the Maritime Safety Agency of the activities of the survey bodies and of the Member State maritime administrations.

## 6.1. Evaluation

### 6.1.1. Ex ante evaluation

The incorporation of the Code into Community law will not involve any additional budgetary costs for the Member States.

As far as inspection and certification are concerned, the Code has already been brought partially into force by the Member States under the provisions of Directive 94/57/EC. Virtually all of the conventions referred to have been ratified by the Member States and have entered into force.

On the other hand, the introduction of a high-quality transport system (ISO9001/2000 standard) will entail certain investment and operating costs for the maritime administrations. These costs will impact on the maritime industries, on the environment and on employment.

#### **Maritime administrations**

Three Member States (Denmark, Luxembourg and the United Kingdom) have already implemented this standard. Despite the fact that the costs set out in the impact analysis on the basis of the information supplied by the Member States are not easily comparable, they nevertheless provide an indication in terms of volume.

Negative impact: Major investment costs associated with the start-up of the action and the implementation of the system are anticipated for certain Member States. By contrast, the additional operating costs facing Member States that have ratified virtually all of the conventions referred to in the proposal and that have already put in place the instruments needed to monitor their implementation will be only slight.

Positive impact Low operating costs, rapid return on investment, better performance by the flag States, publication of performance levels, rationalisation of budgetary controls and expenditure, better traceability in respect of actions taken, time saving, improvement of the image of the flag Administrations, strengthening of the link with other aspects of maritime safety policy.

### 6.1.2. Measures taken following an intermediate/ex post evaluation (lessons learned from similar experiences in the past)

Not applicable.

### 6.1.3. Terms and frequency of future evaluations

The Commission will draw up a report based on the monthly reports by the Member States.

## 7. ANTI-FRAUD MEASURES

Not applicable.

## 8. DETAILS OF RESOURCES

### 8.1 Objectives of the proposal in terms of their financial cost: not applicable

*Commitment appropriations in EUR million (to 3 decimal places)*

(Headings of Objectives, actions and outputs should be provided)	Type of outputs	Av. cost	Year n		Year n+1		Year n+2		Year n+3		Year n+4		Year n+5 and later		TOTAL	
			Number of outputs	Total cost	Number of outputs	Total cost	Number of outputs	Total cost								
OPERATIONAL OBJECTIVE No 1 <sup>8</sup> .....																
Action 1.....																
- Output 1																
- Output 2																
Action 2.....																
- Output 1																
Sub-total Objective 1																
OPERATIONAL OBJECTIVE No 2.....																
Action 1.....																
- Output 1																
Sub-total Objective 2																
OPERATIONAL OBJECTIVE No n																
Sub-total objective n																
TOTAL COST																

<sup>8</sup> As described under Section 5.3.

## 8.2. Administrative expenditure

### 8.2.1. Number and type of human resources

Types of post		Staff to be assigned to management of the action using existing and/or additional resources ( <b>number of posts/FTEs</b> )					
		Year n	Year n+1	Year n+2	Year n+3	Year n+4	Year n+5
Officials and temporary staff <sup>9</sup> (06 01 01)	A*/AD	0.5	0.5	0.5	0.5	0.5	0.5
	B*, C*/AST	0	0	0	0	0	0
Staff financed <sup>10</sup> by Article XX 01 02		0	0	0	0	0	0
Other staff financed <sup>11</sup> by Art. XX 01 04/05		0	0	0	0	0	0
<b>TOTAL</b>		0.5	0.5	0.5	0.5	0.5	0.5

### 8.2.2. Description of tasks deriving from the action: tasks

Tasks linked to the monitoring of the implementation of the Directive by the Member States; possible coordination tasks in association with the Maritime Safety Agency as well as monitoring of the work of the international organisations operating in this sector.

### 8.2.3. Sources of human resources (statutory)

- Posts currently allocated to the management of the programme to be replaced or extended
- Posts pre-allocated within the APS/PDB exercise for year n
- Posts to be requested in the next APS/PDB procedure
- Posts to be redeployed using existing resources within the managing service (internal redeployment)
- Posts required for year n although not foreseen in the APS/PDB exercise of the year in question

<sup>9</sup> Cost of which is NOT covered by the reference amount.

<sup>10</sup> Cost of which is NOT covered by the reference amount.

<sup>11</sup> Cost of which is included within the reference amount.

8.2.4. *Other administrative expenditure included in reference amount (XX 01 04/05 – Expenditure on administrative management)*

EUR million (to 3 decimal places)

Budget line (Number and title)	Year n	Year n+1	Year n+2	Year n+3	Year n+4	Year n+5 and later	TOTAL
<b>1. Technical and administrative assistance (including related staff costs)</b>							0
Executive Agencies <sup>12</sup>							0
Other technical and administrative assistance							0
- <i>intra muros</i>							0
- <i>extra muros</i>							0
<b>Total technical and administrative assistance</b>							0

8.2.5. *Financial cost of human resources and associated costs not included in the reference amount*

EUR million (to 3 decimal places)

Type of human resources	Year n	Year n+1	Year n+2	Year n+3	Year n+4	Year n+5 and later
Officials and temporary staff (06 01 01)	0.054	0.054	0.054	0.054	0.054	0.054
Staff financed by Article XX 01 02 (auxiliary, END, contract staff, etc.) (specify budget line)	0	0	0	0	0	0
<b>Total cost of Human Resources and associated costs (NOT in reference amount)</b>	0.054	0.054	0.054	0.054	0.054	0.054

Calculation – **Officials and temporary staff**

( $0.5 \times \text{EUR } 108\,000 = \text{EUR } 54\,000$ )

Calculation – **Staff financed under Article XX 01 02**

None

<sup>12</sup> Reference should be made to the specific legislative financial statement for the Executive Agency/Agencies concerned.

8.2.6. *Other administrative expenditure not included in reference amount*

EUR million (to 3 decimal places)

	Year n	Year n+1	Year n+2	Year n+3	Year n+4	Year n+5 and later	TOTAL
XX 01 02 11 01 – Missions	0	0	0	0	0	0	0*
XX 01 02 11 02 – Meetings and conferences	0	0	0	0	0	0	0
XX 01 02 11 03 – Committees <sup>13</sup>	0	0	0	0	0	0	0
XX 01 02 11 04 - Studies and consultations	0	0	0	0	0	0	0
XX 01 02 11 05 - Information systems	0	0	0	0	0	0	0
<b>2. Total other management expenditure (XX 01 02 11)</b>	0	0	0	0	0	0	0
<b>3. Other expenditure of an administrative nature</b> (specify including reference to budget line)	0	0	0	0	0	0	0
<b>Total administrative expenditure, other than human resources and associated costs (NOT included in reference amount)</b>	0	0	0	0	0	0	0

\* No impact on the current budget for missions

Calculation - *Other administrative expenditure not included in reference amount*

*Not applicable*

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<sup>13</sup> Specify the type of committee and the group to which it belongs.