

DIRECTIVE 2005/45/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 7 September 2005
on the mutual recognition of seafarers' certificates issued by the Member States and amending
Directive 2001/25/EC
(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 80(2) thereof,

Having regard to the proposal from the Commission,

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 procedure laid down in Article 251 of the Treaty ⁽²⁾,

Whereas:

- (1) In its conclusions of 5 June 2003 on improving the image of Community shipping and attracting young people to the seafaring profession, the Council highlighted the necessity of fostering the professional mobility of seafarers within the European Union, with particular emphasis on recognition procedures for seafarers' certificates of competency, while ensuring thorough compliance with the requirements of the International Maritime Organisation (IMO) Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (the STCW Convention) in its up to date version.
- (2) Maritime transport is an intensively and rapidly developing sector of a particularly international character. Accordingly, in view of the increasing shortage of Community seafarers, the balance between supply and demand in personnel can be maintained more efficiently at the Community, rather than the national level. It is therefore essential that the common transport policy in the field of maritime transport be extended to facilitate the movement of seafarers within the Community.
- (3) As regards seafarers' qualifications, the Community has laid down minimum maritime education, training and certification requirements by way of Directive 2001/25/EC of the European Parliament and of the Council of 4 April 2001 on the minimum level of training of seafarers ⁽³⁾. That Directive incorporates into

Community law the international training, certification and watchkeeping standards laid down by the STCW Convention.

- (4) Directive 2001/25/EC provides that seafarers must hold a certificate of competency issued and endorsed by the competent authority of a Member State in accordance with that Directive and entitling the lawful holder thereof to serve on a ship in the capacity and perform the functions involved at the level of responsibility specified therein.
- (5) Under Directive 2001/25/EC, mutual recognition among Member States of certificates held by seafarers, whether or not nationals of a Member State, is subject to Directives 89/48/EEC ⁽⁴⁾ and 92/51/EEC ⁽⁵⁾ setting up, respectively, a first and a second general system for the recognition of professional education and training. Those Directives do not provide for the automatic recognition of formal qualifications of seafarers, as seafarers may be subject to compensation measures.
- (6) Each Member State should recognise any certificate and other evidence of formal qualifications issued by another Member State in accordance with Directive 2001/25/EC. Therefore, each Member State should permit a seafarer having acquired his/her certificate of competency in another Member State, satisfying the requirements of that Directive, to take up or to pursue the maritime profession for which he/she is qualified, without any prerequisites other than those imposed on its own nationals.
- (7) Since this Directive is aimed at facilitating the mutual recognition of certificates, it does not regulate the conditions concerning access to employment.
- (8) The STCW Convention specifies language requirements for seafarers. These requirements should be introduced into Community law to ensure effective communication on board ships and facilitate the free movement of seafarers within the Community.

⁽¹⁾ OJ C 157, 28.6.2005, p. 53.

⁽²⁾ Opinion of the European Parliament of 23 February 2005 (not yet published in the Official Journal). Decision of the Council of 27 June 2005.

⁽³⁾ OJ L 136, 18.5.2001, p. 17. Directive as last amended by Commission Directive 2005/23/EC (OJ L 62, 9.3.2005, p. 14).

⁽⁴⁾ Council Directive 89/48/EEC of 21 December 1988 on a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years' duration (OJ L 19, 24.1.1989, p. 16). Directive as last amended by Directive 2001/19/EC of the European Parliament and of the Council (OJ L 206, 31.7.2001, p. 1).

⁽⁵⁾ Council Directive 92/51/EEC of 18 June 1992 on a second general system for the recognition of professional education and training to supplement Directive 89/48/EEC (OJ L 209, 24.7.1992, p. 25). Directive as last amended by Commission Decision 2004/108/EC (OJ L 32, 5.2.2004, p. 15).

(9) Today, the proliferation of certificates of competency of seafarers obtained by fraud poses a serious danger to safety at sea and the protection of the marine environment. In most cases, holders of fraudulent certificates of competency do not meet the minimum certification requirements of the STCW Convention. These seafarers could easily be involved in maritime accidents.

(10) Member States should therefore take and enforce specific measures to prevent and penalise fraudulent practices associated with certificates of competency as well as pursue their efforts within the IMO to achieve strict and enforceable agreements on the worldwide combating of such practices. The Committee on Safe Seas and the Prevention of Pollution from Ships (COSS) is an appropriate forum for exchanging information, experience and best practices in this respect.

(11) Regulation (EC) No 1406/2002 ⁽¹⁾, established a European Maritime Safety Agency (the Agency), for the purpose of ensuring a high, uniform and effective level of maritime safety and prevention of pollution from ships. One of the tasks assigned to the Agency is to assist the Commission in the performance of any task assigned to it by Community legislation applicable to the training, certification and watchkeeping of ships' crews.

(12) The Agency should therefore assist the Commission in verifying that Member States comply with the requirements laid down in this Directive and Directive 2001/25/EC.

(13) The mutual recognition among Member States of certificates held by seafarers, whether or not nationals of a Member State, should no longer be subject to Directives 89/48/EEC and 92/51/EEC, but should be governed by this Directive.

(14) Directive 2001/25/EC should therefore be amended accordingly.

(15) Since the objective of this Directive, namely the mutual recognition of the seafarers' certificates issued by the Member States, cannot be sufficiently achieved by the Member States and can therefore be better achieved at Community level, the Community may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.

(16) In accordance with paragraph 34 of the Interinstitutional Agreement on better law-making ⁽²⁾, Member States are encouraged to draw up, for themselves and in the

interest of the Community, their own tables, which will, as far as possible, illustrate the correlation between this Directive and their transposition measures, and to make those tables public,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Scope

This Directive shall apply to seafarers who are:

- (a) nationals of a Member State;
- (b) non-nationals who hold a certificate issued by a Member State.

Article 2

Definitions

For the purposes of this Directive the following definitions shall apply:

- (a) 'seafarer' means a person who is trained and who is certified by a Member State at least in accordance with the requirements laid down in Annex I to Directive 2001/25/EC;
- (b) 'certificate' means a valid document within the meaning of Article 4 of Directive 2001/25/EC;
- (c) 'appropriate certificate' means a certificate as defined in Article 1(27) of Directive 2001/25/EC;
- (d) 'endorsement' means a valid document issued by the competent authority of a Member State in accordance with Article 5(2) and (6) of Directive 2001/25/EC;
- (e) 'recognition' means the acceptance by the competent authorities of a host Member State of a certificate or appropriate certificate issued by another Member State;
- (f) 'host Member State' means any Member State in which a seafarer seeks recognition of his/her appropriate certificate(s) or other certificate(s);
- (g) 'STCW Convention' means the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, in its up-to-date version;
- (h) 'STCW Code' means 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;
- (i) 'the Agency' means the European Maritime Safety Agency, established by Regulation (EC) No 1406/2002.

⁽¹⁾ Regulation (EC) No 1406/2002 of the European Parliament and of the Council of 27 June 2002 establishing a European Maritime Safety Agency (OJ L 208, 5.8.2002, p. 1). Regulation as last amended by Regulation (EC) No 724/2004 (OJ L 129, 29.4.2004, p. 1).

⁽²⁾ OJ C 321, 31.12.2003, p. 1.

*Article 3***Recognition of certificates**

1. Every Member State shall recognise appropriate certificates or other certificates issued by another Member State in accordance with the requirements laid down in Directive 2001/25/EC.
2. The recognition of appropriate certificates shall be limited to the capacities, functions and levels of competency prescribed therein and be accompanied by an endorsement attesting such recognition.
3. Member States shall ensure the right to appeal against any refusal to endorse a valid certificate, or the absence of any response, in accordance with national legislation and procedures.
4. Notwithstanding paragraph 2, the competent authorities of a host Member State may impose further limitations on capacities, functions and levels of competence relating to near-coastal voyages, as referred to in Article 7 of Directive 2001/25/EC, or alternative certificates issued under Regulation VII/1 of Annex I to Directive 2001/25/EC.
5. A host Member State shall ensure that seafarers who present for recognition certificates for functions at the management level have an appropriate knowledge of the maritime legislation of that Member State relevant to the functions they are permitted to perform.

*Article 4***Amendments to Directive 2001/25/EC**

Directive 2001/25/EC is hereby amended as follows:

1. Article 4 shall be replaced by:

'Article 4

Certificate

A certificate shall be any valid document, by whatever name it may be known, issued by or under the authority of the competent authority of a Member State in accordance with Article 5 and with the requirements laid down in Annex I.;

2. the following Article shall be inserted:

'Article 7a

Prevention of fraud and other unlawful practices

1. Member States shall take and enforce the appropriate measures to prevent fraud and other unlawful practices involving the certification process or certificates issued and endorsed by their competent authorities, and shall provide for penalties that are effective, proportionate and dissuasive.
2. Member States shall designate the national authorities competent to detect and combat fraud and other unlawful

practices and exchange information with the competent authorities of other Member States and of third countries concerning the certification of seafarers.

Member States shall forthwith inform the other Member States and the Commission of the details of such competent national authorities.

Member States shall also forthwith inform any third countries with which they have entered into an undertaking in accordance with Regulation I/10, paragraph 1.2 of the STCW Convention of the details of such competent national authorities.

3. At the request of a host Member State, the competent authorities of another Member State shall provide written confirmation or denial of the authenticity of seafarers' certificates, corresponding endorsements or any other documentary evidence of training issued in that other Member State.;

3. Article 18(1) and (2) shall be deleted with effect from 20 October 2007;
4. The following Articles shall be inserted:

'Article 21a

Regular monitoring of compliance

Without prejudice to the powers of the Commission under Article 226 of the Treaty, the Commission, assisted by the European Maritime Safety Agency, established by Regulation (EC) No 1406/2002 (*), shall verify on a regular basis and at least every five years that Member States comply with the minimum requirements laid down by this Directive.

Article 21b

Compliance report

No later than 20 October 2010 the Commission shall submit to the European Parliament and the Council an evaluation report drawn up on the basis of the information obtained pursuant to Article 21a. In the report the Commission shall analyse the Member States' compliance with this Directive and, where necessary, make proposals for additional measures.

(*) Regulation (EC) No 1406/2002 of the European Parliament and of the Council of 27 June 2002 establishing a European Maritime Safety Agency (OJ L 208, 5.8.2002, p. 1). Regulation as last amended by Regulation (EC) No 724/2004 (OJ L 129, 29.4.2004, p. 1).;

5. the following paragraph shall be inserted in Annex I, Chapter I:

'1a. Member States shall ensure that seafarers possess adequate language proficiency, as defined in Sections A-II/1, A-III/1, A-IV/2 and A-II/4 of the STCW Code so as to enable them to perform their specific duties on a vessel flying the flag of a host Member State.'

*Article 5***Transposition**

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 20 October 2007. They shall forthwith inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive or be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

2. Member States shall communicate to the Commission the text of the provisions of national law which they adopt in the field covered by this Directive.

*Article 6***Entry into force**

This Directive shall enter into force on the 20th day following that of its publication in the *Official Journal of the European Union*.

*Article 7***Addressees**

This Directive is addressed to the Member States.

Done at Strasbourg, 7 September 2005.

For the European Parliament

The President

J. BORRELL FONTELLES

For the Council

The President

C. CLARKE
