

Revision of the Flag State Requirements Directive

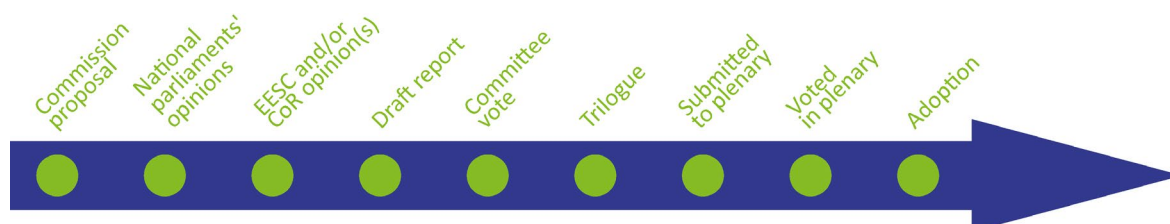
OVERVIEW

On 1 June 2023, the European Commission presented a maritime safety package, including a proposal on a revised directive for compliance with flag state requirements. Revision of the rules is needed to take account of digitalisation, improve inspections and cooperation between flag states, and align with international rules on safety, pollution prevention, and working conditions, through inspections and surveys. This is to ensure EU flag states discharge their international law obligations.

The proposal covers requirements for flag state inspections, based on International Maritime Organization rules. The objective is to improve maritime safety and reduce the risk of environmental pollution, ensuring that EU flag states continue to provide high quality shipping services. The proposal facilitates information sharing between flag states on the results of inspections and compliance issues in general. The European Maritime Safety Agency is to support this cooperation through revised training programmes for flag state inspectors.

The European Parliament's Transport and Tourism Committee (TRAN) adopted its report on 7 December 2023. On 27 February 2024, Parliament and Council negotiators reached a provisional agreement on the conditions under which flag and port states check if vessels are safe to sail. Parliament adopted the provisional agreement in plenary on 10 April 2024, concluding its first reading. On 18 November 2024, the Council adopted Parliament's first reading position, thereby finalising the procedure. The directive takes effect on 5 January 2025, and Member States have until 6 July 2027 to transpose its provisions into national law.

Proposal for a directive of the European Parliament and of the Council amending Directive 2009/21/EC on compliance with flag State requirements		
<i>Committee responsible:</i>	Transport and Tourism (TRAN)	COM(2023) 272
<i>Rapporteur:</i>	Vera Tax (S&D, the Netherlands)	1.6.2023
<i>Shadow rapporteurs:</i>	Ljudmila Novak (EPP, Slovenia) Pierre Karleskind (Renew, France) Karima Delli (Greens/EFA, France) Clare Daly (The Left, Ireland)	2023/0172(COD) Ordinary legislative procedure (COD) (Parliament and Council on equal footing – formerly 'co-decision')
<i>Procedure completed.</i>	Directive (EU) 2024/3100 OJ L, 2024/3100, 16.12.2024	



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Introduction

With [80 %](#) of the EU's external trade being seaborne, an efficient, safe, secure and more sustainable maritime sector is essential for the EU's internal market. Although maritime safety levels and requirements in EU waters are very high, [more than 2 000](#) marine accidents and incidents still occur annually. At the same time, new challenges and technologies require new approaches. Flag states must ensure that ships under their flags are fit to sail. For this, inspections need to become more effective. This requires making greater use of digital solutions and further promoting the sharing of information between flag states. As well as acting as flag states, EU Member States can also act as port states. A port state is a nation that allows [port state control](#) at its ports and is responsible for inspecting any ship, regardless of their flag, to ensure their compliance with international codes.

There are three layers of existing rules. Vessels flying the flag of a state need to follow the national rules and national law of that particular state. EU rules, which are considered to be regional in an international context, have been adopted to supplement international rules, and can be found in the existing framework of the 2009 [maritime safety package](#). In parallel, flag states, as members of the International Maritime Organization (IMO), have a responsibility to comply with the organisation's conventions ([UNCLOS](#)), to which they are party. These include the promotion of safety of life at sea, protection of the marine environment, and the provision of decent working conditions for crews. Key obligations of flag states are listed in the code for the implementation of mandatory IMO instruments, the [III Code](#), of which some parts were incorporated into EU law. However, since the 2009 EU directives on maritime safety, IMO rules have been evolving, which is why EU rules need to be adapted.

Flag state requirements are referred to as the first line of defence against substandard shipping. However, certain flag states remain on grey and black [lists](#) under the Paris memorandum of understanding ([MoU](#)) on harmonised port state control, acting as '[flags of convenience](#)'. This is the case when ships use a specific national flag to avoid taxes, labour costs, or conservation measures, and thereby exercise only limited controls. EU Member States are expected to review white, grey and black lists of flag states in line with the EU Port State Control [Directive](#) and the Paris MoU. These lists are updated on a yearly basis. However, as there is currently no binding international framework governing the registration process, each country sets its own laws and regulations. National registry systems are open registers that allow foreign vessel-owners to register their ships without having a genuine link with the country.

Existing situation

In the framework of the current Flag State Requirements Directive ([2009/21/EC](#)), Member States have a primary responsibility to check the ships registered under their flag, to ensure these ships are fit to sail, and to maintain a registry with certain information and certificates on these ships, which include international standards and obligations, such as regarding the sharing of data. An IMO audit, both worldwide and in the EU, has been mandatory since 2016. Member States' maritime authorities are furthermore required to have a quality management system, which is certified in accordance with international standards. In addition, Member States have an obligation to follow up on any ship that is flying their flag and has been detained after inspection, to make sure it has been brought into conformity. Under the Paris MoU, when Member States have been black- or grey-listed as a flag state, they have reporting obligations towards the European Commission. Since 2012, the European Commission has been required to submit a [report](#) on the application of this directive to the European Parliament and Council every 5 years. The most recent report was included in the ex-post evaluation of 2018.

The European Maritime Safety Organisation (EMSA), an EU regulatory agency, acts as the managing authority for the information system to support flag states in their duties, as well as in the framework of the Monitoring, Reporting and Verification ([MRV](#)) Regulation for CO₂ emissions, through the

[THETIS](#) database. Currently EMSA's mandate is being reviewed, as part of the maritime safety package.

In the opinion of the Commission, the Flag State Directive has been well transposed and implemented by Member States, and the system generally performs well, contributing to the creation of a level playing field for the shipping sector and increased capacities within national administrations. The directive did not introduce major changes to the existing international rules applied by Member States, but, integration into the EU *acquis* allowed for harmonised enforcement.

At the same time, the current directive incorporates only parts of the IMO Instruments Implementation Code (III-Code) into EU legislation and does so in a fragmented manner, leading to legal uncertainty in implementation at EU level. In addition, there is an inconsistent approach to inspections, controls, monitoring and information sharing on flagged fleets. The certificate system is mainly paper-based. Reliance on paper-based procedures proved inadequate, however, during the pandemic, as there were no other means to check or facilitate a temporary extension of certificates. Human and financial resources and cooperation between national authorities are currently insufficient.

There have been several occasions when the Court of Justice of the European Union (CJEU) has interpreted the rules in relation to the flag of a ship. However, none of those required the Court to rule on the interpretation of the Flag State Directive itself. *The North of England P & I Association Ltd v Bundeszentralamt für Steuern*, (C-786/19) involved a dispute between a UK insurance company and the German federal tax services on the possible perception of a tax to insure a vessel originally registered in Germany, but flying the flag of another state under a temporary flagging-out authorisation. The other case, a request for a preliminary ruling from the Østre Landsret in criminal proceedings against VAS Shipping ApS (C-71-20), concerned the compatibility of the EU Treaties with national measures that require crew members to have a work permit from the Member State, where their ship is flagged, even if the ship is owned by a company in a different Member State.

Parliament's starting position

In recent decades, the European Parliament has been a steady supporter of the creation of a strong legal and operational EU framework for maritime safety in general.

In its [resolution](#) of 6 October 2022 on momentum for the ocean and the strengthening of ocean governance and biodiversity, Members stressed the need to limit the use of flags of convenience and reflagging, and to address trans-shipment at sea. Parliament highlighted the issue of reflagging in both fishing and maritime transport and called upon the Commission to promote transparency on the beneficial ownership of corporate structures and on the EU, more broadly, to strengthen anti-corruption and capacity building in these sectors.

In relation to the [FuelEU Maritime](#) proposal, Parliament showed growing concern about re-flagging and the situation of flags of convenience in 2022. In its [first reading](#), it stressed that the maritime sector is characterised by fierce international competition. Major differences in regulatory burdens across flag states have exacerbated unwanted practices, such as the reflagging of vessels. The maritime sector's global character underlines the importance of a flag-neutral approach and of a favourable regulatory environment, which is a pre-condition for attracting new investment and safeguarding the competitiveness of European ports, ship-owners and operators. Parliament called on the Commission to promote transparency on the beneficial ownership of corporate structures and on the EU more broadly to strengthen anti-corruption capacity building.

The EU emissions trading system (ETS) will cover [reporting](#) on emissions from the maritime shipping sector as of 2024. In its [legislative resolution](#) on the revision of ETS of April 2023, Parliament underlined that where a ship of a shipping company that failed to comply with two or more reporting periods is found in a port of the Member State whose flag the ship is flying, the Member State concerned *may* (the Commission had proposed '*shall*'), after giving the opportunity to the

shipping company concerned to submit its observations, issue a flag state detention order, until the shipping company fulfils its surrender obligations.

Council position

In its [conclusions](#) of 5 June 2020 on the EU waterborne transport sector, the Council called for digital transformation of the sector and underlined that any measure in the context of a carbon-neutral and zero pollution waterborne transport sector should be flag neutral while ensuring a level playing field and avoiding carbon leakage. The Council thereby acknowledged EMSA's pivotal role in assisting the Commission and helping Member States fulfil their obligations as flag states.

Preparation of the proposal

The current directive was the subject of an [ex-post evaluation](#) (2018) and a [maritime fitness \(REFIT\) check](#), which identified several issues, including legal uncertainty in implementing new international rules at EU level and the lack of a harmonised approach to inspections, control, monitoring and information sharing of flagged fleet. The benefit of EU action would lie in the harmonised implementation and enforcement of international rules within EU legislation and in encouraging cooperation between Member States. EPRS has prepared an [implementation appraisal](#) of the current directive.

To prepare its new [proposal](#), the European Commission held several consultations. These included four scoping interviews with key stakeholders, 23 targeted interviews with national authorities and industry representatives, a targeted survey, several workshops with flag state administrations, ship owners and ports, and bilateral discussions with Member States.

The Commission published an [impact assessment](#) in October 2020, which examined four different policy options. They vary in terms of the level of ambition regarding harmonisation and control for ensuring compliance. However all options would amend the existing directive by incorporating the mandatory relevant flag state parts of the IMO III-Code and maintaining the IMO audit.

The impact assessment concluded that the preferred policy option was option 2, which would introduce specific requirements regarding inspections and would ensure that all EU flag states keep a core technical staff within their administrations for upholding international obligations, as well as ensuring effective control of flagged fleet and purposeful monitoring of 'recognised organisations' by the EU. These organisations consist of 11 [classification societies](#), responsible for the development and application and technical standards for the design, construction and survey of ships, as well as flag state compliance issues in general.

The impact assessment and the [summary report](#) were submitted to the Regulatory Scrutiny Board ([RSB](#)) for approval in January 2023. The RSB issued a [positive opinion](#) on 17 February 2023. It also noted that the scale of the problem was not sufficiently clear and that the report did not present the key policy choices clearly.

Given the highly technical nature of this directive, the targeted stakeholder consultations and the relatively limited responses, the Commission [announced](#) that there would be no open public consultations on this revision. Flag state administrations and industry stakeholders had indicated being in favour of a coherent and aligned legal framework, incorporating the IMO III-Code. They also fully supported further digitalisation.

The Commission opened the proposal for [feedback](#) by 30 August 2023.

The changes the proposal would bring

With its legal basis in Article 100(2) of the Treaty on the Functioning of the European Union ([TFEU](#)), the [proposal](#) for the revision of the Flag State Directive, and its annex, introduce a more effective framework based on an adequate level and quality of ship inspections and overall fleet oversight,

capacity building for flag state administrations and better measurement of their performance. This will serve safety first, but should also benefit the environmental protection. When stronger environmental rules – such as rules targeting ship pollution of the air and water – become effective under international conventions, the flag state's responsibility for enforcing them is automatically extended. The revision of this directive would deliver further simplification and mostly technical updates, also reflecting the transformation of the shipping industry, such as in the areas of digitalisation, new fuels, and autonomous vessels. In addition, the revision is about staying aligned with the international IMO framework.

The proposed changes include conditions for allowing a ship to sail, monitoring of flagged ships, digitalisation, monitoring of compliance and performance, quality management and exchange of information. These include the following in particular:

- effective inspections of ships based on current international IMO rules. This implies alignment with the existing international framework and incorporation of the flag state part of the Ill-Code (point 1, article 3);
- adequate inspections and reinforced monitoring via EMSA's Union Maritime Information and Exchange System ([SafeSeaNet](#)), which is the system for vessel traffic monitoring in EU waters, as well as oversight of the flagged fleet, which is currently inconsistent between Member States (point 3, new Article 4b and point 4, Article 5);
- higher uptake and use of digital solutions, such as e-documents and e-certificates (same approach and consistency with [port state control](#)). Member State flags will be digitalised via e-certification registers sharing e-certificates, building on EMSA-based IT solutions and a commonly-available technical protocol enabling interoperability at EU level (point 5, Article 6);
- a harmonised approach in the understanding, reporting and performance measurement of EU Member States' fleets and duties. This means promotion of cooperation and information sharing between flag states on the results of inspections they carry out and issues of common concern. This also includes the oversight of recognised organisations by the European Commission. This would be facilitated by training provided by EMSA and via its [THETIS](#) system (point 8, article 8, and point 10, articles 9a and 9b).

The above-mentioned measures and proposed changes are envisaged with extended support from EMSA, with specific training for national administrations, in order to enhance the controls that Member State authorities have over their fleets, including a revised professional development and training programme for flag state inspectors in particular.

The proposal mentions net present costs for the Union budget (including EMSA) of between €7 million to €8.1 million, over the 2025-2050 period. However, the Commission's [impact assessment](#) indicated that additional costs would fall mainly to flag state authorities, as the preferred option 2 would increase the control of flagged fleet by flag state inspections and oversight of recognised organisations. The total costs for flag state authorities are thereby estimated at €49.1 million to €49.2 million. For EMSA, the measures relating to developing or improving a flag state reporting module and developing enhanced training tools for inspectors and are expected to give rise to costs estimated at €6.4 million to €7 million. For ship operators, the limited increase in the number of inspections is expected to result in adjustment costs estimated at €3.2 million.

Advisory committees

Although opinions from the European Economic and Social Committee (EESC) and Committee of the Regions are not mandatory in this case, the EESC adopted its [opinion](#) on 20 September 2023.

National parliaments

The subsidiarity principle does not apply to international IMO instruments or to Union rules implementing those agreements, which fall within exclusive EU competence.

Stakeholder views¹

Stakeholders provided initial views in the context of the consultations conducted by the European Commission in October and November 2020. Feedback came from the Department of Transport in Ireland, [asking](#) for the use of non-exclusive surveyors for radio surveys. The Surfrider Foundation Europe [pleaded](#) for the strengthening of requirements and controls for EU-certified classification societies and for improved frequency of control visits. The European Transport Workers' Foundation (ETF) [wants](#) to ensure that flag states implement seafarers' rights on board their ships in full. The European Community Shipowners' Association (ECSA), was [concerned](#) about the plan to 'create an incentive scheme aimed at recognising exemplary vessels that have consistently shown environmental (and Safety) compliance'.

During a second consultation process, stakeholders had until 30 August 2023 to submit their feedback on the proposal for a directive on flag state control. [Three stakeholders](#) submitted their feedback: the Norwegian Maritime Authority, the International Association of Classification Societies (IACS) and the European International Shipowners' Association of Portugal (EISAP). They all asked for clarifications concerning scope, competencies and procedures.

Legislative process

The European Commission presented its proposal for the revision of the current directive on 1 June 2023. A first discussion took place in the [Council](#) working party on shipping on 14 June 2023.

In the European Parliament, the Committee on Transport and Tourism (TRAN) was assigned the lead on the file. The [draft report](#) was published on 19 September 2023. The TRAN committee adopted the [report](#) on 7 December 2023. It also decided to enter into interinstitutional negotiations on the basis of the report. This decision was confirmed by plenary without a vote on 13 December 2023. The report proposed the following changes.

- Member States must use SafeSeaNet, and electronic certificates should become mandatory for all Member States within 3 years of the entry into force of the directive.
- Training programmes provided by EMSA for flag state authorities should favour a more harmonised approach. EMSA should also facilitate coordination, and the exchange of information and good practice between flag state authorities.
- Inspections should cover working conditions, safety and environmental performance of all ships flying the flag of Member States, and include accurate data on crews' working and resting hours.
- Unwanted practices, such as the reflagging of vessels and the use of open registries, would have to be eliminated. There should be a 'genuine link' between the actual owner of a vessel and the flag the vessel flies, in line with the United Nations Convention on the Law of the Sea.

The Committee on Fisheries (PECH) submitted an [opinion](#) on 29 November 2023.

In the Council, a [general approach](#), adopted on 4 December 2023, sought to limit the scope of the directive to ships holding international certificates and engaging in international voyages. Use of the ships information database suggested by the Commission should be optional, and Member States would be able to continue using their existing databases. Furthermore, to avoid imposing a disproportionate administrative burden on Member States that do not have national registers or ships flying their flag that fall within the scope of the legislation, they should not be obliged to transpose the revised directive.

On 27 February 2024, Parliament and Council negotiators reached a [provisional agreement](#) on the conditions under which flag and port states check if vessels are safe to sail. Parliament succeeded in obliging the flag states to check their ships at least once every 5 years and focus their inspections not only on safety but also on the environmental performance of their ships, and on the working conditions of the crew. On this point, several compromises were reached to avoid duplication, since the EU already has a legal framework in force in this area: Directive 2013/54/EU concerning certain flag state responsibilities for compliance with and enforcement of the Maritime Labour Convention. In addition, negotiators agreed to set up an EU database on ships flying the flag of a Member State, which would be obliged to report the inspection details on a yearly basis.

On 20 March 2024, the TRAN committee endorsed the provisional agreement. On 10 April 2024, Parliament adopted the [provisional agreement](#) in plenary (by 590 votes in favour, 20 against, and with 10 abstentions), concluding its first reading.

On 18 November 2024, the Council adopted Parliament's first-reading position.

The final act was published in the Official Journal on 16 December 2024. Member States have 30 months, until 6 July 2027, after the entry into force of the revised directive to transpose its provisions in their national legislation.

EUROPEAN PARLIAMENT SUPPORTING ANALYSIS

Jansen T., [Revision of Directive 2009/21/EC on flag State requirements and Directive 2009/18/EC on accident investigations](#), implementation appraisal, EPRS, European Parliament, May 2023.

OTHER SOURCE

European Parliament, [Procedure 2023/0172\(COD\) - Compliance with flag State requirements](#), Legislative Observatory (OEIL).

ENDNOTE

- ¹ This section aims to provide a flavour of the debate and is not intended to be an exhaustive account of all different views on the proposal. Additional information can be found in related publications listed under 'European Parliament supporting analysis'.

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