

ECSA position on the proposals on port State control and on flag State requirements

ECSA welcomes the Commission's proposals to amend Directive on port State control and Directive 2009/21/EC on compliance with flag State requirements. ECSA supports the revision and the proposals of the Commission and recognises that it is a necessary and positive step forward. In parallel, European shipowners have identified the following areas which should be improved to ensure that the Directives are fit for purpose.

Port State controls

- ECSA supports the Commission's proposal to consider incorporating environmental parameters into the ship risk profile for port State control inspections **provided that they can be effectively enforced and contribute to creating a level playing field for all ships.**
- ECSA embraces the importance of environmental considerations and believes that a comprehensive and balanced approach is crucial in ensuring the safety and environmental integrity of vessels operating within EU waters. ECSA's commitment is to foster a sustainable maritime industry that upholds the highest standards of both safety and environmental responsibility.
- The primary objective of port State controls should remain the identification of sub-standard ships through a harmonised system. **The environmental parameters should not outweigh safety parameters when calculating the ship's risk profile.**
- In particular, **ECSA thinks that the Carbon Intensity Indicator of the ship (CII) should not be used as it is not an adequate environmental parameter.** The CII is a measure of how efficiently a vessel transports cargo, calculated in grams of CO₂ emitted per cargo-carrying capacity and nautical mile. CII is not a parameter on the technical or operational condition of a ship. For instance, two identical sister vessels, with the same technical characteristics and operational conditions, that operate in different trade areas can, and in most cases will, have different CII ratings due to differences in weather condition encountered, port stay, waiting time, etc. Furthermore, a CII rating of "D" or "E" is fully compliant with IMO regulations, as long as respective corrective measures are undertaken to improve the CII within the given time period. In addition, the CII regulations are being reviewed at the IMO level. This revision process is to be completed by 1 January 2026. The EU Member States, in particular, have recognised this situation, which is why the ESSF expert group on Energy Efficiency has been mandated to review, identify and propose revisions of the regulations to the Commission.
- The **Ballast Water Convention** is currently under review and a "non-penalisation period" applies until this review is completed. The inclusion of

the Ballast Water Convention as an environmental parameter should thus be considered when this review is finalised. A review clause could be added to the Directive to ensure that the Commission reviews it following the completion of the revision process by the International Maritime Organization (IMO).

- ECSA welcomes the increase use of **electronic certificates**. However, as the decision to use electronic certificates lies with Flag State, and not with the shipowners, the proposal for a Directive of the European Parliament and of the Council amending Directive 2009/21/EC on Flag State would be a more suitable instrument to encourage the use of electronic certificates by the Flag State administration, rather than the ship risk profile. A ship carrying conventional certificates is compliant with its obligations and should therefore not be subject to increased inspections.
- A new provision covers a **force majeure** situation to address the issue of lack of flexibility of the port State control regime in cases of crisis or unexpected events. ECSA calls on the co-legislators to define precisely when force majeure can be invoked by port State control administration. The impossibility to carry out an inspection for force majeure reasons should also reported to EMSA to ensure that a level playing field is maintained.
- **A right to appeal and to object before a name of the ship/IMO number is made public** should be created. The right to objection should be included and the appeal/objection procedures should be first finalised before publication of the offence and the identification of the ship or company.

Flag State requirements

ECSA welcomes the overall objective of the revision to address the legal uncertainty on the implementation of new international rules at EU level and to address the lack of harmonisation in the approach to inspections, monitoring and information sharing of EU Member States' flagged fleets.

In particular, ECSA would like to highlight the following points:

- ECSA can in principle welcome the objective of new article 4a on "Safety of ships flying the flag of a Member State" and article 4b on "Safety and pollution prevention requirements". The proposal provides that when ensuring compliance with international rules and standards by ships flying their flag, Member States shall ensure they have been surveyed in accordance with the survey guidelines under the Harmonized System of Survey and Certification (HSSC). ECSA however notes that the HSSC are guidelines, which are by definition non-binding documents. Its use should therefore be encouraged, but not be made mandatory, to ensure a global level playing field and the competitiveness of European flags.
- ECSA notes the obligation under article 4b for a Member State to "ensure that its administration relies on **appropriate resources**, commensurate with the size and type of its fleet" and the implementing powers conferred to the Commission to "define the uniform measures to determine the **minimum requirements** for the implementation of the obligations" under

article 4a(2). It shall be noted that Flag State administrations operate in different manners and shall retain the ability to organise themselves in an efficient manner. While adequate capacity and competence should be maintained, it is key that the requirements to be set at EU level do not unduly penalise well-performing administrations.

- **ECSA supports the enhancement of digitalisation** in the form of harmonised electronic information and exchange (article 6). In particular, the digitalisation and electronic exchange of ship-related certificates, and moving away from paper-based solutions, can significantly improve efficiency and in turn have a positive effect on the attractiveness of the flag of a Member State. However, enhanced digital solutions are not the only criteria that shipowner consider when they select their Flag State. In the same line, shipowners do not have any direct control on the digitalisation effort of their register. For this reason, ECSA believes that linking the uptake and use of electronic statutory certificates with the ship risk profile used to target and select ships for port State control inspection, as proposed by the revision of Directive 2009/16 (article 24a), is not the best tool to increase digitalisation. The proposal for a Directive of the European Parliament and of the Council amending Directive 2009/21/EC on Flag State would be a more suitable instrument to encourage the use of electronic certificates by the Flag State administration, rather than the ship risk profile.
- The establishment of an **inspection database** (article 6a), based on the inspection database referred to in Article 24 of Directive 2009/16, can in principle be supported, insofar as it promotes information sharing between relevant authorities, the Commission and EMSA. While exchange of information is supported to facilitate implementation and enforcement, access to ship-specific data and reports should be granted only to relevant authorities.