***Changes to legislation:*** *Commission Implementing Regulation (EU) No 1355/2014 is up to date with all changes known to be in force on or before 28 December 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

# Commission Implementing Regulation (EU) No 1355/2014 of 17 December 2014 amending Regulation (EC) No 391/2009 with regard to the adoption by the International Maritime Organization (IMO) of certain Codes and related amendments to certain conventions and protocols (Text with EEA relevance)

## COMMISSION IMPLEMENTING REGULATION (EU) No 1355/2014

## of 17 December 2014

## amending Regulation (EC) No 391/2009 with regard to the adoption by the International Maritime Organization (IMO) of certain Codes and related amendments to certain conventions and protocols

## (Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EC) No 391/2009 of the European Parliament and of the Council of 23 April 2009 on common rules and standards for ship inspection and survey organisations[(1)], and in particular Article 13(2) thereof,

Acting in accordance with the conformity checking procedure set out in Article 5 of Regulation (EC) No 2099/2002 of the European Parliament and of the Council establishing a Committee on Safe Seas and the Prevention of Pollution from Ships (COSS)[(2)],

Whereas:

(1) Pursuant to Article 5(1) of Regulation (EC) No 2099/2002, Member States and the Commission shall cooperate in order to define, as appropriate, a common position or approach in the competent international fora with a view to reducing the risks of conflict between the maritime legislation of the Union and international instruments.

(2) Regulation (EC) No 391/2009 forms together with Directive 2009/15/EC of the European Parliament and the Council[(3)] one coherent piece of legislation where the activities of recognised organisations are regulated in a consistent manner in accordance with the same principles and definitions. Pursuant to Article 3(2) of Directive 2009/15/EC, if a Member State decides, with respect to ships flying its flag, to authorise an organisation to carry out on its behalf the inspections and surveys related to statutory certificates, it shall entrust these duties only to a recognised organisation, which, pursuant to Article 2(g) of that Directive, means an organisation recognised in accordance with Regulation (EC) No 391/2009. Therefore, the set of rules on the basis of which the organisations concerned are recognised has an impact on both acts.

(3) The term ‘international conventions’ as defined in Article 2(b) of Regulation (EC) No 391/2009 means the International Convention for the Safety of Life at Sea of 1 November 1974 (the SOLAS Convention) with the exception of chapter XI-2 of the Annex thereto, the International Convention on Load Lines of 5 April 1966

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(the Load Lines Convention) and the International Convention for the Prevention of Pollution from Ships of 2 November 1973 (the MARPOL Convention), together with the protocols and amendments thereto, and the related codes of mandatory status in all Member States, in their up-to-date version.

(4) The IMO Assembly at its 28th session adopted an IMO Instruments Implementation Code (III Code), as set out in IMO resolution A.1070(28) of 4 December 2013, as well as amendments to the Load Lines Convention, with a view to rendering the III Code mandatory, together with an associated flag State audit scheme, as set out in IMO resolution A.1083(28) of 4 December 2013.

(5) The IMO Marine Environment Protection Committee (MEPC) at its 66th session adopted amendments to the Protocol of 1978 relating to the MARPOL Convention, as set out in resolution MEPC.246(66) of 4 April 2014, and to the Protocol of 1997 relating to the MARPOL Convention, as modified by the Protocol of 1978 relating thereto, as set out in resolution MEPC.247(66) of 4 April 2014, with a view to rendering the III Code mandatory, together with an associated flag State audit scheme.

(6) The IMO Maritime Safety Committee (MSC) at its 93rd session adopted amendments to the SOLAS Convention, as set out in resolution MSC.366(93) of 22 May 2014, and to the Protocol of 1988 relating to the Load Lines Convention, as set out in resolution MSC.375(93) of 22 May 2014, with a view to rendering the III Code mandatory, together with an associated flag State audit scheme.

(7) The MEPC at its 65th session and the MSC at its 92nd session adopted an IMO Code for Recognized Organizations (RO Code), as set out in resolution MSC.349(92) of 21 June 2013.

(8) The MEPC at its 65th session adopted amendments to the Protocol of 1978 relating to the MARPOL Convention with a view to rendering the RO Code mandatory, as set out in resolution MEPC.238(65) of 17 May 2013.

(9) The MSC at its 92nd session adopted amendments to the SOLAS Convention and to the Protocol of 1988 relating to the Load Lines Convention with a view to rendering the RO Code mandatory, as set in resolutions MSC.350(92) and MSC.356(92) of 21 June 2013.

(10) The III and RO Codes are therefore expected to enter into force during the period between 1 January 2015 until 1 January 2018 in accordance with the applicable rules for the adoption, ratification and entry into force of amendments under each of the IMO conventions concerned.

(11) On 13 May 2013, the Council adopted Council Decision 2013/268/EU on the position to be taken on behalf of the European Union within the International Maritime Organization (IMO) with regard to the adoption of certain Codes and related amendments to certain conventions and protocols[(4)]. Pursuant to Article 5 of that Decision, the Council authorised the Member States to give their consent to be bound, in the interest of the Union and subject to the declaration set in the Annex of that Decision, by the amendments referred to in recitals 4 to 9 of this Regulation.

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(12) The declaration annexed to Council Decision 2013/268/EU states that Member States consider that the III Code and the RO Code contain a set of minimum requirements on which States can elaborate and improve as appropriate for the enhancement of maritime safety and the protection of the environment.

(13) It also states that nothing in the III Code or RO Code shall be construed to restrict or limit in any way the fulfilment of Member States' obligations under the law of the Union in relation to the definition of ‘statutory certificates’ and ‘class certificates’, the scope of the obligations and criteria laid down for recognised organisations, and the duties of the European Commission as regards the recognition, assessment and, where appropriate, the imposition of corrective measures or sanctions on recognised organisations. The same declaration states that, in the case of an IMO audit, Member States will state that only compliance with those provisions of the relevant international conventions which Member States have accepted, including in the terms of this declaration, shall be verified.

(14) In the legal order of the Union, the scope of Regulation (EC) No 391/2009 as well as that of Directive 2009/15/EC includes references to the ‘international conventions’ as described in recital 3. In this framework, amendments to IMO conventions are automatically brought into Union law at the same time when they enter into force at the international level, including the related codes of mandatory status such as the III and RO codes, which therefore form part of the IMO instruments relevant for the application of Regulation (EC) No 391/2009.

(15) Amendments to international conventions may however be excluded from the scope of Union maritime legislation in accordance with the conformity checking procedure if they meet at least one of the two criteria set out in Article 5(2) of Regulation (EC) No 2099/2002.

(16) The Commission evaluated the amendments to the IMO conventions in accordance with Article 5 of Regulation (EC) No 2099/2002 and determined that a number of discrepancies exist between, on the one hand, the III Code and the RO Code, and, on the other hand, Regulation (EC) No 391/2009 and Directive 2009/15/EC.

(17) First, paragraph 16.1 of part 2 of the III Code provides for a minimum list of resources and processes which flag States have to establish, including the provision of administrative instructions pertaining, inter alia, to ship class certificates required by the flag State to demonstrate compliance with structural, mechanical, electrical, and/or other requirements of an international convention to which the flag State is a party or compliance with a requirement of the flag State's national regulation. As detailed in recital (21) below however, Union law draws a distinction between statutory certificates and class certificates. The latter are documents of a private nature and are neither acts of a flag State nor issued on any flag State's behalf. This provision of the III Code in fact refers to SOLAS Chapter II-1, Part A-1, Regulation 3-1, which provides that ships shall be designed, constructed and maintained in compliance with the structural, mechanical and electrical requirements of a classification society which is recognized by the Administration in accordance with the provisions of regulation XI-1/1. 1. The SOLAS convention clearly identifies the ship or its legal representation vis-à-vis the

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flag State as the object of this requirement. Furthermore, when acting in its capacity as class society, a recognised organisation issues ship class certificates in accordance with its own rules, procedures, conditions and private contractual arrangements, to which the flag State is not a party. Therefore, this provision of the III Code contradicts the delineation of class and statutory activities as set out in the existing EU legislation.

(18) Second, paragraph 18.1 of part 2 of the III Code requires the flag State to determine, *'with regard only to ships entitled to fly its flag',* that a recognised organisation has adequate resources in terms of technical, managerial and research capabilities to accomplish the duties entrusted to it. In contrast, this aspect is addressed under Union law as a requirement for the purpose of the recognition as reflected in criterion A.3 in Annex I of Regulation (EC) No 391/2009, and with regard to the entire fleet in the class of the organisation concerned, without distinction based on flag. Should the above provision of the III Code be incorporated into Union law, it would restrict the application of criterion A.3 in Annex I of Regulation (EC) No 391/2009 to the recognised organisation's performance with regard only to ships flying the flag of Member States, in contradiction with the requirements currently in force.

(19) Third, paragraph 19 of part 2 of the III Code introduces a prohibition for a flag State to mandate its recognised organisations to apply to ships, other than those entitled to fly its flag, any requirements pertaining to, inter alia, their classification rules, requirements or procedures. Pursuant to Directive 2009/15/EC, Member States can only authorise an organisation to act on their behalf for the statutory certification of their respective fleet if that organisation has been recognised and is being monitored for this purpose in accordance with Regulation (EC) No 391/2009. In this framework, the recognised organisations as such have to comply with certain requirements in their relevant activities across their classed fleet, irrespective of the flag. This relates to most of the criteria set out in Annex I of Regulation (EC) No 391/2009, as well as to other obligations, in particular Article 10(4) of that Regulation. Should the above provision of the III Code be incorporated into Union law, it would restrict the application of the existing recognition requirements in Regulation (EC) No 391/2009, inter alia, if they qualify as rules, requirements and procedures to the recognised organisation's performance with regard only to ships flying the flag of Member States.

(20) Fourth, section 1.1 of part 2 of the RO Code defines a 'Recognized Organization' as an organisation assessed by a flag State, and found to comply with part 2 of the RO Code. In contrast, Article 2(e) of Regulation (EC) No 391/2009 provides that a recognised organisation is *'an organisation recognised in accordance with this Regulation'*. Based on the Commission's evaluation set out in recitals (21) to (23), it appears that several provisions in part 2 of the RO Code are incompatible with Regulation (EC) No 391/2009. Consequently, a recognised organisation as defined in the RO Code would not fulfil all the requirements of Regulation (EC) No 391/2009 and could therefore not meet the definition of a recognised organisation as set out in Union law.

(21) Fifth, section 1.3 of part 2 of the RO Code defines 'statutory certification and services' as a single category of activities that a recognised organisation is entitled to perform on behalf of the flag State, including the issuance of certificates pertaining to both statutory