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(Acts whose publication is obligatory)

COUNCIL DIRECTIVE 98/35/EC

of 25 May 1998

amending Directive 94/58/EC on the minimum level of training of seafarers

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 84(2) thereof,

Having regard to the proposal from the Commission [1],

Having regard to the opinion of the Economic and Social Committee [2],

Acting in accordance with the procedure laid down in Article 189c of the Treaty [3],

(1) Whereas Article 12(2) of Council Directive 94/58/EC of 22 November 1994 on the minimum level of training of seafarers [4] provides that following the adoption of new instruments or protocols to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW Convention) the Council, acting on a proposal from the Commission, shall decide on the detailed arrangements for ratifying those new instruments or protocols, while ensuring that they are applied uniformly and simultaneously in the Member States;

(2) Whereas Article 9(3)(a) of that Directive provides that a set of criteria for the recognition of types of certificates issued by institutes or administrations of third countries will be defined by the Council, acting in accordance with the conditions of the Treaty;

(3) Whereas actions to be taken at Community level in the field of maritime safety and pollution prevention at sea should be in line with internationally agreed rules and standards;

(4) Whereas in its resolution of 24 March 1997 on a new strategy to increase the competitiveness of Community shipping [5] the Council sought to promote the employment of Community seafarers and shore-based personnel; whereas to that end the Council agreed that action should be undertaken to help Community shipping to continue striving for high quality and improve its competitiveness by ensuring the continued high-quality training of Community seafarers of all ranks and of shore-based personnel;

(5) Whereas the 1995 Conference of Parties to the STCW Convention adopted the revised Annex to the STCW Convention and the Seafarers' Training, Certification and Watchkeeping Code (STCW Code);

(6) Whereas Member States may establish standards higher than the minimum standards laid down in the STCW Convention and the Directive;

(7) Whereas the Regulations of the STCW Convention set out in Annex I to this Directive should be supplemented by the mandatory provisions contained in Part A of the STCW Code; whereas Part B of the STCW Code contains recommended guidance intended to assist Parties to the STCW Convention and those involved in implementing, applying or enforcing its measures to give the Convention full and complete effect in a uniform manner;

(8) Whereas the establishment of common criteria for the Member States' recognition of certificates issued by third countries should be based on the training and certification requirements as agreed in the framework of the STCW Convention;

[1] OJ C 367, 5.12.1996, p. 1.
[2] OJ C 206, 7.7.1997, p. 29.
[3] Opinion of the European Parliament of 29 May 1997 (OJ C 182, 16.6.1997, p. 34), Council common position of 20 October 1997 (OJ C 389, 22.12.1997, p. 1) and Decision of the European Parliament of 29 January 1998 (OJ C 56, 23.2.1998).
[4] OJ L 319, 12.12.1994, p. 28.
[5] OJ C 109, 8.4.1997, p. 1.

(9) Whereas, in the interests of safety at sea, Member States should recognise qualifications proving the required level of training only where these are issued by or on behalf of Parties to the STCW Convention which have been identified by the Maritime Safety Committee of the International Maritime Organisation (IMO) as having been shown to have given, and still to be giving, full effect to the standards set out in that Convention; whereas, to bridge the time gap until that IMO Committee has been able to carry out such identification, a procedure for the preliminary recognition of certificates is needed;

(10) Whereas, where appropriate, maritime institutes, training programmes and courses should be inspected; whereas criteria for such inspection should therefore be established;

(11) Whereas the Council should review Annex II in the light of the experience gained in applying the Directive, acting on a proposal to be submitted by the Commission within five years of the adoption of this Directive;

(12) Whereas until 1 February 2002 Member States should be allowed to accept on their ships seafarers holding certificates issued in accordance with the provisions which applied before 1 February 1997, the date of entry into force of the revised STCW Convention, provided that those seafarers began their service or training before 1 August 1998;

(13) Whereas for the enhancement of maritime safety and pollution prevention at sea provisions on minimum rest periods for watchkeeping personnel should be established in this Directive in accordance with the STCW Convention; whereas those provisions should be reviewed within the framework of the establishment of a possible separate instrument on working time;

(14) Whereas it is appropriate to include in this Directive provisions on port State control, pending the amendment of Council Directive 95/21/EC of 19 June 1995 concerning the enforcement, in respect of shipping using Community ports and sailing in the waters under the jurisdiction of the Member States, of international standards for ship safety, pollution prevention and shipboard living and working conditions (port State control) [1] in order to transfer to that Directive the provisions on port State control which are included in Articles 8(6), 10, 10a and 11 of this Directive,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Directive 94/58/EC is hereby amended as follows:

(1) Article 2 shall be replaced by the following:

'*Article 2*

1. Member States shall take the measures necessary to ensure that seafarers serving on ships as defined in Article 1 are trained as a minimum in accordance with the requirements of the STCW Convention, as laid down in Annex I to this Directive, and hold certificates as defined in Article 3 or appropriate certificates as defined in Article 4(aa).

2. Member States shall take the measures necessary to ensure that those crew members that must be certified in accordance with Regulation III/10.4 of the International Convention on the Safety of Life at Sea (SOLAS Convention) are trained and certificated in accordance with this Directive.';

(2) the following Article shall be inserted:

'*Article 3a*

Certificates and endorsements

1. Certificates shall be issued in accordance with Article 5d.

2. Certificates for masters, officers and radio operators shall be endorsed by the Member State as prescribed in this Article.

3. Certificates shall be in the official language or languages of the issuing Member State.

4. In respect of radio operators, Member States may:

(1) include the additional knowledge required by the relevant regulations in the examination for the issue of a certificate complying with the Radio Regulations; or

(2) issue a separate certificate indicating that the holder has the additional knowledge required by the relevant regulations.

5. At the discretion of a Member State endorsements may be incorporated in the format of the certificates being issued as provided for in

[1] OJ L 157, 7.7.1995, p. 1.

section A-I/2 of the STCW Code. If so incorporated the form used shall be that set out in section A-I/2, paragraph 1. If issued otherwise, the form of endorsements used shall be that set out in paragraph 2 of that section.

6. A Member State which recognises a certificate under the procedure laid down in Article 9(3)(a) shall endorse that certificate to attest its recognition. The form of the endorsement used shall be that set out in paragraph 3 of section A-I/2 of the STCW Code.

7. The endorsements referred to in paragraphs 5 and 6:

(1) may be issued as separate documents;

(2) shall each be assigned a unique number, except that endorsements attesting the issue of a certificate may be assigned the same number as the certificate concerned, provided that that number is unique; and

(3) shall each expire as soon as the certificate endorsed expires or is withdrawn, suspended or cancelled by the Member State or third country which issued it and, in any case, within five years of its date of issue.

8. The capacity in which the holder of a certificate is authorised to serve shall be identified in the form of endorsement in terms identical to those used in the applicable safe-manning requirements of the Member State concerned.

9. A Member State may use a format different from the format laid down in section A-I/2 of the STCW Code, provided that, as a minimum, the required information is provided in roman characters and Arabic figures, taking account of the variations permitted under section A-I/2.

10. Subject to Article 9(4) any certificate required by the Directive must be kept available in its original form on board the ship on which the holder is serving.';

(3) Article 4 shall be replaced by the following:

'Article 4

For the purposes of this Directive:

(a) "master" shall mean the person having command of a ship;

(b) "officer" shall mean a member of the crew, other than the master, designated as such by national law or regulations or, in the absence of such designation, by collective agreement or custom;

(c) "deck officer" shall mean an officer qualified in accordance with the provisions of Chapter II of Annex I;

(d) "chief mate" shall mean the officer next in rank to the master upon whom the command of the ship will fall in the event of the incapacity of the master;

(e) "engineer officer" shall mean an officer qualified in accordance with the provisions of Chapter III of Annex I;

(f) "chief engineer officer" shall mean the senior engineer officer responsible for the mechanical propulsion and the operation and maintenance of the mechanical and electrical installations of the ship;

(g) "second engineer officer" shall mean the engineer officer next in rank to the chief engineer officer upon whom the responsibility for the mechanical propulsion and the operation and maintenance of the mechanical and electrical installations of the ship will fall in the event of the incapacity of the chief engineer officer;

(h) "assistant engineer officer" shall mean a person under training to become an engineer officer and designated as such by national law or regulations;

(i) "radio operator" shall mean a person holding an appropriate certificate issued or recognised by the competent authorities under the provisions of the Radio Regulations;

(j) "rating" shall mean a member of the ship's crew other than the master or an officer;

(k) "seagoing ship" shall mean a ship other than those which navigate exclusively in inland waters or in waters within, or closely adjacent to, sheltered waters or areas where port regulations apply;

(l) "ship flying the flag of a Member State" shall mean a ship registered in and flying the flag of a Member State in accordance with its legislation. A ship not corresponding to this definition shall be regarded as a ship flying the flag of a third country;

(m) "near-coastal voyages" shall mean voyages in the vicinity of a Member State as defined by that Member State;

(n) "propulsion power" shall mean the total maximum continuous rated output power in kilowatts of all of a ship's main propulsion machinery which appears on the ship's certificate of registry or other official document;

(o) "oil tanker" shall mean a ship constructed and used for the carriage of petroleum and petroleum products in bulk;

(p) "chemical tanker" shall mean a ship constructed or adapted and used for the carriage in bulk of any liquid product listed in Chapter 17 of the International Bulk Chemical Code as in force at the time of the adoption of this Directive;

(q) "liquefied-gas tanker" shall mean a ship constructed or adapted and used for the carriage in bulk of any liquefied gas or other product listed in Chapter 19 of the International Gas Carrier Code as in force at the time of the adoption of this Directive;

(r) "Radio Regulations" shall mean the revised radio regulations, adopted by the World Administrative Radio Conference for the Mobile Service as in force at the time of the adoption of this Directive;

(s) "passenger ship" shall mean a seagoing ship which carries more than 12 passengers;

(t) "fishing vessel" shall mean a vessel used for catching fish or other living resources of the sea;

(u) "STCW Convention" shall mean the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers as it applies to the matters concerned taking into account the transitional provisions of Article VII and Regulation I/15 of the Convention and including, where appropriate, the applicable provisions of the STCW Code, all being applied as in force at the time of the adoption of this Directive;

(v) "radio duties" shall include, as appropriate, watchkeeping and technical maintenance and repairs conducted in accordance with the Radio Regulations, the International Convention for the Safety of Life at Sea (1974) (SOLAS) as in force at the time of the adoption of this Directive and, at the discretion of each Member State, the relevant recommendations of the International Maritime Organisation (IMO);

(w) "ro-ro passenger ship" shall mean a passenger ship with ro-ro cargo spaces or special-category spaces as defined in the SOLAS Convention;

(x) "STCW Code" shall mean the Seafarers' Training, Certification and Watchkeeping (STCW) Code as adopted by Resolution 2 of the 1995 STCW Conference of Parties, as in force at the time of the adoption of this Directive;

(y) "function" shall mean a group of tasks, duties and responsibilities, as specified in the STCW Code, necessary for ship operation, safety of life at sea or protection of the marine environment;

(z) "company" shall mean the owner of the ship or any other organisation or person such as the manager or the bareboat charterer who has assumed the responsibility for operation of the ship from the shipowner and who, on assuming such responsibility, has agreed to take over all the duties and responsibilities imposed on the company by these regulations;

(aa) "appropriate certificate" shall mean a certificate issued and endorsed in accordance with this Directive and entitling the lawful holder thereof to serve in the capacity and perform the functions involved at the level of responsibility specified therein on a ship of the type, tonnage, power and means of propulsion concerned while engaged on the particular voyage concerned;

(ab) "seagoing service" shall mean service on board a ship relevant to the issue of a certificate or other qualification;

(ac) "approved" shall mean approved by a Member State in accordance with this Directive;

(ad) "third country" shall mean any country which is not a Member State;

(ae) "month" shall mean a calendar month or 30 days made up of periods of less than one month.';

(4) the following Articles shall be inserted:

'Article 5a

Principles governing near-coastal voyages

1. When defining near-coastal voyages Member States shall not impose training, experience or certification requirements on seafarers serving on board ships entitled to fly the flag of another Member State or of another Party to the STCW

Convention and engaged on such voyages in a manner resulting in more stringent requirements for such seafarers than for seafarers serving on board ships entitled to fly its own flag. In no case shall a Member State impose requirements in respect of seafarers serving on board ships flying the flag of another Member State or of another Party to the STCW Convention in excess of those of the Directive in respect of ships not engaged on near-coastal voyages.

2. With respect to ships entitled to fly the flag of a Member State regularly engaged on near-coastal voyages off the coast of another Member State or of another Party to the STCW Convention, the Member State the flag of which a ship is entitled to fly shall prescribe training, experience and certification requirements for seafarers serving on such ships at least equal to those of the Member State or the Party to the STCW Convention off the coast of which the ship is engaged, provided that they do not exceed the requirements of the Directive in respect of ships not engaged on near-coastal voyages. Seafarers serving on a ship which extends its voyage beyond what is defined as a near-coastal voyage by a Member State and enters waters not covered by that definition shall fulfil the appropriate requirements of the Directive.

3. A Member State may afford a ship which is entitled to fly its flag the benefits of the near-coastal voyage provisions of this Directive when it is regularly engaged off the coast of a non-Party to the STCW Convention on near-coastal voyages as defined by that Member State.

4. Upon deciding on the definition of near-coastal voyages and the conditions of education and training required thereof in accordance with the requirements of this Article, Member States shall communicate to the Commission the details of the provisions they have adopted.

Article 5b

Penalties or disciplinary measures

1. Member States shall establish processes and procedures for the impartial investigation of any reported incompetence, act or omission, that may pose a direct threat to safety of life or property at sea or to the marine environment, on the part of the holders of certificates or endorsements issued by that Member State in connection with their performance of duties relating to their certificates and for the withdrawal, suspension and cancellation of such certificates for such cause and for the prevention of fraud.

2. Each Member State shall prescribe penalties or disciplinary measures for cases in which the provisions of its national legislation giving effect to the Directive are not complied with in respect of ships entitled to fly its flag or of seafarers duly certificated by it.

3. In particular, such penalties or disciplinary measures shall be prescribed and enforced in cases in which:

(1) a company or a master has engaged a person not holding a certificate as required by the Directive;

(2) a master has allowed any function or service in any capacity which under the Directive must be performed by a person holding an appropriate certificate to be performed by a person not holding the required certificate, a valid dispensation or having the documentary proof required by Article 9(4); or

(3) a person has obtained by fraud or forged documents an engagement to perform any function or serve in any capacity which under the Directive must be performed or filled by a person holding a certificate or dispensation.

4. Member States within the jurisdiction of which any company which or any person who is believed on clear grounds to have been responsible for or to have knowledge of any apparent non-compliance with the Directive specified in paragraph 3 is located shall extend cooperation to any Member State or other party to the STCW Convention which advises them of its intention to initiate proceedings under its jurisdiction.

Article 5c

Quality standards

1. Each Member State shall ensure that:

(1) all training, assessment of competence, certification, endorsement and revalidation activities carried out by non-governmental agencies or entities under its authority are continuously monitored through a quality-standards system to ensure the achievement of defined objectives, including those concerning the qualifications and experience of instructors and assessors;