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PROPOSAL

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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
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Delegations will find attached document COM(2018) 315 final.

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Brussels, 24.5.2018
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2018/0162 (COD)

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
amending Directive 2008/106/EC on the minimum level of training of seafarers and
repealing Directive 2005/45/EC

(Text with EEA relevance)

{SWD(2018) 239 final}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

1.1. Reasons for and objectives of the proposal

The importance of the human element for the safety of life at sea and the protection of the marine environment has been recognised at the Union level since the beginning of the 1990's¹. Enhancing maritime education, training and certification of seafarers were considered particularly important elements to attain a high level of safety. At EU level this was achieved through Directive 2008/106/EC, as amended², by setting minimum training and education standards. This Directive integrates at the EU level the international framework on the training, certification and watchkeeping requirements for seafarers developed under the International Maritime Organisation (IMO) and prescribed by the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended (STCW Convention).

Directive 2008/106/EC also contains a common EU mechanism for the recognition of the systems of maritime education, training and certification of seafarers from third countries. In addition, it requires regular verification, by the Commission assisted by the European Maritime Safety Agency (EMSA), of compliance of the Member States and of third countries with the requirements of the Directive 2008/106/EC and STCW Convention, respectively.

Fostering the professional mobility of seafarers within the EU, by facilitating the mutual recognition of seafarers' certificates issued by the Member States, was the objective of Directive 2005/45/EC³. The Directive introduced a simplified procedure for the recognition of seafarers' certificates issued by the Member States. The purpose was to ensure that all seafarers, who are qualified in a Member State and hold such certificates, will be permitted to serve on board ships flying the flag of any Member State.

An evaluation has been carried out and concluded that both Directives are fit for purpose and have met to a great extent the initial objectives and expectations. However, it also identified elements that have hindered the effectiveness and the efficiency of the legislative framework. This proposal aims to tackle the problematic issues identified.

The overarching objective of this revision is therefore to simplify and streamline the existing EU regulatory framework on seafarers' training and certification in order to: i) keep the EU rules aligned with the international framework; ii) revamp the centralised mechanism for the recognition of third countries in order to increase its efficiency and effectiveness; and iii) increase legal clarity regarding the mutual recognition of seafarers certificates issued by the Member States.

¹ In its conclusions of 25 January 1993 on maritime safety and pollution prevention, the Council noted the importance of the human element in the safe operation of ships. Also, in its resolution of 8 June 1993 on a Common Policy on Safe Seas, the Council set the objective of removing substandard crews and gave priority to action aimed at enhancing training and education by developing common standards for minimum training levels of key personnel.

² Directive 2008/106/EC of the European Parliament and of the Council of 19 November 2008 on the minimum level of training of seafarers (OJ L 323, 3.12.2008, p. 33). Directive, as last amended by Directive 2012/35/EU of the European Parliament and of the Council (OJ L343, 14.12.2012, p.78).

³ 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 (OJ L 255, 30.9.2005, p.160).

1.2. Consistency with existing policy provisions in the policy area

The proposal is fully in line with the goals of the 2018 Maritime Transport Strategy⁴ that called for continuous alignment of the European framework with the STCW Convention and the establishment of a level playing field in the implementation of the international framework between EU and the third countries. In addition, since the introduction by Directive 2005/45/EC of the scheme for the mutual recognition of seafarers' certificates issued by the Member States, the provisions for recognition of professional qualifications under Directive 2005/36/EC of the European Parliament and of the Council⁵ are not applicable with regard to the recognition of certificates of seafarers under Directive 2008/106/EC.

1.3. Consistency with other Union policies

The proposal ensures that the existing legislation is simple and clear, does not create unnecessary burden and keeps pace with evolving political and societal developments at the European and International level. The proposal is fully in line with the 2011 White Paper for the future of transport⁶ by ensuring the harmonised implementation of the STCW Convention requirements in the Union and safeguarding a level playing field between the Member States and the third countries.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

2.1. Legal basis

Given that the proposal amends the current Directive 2008/106/EC and repeals Directive 2005/45/EC, the legal basis remains Article 100(2) TFEU (ex Article 80(2) TEC), providing for measures in the field of sea transport.

2.2. Subsidiarity (for non-exclusive competence)

The EU legislation on the training and certification requirements for seafarers has been mainly modelled and shaped on international requirements, namely the STCW Convention. As the STCW Convention has been already transposed into the Union law in its entirety and all the Member States are parties to the Convention, the Directive needs to be aligned with the recent amendments to the international framework.

Considering the global nature of shipping, a conflict between the international commitments of Member States and their Union commitments should be avoided. In this respect it is fundamental that the STCW Convention is implemented, across the Union, in a harmonised way so that a level playing field between the Member States is maintained.

Moreover, the centralised mechanism for the recognition of third countries incorporates, at the Union level, the obligation of the Member States under the STCW Convention to evaluate the systems of training, education and certification of third countries whose seafarers' certificates are recognised by them. The evaluation showed that the centralised mechanism contributed to levelling the playing field between EU and third countries while in parallel resulted to a

⁴ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions- Strategic goals and recommendations for the EU's maritime transport policy until 2018 (COM/2009/8)

⁵ Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications (OJ L 255, 30.9.2005, p. 22).

⁶ White Paper 'Roadmap to a Single European Transport Area- Towards a competitive and resource efficient transport system', COM(2011) 144.

considerable cost reductions compared to a situation under which inspections would be performed in the third countries by each Member State individually.

The proposed measures will ensure that the international framework is applied by the Member States in a harmonised way while they will safeguard the efficient allocation of the available human and financial resources engaged under the centralised mechanism for the recognition of third countries.

2.3. Proportionality

In view of the latest legal developments and the amendments to the STCW Convention, the proposal to align the existing Union requirements with the international requirements, increase the efficiency of the centralised mechanism for the recognition of third countries and clarify the definition of seafarers' certificates recognised between the Member States, is considered as the only proportionate and coherent option. It ensures that the current high level of safety is not compromised and allows for the better use of the available resources.

2.4. Choice of the instrument

A Directive is considered as the most suitable form for achieving the identified objectives. It establishes common principles and a harmonised safety level, ensures the enforcement of the rules, but leaves the choice of legal and technical procedures to be applied by each Member State. In particular, the proposed measures are related to minimum training requirements for seafarers and it is considered that a Directive leaves the necessary freedom to the Member States to introduce higher requirements in their training systems, if they considered it appropriate.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

3.1. Ex-post evaluations/fitness checks of existing legislation

The Commission evaluated the EU regulatory framework on the minimum level of training and certification requirements for seafarers and on the mutual recognition of seafarers' certificates issued by the Member States⁷ in the context of its regulatory fitness and performance programme (REFIT). The REFIT evaluation showed that the EU framework related to seafarers' training and certification attained largely its key objectives and remains relevant. In particular, the EU framework has contributed to the elimination of substandard crews working on board the EU-flagged ships by the enhancement of maritime education, training and certification while a level playing field was achieved between seafarers trained in the Union and seafarers employed from third countries through the establishment of the EU centralised mechanism. Moreover, the mutual recognition of seafarers' certificates under Directive 2005/45/EC has fostered the mobility of seafarers among the EU flagged vessels.

The REFIT evaluation also showed some shortcomings in its efficiency and the proportionality of some of the regulatory requirements which concern:

- (a) The administrative framework regarding the recognition and re-assessment procedure of third countries is lacking effectiveness and efficiency:

⁷ SWD(2018)19.

- The timeframe set out in the legislation for the recognition of new third countries, is unrealistic as it does not sufficiently take into account all the necessary procedural steps.
 - The available financial and human resources involved in the process for the recognition of third countries are not used in an efficient manner. The procedure currently does not take into consideration the number of masters and officers likely to be employed from the third countries.
 - The re-assessment procedure for third countries, is not performed in a proportionate manner. The timeframe for re-assessment does not take into account the rate of compliance of a country with the requirements of the STCW Convention and the number of endorsements issued by the Member States.
- (b) The scope of the scheme for the mutual recognition of seafarers' certificates issued by the Member States lacks clarity and legal certainty.
- (c) The Directive 2008/106/EC needs to be aligned in regular intervals with the latest amendments to the STCW Convention. In this respect, the current procedure for incorporating amendments of the STCW Convention causes considerable delays and poses the risk of the Union law to be inconsistent with the international framework for a significant period of time.

3.2. Stakeholder consultations

Given the technical nature of the envisaged proposal, a targeted consultation has been carried out. National experts in the STCW, shipowners' associations and seafarers' trade unions have been consulted through an online survey for a period of 4 weeks. A workshop was organised where the Member States as well as the European associations of shipowners and seafarers participated and shared their views on the envisaged measures. The consultation summary, as well as, detailed feedback on comments raised during the consultation process is provided in the staff working document accompanying the proposal. The envisaged measures were supported by the large majority of the national experts and the stakeholders participated. Only the stakeholders representing the shipowners expressed some concerns on revamping the centralised mechanism by introducing a discussion between the Member States on the need to recognise new third countries. Nevertheless, their concerns were fed into the final measures in order to balance any efficiency measures with the need to maintain competitiveness of the European fleet by allowing the requesting Member State to unilaterally recognise the third country until a decision on its recognition is reached.

3.3. Collection and use of expertise

This proposal builds primarily on the data collected during the REFIT evaluation as reported in the relevant Commission Staff Working Document⁸.

In addition, a workshop was organised in the context of the preparation of this proposal with national experts and stakeholders. Moreover, technical expertise was gathered internally in cooperation with the European Maritime Safety Agency.

The results of the workshop and the discussions with the national experts and the views of other relevant stakeholders are reported in the Staff Working document accompanying the proposal.

⁸ SWD(2018)19.

3.4. Impact assessment

The proposal is an immediate follow-up to the REFIT evaluation that identified the issues for the need of alignment with the international framework, increase of efficiency regarding the centralised mechanism for the recognition of third countries and the need for legal clarity regarding the recognition of seafarers' certificates. The envisaged measures are not expected to have any significant impacts (i.e. beyond legal clarity, certainty or simplicity) and there are no materially different solutions available. In line with the Commission's Better Regulation Guidelines, a fully-fledged impact assessment has not been carried out.

Nonetheless, the proposal is accompanied by a Commission Staff Working Document that explains the rationale of the proposed solutions from the technical and the legal perspective and summarizes the views of the stakeholders consulted during the preparation of this initiative.

3.5. Regulatory fitness and simplification

As this is a revision of an existing piece of legislation falling under the Commission's Regulatory Fitness and Performance Programme REFIT, the Commission has looked at opportunities to simplify and reduce burdens.

The analysis shows that significant simplification is possible through the repeal of Directive 2005/45/EC, and the alignment of Directive 2008/106/EC to the international framework.

The main element related to the increase of the efficiency is the revamp of the centralised mechanism for the recognition of the maritime education and certification systems of third countries. By introducing a discussion among the Member States on the need to recognise a new third country, the whole process will become more transparent in relation to the need to proceed with such a recognition. This would result to a more reasonable and efficient use of the available human and financial resources since a thorough consideration will take place in relation to the cost to be accrued by the recognition compared to the competitive advantage for the EU fleet by employing seafarers from the relevant third country.

In addition, the extension of the reassessment period for the already recognised third countries on the basis of defined priority criteria will release resources which are currently used in an inefficient way. In particular, the available resources will be redirected from countries which provide a low number of seafarers to the EU fleet and pose a minor safety threat to countries which shall be reassessed more often since they provide the highest proportion of the seafarers certified outside of the Union.

In this vein, the de-recognition of third countries, which for at least five years period have not provided any master or officer in the EU fleet, will release resources for the recognition of new third countries with more potential to supply labour on board the European vessels. Given the lack of available data and the legal nature of the changes, the simplification elements have not been quantified.

3.6. Fundamental rights

The proposal has no consequences for the protection of fundamental rights.

4. BUDGETARY IMPLICATIONS

The proposal has no implications for the Union budget.

5. OTHER ELEMENTS

5.1. Implementation plans and monitoring, evaluation and reporting arrangements

The current proposal has a very technical scope in relation to the measures required to be transposed by the Member States while it is amending only a very limited number of the existing legal obligations. Therefore, an implementation plan is not required, in view of the limited actions needed by the Member States in order to implement the proposed measures.

5.2. Explanatory documents (for directives)

Explanatory documents are not required as the proposed measures that need to be transposed by the Member States are not of substantial nature.

5.3. Detailed explanation of the specific provisions of the proposal

Definitions and scope

Article 1 is amended in order to provide for new definitions related to the new Regulation V/3 and Regulation V/4, introduced in the Annex to the Directive 2008/106/EC. In addition, a new definition in relation to the 'host Member State' was considered necessary following the introduction of the new Article 5b and also in order to clarify the application of the current Article 8.

Article 2 is also amended in order to incorporate the scope of the repealed Directive 2005/45/EC.

Mutual recognition of seafarers' certificates issued by the Member States

A new Article 5b is added in order to incorporate the scheme for the mutual recognition of seafarers' certificates issued by the Member States. Article 5b reflects mainly the repealed Article 3 of Directive 2005/45/EC, clarifying which certificates shall be recognised mutually for the purpose of allowing seafarers' certified by another Member State to work onboard vessels flying the flag of another Member State.

Alignment to the international framework

Article 12 and Annex I incorporate the new amendments to the STCW Convention in relation to new training and qualification requirements for seafarers working onboard passenger ships and ships falling under the IGF Code and the Polar Code.

Recognition of seafarer' certificates issued by third countries

Article 19 is amended in order to provide for an implementing decision on the need to initiate the procedure for recognising new third countries. This new procedural step will allow the requesting Member State to present the reasons for submitting the recognition request while the Member States will have an opportunity to discuss and decide on the relevant request.

In addition, the deadline for adopting a decision on the recognition of the third country is extended from 18 months to 24 months and in case that the third country needs to implement major corrective actions, including amendments to its legislation, the relevant deadline is further extended to 36 months. The extension of the deadlines is not expected to have negative impacts since the requesting Member State is allowed to unilaterally recognise the third country pending the final decision on the recognition of the third country.

In Article 20 a new paragraph is added, introducing a distinctive reason to derecognise a third country on the basis of not providing any seafarers for at least 5 years to the EU fleet.

Reassessment of third countries

Article 21 is amended in order to extend the interval of reassessment to up to 10 years on the basis of priority criteria. Third countries which provide limited numbers of seafarers onboard the EU fleet and which pose a minor risk in terms of safety should be reassessed on longer intervals in comparison with the major labour supplying third countries.

Information regarding endorsements attesting recognition of certificates issued by third countries

Article 25a is amended in order to make possible to use the information provided by the Member States on the number of endorsements attesting recognition of certificates issued by third countries for the purpose of derecognizing and prioritizing the reassessment of third countries. In the same vein, Article 5a is replaced in order to be aligned to the new Article 25a.

Amendment procedure and committee procedure

Article 27 is amended in order to empower the Commission to amend, through delegated acts, the necessary provisions of Directive 2008/106/EC so that could be aligned with future amendments to the STCW Convention.

Article 27a is replaced in order to be brought in line with the Interinstitutional Agreement on Better Law-Making of 13 April 2016⁹.

⁹ OJ L 123, 12.5.2016, p. 10

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Directive 2008/106/EC on the minimum level of training of seafarers and repealing Directive 2005/45/EC

(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 Committee¹⁰,
Having regard to the opinion of the Committee of the Regions¹¹,
Acting in accordance with the ordinary legislative procedure,
Whereas:

- (1) In order to maintain a high level of maritime safety and pollution prevention at sea, it is essential to improve the level of knowledge and skills of the Union seafarers by developing maritime training and certification in line with the international rules.
- (2) The training and certification of seafarers is regulated at the international level by the International Maritime Organisation Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 ('STCW Convention') which was revised in 2010. Further 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 (IGF Code). Also, 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.
- (3) Directive 2008/106/EC of the European Parliament and of the Council¹² incorporates the STCW Convention into the 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

¹⁰ OJ C , , p. .

¹¹ OJ C , , p. .

¹² OJ L 323, 3.12.2008, p. 33. .

working on board ships falling under the IGF Code, on board passenger ships and on board ships operating in polar waters.

- (4) In order to take account of developments at international level and to ensure the timely adaptation of the 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 by updating the technical requirements on training and certification of 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-Making¹³. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council are to receive all documents at the same time as Member States' experts, and their experts are to have systematically access to meetings of Commission expert groups dealing with the preparation of delegated acts.
- (5) Directive 2008/106/EC also contains a centralised mechanism for the recognition of seafarers' certificates issued by third countries. The Regulatory Fitness Programme (REFIT) evaluation¹⁴ showed that significant cost savings for the Member States were achieved since the introduction of the centralised mechanism. However, the evaluation also revealed that, with regard to some of the recognised third countries, only a very limited number of seafarers was subsequently employed in Union vessels. 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 an estimation of the number of masters and officers originating from that country who are likely to be employed in Union vessels.
- (6) In view of the experience gained in applying the procedure of recognition of third countries, the REFIT evaluation revealed that the current time-frame of 18 months does not take into account the complexity of the process which includes an on 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 months period 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 in order to maintain the flexibility of the recognition procedure.
- (7) In order to further increase the efficiency of the centralised system for the recognition of third countries, the reassessment of third countries which provide low number of seafarers in the Union fleet should be performed in 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

¹³ Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making (OJ L 123, 12.5.2016, p. 10).

¹⁴ SWD(2018)19.

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.

- (8) Information on the seafarers employed from third countries has become available at Union level through the communication by the Member States of the relevant information kept in their national registers regarding issued certificates and endorsements. This information should be used not only for statistical and policy making purposes but also for the purpose of improving the efficiency of the centralised system recognising third countries. Based on the information communicated by the Member States, recognised third countries which have not provided the Union fleet with seafarers for a period of at least five years shall be withdrawn from the list of recognised third countries. In addition, this information shall be also used in order to prioritise the reassessment of the recognised third countries.
- (9) The provisions for recognition of professional qualifications in accordance with Directive 2005/36/EC of the European Parliament and of the Council¹⁵ 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 Council¹⁶ regulated the mutual recognition of seafarers' certificates issued by the Member States. However, the definitions of seafarers' certificates referred 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 new 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 Directive 2005/45/EC and Directive 2008/106/EC, the mutual recognition of seafarers' certificates should be regulated by Directive 2008/106/EC.
- (10) In order to increase legal clarity and consistency, Directive 2005/45/EC should be repealed and 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;

44. 'IGF Code' means the International Code of safety for ships using gases or other low-flashpoint fuels, as defined in SOLAS regulation II-1/2.29;

¹⁵ Directive 2005/36/EC of the European Parliament and of the Council on the recognition of professional qualifications (OJ L 255, 30.9.2005, p. 22).

¹⁶ Directive 2005/45/EC of the European Parliament and of the Council on the mutual recognition of seafarers' certificates issued by the Member States and amending Directive 2001/25/EC (OJ L 255, 30.9.2005, p.160).

45. 'Polar Code' means the International Code for Ships Operating in Polar Waters, as defined in SOLAS regulation XIV/1.1;

46. 'Polar waters' means Arctic waters and/or the Antarctic area, as defined in SOLAS regulations XIV/1.2 to XIV/1.4."

(2) Article 2 is amended as follows:

(a) the first sub-paragraph is amended as follows:

"1. This Directive shall apply 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 2 is added:

"2. Article 5b shall apply to seafarers who are:

(a) nationals of a Member State;

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

(3) Article 5a is replaced by the following:

"For the purposes of paragraph 8 of Article 20, paragraph 2 of Article 21 and for use by the Member States and the Commission in policy-making, Member States shall submit to the Commission, on a yearly basis, the information referred to 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, the information on certificates of proficiency issued to ratings in accordance with Chapters II, III and VII of the Annex to the STCW Convention."

(4) The following Article 5b 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, for the purpose of allowing seafarers to serve on-board its fleet.

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, by endorsing that certificate to attest its recognition. The endorsement attesting the recognition, shall be limited to the capacities, functions and levels of competency or proficiency prescribed therein. The form of the endorsement used shall be that set out in paragraph 3 of Section A-I/2 of the STCW Code.

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

4. Member States shall 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.

5. Without prejudice to paragraph 2, 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 Member State may, where necessary, allow a seafarer to serve in a capacity other than radio officer or radio operator, except as provided by the Radio Regulations, 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 Member State concerned.

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

7. 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."

(5) 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 2b 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 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 3a 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 of the STCW Code, and shall determine the need, if any, for requiring these personnel to update their qualifications."

(6) Article 19 is amended as follows:

(a) paragraph 2 is 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 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, including an estimation of the number of masters and officers from that country likely to be employed.

Following the submission of the request by a Member State, a decision for initiating the recognition procedure for that third country shall be taken by the Commission. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 28(2).

When a positive decision for initiating the recognition procedure has been adopted, the Commission, assisted by the European Maritime Safety Agency and with the possible involvement of the Member State submitting the request, shall collect the information referred to in Annex II 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 whether the country concerned meets all the requirements of the STCW Convention and whether appropriate measures have been taken to prevent issuance of fraudulent certificates."

(b) paragraph 3 is replaced by the following:

"3. The decision on the recognition of a third country shall be taken by the Commission by the means of an implementing act. That implementing act shall be adopted in accordance with the examination procedure referred to in Article 28(2), within 24 months from the adoption of a positive decision pursuant to paragraph 2.

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 decision can be adopted within 36 months from the adoption of a positive decision referred to in paragraph 2.

The Member State submitting the request may decide to recognise the third country unilaterally until a decision is taken under this paragraph. In case such a unilateral recognition takes place, 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 decision on its recognition is adopted."

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

"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 paragraph 1 of Article 19, issued by a third country for a period of more than 5 years, the recognition of that country's certificates shall be withdrawn. To this end, the Commission shall adopt implementing decisions, 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 two months in advance."

(8) Article 21 shall be amended, as follows:

(a) paragraph 1 is replaced by the following:

"1. The third countries that have been recognized 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."

(b) paragraph 2 is replaced by the following:

"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 issued 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 programs approved by the third country;
- e) the date of last assessment and the number of deficiencies in critical processes identified during the last Commission's assessment;
- f) any significant change in the maritime training and certification system of a third country.

In case of non-compliance of a third country with the requirements of the STCW Convention in accordance with Article 20, the re-assessment of the relevant country shall take priority in relation to the other third countries."

(9) 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 paragraph 8 of Article 20, paragraph 2 of Article 21 and for use by the Member States and the Commission in policy-making."

(10) Article 27 is amended as follows:

(a) the first paragraph is amended as follows:

"**1.** The Commission shall be 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 Code and respect the safeguards on data protection. Such delegated acts shall not change the provisions of anonymisation of data as required by Article 25a(3)."

(b) the following paragraph 2 is added:

"2. The Commission shall be empowered to adopt delegated acts, in accordance with Article 27a, in order to amend Annex I to this Directive and any other necessary provisions in order to align it with new amendments to the STCW Convention and STCW Code."

(11) 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 27 shall be conferred on the Commission for an indeterminate period of time from [*date of entry into force*].
3. The delegation of power referred to in 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 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 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."

(12) Annex I is amended in accordance with the Annex to this Directive.

Article 2

Repeal

Directive 2005/45/EC is repealed.

Article 3

Transposition

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [12 months after the entry into force]. They shall immediately inform the Commission thereof.

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

Article 4

Entry into force

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

Article 5

Addressees

This Directive is addressed to the Member States.

Done at Brussels,

*For the European Parliament
The President*

*For the Council
The President*