

Directive 2012/35/EU of the European Parliament and of the Council
of 21 November 2012 amending Directive 2008/106/EC on the
minimum level of training of seafarers (Text with EEA relevance)

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PARLIAMENT AND OF THE COUNCIL

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amending Directive 2008/106/EC on the minimum level of training of seafarers
(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) The training and certification of seafarers is regulated by the International Maritime Organisation (IMO) Convention on Standards of Training, Certification and Watchkeeping for Seafarers 1978 (the ‘STCW Convention’), which entered into force in 1984 and which was significantly amended in 1995.
- (2) The STCW Convention was incorporated into Union law for the first time by Council Directive 94/58/EC of 22 November 1994 on the minimum level of training of seafarers⁽³⁾. The Union rules on training and certification of seafarers were later adapted to the subsequent amendments to the STCW Convention, and a common Union mechanism for the recognition of the systems of training and certification of seafarers in third countries was set up. Those rules are, as the result of a recast, contained in Directive 2008/106/EC of the European Parliament and of the Council⁽⁴⁾.
- (3) A Conference of Parties to the STCW Convention held in Manila in 2010 introduced significant amendments to the STCW Convention (the ‘Manila amendments’), namely on the prevention of fraudulent practices for certificates, in the field of medical standards, in the matter of training on security, including piracy and armed robbery, and with respect to training in technology-related matters. The Manila amendments also introduced requirements for able seafarers and established new professional profiles, such as electro-technical officers.

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- (4) All Member States are parties to the STCW Convention and none of them has objected to the Manila amendments under the procedure foreseen to that effect. Member States should therefore align their national rules with the Manila amendments. A conflict between the international commitments of Member States and their Union commitments should be avoided. Moreover, given the global nature of shipping, Union rules on training and certification of seafarers should be kept in line with international rules. Several provisions of Directive 2008/106/EC should, therefore, be amended in order to reflect the Manila amendments.
- (5) Improved training for seafarers should cover proper theoretical and practical training so as to ensure that seafarers are qualified to meet security and safety standards and are able to respond to hazards and emergencies.
- (6) Quality standards and quality standards systems should be developed and implemented taking into account, where applicable, the Recommendation of the European Parliament and of the Council of 18 June 2009 on the establishment of a European Quality Assurance Reference Framework for Vocational Education and Training⁽⁵⁾ and related measures adopted by the Member States.
- (7) European social partners have agreed on minimum hours of rest applicable to seafarers and Directive 1999/63/EC⁽⁶⁾ was adopted with a view to implementing that agreement. That Directive also allows for the possibility to authorise exceptions to the minimum hours of rest for seafarers. The possibility to authorise exceptions should, however, be limited in terms of maximum duration, frequency and scope. The Manila amendments aimed, amongst other things, to set objective limits to the exceptions to the minimum rest hours for watchkeeping personnel and seafarers with designated tasks related to safety, security and prevention of pollution with a view to preventing fatigue. The Manila amendments should be incorporated in Directive 2008/106/EC in a manner that ensures coherence with Directive 1999/63/EC, as amended by Directive 2009/13/EC⁽⁷⁾.
- (8) Further recognising the importance of setting out minimum requirements governing the living and working conditions of all seafarers, Directive 2009/13/EC will take effect as specified therein, when the Maritime Labour Convention, 2006, enters into force.
- (9) Directive 2008/106/EC also contains a mechanism for the recognition of the systems of training and certification of seafarers of third countries. The recognition is granted by the Commission in accordance with a procedure under which the Commission is assisted by the European Maritime Safety Agency (the 'Agency') established by Regulation (EC) No 1406/2002 of the European Parliament and of the Council⁽⁸⁾ and by the Committee on Safe Seas and the Prevention of Pollution from Ships (COSS), established by Regulation (EC) No 2099/2002 of the European Parliament and of the Council⁽⁹⁾. Experience gained in applying that procedure suggests that it should be changed, namely with respect to the deadline for the Commission decision. Since the recognition requires an inspection to be performed by the Agency, which has to be planned and carried out, and, in most cases, involves significant adjustments to the STCW Convention requirements by the third country concerned, the whole process cannot be completed in three months. On the basis of experience, a more realistic time-frame in this respect appears to be 18 months. The deadline for the

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Commission decision should therefore be changed accordingly, while the possibility for the requesting Member State to provisionally recognise the third country's STCW system should be kept in order to maintain flexibility. Furthermore, the provisions for recognition of professional qualifications under Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications⁽¹⁰⁾ are not applicable with regard to the recognition of certificates of seafarers under Directive 2008/106/EC.

- (10) Available statistics on seafarers in the Union are incomplete and often inaccurate, which makes policy-making in this sector more difficult. Detailed data on certification of seafarers cannot entirely solve this problem but they would clearly help. Under the STCW Convention Parties are obliged to maintain registers of all certificates and endorsements and the relevant revalidations or other measures affecting them. Member States are obliged to maintain a register of issued certificates and endorsements. In order to have information that is as complete as possible on the employment situation in the Union and exclusively with a view to facilitating policy-making by Member States and the Commission, Member States should be required to send to the Commission selected information already contained in their registers of seafarers' certificates of competency. That information should be communicated for the purposes of statistical analysis only, and is not to be used for administrative, legal or verification purposes. That information must be in line with the data protection requirements of the Union and, therefore, a provision to that effect should be introduced in Directive 2008/106/EC.
- (11) The results of the analysis of such information should be used to anticipate trends in the labour market with a view to improving the options for seafarers with regard to career planning and taking advantage of available vocational education and training opportunities. Such results should also contribute to the improvement of vocational education and training.
- (12) In order to gather data on the seafaring profession in line with its evolution and with that of technology, 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 adaptations of Annex V of Directive 2008/106/EC. The use of such delegated acts should be limited to cases in which amendments to the STCW Convention and Code require changes to that Annex. Additionally, such delegated acts should not modify the provisions on anonymising data referred to in that Annex. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and the Council.
- (13) The Union shipping sector has maritime expertise of high quality which helps to underpin its competitiveness. The quality of training for seafarers is important for the competitiveness of this sector and for attracting Union citizens, in particular young people, to the maritime professions.

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- (14) In order to uphold quality standards regarding training for seafarers, measures to prevent fraudulent practices associated with certificates of competency and of proficiency need to be improved.
- (15) In order to ensure uniform conditions for the implementation of Directive 2008/106/EC implementing powers have been conferred on the Commission in the field of training and certification of seafarers. For the same reason implementing powers should also be conferred on the Commission in relation to the statistical data on seafarers to be supplied by Member States to the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers⁽¹¹⁾.
- (16) The examination procedure should be used for the adoption of technical requirements necessary to ensure the appropriate management of statistical data referred to in Annex V to Directive 2008/106/EC and for the adoption of implementing decisions on the recognition and withdrawal of recognition of third countries' STCW systems.
- (17) The Manila amendments entered into force on 1 January 2012, whilst transitional arrangements may be applied until 1 January 2017. In order to allow for a smooth transition to the new rules, this Directive should provide for the same transitional arrangements as those established in the Manila amendments.
- (18) The IMO Maritime Safety Committee at its 89th session noted the need for clarification with regard to the implementation of the Manila amendments, taking into account the transitional arrangements established therein and Resolution 4 of the STCW Conference which recognises the need for full compliance to be achieved by 1 January 2017. Such clarification was provided by the IMO Circulars STCW.7/Circ.16 and STCW.7/Circ.17. In particular, STCW.7/Circ.16 states that the validity of any revalidated certificate should not extend beyond 1 January 2017 for seafarers holding certificates issued in accordance with the provisions of the STCW Convention which applied immediately prior to 1 January 2012, and who have not met the requirements of the Manila amendments, and for seafarers who commenced approved seagoing service, an approved education and training programme or an approved training course before 1 July 2013.
- (19) Further delays in incorporating the Manila amendments in Union law should be avoided, in order to maintain the competitiveness of seafarers from the Union as well as to uphold safety on board ships through up-to-date training.
- (20) For the sake of uniform implementation of the Manila amendments within the Union, it is advisable that, when transposing this Directive, Member States should take into account the guidance contained in the IMO circulars STCW.7/Circ.16 and STCW.7/Circ.17.
- (21) Since the objective of this Directive, namely the alignment of the current rules of the Union with international rules on training and certification of seafarers, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the action, be better achieved at Union level, the Union may adopt measures,

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in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary to achieve that objective.

(22) Directive 2008/106/EC should therefore be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

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- (1) [OJ C 43, 15.2.2012, p. 69.](#)
- (2) Position of the European Parliament of 23 October 2012 (not yet published in the Official Journal) and decision of the Council of 13 November 2012.
- (3) [OJ L 319, 12.12.1994, p. 28.](#)
- (4) [OJ L 323, 3.12.2008, p. 33.](#)
- (5) [OJ C 155, 8.7.2009, p. 1.](#)
- (6) Council Directive 1999/63/EC of 21 June 1999 concerning the Agreement on the organisation of working time of seafarers concluded by the European Community Shipowners' Association (ECSA) and the Federation of Transport Workers' Unions in the European Union (FST) — Annex: European Agreement on the organisation of working time of seafarers ([OJ L 167, 2.7.1999, p. 33](#)).
- (7) Council Directive 2009/13/EC of 16 February 2009 implementing the Agreement concluded by the European Community Shipowners' Associations (ECSA) and the European Transport Workers' Federation (ETF) on the Maritime Labour Convention, 2006 ([OJ L 124, 20.5.2009, p. 30](#)).
- (8) [OJ L 208, 5.8.2002, p. 1.](#)
- (9) [OJ L 324, 29.11.2002, p. 1.](#)
- (10) [OJ L 255, 30.9.2005, p. 22.](#)
- (11) [OJ L 55, 28.2.2011, p. 13.](#)