

Directive (EU) 2019/1159 of the European Parliament and of the Council of 20 June 2019 amending Directive 2008/106/EC on the minimum level of training of seafarers and repealing Directive 2005/45/EC on the mutual recognition of seafarers' certificates issued by the Member States (Text with EEA relevance)

DIRECTIVE (EU) 2019/1159 OF THE EUROPEAN
PARLIAMENT AND OF THE COUNCIL

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(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 100(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee⁽¹⁾,

After consulting the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure⁽²⁾,

Whereas:

- (1) In order to maintain, and to aim to improve, the high level of maritime safety and pollution prevention at sea, it is essential to maintain and possibly to improve the level of knowledge and skills of Union seafarers by developing maritime training and certification in line with international rules and technological progress, as well as to take further action to enhance the European maritime skills base.
- (2) The training and certification of seafarers is regulated at international level by the International Maritime Organization's International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended (the 'STCW Convention'), which was last subject to a major revision in 2010. Amendments to the STCW Convention were adopted in 2015 on the training and qualification requirements for seafarers working on board ships subject to the International Code of Safety for Ships using Gases or other Low-flashpoint Fuels (the 'IGF Code'). In 2016, amendments to the STCW Convention were adopted in relation to training and qualification of seafarers working on board passenger ships and on board ships operating in polar waters.

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- (3) Directive 2008/106/EC of the European Parliament and of the Council⁽³⁾ incorporates the STCW Convention into Union law. All Member States are signatories to the STCW Convention and thus a harmonized implementation of their international commitments is to be achieved through the alignment of the Union rules on training and certification of seafarers with the STCW Convention. Therefore, several provisions of Directive 2008/106/EC should be amended in order to reflect the latest amendments to the STCW Convention regarding training and qualification of seafarers working on board ships falling under the IGF Code, on board passenger ships and on board ships operating in polar waters.
- (4) The Seafarers' Training, Certification and Watchkeeping Code, as adopted by Resolution 2 of the 1995 STCW Conference of Parties, in its up-to-date version (the 'STCW Code') already contains guidance on the prevention of fatigue (Section B-VIII/1) as well as on fitness for duty (Section A-VIII/1). In the interest of safety, it is imperative that the requirements of Article 15 of Directive 2008/106/EC are enforced and followed without exception and that due account is taken of that guidance.
- (5) One of the objectives of the common transport policy in the field of maritime transport is to facilitate the movement of seafarers within the Union. Such movement contributes, among other things, to making the Union maritime transport sector attractive to future generations, thereby avoiding a situation in which the European maritime cluster is faced with a shortage of competent staff with the right mix of skills and competencies. The mutual recognition of seafarers' certificates issued by Member States is essential to facilitate the free movement of seafarers. In the light of the right to good administration, Member States' decisions in respect of acceptance of certificates of proficiency issued to seafarers by other Member States for the purpose of issuing national certificates of competency should be based on reasons that are capable of being ascertained by the seafarer concerned.
- (6) Directive 2008/106/EC also contains a centralised system for the recognition of seafarers' certificates issued by third countries. The Regulatory Fitness Programme (REFIT) evaluation showed that significant cost savings for the Member States were achieved since the introduction of the centralised system. However, the evaluation also revealed that, with regard to some of the recognised third countries, only a very limited number of endorsements attesting the recognition of certificates were issued by Member States in relation to certificates of competency or certificates of proficiency issued by those third countries. Therefore, in order to use the available human and financial resources in a more efficient way, the procedure for the recognition of third countries should be based on an analysis of the need for such recognition, including but not limited to an indication of the estimated number of masters, officers and radio operators originating from that country who are likely to be serving on ships flying the flags of Member States. That analysis should be submitted for examination to the Committee on Safe Seas and the Prevention of Pollution from Ships (COSS).
- (7) In view of the experience gained in applying the procedure for the recognition of third countries, the REFIT evaluation revealed that the current 18-month time frame does not take into account the complexity of the process which includes an on

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field inspection conducted by the European Maritime Safety Agency. The necessary diplomatic arrangements to plan and carry out such an inspection require more time. Furthermore, the 18-month time frame is not sufficient where the third country has to implement corrective actions and undertake legal changes in its system in order to comply with the requirements of the STCW Convention. On those grounds, the deadline for the adoption of a Commission decision should be extended from 18 to 24 months and, where considerable corrective actions, including amendments to legal provisions, have to be implemented by the third country, the deadline should be further extended to 36 months. In addition, the possibility for the requesting Member State to provisionally recognise the third country's system for standards of training, certification and watchkeeping for seafarers should be kept so as to maintain the flexibility of the recognition procedure.

- (8) In order to ensure the right of all seafarers to decent employment and in order to limit distortions of competition in the internal market, future recognition of third countries should consider whether those third countries have ratified the Maritime Labour Convention, 2006.
- (9) In order to further increase the efficiency of the centralised system for the recognition of third countries, the reassessment of third countries which provide a low number of seafarers to ships flying the flags of Member States should be performed at longer intervals which should be increased to ten years. However, this longer period of reassessment of the system of such third countries should be combined with priority criteria which take into account safety concerns, balancing the need for efficiency with an effective safeguard mechanism in case of deterioration of the quality of seafarers' training provided in the relevant third countries.
- (10) Information on the seafarers employed from third countries has become available at Union level through the communication by Member States of the relevant information kept in their national registers regarding issued certificates and endorsements. That information should be used for statistical and policy-making purposes, in particular for the purpose of improving the efficiency of the centralised system for the recognition of third countries. Based on the information communicated by the Member States, the recognition of third countries which have not provided seafarers to ships flying the flags of Member States for a period of at least eight years should be re-examined. The re-examination process should cover the possibility of retaining or withdrawing the recognition of the relevant third country. In addition, the information communicated by the Member States should also be used in order to prioritise the reassessment of the recognised third countries.
- (11) In order to take account of developments at international level and to ensure the timely adaptation of Union rules to such developments, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of incorporating amendments to the STCW Convention and Part A of the STCW Code by updating the technical requirements on training and certification of seafarers and by aligning all the relevant provisions of Directive 2008/106/EC in relation to the digital certificates for seafarers. It

is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making⁽⁴⁾. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

- (12) In order to ensure uniform conditions for the implementation of the provisions of this Directive concerning the recognition of third countries, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council⁽⁵⁾.
- (13) The provisions for recognition of professional qualifications set out in Directive 2005/36/EC of the European Parliament and of the Council⁽⁶⁾ are not applicable with regard to the recognition of certificates of seafarers under Directive 2008/106/EC. Directive 2005/45/EC of the European Parliament and of the Council⁽⁷⁾ regulated the mutual recognition of seafarers' certificates issued by the Member States. However, the definitions of seafarers' certificates referred to in Directive 2005/45/EC have become obsolete following the 2010 amendments to the STCW Convention. Therefore, the mutual recognition scheme of seafarers' certificates issued by Member States should be amended in order to reflect the international amendments and the definitions of seafarers' certificates included in Directive 2008/106/EC. In addition, the seafarers' medical certificates issued under the authority of Member States should also be included in the mutual recognition scheme. In order to remove ambiguity and the risk of inconsistencies between Directives 2005/45/EC and 2008/106/EC, the mutual recognition of seafarers' certificates should be regulated by Directive 2008/106/EC only. Furthermore, in order to reduce the administrative burden on Member States, an electronic system for the presentation of seafarers' qualifications should be introduced once relevant amendments to the STCW Convention have been adopted.
- (14) Digitalisation of data is part and parcel of technological progress in the area of data collection and communication with a view to helping to bring down costs and making efficient use of human resources. The Commission should consider measures in order to enhance the effectiveness of port State control, including, inter alia, an evaluation of the feasibility and added value of setting up and managing a central database of seafarers' certificates which would be linked to the inspection database referred to in Article 24 of Directive 2009/16/EC of the European Parliament and of the Council⁽⁸⁾, and to which all Member States will be connected. That central database should contain all the information set out in Annex V to Directive 2008/106/EC on certificates of competency and endorsements attesting the recognition of certificates of proficiency issued in accordance with Regulations V/1-1 and V/1-2 of the STCW Convention.
- (15) The education and training of European seafarers to be masters and officers should be supported by exchanges of students between maritime education and training

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institutions across the Union. In order to cultivate and develop the skills and qualifications of seafarers under a European flag, an exchange of good practices between Member States is necessary. The education and training of seafarers should fully benefit from the opportunities provided by the Erasmus+ programme.

- (16) The Commission should establish a dialogue with social partners and Member States to develop maritime training initiatives additional to the internationally agreed minimum level of training of seafarers, and which could be mutually recognised by Member States as European Maritime Diplomas of Excellence. Those initiatives should build upon, and be developed in line with, the recommendations of the ongoing pilot projects and strategies in the Commission's Blueprint for sectoral cooperation on skills.
- (17) In order to increase legal clarity and consistency, Directive 2005/45/EC should be repealed.
- (18) Directive 2008/106/EC should be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Amendments to Directive 2008/106/EC

Directive 2008/106/EC is amended as follows:

- (1) In Article 1, the following points are added:
 - 43. “host Member State” means the Member State in which seafarers seek acceptance or recognition of their certificates of competency, certificates of proficiency or documentary evidence;
 - 44. “IGF Code” means the International Code of Safety for Ships using Gases or other Low-flashpoint Fuels, as defined in SOLAS 74 Regulation II-1/2.29;
 - 45. “Polar Code” means the International Code for Ships Operating in Polar Waters, as defined in SOLAS 74 Regulation XIV/1.1;
 - 46. “Polar waters” means Arctic waters and/or the Antarctic area, as defined in SOLAS 74 Regulations XIV/1.2 to XIV/1.4..
- (2) Article 2 is amended as follows:
 - (a) in the sole paragraph, the introductory wording is replaced by the following:
 - 1. This Directive applies to the seafarers mentioned in this Directive serving on board seagoing ships flying the flag of a Member State with the exception of;
 - (b) the following paragraph is added:
 - 2. Article 5b applies to seafarers who hold a certificate issued by a Member State, regardless of their nationality..
- (3) Article 5 is amended as follows:
 - (a) paragraph 10 is replaced by the following: