

2.4.2024

A9-0418/ 001-033

AMENDMENTS 001-033

by the Committee on Transport and Tourism

Report

Vera Tax

A9-0418/2023

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

Proposal for a directive (COM(2023)0272 – C9-0188/2023 – 2023/0172(COD))

Amendment 1

Proposal for a directive

Recital 1 a (new)

Text proposed by the Commission

Amendment

(1a) It is important to take into account the on-board working and living conditions of the crew and the training and qualifications of crew members, in line with Directive 2013/54/EU of the European Parliament and of the Council^{1a}, given that health, safety, security and the human factor are closely interlinked and that it is of utmost importance to prevent any damage caused by human error.

^{1a} Directive 2013/54/EU of the European Parliament and of the Council of 20 November 2013 concerning certain flag State responsibilities for compliance with and enforcement of the Maritime Labour Convention, 2006.

Amendment 2

Proposal for a directive Recital 7 a (new)

Text proposed by the Commission

Amendment

(7a) To ensure the effectiveness of this Directive, every EU flag State should carry out its fair share of inspections, commensurate with the size and type of its fleet. A yearly minimum inspection quota of at least 30 % of ships flying its flag for every Member State should therefore be set.

Amendment 3

Proposal for a directive Recital 9

Text proposed by the Commission

Amendment

(9) The fulfilment of a harmonised capacity building scheme, post-qualification, by flag State surveyors and inspectors, should ensure a level playing field between maritime administrations and contribute to the qualitative performance of ships flying the flag of a Member State.

(9) The fulfilment of a harmonised capacity building scheme, post-qualification, by flag State surveyors and inspectors, should ensure a level playing field between maritime administrations and contribute to the qualitative performance of ships flying the flag of a Member State.
The training programme developed by the European Maritime Safety Agency (EMSA) should lead to the adoption of harmonised approaches by all Flag State surveyors and inspectors, including the mandatory use of electronic certificates by all Members States from three years from ... [three years from the date of entry into force of this amending Directive], at the latest.

Amendment 4

Proposal for a directive Recital 11

Text proposed by the Commission

(11) The establishment and development of a database providing essential information, in an electronic format on ships flying the flag of a Member State should contribute to enhanced exchange of information, further improve the transparency of the performance of a high quality fleet and allowing enhanced monitoring of flag State obligations to ensure a level playing field between maritime administrations.

Amendment

(11) The establishment and development of a database providing essential information, in an electronic format on ships flying the flag of a Member State should contribute to enhanced exchange of information, further improve the transparency of the performance of a high quality fleet and allowing enhanced monitoring of flag State obligations to ensure a level playing field between maritime administrations. ***In accordance with Article 91(1) of UNCLOS, there must be a genuine link between a vessel and its flag State. In order to proceed with the correct analysis of the reflagging of vessels and the use of open registries, the Commission should facilitate the task of Member States in determining the existence of such a link by developing guidelines. Those guidelines should set out what constitutes a genuine link and its consequences. In drawing up those guidelines, the Commission should take into account the recommendation of the High Level Group on flag State matters and input from stakeholders, including those from the private sector, civil society and academia. Shipowners are obliged to pay social security contributions under the law of the State of the flag that they are flying, unless the employee pays them in accordance with the law of the State in which they reside. Those rules can have undesirable consequences when they are used to avoid high contribution levels.***

Amendment 5

**Proposal for a directive
Recital 14**

Text proposed by the Commission

(14) The Commission, ***assisted by*** the European Maritime Safety Agency

Amendment

(14) The Commission ***and*** the European Maritime Safety Agency (EMSA)

(EMSA) established by Regulation (EC) No 1406/2002 of the European Parliament and of the Council³¹, should be invited and involved as observer by the auditee Member State as flag State for the purpose of ensuring consistency between IMO audit and Commission assessments, executed by EMSA to check the implementation of Union maritime safety legislation via its visit and inspection scheme, on behalf of the Commission.

³¹ Regulation (EC) 1406/2002 of the European Parliament and of the Council of 27 June 2002 establishing a European Maritime Safety Agency (OJ L 208 5.8.2002, p. 1).

established by Regulation (EC) No 1406/2002 of the European Parliament and of the Council³¹, should be invited and involved as observer by the auditee Member State as flag State for the purpose of ensuring consistency between IMO audit and Commission assessments, executed by EMSA to check the implementation of Union maritime safety legislation via its visit and inspection scheme, on behalf of the Commission.

³¹ Regulation (EC) 1406/2002 of the European Parliament and of the Council of 27 June 2002 establishing a European Maritime Safety Agency (OJ L 208 5.8.2002, p. 1).

Amendment 6

Proposal for a directive Recital 14 a (new)

Text proposed by the Commission

Amendment

(14a) The involvement of the Commission and EMSA in the audits should make the auditing process more effective and comprehensive. It should also facilitate the introduction and implementation of simplified procedures, including incentives for compliance with environmental, social, public health and labour law standards and standards ensuring the safety on board ships calling at Union ports of seafarers, as well as possibilities for effective, proportionate and dissuasive sanctions, taking into account environmental, public health, tax and social law.

Amendment 7

Proposal for a directive Recital 15 a (new)

Text proposed by the Commission

Amendment

(15a) In coordination with the International Labour Organisation (ILO), the Commission and Member States should promote capacity building for third countries on inspection and enforcement by establishing campaigns with social partners to raise awareness of rights and obligations under the Maritime Labour Convention adopted by ILO in 2006 (MLC 2006). Furthermore the Commission should promote the establishment by the ILO of a database of inspection results and complaints, for seafarers and dockworkers, ensuring the accuracy of records of hours of work and rest, to help seafarers and shipowners seek the most reliable and MLC 2006-compliant recruitment and employment services.

Amendment 8

Proposal for a directive Recital 16 a (new)

Text proposed by the Commission

Amendment

(16a) The Commission should issue a transparency report based on information from the mandatory database, which is accessible to all Member States.

Amendment 9

Proposal for a directive Recital 21

Text proposed by the Commission

Amendment

(21) The European Maritime Safety Agency (EMSA) should provide the necessary support to ensure the implementation of Directive 2009/21/EC.

(21) The European Maritime Safety Agency (EMSA) should provide the necessary support to ensure the implementation of Directive 2009/21/EC.
The training provided by EMSA to flag

State administrations should be continued, reinforced and extended to fully cover the obligations of Member States as set out in the MLC 2006. EMSA should facilitate coordination and exchange of information and good practices between flag State administrations.

Amendment 10

Proposal for a directive

Article 1 – paragraph 1 – point -1 (new)

Directive 2009/21/EC

Article 1 – paragraph 1

Present text

1. The purpose of this Directive is:
 - (a) to ensure that Member States effectively and consistently discharge their obligations as flag States; and
 - (b) to enhance safety and prevent pollution from ships flying the flag of a Member State

Amendment

(-1) In Article 1, paragraph 1 is replaced by the following:

- ‘1. The purpose of this Directive is:
 - (a) to ensure that Member States effectively and consistently discharge their obligations as flag States; and
 - (b) to enhance safety, ***including safety onboard***, and ***to*** prevent pollution from ships flying the flag of a Member State.’

Amendment 11

Proposal for a directive

Article 1 – paragraph 1 – point 2

Directive 2009/21/EC

Article 4 – paragraph 1

Text proposed by the Commission

1. Prior to allowing a ship to operate, which has been granted the right to fly its flag, the Member State concerned shall ensure that the ship in question complies with the applicable international rules and regulations. In particular, it shall verify the safety records of the ship using the inspection reports and certificates contained in database referred to in article

Amendment

1. Prior to allowing a ship to operate, which has been granted the right to fly its flag, the Member State concerned shall ensure that the ship in question complies with the applicable international rules and regulations. In particular, it shall ***carry out on-board inspections and*** verify ***both*** the safety records of the ship ***and documentation the purpose of which is to***

6a. It shall, if necessary, consult with the losing flag State in order to establish whether any outstanding deficiencies or safety issues identified by the latter remain unresolved.

ensure that the ship meets international environmental and social standards, using the inspection reports and certificates contained in *the inspection* database referred to in article 6a. *It shall also verify that the operation of the ship complies with international environmental and labour conventions, that it is in line with Directive 2013/54/EU, and that the crew is trained in accordance with Directive 2022/993 of the European Parliament and of the Council^{1a}*. It shall, if necessary, consult with the losing flag State in order to establish whether any outstanding deficiencies or safety issues identified by the latter remain unresolved.

^{1a} *Directive (EU) 2022/993 of the European Parliament and of the Council of 8 June 2022 on the minimum level of training of seafarers (OJ L 169, 27.6.2022, p. 45).*

Amendment 12

Proposal for a directive
Article 1 – paragraph 1 – point 3
Directive 2009/21/EC
Article 4a – paragraph 3

Text proposed by the Commission

3. Member States shall ensure that any deficiencies confirmed or revealed by an inspection carried out in accordance with paragraph 2(c) are rectified.

Amendment

3. Member States shall ensure that any deficiencies confirmed or revealed by an inspection carried out in accordance with paragraph 2(c) are rectified *and all necessary corrective measures addressing time-critical safety and environmental concerns are taken before the ship proceeds to sea. Inspections shall focus in particular on the safety and environmental performance of all ships flying the flag of a Member State, as well as on the working conditions of the crews, including the accuracy of data on working and resting hours in line with Directive 2013/54/EU of the European*

Amendment 13

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive 2009/21/EC

Article 4b – paragraph 4

Text proposed by the Commission

4. In order to ensure harmonisation of the supplementary flag State inspections referred to in Article 4a(2) point (c), the Commission, after consulting the high level group on flag State matters referred to in Article 9a(1), shall adopt implementing acts to define the uniform measures to determine the minimum requirements for the implementation of the obligations provided for by paragraph 1. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 10(2).’

Amendment

4. In order to ensure harmonisation of the supplementary flag State inspections referred to in Article 4a(2) point (c), the Commission, after consulting the high level group on flag State matters referred to in Article 9a(1), shall adopt implementing acts to define the uniform measures to determine the minimum requirements for the implementation of the obligations provided for by paragraph 1. ***These minimum requirements shall in particular include a yearly minimum inspection quota of at least 30% of ships flying its flag for every Member State, commensurate with the size and type of its fleet and a qualitative element that takes account of the risk profile of the ship being inspected.*** Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 10(2).

Amendment 14

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive 2009/21/EC

Article 4c – paragraph 2

Text proposed by the Commission

2. The Commission, seeking the advice of the high level group on flag State matters referred to in Article 9a(1), shall develop a common capacity building scheme (post-qualification at national

Amendment

2. The Commission, seeking the advice of the high level group on flag State matters referred to in Article 9a(1), shall develop a common capacity building scheme (post-qualification at national

level) and keep it updated, considering new technologies and in relation to new or additional obligations arising from the relevant international instruments, for Member States flag State surveyors and inspectors.

level) and keep it updated, considering new technologies and in relation to new or additional obligations arising from the relevant international instruments, for Member States flag State surveyors and inspectors, ***and paying particular attention to the implementation of Directive 2013/54/EU.***

Amendment 15

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive 2009/21/EC

Article 4c – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. The Commission, with the assistance of EMSA, shall produce a guidance document offering advice on how to implement Directive 2013/54/EU. EMSA shall also provide detailed information about the problems most frequently detected during port State inspections of ships under each flag, as well as explanations and clarifications concerning the specific documentation and certificates of each flag State.

Amendment 16

Proposal for a directive

Article 1 – paragraph 1 – point 5

Directive 2009/21/EC

Article 6 – paragraph 1 – introductory part

Text proposed by the Commission

Amendment

1. Member States shall ensure that at least the following information concerning ships flying their flag is kept and is made accessible in an electronic format compatible and interoperable with Union maritime safety databases:

1. ***Electronic certificates shall be mandatory for all Members States from [three years from the date of entry into force of this amending Directive], at the latest.*** Member States shall ensure that at least the following information concerning ships flying their flag is kept and is made accessible in an electronic format

compatible and interoperable with Union maritime safety databases:

Amendment 17

Proposal for a directive

Article 1 – paragraph 1 – point 5

Directive 2009/21/EC

Article 6 – paragraph 1 – point a a (new)

Text proposed by the Commission

Amendment

(aa) particulars of shipboard working arrangements and records of seafarers' daily hours of work as defined in Directive 1999/63/CE.

Amendment 18

Proposal for a directive

Article 1 – paragraph 1 – point 5

Directive 2009/21/EC

Article 6 – paragraph 1 – point e

Text proposed by the Commission

Amendment

(e) outcome of the port State control inspections (deficiencies: yes or no; detentions: yes or no);

(e) outcome of the port State control inspections (deficiencies: yes or no; detentions: yes or no; ***and, if there are deficiencies or detentions, further details as appropriate***);

Amendment 19

Proposal for a directive

Article 1 – paragraph 1 – point 5

Directive 2009/21/EC

Article 6 – paragraph 1 – point e a (new)

Text proposed by the Commission

Amendment

(ea) statutory certificates that confirm if any reported deficiencies identified through port State control inspections have been rectified;

Amendment 20

Proposal for a directive

Article 1 – paragraph 1 – point 5

Directive 2009/21/EC

Article 6 – paragraph 2

Text proposed by the Commission

2. The information shall be communicated to the inspection database provided for in Article 6a. The master shall also be provided with a copy of the report.

Amendment

2. The information shall be communicated to the inspection database provided for in Article 6a, ***since the interoperability of databases contributes to a harmonised approach to the reporting and measuring of performance of the fleet that is under the responsibility of the flag State***. The master shall also be provided with a copy of the report.

Amendment 21

Proposal for a directive

Article 1 – paragraph 1 – point 6

Directive 2009/21/EC

Article 6a – paragraph 4

Text proposed by the Commission

4. Member States shall have access to all the information recorded in the inspection database referred to in paragraph 1 of this Article and the inspection system provided for in Directive 2009/16/EC. Nothing in this Directive shall prevent the sharing of such information between relevant competent authorities within and between Member States, with the Commission ***or*** with the European Maritime Safety Agency (EMSA) established by Regulation (EC) No 1406/2002 of the European Parliament and of the Council³⁶.

Amendment

4. Member States shall have access to all the information recorded in the inspection database referred to in paragraph 1 of this Article and the inspection system provided for in Directive 2009/16/EC. Nothing in this Directive shall prevent the sharing of such information between relevant competent authorities within and between Member States, with the Commission ***and*** with the European Maritime Safety Agency (EMSA) established by Regulation (EC) No 1406/2002 of the European Parliament and of the Council³⁶.

³⁶ Regulation (EC) 1406/2002 of the European Parliament and of the Council of

³⁶ Regulation (EC) 1406/2002 of the European Parliament and of the Council of

27 June 2002 establishing a European Maritime Safety Agency (OJ L 208 5.8.2002, p. 1).

27 June 2002 establishing a European Maritime Safety Agency (OJ L 208 5.8.2002, p. 1).

Amendment 22

Proposal for a directive

Article 1 – paragraph 1 – point 6

Directive 2009/21/EC

Article 6a – paragraph 5

Text proposed by the Commission

5. Member States shall ensure that Statutory certificates referred to in Article 6(1) **paragraph b, shall be** transmitted electronically to the inspection database referred to in paragraph 1 of this Article using the functional and technical specifications for a harmonised electronic reporting interface provided for in Article 24a of Directive 2009/16/EC.

Amendment

5. Member States shall ensure that **shipboard working arrangements and records of seafarers' daily hours of work or of their daily hours of rest, in line with Directive 2013/54/EU, as well as** Statutory certificates, referred to in Article 6(1), **points (aa) and (b), are** transmitted electronically to the inspection database referred to in paragraph 1 of this Article using the functional and technical specifications for a harmonised electronic reporting interface provided for in Article 24a of Directive 2009/16/EC.

Amendment 23

Proposal for a directive

Article 1 – paragraph 1 – point 7

Directive 2009/21/EC

Article 7 – paragraph 1

Text proposed by the Commission

1. Member States shall take the necessary measures to undergo the IMO audit of their administration at least once every **seven** years, and shall publish the outcome of the audit as well as any corrective actions in the Global Integrated Shipping Information System (GISIS) database set up by the IMO. Member States shall also make the same information available to the public, in accordance with relevant national

Amendment

1. Member States shall take the necessary measures to undergo the IMO audit of their administration at least once every **five** years, and shall publish the outcome of the audit as well as any corrective actions in the Global Integrated Shipping Information System (GISIS) database set up by the IMO. Member States shall also make the same information available to the public, in accordance with relevant national

legislation on confidentiality.

legislation on confidentiality.

Amendment 24

Proposal for a directive

Article 1 – paragraph 1 – point 7

Directive 2009/21/EC

Article 7 – paragraph 2

Text proposed by the Commission

2. Member States shall ensure that the Commission, **assisted by EMSA, is** allowed to participate as an observer in the IMO auditing process and, that any Audit report and the information on subsequent action taken is immediately made available to the Commission.

Amendment

2. Member States shall ensure that the Commission **and EMSA are** allowed to participate as an observer in the IMO auditing process and, that any Audit report and the information on subsequent action taken is immediately made available to the Commission.

Amendment 25

Proposal for a directive

Article 1 – paragraph 1 – point 8 – point a

Directive 2009/21/EC

Article 8 – paragraph 1 – subparagraph 3

Text proposed by the Commission

Each Member State shall ensure that other personnel assisting in the performance of inspections have education, training and supervision commensurate with the tasks they are authorized to perform.

Amendment

Each Member State shall ensure that other personnel assisting in the performance of inspections have education, training and supervision commensurate with the tasks they are authorized to perform. ***Flag States shall revise the guidelines provided to their inspectors, and to those authorised to act on their behalf, so that they cover the systematic verification of the accuracy of records. Training provided by EMSA to flag State administrations shall cover such verification procedures and shall be continuous, reinforced and extended to cover MLC 2006 in more detail. EMSA shall also facilitate the coordination and exchange of information and good practices between flag State administrations.***

Amendment 26

Proposal for a directive

Article 1 – paragraph 1 – point 9

Directive 2009/21/EC

Article 9

Text proposed by the Commission

(9) Article 9 *is deleted.*

Amendment

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

‘Article 9

Reports and Review

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

That report shall contain an assessment of the performance of the Member States as flag States and shall be accompanied, where appropriate, by a legislative proposal for the amendment of this Directive.’

Amendment 27

Proposal for a directive

Article 1 – paragraph 1 – point 10

Directive 2009/21/EC

Article 9a – paragraph 1 – subparagraph 1

Text proposed by the Commission

The Commission shall establish a high level group on flag State matters for discussing flag State issues and facilitate exchanges of experience between the Member States’ national authorities, flag State experts and inspectors, *including as appropriate those* from the private sector.

Amendment

The Commission shall establish a high level group on flag State matters for discussing flag State issues and facilitate exchanges of experience between the Member States’ national authorities, flag State experts and inspectors, *and all relevant stakeholders* from the private sector, *civil society and academia.*

Amendment 28

Proposal for a directive

Article 1 – paragraph 1 – point 10

Directive 2009/21/EC

Article 9a – paragraph 1 – subparagraph 2

Text proposed by the Commission

The high level group on flag State matters shall be composed of representatives of the Member States and of the Commission, **assisted by** EMSA.

Amendment

The high level group on flag State matters shall be composed of representatives of the Member States and of the Commission **and** EMSA.

Amendment 29

Proposal for a directive

Article 1 – paragraph 1 – point 10

Directive 2009/21/EC

Article 9a – paragraph 2 – point c

Text proposed by the Commission

(c) assist the Commission in the development of the technical method for what constitutes appropriate resources, commensurate with the size and type of fleet, referred to in Article 4b;

Amendment

(c) assist the Commission in the development of the technical method for what constitutes appropriate resources, commensurate with the size and type of fleet **and the number of inspections to be undertaken**, referred to in Article 4b;

Amendment 30

Proposal for a directive

Article 1 – paragraph 1 – point 10

Directive 2009/21/EC

Article 9b – paragraph 1

Text proposed by the Commission

The Commission shall establish an electronic reporting tool for the purposes of gathering information and data from the Member States in relation to this Directive. Member States shall periodically, and at least once a year, inform the Commission, about:

Amendment

1. The Commission shall establish an electronic reporting tool for the purposes of gathering information and data from the Member States in relation to this Directive. Member States shall periodically, and at least once a year, inform the Commission, about:

Amendment 31

Proposal for a directive

Article 1 – paragraph 1 – point 10

Directive 2009/21/EC

Article 9b – paragraph 1 – point a – point iv a (new)

Text proposed by the Commission

Amendment

(iva) the extent to which the risk profile of ships was taken account of in the surveys, inspections and audits carried out by flag States;

Amendment 32

Proposal for a directive

Article 1 – paragraph 1 – point 10

Directive 2009/21/EC

Article 9b – paragraph 1 – point a – point iv b (new)

Text proposed by the Commission

Amendment

(ivb) working conditions based on records of seafarers' daily hours of work and daily hours of rest in line with Directive 2013/54/EU of the European Parliament and of the Council;

Amendment 33

Proposal for a directive

Article 1 – paragraph 1 – point 10

Directive 2009/21/EC

Article 9b – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. The Commission shall issue an annual report based on the information collected under paragraph 1 of this Article, which shall be published on the official website. After its publication, the Commission shall present the results of that report to the European Parliament and to the Council.