

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)

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:
 10. Subject to Article 19(7), any certificate required by this Directive shall be kept available in its original form on board the ship on which the holder is serving, in a hard copy or in a digital format, the authenticity and validity of which may be verified under the procedure laid down in point (b) of paragraph 12 of this Article.;
 - (b) paragraph 13 is replaced by the following:
 13. When relevant amendments to the STCW Convention and Part A of the STCW Code related to digital certificates for seafarers come into force, the Commission is empowered to adopt delegated acts in accordance with Article 27a to amend this Directive by aligning all the relevant provisions

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thereof with those amendments to the STCW Convention and Part A of the STCW Code in order to digitalise the seafarers' certificates and endorsements..

- (4) Article 5a is replaced by the following:

Article 5a

Information to the Commission

For the purposes of Article 20(8) and Article 21(2) and exclusively for use by the Member States and the Commission for policy-making and statistical purposes, Member States shall submit to the Commission, on a yearly basis, the information listed in Annex V to this Directive on certificates of competency and endorsements attesting the recognition of certificates of competency. They may also provide, on a voluntary basis, information on certificates of proficiency issued to ratings in accordance with Chapters II, III and VII of the Annex to the STCW Convention, such as the information indicated in Annex V to this Directive..

- (5) The following Article is inserted:

Article 5b

Mutual recognition of seafarers' certificates issued by Member States

- 1 Every Member State shall accept certificates of proficiency and documentary evidence issued by another Member State, or under its authority, in hard copy or in digital format, for the purpose of allowing seafarers to serve on ships flying its flag.

- 2 Every Member State shall recognise certificates of competency issued by another Member State or certificates of proficiency issued by another Member State to masters and officers in accordance with Regulations V/1-1 and V/1-2 of Annex I to this Directive, by endorsing those certificates to attest their recognition. The endorsement attesting the recognition shall be limited to the capacities, functions and levels of competency or proficiency prescribed therein. The endorsement shall only be issued if all requirements of the STCW Convention have been complied with, in accordance with Regulation I/2, paragraph 7, of the STCW Convention. The form of the endorsement used shall be that set out in Section A-I/2, paragraph 3, of the STCW Code.

- 3 Every Member State shall accept, for the purpose of allowing seafarers to serve on ships flying its flag, medical certificates issued under the authority of another Member State in accordance with Article 11.

- 4 The host Member States shall ensure that the decisions referred to in paragraphs 1, 2 and 3 are issued within a reasonable time. The host Member States shall also ensure that seafarers have the right to appeal against any refusal to endorse or accept a valid certificate, or the absence of any response, in accordance with national legislation and procedures and that seafarers are provided with adequate advice and assistance regarding such appeals in accordance with established national legislation and procedures.

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5 Without prejudice to paragraph 2 of this Article, the competent authorities of a host Member State may impose further limitations on capacities, functions and levels of competence or proficiency relating to near-coastal voyages, as referred to in Article 7, or alternative certificates issued under Regulation VII/1 of Annex I.

6 Without prejudice to paragraph 2, a host Member State may, where necessary, allow a seafarer to serve, for a period not exceeding three months on board a ship flying its flag, while holding an appropriate and valid certificate issued and endorsed by another Member State, but not yet endorsed for recognition by the host Member State concerned.

Documentary proof that an application for endorsement has been submitted to the competent authorities shall be readily available.

7 A host Member State shall ensure that seafarers who present for recognition certificates for functions at management level have appropriate knowledge of the maritime legislation of that Member State relevant to the functions that they are permitted to perform..

(6) Article 12 is amended as follows:

(a) paragraph 1 is replaced by the following:

1. Every master, officer and radio operator holding a certificate issued or recognised under any chapter of Annex I other than Regulation V/3 of Chapter V or Chapter VI, who is serving at sea or intends to return to sea after a period ashore, shall, in order to continue to qualify for seagoing service, be required at intervals not exceeding five years:

- a to meet the standards of medical fitness prescribed by Article 11; and
- b to establish continued professional competence in accordance with Section A-I/11 of the STCW Code.;

(b) the following paragraph is inserted:

2b. Every master or officer shall, for continuing seagoing service on board ships operating in polar waters, meet the requirements of paragraph 1 of this Article and shall be required, at intervals not exceeding five years, to establish continued professional competence for ships operating in polar waters in accordance with Section A-I/11, paragraph 4, of the STCW Code.;

(c) paragraph 3 is replaced by the following:

3. Each Member State shall compare the standards of competence which are required of candidates for certificates of competency and/or certificates of proficiency issued until 1 January 2017 with those specified for the relevant certificate of competency and/or proficiency in Part A of the STCW Code, and shall determine the need to require the holders of such certificates of competency and/or certificates of proficiency to undergo appropriate refresher and updating training or assessment.;

(d) the following paragraph is inserted:

3a. Every Member State shall compare the standards of competence which it required of persons serving on gas-fuelled ships before 1 January 2017 with the standards of competence in Section A-V/3

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of the STCW Code, and shall determine the need, if any, for requiring those persons to update their qualifications..

(7) In Article 19, paragraphs 2 and 3 are replaced by the following:

2. A Member State which intends to recognise, by endorsement, the certificates of competency or the certificates of proficiency referred to in paragraph 1 of this Article issued by a third country to a master, officer or radio operator, for service on ships flying its flag, shall submit a request to the Commission for the recognition of that third country, accompanied by a preliminary analysis of the third country's compliance with the requirements of the STCW Convention by collecting the information referred to in Annex II to this Directive. In that preliminary analysis, further information on the reasons for recognition of the third country shall be provided by the Member State, in support of its request.

Following the submission of such a request by a Member State, the Commission shall process without delay that request and shall decide, in accordance with the examination procedure referred to in Article 28(2), on the initiation of the assessment of the training and certification system in the third country within a reasonable time with due regard to the time limit set out in paragraph 3 of this Article.

When a positive decision for initiating the assessment has been adopted, the Commission, assisted by the European Maritime Safety Agency and with the possible involvement of the Member State submitting the request and any other interested Member States, shall collect the information referred to in Annex II to this Directive and shall carry out an assessment of the training and certification systems in the third country for which the request for recognition was submitted, in order to verify that the country concerned meets all the requirements of the STCW Convention and that appropriate measures have been taken to prevent issuance of fraudulent certificates, and to consider whether it has ratified the Maritime Labour Convention, 2006.

3. Where, as a result of the assessment referred to in paragraph 2 of this Article, the Commission concludes that all those requirements are fulfilled, it shall adopt implementing acts laying down its decision on the recognition of a third country. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 28(2), within 24 months of the submission of the request by a Member State referred to in paragraph 2 of this Article.

In case the third country concerned needs to implement major corrective actions, including amendments to its legislation, its education, training and certification system in order to meet the requirements of the STCW Convention, the implementing acts referred to in the first subparagraph of this paragraph shall be adopted within 36 months of the submission of the request by a Member State referred to in paragraph 2 of this Article.

The Member State submitting that request may decide to recognise the third country unilaterally until an implementing act is adopted pursuant to this paragraph. In case of such a unilateral recognition, the Member State shall communicate to the Commission the number of endorsements attesting recognition issued in relation to certificates of competency and certificates of proficiency referred to in paragraph 1, issued by the third country until the implementing act regarding the recognition of that third country is adopted..

(8) In Article 20, the following paragraph is added:

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8. If there are no endorsements attesting recognition issued by a Member State in relation to certificates of competency or certificates of proficiency, referred to in Article 19(1), issued by a third country for a period of more than eight years, the recognition of that country's certificates shall be re-examined. The Commission shall adopt implementing acts laying down its decision following that re-examination. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 28(2), after notifying the Member States as well as the third country concerned at least six months in advance..

(9) In Article 21, paragraphs 1 and 2 are replaced by the following:

1. The third countries that have been recognised under the procedure referred to in the first subparagraph of Article 19(3), including those referred to in Article 19(6), shall be reassessed by the Commission, with the assistance of the European Maritime Safety Agency, on a regular basis and at least within ten years of the last assessment, to verify that they fulfil the relevant criteria set out in Annex II and whether the appropriate measures have been taken to prevent issuance of fraudulent certificates.

2. The Commission, with the assistance of the European Maritime Safety Agency, shall carry out the reassessment of the third countries based on priority criteria. Those priority criteria shall include the following:

- a performance data by the port State control pursuant to Article 23;
- b the number of endorsements attesting recognition in relation to certificates of competency, or certificates of proficiency issued in accordance with Regulations V/1-1 and V/1-2 of the STCW Convention, issued by the third country;
- c the number of maritime education and training institutions accredited by the third country;
- d the number of seafarers' training and professional development programmes approved by the third country;
- e the date of the Commission's last assessment of the third country and the number of deficiencies in critical processes identified during that assessment;
- f any significant change in the maritime training and certification system of the third country;
- g the overall numbers of seafarers certified by the third country, serving on ships flying the flags of Member States and the level of training and qualifications of those seafarers;
- h information concerning education and training standards in the third country provided by any concerned authorities or other stakeholders, if available.

In case of non-compliance of a third country with the requirements of the STCW Convention in accordance with Article 20 of this Directive, the reassessment of that third country shall take priority in relation to the other third countries..

(10) In Article 25a, paragraph 1 is replaced by the following:

1. The Member States shall communicate the information referred to in Annex V to the Commission for the purposes of Article 20(8) and Article 21(2) and for use by the Member States and the Commission in policy making..

(11) Article 26 is replaced by the following:

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Article 26

Evaluation report

No later than 2 August 2024 the Commission shall submit to the European Parliament and to the Council an evaluation report, including suggestions for follow up actions to be taken in the light of that evaluation. In that evaluation report, the Commission shall analyse the implementation of the mutual recognition scheme of seafarers' certificates issued by Member States, and any developments regarding digital certificates for seafarers at international level. The Commission shall also evaluate any developments regarding a future consideration of the European Maritime Diplomas of Excellence, as underpinned by the recommendations provided by the social partners..

- (12) Article 27 is replaced by the following:

Article 27

Amendment

- 1 The Commission is empowered to adopt delegated acts in accordance with Article 27a amending Annex I to this Directive and the related provisions of this Directive in order to align that Annex and those provisions with the amendments to the STCW Convention and Part A of the STCW Code.
- 2 The Commission is empowered to adopt delegated acts in accordance with Article 27a amending Annex V to this Directive with respect to specific and relevant content and details of the information that needs to be reported by Member States provided that such acts are limited to taking into account the amendments to the STCW Convention and Part A of the STCW Code and respect the safeguards on data protection. Such delegated acts shall not change the provisions on anonymisation of data set out in Article 25a(3)..

- (13) Article 27a is replaced by the following:

Article 27a

Exercise of the delegation

- 1 The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
- 2 The power to adopt delegated acts referred to in Article 5(13) and Article 27 shall be conferred on the Commission for a period of five years from 1 August 2019. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.
- 3 The delegation of power referred to in Article 5(13) and Article 27 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall

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take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

- 4 Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.
- 5 As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
- 6 A delegated act adopted pursuant to Article 5(13) and Article 27 shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council..
- (14) Annex I to Directive 2008/106/EC is amended in accordance with the Annex to this Directive.