

## **Order on recognition and authorisation of organisations performing inspections and surveys of ships<sup>1</sup>**

In pursuance of section 22(1)-(3) of the act on safety at sea (*lov om sikkerhed til søs*), cf. consolidated act no. 72 of 17 January 2014, and in pursuance of section 22(1)-(3) of the act on safety at sea as enacted for Greenland by decree no. 71 of 29 January 2013, the following provisions are laid down by authority:

**Section 1.** When the Danish Maritime Authority authorises organisations to perform surveys and issue certificates in accordance with international conventions, this shall be on the conditions stipulated in directive 2009/15/EC of the European Parliament and of the Council of 23 April 2009 on common rules and standards for ship inspection and survey organisations and for the relevant activities of maritime administrations, as amended by the Commission's implementing directive 2014/111/EU of 17 December 2014.

*Subsection 2.* The directive and the implementing directive have been printed as annexes 1 and 2 to this order.

*Subsection 3.* In addition, regulation (EC) no. 391/2009 of the European Parliament and of the Council of 23 April 2009 on common rules and standards for ship inspection and survey organisations, as amended by the Commission's implementing regulation (EU) no. 1355/2014 of 17 December 2014, has been printed as annexes 3 and 4 to this order. The regulation and the implementing regulation mentioned have been reproduced exclusively for practical reasons and this reproduction does not concern the immediate validity of the regulation or the implementing regulation in Denmark.

**Section 2.** A list of the recognised organisations that have been granted authorisation under this order is available from the webpage of the Danish Maritime Authority, [www.sofartsstyrelsen.dk](http://www.sofartsstyrelsen.dk).

**Section 3.** This order shall enter into force on 1 January 2016.

*Subsection 2.* Order no. 612 of 8 June 2010 on technical regulation on the recognition and authorisation of organisations performing inspections and surveys of ships shall be repealed.

*Danish Maritime Authority, 24 November 2015*

Per Sønderstrup / Christian Bækmark Schiølborg

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<sup>1</sup> This order contains provisions implementing directive 2009/15/EC of the European Parliament and of the Council of 23 April 2009 on common rules and standards for ship inspection and survey organisations and for the relevant activities of maritime administrations, Official Journal 2009, no. L 131, page 47, as amended by the Commission's implementing directive 2014/111/EU of 17 December 2014 amending Directive 2009/15/EC with regard to the adoption by the International Maritime Organization (IMO) of certain Codes and related amendments to certain conventions and protocols, Official Journal 2014, no. L 366, page 83.

## DIRECTIVES

## DIRECTIVE 2009/15/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 23 April 2009

## on common rules and standards for ship inspection and survey organisations and for the relevant activities of maritime administrations

(Recast)

(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 <sup>(1)</sup>,

Having regard to the opinion of the Committee of the Regions <sup>(2)</sup>,

Acting in accordance with the procedure laid down in Article 251 of the Treaty, in the light of the Joint text approved by the Conciliation Committee on 3 February 2009 <sup>(3)</sup>,

Whereas:

(1) Council Directive 94/57/EC of 22 November 1994 on common rules and standards for ship inspection and survey organisations and for the relevant activities of maritime administrations <sup>(4)</sup> has been substantially amended several times. Since further amendments are to be made, it should be recast in the interests of clarity.

<sup>(1)</sup> OJ C 318, 23.12.2006, p. 195.

<sup>(2)</sup> OJ C 229, 22.9.2006, p. 38.

<sup>(3)</sup> Opinion of the European Parliament of 25 April 2007 (OJ C 74 E, 20.3.2008, p. 633), Council Common Position of 6 June 2008 (OJ C 184 E, 22.7.2008, p. 11), Position of the European Parliament of 24 September 2008 (not yet published in the Official Journal), Council Decision of 26 February 2009 and Legislative Resolution of the European Parliament of 11 March 2009 (not yet published in the Official Journal).

<sup>(4)</sup> OJ L 319, 12.12.1994, p. 20.

(2) In view of the nature of the provisions of Directive 94/57/EC it seems appropriate that its provisions be recast in two different Community legal instruments, namely a Directive and a Regulation.

(3) In its Resolution of 8 June 1993 on a common policy on safe seas, the Council set the objective of removing all substandard vessels from Community waters and gave priority to Community action designed to secure the effective and uniform implementation of international rules by drawing up common standards for classification societies.

(4) Safety and pollution prevention at sea may be effectively enhanced by strictly applying international conventions, codes and resolutions while furthering the objective of freedom to provide services.

(5) The control of compliance of ships with the uniform international standards for safety and prevention of pollution of the seas is the responsibility of flag and port States.

(6) Member States are responsible for the issuing of international certificates for safety and the prevention of pollution provided for under conventions such as the International Convention for the Safety of Life at Sea of 1 November 1974 (SOLAS 74), the International Convention on Load Lines of 5 April 1966 and the International Convention for the Prevention of Pollution from Ships of 2 November 1973 (Marpol), and for the implementation of those conventions.

(7) In compliance with such conventions all Member States may authorise to a varying extent recognised organisations for the certification of such compliance and may delegate the issue of the relevant certificates for safety and the prevention of pollution.

- (8) Worldwide a large number of the existing organisations recognised by International Maritime Organisation (IMO) Contracting Parties do not ensure either adequate implementation of the rules or sufficient reliability when acting on behalf of national administrations as they do not have reliable and adequate structures and experience to enable them to carry out their duties in a highly professional manner.
- (9) In accordance with SOLAS 74 Chapter II-1, Part A-1, Regulation 3-1, Member States are responsible for ensuring that ships flying their flag are designed, constructed and maintained in compliance with the structural, mechanical and electrical requirements of organisations, recognised by administrations. These organisations therefore produce and implement rules for the design, construction, maintenance and inspection of ships and they are responsible for inspecting ships on behalf of the flag States and certifying that those ships meet the requirements of the international conventions for the issue of the relevant certificates. To enable them to carry out that duty in a satisfactory manner they need to have strict independence, highly specialised technical competence and rigorous quality management.
- (10) Ship inspection and survey organisations play an important role in Community legislation concerning maritime safety.
- (11) Ship inspection and survey organisations should be able to offer their services throughout the Community and compete with each other while providing equal levels of safety and of environmental protection. The necessary professional standards for their activities should therefore be uniformly established and applied across the Community.
- (12) The issue of the cargo ship safety radio certificate may be entrusted to private bodies having sufficient expertise and qualified personnel.
- (13) A Member State may restrict the number of recognised organisations it authorises in accordance with its needs, based on objective and transparent grounds, subject to control exercised by the Commission in accordance with a committee procedure.
- (14) This Directive should ensure freedom to provide services in the Community; accordingly the Community should agree with those third countries where some of the recognised organisations are located, to ensure equal treatment for the recognised organisations located in the Community.
- (15) A tight involvement of the national administrations in ship surveys and in the issue of the related certificates is necessary to ensure full compliance with the international safety rules even if the Member States rely upon recognised organisations, which are not part of their administration for carrying out statutory duties. It is appropriate, therefore, to establish a close working relationship between the administrations and the recognised organisations authorised by them, which may require that the recognised organisations have a local representation on the territory of the Member State on behalf of which they perform their duties.
- (16) When a recognised organisation, its inspectors, or its technical staff issue the relevant certificates on behalf of the administration, Member States should consider enabling them, as regards these delegated activities, to be subject to proportionate legal safeguards and judicial protection, including the exercise of appropriate rights of defence, apart from immunity, which is a prerogative that can only be invoked by Member States as an inseparable right of sovereignty and therefore that cannot be delegated.
- (17) Divergence in terms of financial liability regimes among the recognised organisations working on behalf of the Member States would impede the proper implementation of this Directive. In order to contribute to solving this problem it is appropriate to bring about a degree of harmonisation at Community level of the liability arising out of any marine casualty caused by a recognised organisation, as decided by a court of law, including settlement of a dispute through arbitration procedures.
- (18) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission <sup>(1)</sup>.
- (19) In particular the Commission should be empowered to amend this Directive in order to incorporate subsequent amendments to the international conventions, protocols, codes and resolutions related thereto. Since those measures are of general scope and are designed to amend non-essential elements of this Directive, inter alia by supplementing it with new non-essential elements, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.
- (20) Member States should nevertheless be left with the possibility of suspending or withdrawing their authorisation of a recognised organisation while informing the Commission and the other Member States of their decisions and giving substantiated reasons therefor.

<sup>(1)</sup> OJ L 184, 17.7.1999, p. 23.

- (21) Member States should periodically assess the performance of the recognised organisations working on their behalf and provide the Commission and all the other Member States with precise information related to such performance.
- (22) As port authorities, Member States are required to enhance safety and prevention of pollution in Community waters through priority inspection of ships carrying certificates of organisations which do not fulfil the common criteria, thereby ensuring that ships flying the flag of a third State do not receive more favourable treatment.
- (23) At present there are no uniform international standards to which all ships must conform either at the building stage or during their entire lifetime, as regards hull, machinery and electrical and control installations. Such standards may be fixed according to the rules of recognised organisations or to equivalent standards to be decided by the national administrations in accordance with the procedure laid down in Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on Information Society services<sup>(1)</sup>.
- (24) Since the objective of this Directive, namely to establish measures to be followed by the Member States in their relationship with organisations entrusted with the inspection, survey and certification of ships, operating in the Community, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale of the action, 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.
- (25) The obligation to transpose this Directive into national law should be confined to those provisions which represent a substantive change as compared with the Directive 94/57/EC. The obligation to transpose the provisions which are unchanged arises under that Directive.
- (26) This Directive should be without prejudice to the obligations of the Member States relating to the time limits for transposition into national law of the Directives set out in Annex I, Part B.
- (27) In accordance with point 34 of the Interinstitutional Agreement on better law-making<sup>(2)</sup>, Member States are

encouraged to draw up, for themselves and in the interest of the Community, their own tables, illustrating, as far as possible, the correlation between this Directive and the transposition measures, and to make them public.

- (28) Measures to be followed by ship inspection and survey organisations are laid down in Regulation (EC) No 391/2009 of the European Parliament and the Council of 23 April 2009 on common rules and standards for ship inspection and survey organisations (recast)<sup>(3)</sup>,

HAVE ADOPTED THIS DIRECTIVE:

#### Article 1

This Directive establishes measures to be followed by the Member States in their relationship with organisations entrusted with the inspection, survey and certification of ships for compliance with the international conventions on safety at sea and prevention of marine pollution, while furthering the objective of freedom to provide services. This includes the development and implementation of safety requirements for hull, machinery and electrical and control installations of ships falling under the scope of the international conventions.

#### Article 2

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

- (a) 'ship' means a ship falling within the scope of the international conventions;
- (b) 'ship flying the flag of a Member State' means a ship registered in and flying the flag of a Member State in accordance with its legislation. Ships not corresponding to this definition are assimilated to ships flying the flag of a third country;
- (c) 'inspections and surveys' means inspections and surveys that are mandatory under the international conventions;
- (d) 'international conventions' means the International Convention for the Safety of Life at Sea of 1 November 1974, (SOLAS 74) with the exception of chapter XI-2 of the Annex thereto, the International Convention on Load Lines of 5 April 1966 and the International Convention for the Prevention of Pollution from Ships of 2 November 1973 (Marpol), together with the protocols and amendments thereto, and the related codes of mandatory status in all Member States, in their up-to-date version;

<sup>(1)</sup> OJ L 204, 21.7.1998, p. 37.

<sup>(2)</sup> OJ C 321, 31.12.2003, p. 1.

<sup>(3)</sup> See page 11 of this Official Journal.

- (e) 'organisation' means a legal entity, its subsidiaries and any other entities under its control, which jointly or separately carry out tasks falling under the scope of this Directive;
- (f) 'control' means, for the purpose of point (e), rights, contracts or any other means, in law or in fact, which, either separately or in combination confer the possibility of exercising decisive influence on a legal entity or enable that entity to carry out tasks falling under the scope of this Directive;
- (g) 'recognised organisation' means an organisation recognised in accordance with Regulation (EC) No 391/2009;
- (h) 'authorisation' means an act whereby a Member State grants an authorisation or delegates powers to a recognised organisation;
- (i) 'statutory certificate' means a certificate issued by or on behalf of a flag State in accordance with the international conventions;
- (j) 'rules and procedures' means a recognised organisation's requirements for the design, construction, equipment, maintenance and survey of ships;
- (k) 'class certificate' means a document issued by a recognised organisation certifying the fitness of a ship for a particular use or service in accordance with the rules and procedures laid down and made public by that recognised organisation;
- (l) 'cargo ship safety radio certificate' means the certificate introduced by the 1988 Protocol amending SOLAS, adopted by the International Maritime Organisation (IMO).

#### Article 3

1. In assuming their responsibilities and obligations under the international conventions, Member States shall ensure that their competent administrations can ensure appropriate enforcement of the provisions thereof, in particular with regard to the inspection and survey of ships and the issue of statutory certificates and exemption certificates as provided for by the international conventions. Member States shall act in accordance with the relevant provisions of the Annex and the Appendix to IMO Resolution A.847(20) on guidelines to assist flag States in the implementation of IMO instruments.

2. Where for the purpose of paragraph 1 a Member State decides with respect to ships flying its flag:

- (i) to authorise organisations to undertake fully or in part inspections and surveys related to statutory certificates including those for the assessment of compliance with the rules referred to in Article 11(2) and, where appropriate, to issue or renew the related certificates; or
- (ii) to rely upon organisations to undertake fully or in part the inspections and surveys referred to in point (i);

it shall entrust these duties only to recognised organisations.

The competent administration shall in all cases approve the first issue of the exemption certificates.

However, for the cargo ship safety radio certificate these duties may be entrusted to a private body recognised by a competent administration and having sufficient expertise and qualified personnel to carry out specified safety assessment work on radio-communication on its behalf.

3. This Article does not concern the certification of specific items of marine equipment.

#### Article 4

1. In applying Article 3(2), Member States shall in principle not refuse to authorise any of the recognised organisations to undertake such functions, subject to the provisions of paragraph 2 of this Article and Articles 5 and 9. However, they may restrict the number of organisations they authorise in accordance with their needs provided there are transparent and objective grounds for so doing.

At the request of a Member State, the Commission shall, in accordance with the regulatory procedure referred to in Article 6(2), adopt appropriate measures to ensure the correct application of the first subparagraph of this paragraph as regards refusal of authorisation and of Article 8 as regards those cases where authorisation is suspended or withdrawn.

2. In order for a Member State to accept that a recognised organisation located in a third State is to carry out fully or in part the duties mentioned in Article 3 it may request the third State in question to grant reciprocal treatment to those recognised organisations which are located in the Community.

In addition, the Community may request the third State where a recognised organisation is located to grant reciprocal treatment to those recognised organisations which are located in the Community.

### Article 5

1. Member States which take a decision as described in Article 3(2) shall set out a 'working relationship' between their competent administration and the organisations acting on their behalf.

2. The working relationship shall be regulated by a formalised written and non-discriminatory agreement or equivalent legal arrangements setting out the specific duties and functions assumed by the organisations and including at least:

(a) the provisions set out in Appendix II of IMO Resolution A.739(18) on guidelines for the authorisation of organisations acting on behalf of the administration, while drawing inspiration from the Annex, Appendices and Attachment to IMO MSC/Circular 710 and MEPC/Circular 307 on a model agreement for the authorisation of recognised organisations acting on behalf of the administration;

(b) the following provisions concerning financial liability:

(i) if liability arising out of any marine casualty is finally and definitely imposed on the administration by a court of law or as part of the settlement of a dispute through arbitration procedures, together with a requirement to compensate the injured parties for loss of or damage to property or personal injury or death, which is proved in that court of law to have been caused by a wilful act or omission or gross negligence of the recognised organisation, its bodies, employees, agents or others who act on behalf of the recognised organisation, the administration shall be entitled to financial compensation from the recognised organisation to the extent that that loss, damage, injury or death was, as decided by that court, caused by the recognised organisation;

(ii) if liability arising out of any marine casualty is finally and definitely imposed on the administration by a court of law or as part of the settlement of a dispute through arbitration procedures, together with a requirement to compensate the injured parties for personal injury or death, which is proved in that court of law to have been caused by any negligent or reckless act or omission of the recognised organisation, its employees, agents or others who act on behalf of the recognised organisation, the administration shall be entitled to financial compensation from the recognised organisation to the extent that that personal injury or death was, as decided by that court, caused by the recognised organisation; the Member States may limit the maximum amount payable by the recognised organisation, which must, however, be at least equal to EUR 4 million;

(iii) if liability arising out of any marine casualty is finally and definitely imposed on the administration by a court

of law or as part of the settlement of a dispute through arbitration procedures, together with a requirement to compensate the injured parties for loss of or damage to property, which is proved in that court of law to have been caused by any negligent or reckless act or omission of the recognised organisation, its employees, agents or others who act on behalf of the recognised organisation, the administration shall be entitled to financial compensation from the recognised organisation, to the extent that that loss or damage was, as decided by that court, caused by the recognised organisation; the Member States may limit the maximum amount payable by the recognised organisation, which must, however, be at least equal to EUR 2 million;

(c) provisions for a periodical audit by the administration or by an impartial external body appointed by the administration into the duties the organisations are undertaking on its behalf, as referred to in Article 9(1);

(d) the possibility for random and detailed inspections of ships;

(e) provisions for compulsory reporting of essential information about their classed fleet, and changes, suspensions and withdrawals of class.

3. The agreement or equivalent legal arrangement may require the recognised organisation to have a local representation on the territory of the Member State on behalf of which it performs the duties referred to in Article 3. A local representation with legal personality under the law of the Member State and subject to the jurisdiction of its national courts may satisfy such a requirement.

4. Each Member State shall provide the Commission with precise information on the working relationship established in accordance with this Article. The Commission shall subsequently inform the other Member States thereof.

### Article 6

1. The Commission shall be assisted 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<sup>(1)</sup>.

2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at three months.

<sup>(1)</sup> OJ L 324, 29.11.2002, p. 1.

3. Where reference is made to this paragraph, Article 5a(1) to (4) and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

#### Article 7

1. This Directive may, without broadening its scope, be amended in order to:

- (a) incorporate, for the purposes of this Directive, subsequent amendments to the international conventions, protocols, codes and resolutions related thereto referred to in Articles 2(d), 3(1) and 5(2), which have entered into force;
- (b) alter the amounts specified in points (ii) and (iii) of Article 5(2)(b).

These measures designed to amend non-essential elements of this Directive shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 6(3).

2. Following the adoption of new instruments or protocols to the international conventions referred to in Article 2(d), the Council, acting on a proposal from the Commission, shall decide, taking into account the Member States' parliamentary procedures as well as the relevant procedures within the IMO, on the detailed arrangements for ratifying those new instruments or protocols, while ensuring that they are applied uniformly and simultaneously in the Member States.

The amendments to the international instruments referred to in Article 2(d) and Article 5 may be excluded from the scope of this Directive, pursuant to Article 5 of Regulation (EC) No 2099/2002.

#### Article 8

Notwithstanding the minimum criteria specified in the Annex I of Regulation (EC) No 391/2009, where a Member State considers that a recognised organisation can no longer be authorised to carry out on its behalf the tasks specified in Article 3 it may suspend or withdraw such authorisation. In such case the Member State shall inform the Commission and the other Member States of its decision without delay and shall give substantiated reasons therefor.

#### Article 9

1. Each Member State shall satisfy itself that the recognised organisations acting on its behalf for the purpose of Article 3(2) effectively carry out the functions referred to in that Article to the satisfaction of its competent administration.

2. In order to carry out the task referred to in paragraph 1, each Member State shall, at least on a biennial basis, monitor every recognised organisation acting on its behalf and shall provide the other Member States and the Commission with a report on the results of such monitoring activities at the latest by 31 March of the year following the year in which the monitoring was carried out.

#### Article 10

In exercising their inspection rights and obligations as port States, Member States shall report to the Commission and to other Member States, and inform the flag State concerned, if they find that valid statutory certificates have been issued by recognised organisations acting on behalf of a flag State to a ship which does not fulfil the relevant requirements of the international conventions, or in the event of any failure of a ship carrying a valid class certificate and relating to items covered by that certificate. Only cases of ships representing a serious threat to safety and the environment or showing evidence of particularly negligent behaviour of the recognised organisations shall be reported for the purposes of this Article. The recognised organisation concerned shall be advised of the case at the time of the initial inspection so that it can take appropriate follow-up action immediately.

#### Article 11

1. Each Member State shall ensure that ships flying its flag are designed, constructed, equipped and maintained in accordance with the rules and procedures relating to hull, machinery and electrical and control installation requirements of a recognised organisation.

2. A Member State may decide to use rules it considers equivalent to the rules and procedures of a recognised organisation only on the proviso that it immediately notifies them to the Commission in conformity with the procedure under Directive 98/34/EC and to the other Member States and they are not objected to by another Member State or the Commission and are held, through the regulatory procedure referred to in Article 6(2) of this Directive, not to be equivalent.

3. Member States shall cooperate with the recognised organisations they authorise in the development of the rules and procedures of those organisations. They shall confer with the recognised organisations with a view to achieving consistent interpretation of the international conventions.

#### Article 12

The Commission shall, on a biennial basis, inform the European Parliament and the Council of progress in the implementation of this Directive in the Member States.

*Article 13*

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 17 June 2011. They shall forthwith inform the Commission thereof.

When they are adopted by Member States, these measures shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. They shall also include a statement that references in existing laws, regulations and administrative provisions to the directives repealed by this Directive shall be construed as references to this Directive. The methods of making such references shall be laid down by Member States.

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

*Article 14*

Directive 94/57/EC, as amended by the Directives listed in Annex I, Part A, shall be repealed with effect from 17 June 2009, without prejudice to the obligations of the Member

States relating to the time limits for transposition into national law of the Directives set out in Annex I, Part B.

References to the repealed Directives shall be construed as references to this Directive and shall be read in accordance with the correlation table in Annex II.

*Article 15*

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

*Article 16*

This Directive is addressed to the Member States.

Done at Strasbourg, 23 April 2009.

*For the European Parliament*

*The President*

H.-G. PÖTTERING

*For the Council*

*The President*

P. NEČAS

## ANNEX I

**PART A****Repealed Directive with its successive amendments**

(referred to in Article 14)

Council Directive 94/57/EC	OJ L 319, 12.12.1994, p. 20
Commission Directive 97/58/EC	OJ L 274, 7.10.1997, p. 8
Directive 2001/105/EC of the European Parliament and of the Council	OJ L 19, 22.1.2002, p. 9
Directive 2002/84/EC of the European Parliament and of the Council	OJ L 324, 29.11.2002, p. 53

**PART B****List of time limits for transposition into national law**

(referred to in Article 14)

Directive	Time limit for transposition
94/57/EC	31 December 1995
97/58/EC	30 September 1998
2001/105/EC	22 July 2003
2002/84/EC	23 November 2003

## ANNEX II

## Correlation table

Directive 94/57/EC	This Directive	Regulation (EC) No 391/2009
Article 1	Article 1	Article 1
Article 2(a)	Article 2(a)	Article 2(a)
Article 2(b)	Article 2(b)	—
Article 2(c)	Article 2(c)	—
Article 2(d)	Article 2(d)	Article 2(b)
Article 2(e)	Article 2(e)	Article 2(c)
—	Article 2(f)	Article 2(d)
Article 2(f)	Article 2(g)	Article 2(e)
Article 2(g)	Article 2(h)	Article 2(f)
Article 2(h)	Article 2(i)	Article 2(g)
Article 2(i)	Article 2(k)	Article 2(i)
—	Article 2(j)	Article 2(h)
Article 2(j)	Article 2(l)	—
Article 2(k)	—	Article 2(j)
Article 3	Article 3	—
Article 4(1) first phrase	—	Article 3(1)
Article 4(1) second phrase	—	Article 3(2)
Article 4(1) third phrase	—	—
Article 4(1) fourth phrase	—	Article 4(1)
—	—	Article 3(3)
—	—	Article 4(2), (3), (4)
—	—	Article 5
—	—	Article 6
—	—	Article 7
Article 5(1)	Article 4(1)	—
Article 5(3)	Article 4(2)	—
Article 6(1), (2), (3), (4)	Article 5 (1), (2), (3), (4)	—
Article 6(5)	—	—
Article 7	Article 6	Article 12
Article 8(1) first indent	Article 7(1), point (a) of first subparagraph	—
Article 8(1) second indent	—	Article 13(1)
Article 8(1) third indent	Article 7(1), point (b) of first subparagraph	—
—	Article 7(1) second subparagraph	Article 13(1) (second subparagraph)
Article 8(2)	Article 7(2)	—
Article 8(2) second subparagraph	—	Article 13(2)
Article 9(1)	—	—
Article 9(2)	—	—
Article 10(1) introductory wording	Article 8	—
Article 10(1)(a), (b), (c), (2), (3), (4)	—	—
Article 11(1),(2)	Article 9(1), (2)	—

Directive 94/57/EC	This Directive	Regulation (EC) No 391/2009
Article 11(3), (4)	—	Article 8(1), (2)
Article 12	Article 10	—
Article 13	—	—
Article 14	Article 11(1), (2)	—
—	Article 11(3)	—
—	Article 12	—
—	—	Article 9
Article 15(1)	—	—
—	—	Article 10(1), (2)
Article 15(2)	—	Article 10(3)
Article 15(3)	—	Article 10(4)
Article 15(4)	—	Article 10(5)
Article 15(5)	—	Article 10(6) first, second, third, fifth subparagraphs
—	—	Article 10(6) fourth subparagraph
Article 16	Article 13	—
Article 17	Article 16	—
—	Article 14	—
—	Article 15	—
—	—	Article 11
—	—	Article 14
—	—	Article 15
—	—	Article 16
—	—	Article 17
—	—	Article 18
—	—	Article 19
Annex	—	Annex I
—	Annex I	—
—	Annex II	Annex II

**COMMISSION IMPLEMENTING DIRECTIVE 2014/111/EU****of 17 December 2014****amending Directive 2009/15/EC with regard to the adoption by the International Maritime Organization (IMO) of certain Codes and related amendments to certain conventions and protocols****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Directive 2009/15/EC of the European Parliament and of the Council of 23 April 2009 on common rules and standards for ship inspection and survey organisations and for the relevant activities of maritime administrations <sup>(1)</sup>, and in particular the second sentence of Article 7(2) thereof,Acting in accordance with the conformity checking procedure set out in Article 5 of Regulation (EC) No 2099/2002 of the European Parliament and of the Council establishing a Committee on Safe Seas and the Prevention of Pollution from Ships (COSS) <sup>(2)</sup>,

Whereas:

- (1) Pursuant to Article 5(1) of Regulation (EC) No 2099/2002, Member States and the Commission shall cooperate in order to define, as appropriate, a common position or approach in the competent international fora with a view to reducing the risks of conflict between the maritime legislation of the Union and international instruments.
- (2) Directive 2009/15/EC forms together with Regulation (EC) No 391/2009 of the European Parliament and the Council <sup>(3)</sup> one coherent piece of legislation where the activities of recognised organisations are regulated in a consistent manner in accordance with the same principles and definitions. Pursuant to Article 3(2) of Directive 2009/15/EC, if a Member State decides, with respect to ships flying its flag, to authorise an organisation to carry out on its behalf the inspections and surveys related to statutory certificates, it shall entrust these duties only to a recognised organisation, which, pursuant to Article 2(g) of that Directive, means an organisation recognised in accordance with Regulation (EC) No 391/2009. Therefore, the set of rules on the basis of which the organisations concerned are recognised has an impact on both acts.
- (3) The term 'international conventions' as defined in Article 2(d) of Directive 2009/15/EC means the International Convention for the Safety of Life at Sea of 1 November 1974 ('the SOLAS Convention') with the exception of chapter XI-2 of the Annex thereto, the International Convention on Load Lines of 5 April 1966 ('the Load Lines Convention') and the International Convention for the Prevention of Pollution from Ships of 2 November 1973 ('the MARPOL Convention'), together with the protocols and amendments thereto, and the related codes of mandatory status in all Member States, in their up-to-date version.
- (4) The IMO Assembly at its 28th session adopted an IMO Instruments Implementation Code (III Code), as set out in IMO resolution A.1070(28) of 4 December 2013, as well as amendments to the Load Lines Convention, with a view to rendering the III Code mandatory, together with an associated flag State audit scheme, as set out in IMO resolution A.1083(28) of 4 December 2013.
- (5) The IMO Marine Environment Protection Committee (MEPC) at its 66th session adopted amendments to the Protocol of 1978 relating to the MARPOL Convention, as set out in resolution MEPC.246(66) of 4 April 2014, and to the Protocol of 1977 relating to the MARPOL Convention, as modified by the Protocol of 1978 relating thereto, as set out in resolution MEPC.247(66) of 4 April 2014, with a view to rendering the III Code mandatory, together with an associated flag State audit scheme.

<sup>(1)</sup> OJ L 131, 28.5.2009, p. 47.

<sup>(2)</sup> OJ L 324, 29.11.2002, p. 1.

<sup>(3)</sup> Regulation (EC) No 391/2009 of the European Parliament and of the Council of 23 April 2009 on common rules and standards for ship inspection and survey organisations (OJ L 131, 28.5.2009, p. 11).

- (6) The IMO Maritime Safety Committee (MSC) at its 93rd session adopted amendments to the SOLAS Convention, as set out in resolution MSC.366(93) of 22 May 2014, and to the Protocol of 1988 relating to the Load Lines Convention, as set out in resolution MSC.375(93) of 22 May 2014, with a view to rendering the III Code mandatory, together with an associated flag State audit scheme.
- (7) The MEPC at its 65th session and the MSC at its 92nd session adopted an IMO Code for Recognized Organizations (RO Code), as set out in resolution MSC.349(92) of 21 June 2013.
- (8) The MEPC at its 65th session adopted amendments to the Protocol of 1978 relating to the MARPOL Convention with a view to rendering the RO Code mandatory, as set out in resolution MEPC.238(65) of 17 May 2013.
- (9) The MSC at its 92nd session adopted amendments to the SOLAS Convention and to the Protocol of 1988 relating to the Load Lines Convention with a view to rendering the RO Code mandatory, as set in resolutions MSC.350(92) and MSC.356(92) of 21 June 2013.
- (10) The III and RO Codes are therefore expected to enter into force during the period between 1 January 2015 until 1 January 2018 in accordance with the applicable rules for the adoption, ratification and entry into force of amendments under each of the IMO conventions concerned.
- (11) On 13 May 2013, the Council adopted Council Decision 2013/268/EU on the position to be taken on behalf of the European Union within the International Maritime Organization (IMO) with regard to the adoption of certain Codes and related amendments to certain conventions and protocols <sup>(1)</sup>. Pursuant to Article 5 of that Decision, the Council authorised the Member States to give their consent to be bound, in the interest of the Union and subject to the declaration set in the Annex of that Decision, by the amendments referred to in recitals (4) to (9) of this Directive.
- (12) The declaration annexed to Council Decision 2013/268/EU states that Member States consider that the III Code and the RO Code contain a set of minimum requirements on which States can elaborate and improve as appropriate for the enhancement of maritime safety and the protection of the environment.
- (13) It also states that nothing in the III Code or RO Code shall be construed to restrict or limit in any way the fulfilment of Member States' obligations under the law of the Union in relation to the definition of 'statutory certificates' and 'class certificates', the scope of the obligations and criteria laid down for recognised organisations, and the duties of the European Commission as regards the recognition, assessment and, where appropriate, the imposition of corrective measures or sanctions on recognised organisations. The same declaration states that, in the case of an IMO audit, Member States will state that only compliance with those provisions of the relevant international conventions which Member States have accepted, including in the terms of this declaration, shall be verified.
- (14) In the legal order of the Union, the scope of Directive 2009/15/EC as well as that of Regulation (EC) No 391/2009 includes references to the 'international conventions' as described in recital (3). In this framework, amendments to IMO conventions are automatically brought into Union law at the same time when they enter into force at the international level, including the related codes of mandatory status such as the III and RO codes, which therefore form part of the IMO instruments relevant for the application of Directive 2009/15/EC.
- (15) Amendments to international conventions may however be excluded from the scope of Union maritime legislation in accordance with the conformity checking procedure if they meet at least one of the two criteria set out in Article 5(2) of Regulation (EC) No 2099/2002.
- (16) The Commission evaluated the amendments to the IMO conventions in accordance with Article 5 of Regulation (EC) No 2099/2002 and determined that a number of discrepancies exist between, on the one hand, the III Code and the RO Code, and, on the other hand, Directive 2009/15/EC and Regulation (EC) No 391/2009.

<sup>(1)</sup> OJ L 155, 7.6.2013, p. 3.

- (17) First, paragraph 16.1 of part 2 of the III Code provides for a minimum list of resources and processes which flag States have to establish, including the provision of administrative instructions pertaining *inter alia* to ship class certificates required by the flag State to demonstrate compliance with structural, mechanical, electrical, and/or other requirements of an international convention to which the flag State is a party or compliance with a requirement of the flag State's national regulation. As detailed in recital (21) below however, Union law draws a distinction between statutory certificates and class certificates. The latter are documents of a private nature and are neither acts of a flag State nor issued on any flag State's behalf. This provision of the III Code in fact refers to SOLAS Chapter II-1, Part A-1, Regulation 3-1, which provides that ships shall be designed, constructed and maintained in compliance with the structural, mechanical and electrical requirements of a classification society which is recognized by the Administration in accordance with the provisions of regulation XI-1/1. 1. The SOLAS convention clearly identifies the ship or its legal representation vis-à-vis the flag State as the object of this requirement. Furthermore, when acting in its capacity as class society, a recognised organisation issues ship class certificates in accordance with its own rules, procedures, conditions and private contractual arrangements, to which the flag State is not a party. Therefore, this provision of the III Code contradicts the delineation of class and statutory activities as set out in the existing EU legislation.
- (18) Second, paragraph 18.1 of part 2 of the III Code requires the flag State to determine, "with regard only to ships entitled to fly its flag", that a recognised organisation has adequate resources in terms of technical, managerial and research capabilities to accomplish the duties entrusted to it. In contrast, this aspect is addressed under Union law as a requirement for the purpose of the recognition as reflected in criterion A.3 in Annex I of Regulation (EC) No 391/2009, and with regard to the entire fleet in the class of the organisation concerned, without distinction based on flag. Should the above provision of the III Code be incorporated into Union law, it would restrict the application of criterion A.3 in Annex I of Regulation (EC) No 391/2009 to the recognised organisation's performance with regard only to ships flying the flag of Member States, in contradiction with the requirements currently in force.
- (19) Third, paragraph 19 of part 2 of the III Code introduces a prohibition for a flag State to mandate its recognised organisations to apply to ships, other than those entitled to fly its flag, any requirements pertaining to *inter alia* their classification rules, requirements or procedures. Pursuant to Directive 2009/15/EC, Member States can only authorise an organisation to act on their behalf for the statutory certification of their respective fleet if that organisation has been recognised and is being monitored for this purpose in accordance with Regulation (EC) No 391/2009. In this framework, the recognised organisations as such have to comply with certain requirements in their relevant activities across their classed fleet, irrespective of the flag. This relates to most of the criteria set out in Annex I of Regulation (EC) No 391/2009, as well as to other obligations, in particular Article 10(4) of that Regulation. Should the above provision of the III Code be incorporated into Union law, it would restrict the application of the existing recognition requirements in Regulation (EC) No 391/2009 *inter alia* if they qualify as rules, requirements and procedures to the recognised organisation's performance with regard only to ships flying the flag of Member States.
- (20) Fourth, section 1.1 of part 2 of the RO Code defines a 'Recognized Organization' as an organisation assessed by a flag State and found to comply with part 2 of the RO Code. In contrast, Article 2(g) of Directive 2009/15/EC provides that a recognised organisation is 'an organisation recognised in accordance with Regulation (EC) No 391/2009'. Based on the Commission's evaluation set out in recitals (21) to (23), it appears that several provisions in part 2 of the RO Code are incompatible with Regulation (EC) No 391/2009. Consequently, a recognised organisation as defined in the RO Code would not fulfil all the requirements of Regulation (EC) No 391/2009 and could therefore not meet the definition of a recognised organisation as set out in Union law.
- (21) Fifth, section 1.3 of part 2 of the RO Code defines 'statutory certification and services' as a single category of activities that a recognised organisation is entitled to perform on behalf of the flag State, including the issuance of certificates pertaining to both statutory and class requirements. In contrast, the definitions set out in Article 2(i) and (k) of Directive 2009/15/EC draw a clear distinction between 'statutory certificates', which are those certificates issued by or on behalf of a flag State in accordance with the international conventions, and 'class certificates', which are those documents issued by a recognised organisation, in its capacity as class society, certifying the fitness of a ship for a particular use or service in accordance with the rules and procedures laid down and made public by that recognised organisation. It follows that, under Union law, statutory and class certificates are distinct and have different natures. Namely, statutory certificates have a public nature, while class certificates have a private nature, being issued by the class society in accordance with its own rules, procedures and conditions. It follows that classification certificates issued by a recognised organisation for a ship in order to attest compliance with classification rules and procedures, including when verified by a flag State as proof of compliance with SOLAS Chapter II-1, Part A-1, Regulation 3-1, are documents of a strictly private nature which are neither acts of a flag State nor carried out on any flag State's behalf. In the RO Code however, 'statutory certification and services' are systematically referred to as being performed by the RO "on behalf of the flag State",

contradicting the legal distinction established in Union law. Notwithstanding this contradiction, this provision of the RO Code, if accepted as a norm in the Union legal order, entails a manifest risk that the recognition requirements contained in Regulation (EC) No 391/2009 which pertain to the entire activity of the organisation, irrespective of flag, could no longer be enforced within the EU. Due to the link between the two instruments as explained in recital (2), this risk is also relevant to Directive 2009/15/EC.

- (22) Sixth, section 3.9.3.1 of part 2 of the RO Code provides for a mechanism of co-operation between recognised organisations under the sole framework established by the flag State with the view to standardising processes concerning statutory certification and services for the flag State, as appropriate; whereas section 3.9.3.2 of part 2 of the same Code establishes a framework "by a flag State or a group of flag States" to regulate co-operation among their recognised organisations on technical and safety-related aspects of "statutory certification and services of ships [...] on behalf of the said flag State(s)". In contrast, co-operation between recognised organisations under Union law is governed by Article 10(1) of Regulation (EC) No 391/2009, which requires recognised organisations to consult with each other with a view to maintaining equivalence and aiming for harmonisation of their rules and procedures and the implementation thereof, and sets out a framework for the mutual recognition, in appropriate cases, of class certificates for materials, equipment and components. Those two co-operation processes under Article 10(1) pertain to the private activities of the recognised organisations, in their capacity as classification societies, and therefore apply without distinction based on flag. The co-operation mechanisms provided for in the RO Code, if incorporated into Union law, would therefore limit the scope of the co-operation framework established by Regulation (EC) No 391/2009 to the recognised organisations' activities with regard only to ships flying the flag of Member States, in contradiction with the requirements currently in force.
- (23) Seventh, section 3.9.3.3 of part 2 of the RO Code is identical to paragraph 19 of part 2 of the III Code; therefore the considerations made in recital (19) are equally relevant to this provision of the RO Code.
- (24) Nothing in either the III Code or the RO Code should place any restrictions on the Union's capacity to lay down, in accordance with the Treaties and international law, appropriate conditions for the granting of recognition to organisations wishing to be authorised by the Member States to carry out ship survey and certification activities on their behalf, with a view to achieving the Union's objectives and in particular to enhance maritime safety and the protection of the environment.
- (25) The scheme for the mutual recognition of class certificates for materials, equipment and components laid down by Article 10(1) of Regulation (EC) No 391/2009 is only enforceable within the Union in respect of ships flying the flag of a Member State. As far as foreign vessels are concerned, the acceptance of relevant certificates remains at the discretion of relevant non-EU flag States in the exercise of their exclusive jurisdiction, notably under the United Nations Convention on the Law of the Sea (UNCLOS).
- (26) Based on its evaluation, the Commission determined that the provisions of the III Code and of the RO Code referred to in the preceding recitals are incompatible with Directive 2009/15/EC, or with Regulation (EC) No 391/2009 and consequently with Directive 2009/15/EC due to the link between the two instruments as explained in recital (2), and should be excluded from the scope of that Directive. Therefore Article 2(d) of Directive 2009/15/EC should be amended accordingly.
- (27) As the RO Code enters into force on 1 January 2015, this Directive should enter into force as soon as possible after its date of publication.
- (28) The Committee on Safe Seas and the Prevention of Pollution from Ships (COSS) did not deliver an opinion on the measures provided for in this Directive. An implementing act was deemed to be necessary and the chair submitted the draft implementing act to the appeal committee for further deliberation. The measures provided for in this Directive are in accordance with the opinion of the appeal committee,

HAS ADOPTED THIS DIRECTIVE:

#### Article 1

In Article 2 of Directive 2009/15/EC, point (d) is replaced by the following:

- (d) "international conventions" means the International Convention for the Safety of Life at Sea of 1 November 1974 (SOLAS 74) with the exception of chapter XI-2 of the Annex thereto, the International Convention on Load Lines of 5 April 1966 and the International Convention for the Prevention of Pollution from Ships of

2 November 1973 (MARPOL), together with the protocols and amendments thereto, and the related codes of mandatory status in all Member States, with the exception of paragraphs 16.1, 18.1 and 19 of part 2 of the IMO Instruments Implementation Code, and of sections 1.1, 1.3, 3.9.3.1, 3.9.3.2 and 3.9.3.3 of part 2 of the IMO Code for Recognized Organizations, in their up-to-date version.'

*Article 2*

1. Member States shall adopt and publish, by 31 December 2015 at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.

They shall apply those provisions from 1 January 2016.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

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

*Article 3*

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

*Article 4*

This Directive is addressed to the Member States.

Done at Brussels, 17 December 2014.

*For the Commission*  
*The President*  
Jean-Claude JUNCKER

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**REGULATION (EC) No 391/2009 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**of 23 April 2009**

**on common rules and standards for ship inspection and survey organisations**

**(Recast)**

**(Text with EEA relevance)**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

necessary professional standards for their activities should therefore be uniformly established and applied across the Community.

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

- (4) This objective should be pursued through measures that adequately tie in with the work of the International Maritime Organisation (IMO) and, where appropriate, build on and complement it. Furthermore, the Member States and the Commission should promote the development by the IMO of an international code for recognised organisations.

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee <sup>(1)</sup>,

Having regard to the opinion of the Committee of the Regions <sup>(2)</sup>,

- (5) Minimum criteria for recognition of organisations should be laid down with a view to enhancing the safety of, and preventing pollution from, ships. The minimum criteria laid down in Directive 94/57/EC should therefore be strengthened.

Acting in accordance with the procedure laid down in Article 251 of the Treaty, in the light of the joint text approved by the Conciliation Committee on 3 February 2009 <sup>(3)</sup>,

- (6) In order to grant initial recognition to the organisations wishing to be authorised to work on behalf of the Member States, compliance with the minimum criteria laid down in this Regulation could be assessed more effectively in a harmonised and centralised manner by the Commission together with the Member States requesting the recognition.

Whereas:

(1) Council Directive 94/57/EC of 22 November 1994 on common rules and standards for ship inspection and survey organisations and for the relevant activities of maritime administrations <sup>(4)</sup> has been substantially amended several times. Since further amendments are to be made, it should be recast in the interests of clarity.

- (7) Recognition should be granted only on the basis of the quality and safety performance of the organisation. It should be ensured that the extent of that recognition be at all times in keeping with the actual capacity of the organisation concerned. Recognition should furthermore take into account the differences in legal status and corporate structure of recognised organisations while continuing to ensure uniform application of the minimum criteria laid down in this Regulation and the effectiveness of the Community controls. Regardless of the corporate structure, the organisation to be recognised should provide services worldwide and its legal entities should be subject to global joint and several liability.

(2) In view of the nature of the provisions of Directive 94/57/EC it seems appropriate that its provisions be recast in two different Community legal instruments, namely a Directive and a Regulation.

(3) Ship inspection and survey organisations should be able to offer their services throughout the Community and compete with each other while providing equal levels of safety and of environmental protection. The

- (8) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission <sup>(5)</sup>.

<sup>(1)</sup> OJ C 318, 23.12.2006, p. 195.

<sup>(2)</sup> OJ C 229, 22.9.2006, p. 38.

<sup>(3)</sup> Opinion of the European Parliament of 25 April 2007 (OJ C 74 E, 20.3.2008, p. 632), Council Common Position of 6 June 2008 (OJ C 190E, 29.7.2008, p. 1), Position of the European Parliament of 24 September 2008 (not yet published in the Official Journal), Council Decision of 26 February 2009 and Legislative Resolution of the European Parliament of 11 March 2009 (not yet published in the Official Journal).

<sup>(4)</sup> OJ L 319, 12.12.1994, p. 20.

<sup>(5)</sup> OJ L 184, 17.7.1999, p. 23.

- (9) In particular, the Commission should be empowered to amend this Regulation in order to incorporate subsequent amendments to the international conventions, protocols, codes and resolutions related thereto, to update the minimum criteria in Annex I and to adopt the criteria to measure the effectiveness of the rules and procedures as well as the performance of the recognised organisations as regards the safety of, and the prevention of pollution from, their classed ships. Since those measures are of general scope and are designed to amend non-essential elements of this Regulation, *inter alia*, by supplementing it with new non-essential elements, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.
- (10) It is of the utmost importance that failure by a recognised organisation to fulfil its obligations can be addressed in a prompt, effective and proportionate manner. The primary objective should be to correct any deficiencies with a view to removing any potential threat to safety or the environment at an early stage. The Commission should therefore be given the necessary powers to require that the recognised organisation undertake the necessary preventive and remedial action, and to impose fines and periodic penalty payments as coercive measures. When exercising these powers, the Commission should do so in a manner that complies with fundamental rights and should ensure that the organisation can make its views known throughout the procedure.
- (11) In accordance with the Community-wide approach, the decision to withdraw the recognition of an organisation which fails to fulfil the obligations set out in this Regulation if the above measures prove ineffective or the organisation otherwise presents an unacceptable threat to safety or the environment, has to be taken at Community level, and therefore by the Commission, on the basis of a committee procedure.
- (12) The continuous *a posteriori* monitoring of the recognised organisations to assess their compliance with this Regulation can be carried out more effectively in a harmonised and centralised manner. Therefore, it is appropriate that the Commission, together with the Member State requesting the recognition, be entrusted with this task on behalf of the Community.
- (13) As part of the monitoring of the operations of recognised organisations, it is crucial that Commission inspectors have access to ships and ship files regardless of the ship's flag in order to ascertain whether the recognised organisations are complying with the minimum criteria laid down in this Regulation in respect of all ships in their respective classes.
- (14) The ability of recognised organisations to identify rapidly and correct weaknesses in their rules, processes and internal controls is critical for the safety of the ships they inspect and certify. That ability should be enhanced by means of a quality assessment and certification entity, which should be independent of commercial or political interests, can propose common action for the sustained improvement of all recognised organisations and ensure fruitful cooperation with the Commission.
- (15) The rules and procedures of recognised organisations are a key factor for increasing safety and preventing accidents and pollution. The recognised organisations have initiated a process that should lead to harmonisation of their rules and procedures. That process should be encouraged and supported by Community legislation, as it should have a positive impact on maritime safety as well as on the competitiveness of the European shipbuilding industry.
- (16) The harmonisation of the rules of recognised organisations for the design, construction and periodic survey of merchant ships is an ongoing process. Therefore, the obligation to have a set of own rules or the demonstrated ability to have own rules should be seen in the context of the process of harmonisation and should not constitute an obstacle to the activities of recognised organisations or potential candidates for recognition.
- (17) Recognised organisations should be obliged to update their technical standards and enforce them consistently in order to harmonise safety rules and ensure uniform implementation of international rules within the Community. Where the technical standards of recognised organisations are identical or very similar, mutual recognition of certificates for materials, equipment and components should be considered in appropriate cases, taking the most demanding and rigorous standards as the reference.
- (18) While each recognised organisation, in principle, should be held responsible solely and exclusively in relation to the parts it certifies, the liability of recognised organisations and manufacturers will follow the agreed conditions or, as the case may be, the applicable law in each individual case.
- (19) Since transparency and exchange of information between interested parties, as well as public right of access to information, are fundamental tools for preventing accidents at sea, recognised organisations should provide all relevant statutory information concerning the conditions of the ships in their class to the port State control authorities and make it available to the general public.

- (20) In order to prevent ships from changing class to avoid carrying out necessary repairs, recognised organisations should exchange all relevant information among themselves concerning the conditions of ships changing class and involve the flag State when necessary.
- (21) The protection of intellectual property rights of maritime stakeholders including shipyards, equipment suppliers and shipowners, should not prevent normal business transactions and contractually agreed services between these parties.
- (22) The European Maritime Safety Agency (EMSA) established by Regulation (EC) No 1406/2002 of the European Parliament and of the Council<sup>(1)</sup> should provide the necessary support to ensure the application of this Regulation.
- (23) Since the objective of this Regulation, namely the establishment of measures to be followed by organisations entrusted with the inspection, survey and certification of ships, operating in the Community, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale of the action, 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 Regulation does not go beyond what is necessary in order to achieve that objective.
- (24) Measures to be followed by the Member States in their relationship with ship inspection and survey organisations are laid down in Directive 2009/15/EC of the European Parliament and of the Council of 23 April 2009 on common rules and standards for ship inspection and survey organisations and for the relevant activities of maritime administrations<sup>(2)</sup>,

HAVE ADOPTED THIS REGULATION:

#### Article 1

This Regulation establishes measures to be followed by organisations entrusted with the inspection, survey and certification of ships for compliance with the international conventions on safety at sea and prevention of marine pollution, while furthering the objective of freedom to provide services. This includes the development and implementation of safety requirements for hull, machinery and electrical and control installations of ships falling under the scope of the international conventions.

<sup>(1)</sup> OJ L 208, 5.8.2002, p. 1.

<sup>(2)</sup> See page 47 of this Official Journal.

#### Article 2

For the purpose of this Regulation the following definitions shall apply:

- (a) 'ship' means a ship falling within the scope of the international conventions;
- (b) 'international conventions' means the International Convention for the Safety of Life at Sea of 1 November 1974 (SOLAS 74) with the exception of chapter XI-2 of the Annex thereto, the International Convention on Load Lines of 5 April 1966 and the International Convention for the Prevention of Pollution from Ships of 2 November 1973 (MARPOL), together with the protocols and amendments thereto, and the related codes of mandatory status in all Member States, in their up-to-date version;
- (c) 'organisation' means a legal entity, its subsidiaries and any other entities under its control, which jointly or separately carry out tasks falling under the scope of this Regulation;
- (d) 'control' means, for the purpose of point (c), rights, contracts or any other means, in law or in fact, which, either separately or in combination confer the possibility of exercising decisive influence on a legal entity or enable that entity to carry out tasks falling under the scope of this Regulation;
- (e) 'recognised organisation' means an organisation recognised in accordance with this Regulation;
- (f) 'authorisation' means an act whereby a Member State grants an authorisation or delegates powers to a recognised organisation;
- (g) 'statutory certificate' means a certificate issued by or on behalf of a flag State in accordance with the international conventions;
- (h) 'rules and procedures' means a recognised organisation's requirements for the design, construction, equipment, maintenance and survey of ships;
- (i) 'class certificate' means a document issued by a recognised organisation certifying the fitness of a ship for a particular use or service in accordance with the rules and procedures laid down and made public by that recognised organisation;
- (j) 'location' means the place of the registered office, central administration or principal place of business of an organisation.

### Article 3

1. Member States which wish to grant an authorisation to any organisation which is not yet recognised shall submit a request for recognition to the Commission together with complete information on, and evidence of, the organisation's compliance with the minimum criteria set out in Annex I and on the requirement and its undertaking that it shall comply with the provisions of Articles 8(4), 9, 10 and 11.

2. The Commission, together with the respective Member States submitting the request, shall carry out assessments of the organisations for which the request for recognition was received in order to verify that the organisations meet and undertake to comply with the requirements referred to in paragraph 1.

3. The Commission shall, in accordance with the regulatory procedure referred to in Article 12(3), refuse to recognise organisations which fail to meet the requirements referred to in paragraph 1 or whose performance is considered an unacceptable threat to safety or the environment on the basis of the criteria laid down in accordance with Article 14.

### Article 4

1. Recognition shall be granted by the Commission in accordance with the regulatory procedure referred to in Article 12(3).

2. Recognition shall only be granted to organisations which meet the requirements referred to in Article 3.

3. Recognition shall be granted to the relevant legal entity, which is the parent entity of all legal entities that constitute the recognised organisation. The recognition shall encompass all legal entities that contribute to ensuring that that organisation provides cover for their services worldwide.

4. The Commission, acting in accordance with the regulatory procedure referred to in Article 12(3), may limit the recognition as regards certain types of ships, ships of a certain size, certain trades, or a combination thereof, in accordance with the proven capacity and expertise of the organisation concerned. In such a case, the Commission shall state the reasons for the limitation and the conditions under which the limitation shall be removed or can be widened. The limitation may be reviewed at any time.

5. The Commission shall draw up and regularly update a list of the organisations recognised in accordance with this Article. That list shall be published in the *Official Journal of the European Union*.

### Article 5

Where the Commission considers that a recognised organisation has failed to fulfil the minimum criteria set out in Annex I or its obligations under this Regulation, or that the safety and

pollution prevention performance of a recognised organisation has worsened significantly, without, however, it constituting an unacceptable threat to safety or the environment, it shall require the recognised organisation concerned to undertake the necessary preventive and remedial action within specified deadlines to ensure full compliance with those minimum criteria and obligations and, in particular, remove any potential threat to safety or the environment, or to otherwise address the causes of the worsening performance.

The preventive and remedial action may include interim protective measures when the potential threat to safety or the environment is immediate.

However, and without prejudice to their immediate implementation, the Commission shall give to all Member States which have granted an authorisation to the recognised organisation concerned, advance notice of the measures that it intends to take.

### Article 6

1. In addition to the measures taken under Article 5, the Commission may, in accordance with the advisory procedure referred to in Article 12(2), impose fines on a recognised organisation:

(a) — whose serious or repeated failure to fulfil the minimum criteria set out in Annex I or its obligations under Articles 8(4), 9, 10 and 11,

or

— whose worsening performance reveals serious shortcomings in its structure, systems, procedures or internal controls;

or

(b) which has deliberately provided incorrect, incomplete or misleading information to the Commission in the course of its assessment pursuant to Article 8(1) or otherwise obstructed that assessment.

2. Without prejudice to paragraph 1, where a recognised organisation fails to undertake the preventive and remedial action required by the Commission, or incurs unjustified delays, the Commission may impose periodic penalty payments on that organisation until the required action is fully carried out.

3. The fines and periodic penalty payments referred to in paragraphs 1 and 2 shall be dissuasive and proportionate to both the gravity of the case and the economic capacity of the recognised organisation concerned, taking into account, in particular, the extent to which safety or the protection of the environment has been compromised.

They shall be imposed only after the recognised organisation and the Member States concerned have been given the opportunity to submit their observations.

The aggregate amount of the fines and periodic penalty payments imposed shall not exceed 5 % of the total average turnover of the recognised organisation in the preceding three business years for the activities falling under the scope of this Regulation.

4. The Court of Justice of the European Communities shall have unlimited jurisdiction to review decisions whereby the Commission has fixed a fine or periodic penalty payment. It may cancel, reduce or increase the fine or periodic penalty payment imposed.

#### Article 7

1. The Commission shall withdraw the recognition of an organisation:

- (a) whose repeated and serious failure to fulfil the minimum criteria set out in Annex I or its obligations under this Regulation is such that it constitutes an unacceptable threat to safety or the environment;
- (b) whose repeated and serious failure in its safety and pollution prevention performance is such that it constitutes an unacceptable threat to safety or the environment;
- (c) which prevents or repeatedly obstructs the assessment by the Commission;
- (d) which fails to pay the fines and/or periodic penalty payments referred to in Article 6(1) and (2); or
- (e) which seeks to obtain financial cover or reimbursement of any fines imposed on it pursuant to Article 6.

2. For the purpose of points (a) and (b) of paragraph 1, the Commission shall decide on the basis of all the available information, including:

- (a) the results of its own assessment of the recognised organisation concerned pursuant to Article 8(1);
- (b) reports submitted by Member States pursuant to Article 10 of Directive 2009/15/EC;
- (c) analyses of casualties involving ships classed by the recognised organisations;

(d) any recurrence of the shortcomings referred to in point (a) of Article 6(1);

(e) the extent to which the fleet in the recognised organisation's class is affected; and

(f) the ineffectiveness of the measures referred to in Article 6(2).

3. Withdrawal of recognition shall be decided by the Commission, upon its own initiative or at the request of a Member State, in accordance with the regulatory procedure referred to in Article 12(3) and after the recognised organisation concerned has been given the opportunity to submit its observations.

#### Article 8

1. All the recognised organisations shall be assessed by the Commission, together with the Member State which submitted the relevant request for recognition, on a regular basis and at least every two years to verify that they meet the obligations under this Regulation and fulfil the minimum criteria set out in Annex I. The assessment shall be confined to those activities of the recognised organisations, which fall within the scope of this Regulation.

2. In selecting the recognised organisations for assessment, the Commission shall pay particular attention to the safety and pollution prevention performance of the recognised organisation, to the casualty records and to the reports produced by Member States in accordance with Article 10 of Directive 2009/15/EC.

3. The assessment may include a visit to regional branches of the recognised organisation as well as random inspection of ships, both in service and under construction, for the purpose of auditing the recognised organisation's performance. In this case the Commission shall, where appropriate, inform the Member State in which the regional branch is located. The Commission shall provide the Member States with a report on the results of the assessment.

4. Each recognised organisation shall make available the results of its quality system management review to the Committee referred to in Article 12(1), on an annual basis.

#### Article 9

1. Recognised organisations shall ensure that the Commission has access to the information necessary for the purposes of the assessment referred to in Article 8(1). No contractual clauses may be invoked to restrict this access.

2. Recognised organisations shall ensure in their contracts with shipowners or operators for the issue of statutory certificates or class certificates to a ship that such issue shall be made conditional on the parties not opposing the access of the Commission inspectors on board that ship for the purposes of Article 8(1).

#### Article 10

1. Recognised organisations shall consult with each other periodically with a view to maintaining equivalence and aiming for harmonisation of their rules and procedures and the implementation thereof. They shall cooperate with each other with a view to achieving consistent interpretation of the international conventions, without prejudice to the powers of the flag States. Recognised organisations shall, in appropriate cases, agree on the technical and procedural conditions under which they will mutually recognise the class certificates for materials, equipment and components based on equivalent standards, taking the most demanding and rigorous standards as the reference.

Where mutual recognition cannot be agreed upon for serious safety reasons, recognised organisations shall clearly state the reasons therefor.

Where a recognised organisation ascertains by inspection or otherwise that material, a piece of equipment or a component is not in compliance with its certificate, that organisation may refuse to authorise the placing on board of that material, piece of equipment or component. The recognised organisation shall immediately inform the other recognised organisations, stating the reasons for its refusal.

Recognised organisations shall recognise, for classification purposes, certificates of marine equipment bearing the wheel mark in accordance with Council Directive 96/98/EC of 20 December 1996 on marine equipment <sup>(1)</sup>.

They shall provide the Commission and the Member States with periodic reports on fundamental progress in standards and mutual recognition of certificates for materials, equipment and components.

2. The Commission shall submit a report to the European Parliament and the Council by 17 June 2014, based on an independent study, on the level reached in the process of harmonising the rules and procedures and on mutual recognition of certificates for materials, equipment and components.

3. The recognised organisations shall cooperate with port State control administrations where a ship of their class is concerned, in particular in order to facilitate the rectification of reported deficiencies or other discrepancies.

4. The recognised organisations shall provide to all Member States' administrations which have granted any of the authorisations provided for in Article 3 of Directive 2009/15/EC and to the Commission all relevant information about their classed fleet, transfers, changes, suspensions and withdrawals of class, irrespective of the flag the ships fly.

Information on transfers, changes, suspensions, and withdrawals of class, including information on all overdue surveys, overdue recommendations, conditions of class, operating conditions or operating restrictions issued against their classed ships, irrespective of the flag the ships fly, shall also be communicated electronically to the common inspection database used by the Member States for the implementation of Directive 2009/16/EC of the European Parliament and of the Council of 23 April 2009 on port State control <sup>(2)</sup> at the same time as it is recorded within the recognised organisation's own systems and in any case no later than 72 hours after the event that gave rise to the obligation to communicate the information. That information, with the exception of recommendations and conditions of class which are not overdue, shall be published on the website of these recognised organisations.

5. The recognised organisations shall not issue statutory certificates to a ship, irrespective of its flag, which has been declassified or is changing class for safety reasons, before giving the opportunity to the competent administration of the flag State to give its opinion within a reasonable time as to whether a full inspection is necessary.

6. In cases of transfer of class from one recognised organisation to another, the losing organisation shall, without undue delay, provide the gaining organisation with the complete history file of the ship and, in particular, inform it of:

- (a) any overdue surveys;
- (b) any overdue recommendations and conditions of class;
- (c) operating conditions issued against the ship; and
- (d) operating restrictions issued against the ship.

New certificates for the ship can be issued by the gaining organisation only after all overdue surveys have been satisfactorily completed and all overdue recommendations or conditions of class previously issued in respect of the ship have been completed as specified by the losing organisation.

Prior to the issue of the certificates, the gaining organisation must advise the losing organisation of the date of issue of the certificates and confirm the date, place and action taken to satisfy each overdue survey, overdue recommendation and overdue condition of class.

<sup>(1)</sup> OJ L 46, 17.2.1997, p. 25.

<sup>(2)</sup> See page 57 of this Official Journal.

Recognised organisations shall establish and implement appropriate common requirements concerning cases of transfer of class where special precautions are necessary. Those cases shall, as a minimum, include the transfer of class of ships of 15 years of age or over and the transfer from a non-recognised organisation to a recognised organisation.

Recognised organisations shall cooperate with each other in properly implementing the provisions of this paragraph.

#### Article 11

1. Recognised organisations shall set up by 17 June 2011 and maintain an independent quality assessment and certification entity in accordance with the applicable international quality standards where the relevant professional associations working in the shipping industry may participate in an advisory capacity.

2. The quality assessment and certification entity shall carry out the following tasks:

- (a) frequent and regular assessment of the quality management systems of recognised organisations, in accordance with the ISO 9001 quality standard criteria;
- (b) certification of the quality management systems of recognised organisations, including organisations for which recognition has been requested in accordance with Article 3;
- (c) issue of interpretations of internationally recognised quality management standards, in particular to take account of the specific features of the nature and obligations of recognised organisations; and
- (d) adoption of individual and collective recommendations for the improvement of recognised organisations' processes and internal control mechanisms.

3. The quality assessment and certification entity shall have the necessary governance and competences to act independently of the recognised organisations and shall have the necessary means to carry out its duties effectively and to the highest professional standards, safeguarding the independence of the persons performing them. The quality assessment and certification entity will lay down its working methods and rules of procedure.

4. The quality assessment and certification entity may request assistance from other external quality assessment bodies.

5. The quality assessment and certification entity shall provide the interested parties, including flag States and the Commission, with full information on its annual work plan as well as on its findings and recommendations, particularly with regard to situations where safety might have been compromised.

6. The quality assessment and certification entity shall be periodically assessed by the Commission.

7. The Commission shall report to the Member States on the results and follow-up of its assessment.

#### Article 12

1. The Commission shall be assisted 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 <sup>(1)</sup>.

2. Where reference is made to this paragraph, Articles 3 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

3. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at three months.

4. Where reference is made to this paragraph, Article 5a(1) to (4) and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

#### Article 13

1. This Regulation may, without broadening its scope, be amended in order to update the minimum criteria set out in Annex I taking into account, in particular, the relevant decisions of the IMO.

These measures designed to amend non-essential elements of this Regulation shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 12(4).

2. Amendments to the international conventions defined in Article 2(b) of this Regulation may be excluded from the scope of this Regulation, pursuant to Article 5 of Regulation (EC) No 2099/2002.

<sup>(1)</sup> OJ L 324, 29.11.2002, p. 1.

*Article 14*

1. The Commission shall adopt and publish:
  - (a) criteria to measure the effectiveness of the rules and procedures as well as the performance of the recognised organisations as regards the safety of, and the prevention of pollution from, their classed ships, having particular regard to the data produced by the Paris Memorandum of Understanding on Port State Control and/or by other similar schemes; and
  - (b) criteria to determine when such performance is to be considered an unacceptable threat to safety or the environment, which may take into account specific circumstances affecting smaller-sized or highly specialised organisations.

These measures designed to amend non-essential elements of this Regulation by supplementing it shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 12(4).

2. The measures designed to amend non-essential elements of this Regulation by supplementing it relating to the implementation of Article 6 and, if appropriate, Article 7 shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 12(4).

3. Without prejudice to the immediate application of the minimum criteria set out in Annex I, the Commission may, in accordance with the regulatory procedure referred to in Article 12(3), adopt rules on their interpretation and may consider the establishment of objectives for the general minimum criteria referred to in point 3, Part A of Annex I.

*Article 15*

1. The organisations which, at the entry into force of this Regulation, had been granted recognition in accordance with Directive 94/57/EC shall retain their recognition, subject to the provisions of paragraph 2.

2. Without prejudice to Articles 5 and 7, the Commission shall re-examine all limited recognitions granted under Directive 94/57/EC in light of Article 4(3) of this Regulation by 17 June 2010, with a view to deciding, in accordance with the regulatory procedure referred to in Article 12(3), whether the limitations are to be replaced by others or removed. The limitations shall continue to apply until the Commission has taken a decision.

*Article 16*

In the course of the assessment pursuant to Article 8(1), the Commission shall verify that the holder of the recognition is the relevant legal entity within the organisation to which the provisions of this Regulation shall apply. If that is not the case, the Commission shall take a decision amending that recognition.

Where the Commission amends the recognition, the Member States shall adapt their agreements with the recognised organisation to take account of the amendment.

*Article 17*

The Commission shall, on a biennial basis, inform the European Parliament and the Council on the application of this Regulation.

*Article 18*

References in Community and national law to Directive 94/57/EC shall be construed, as appropriate, as being made to this Regulation and shall be read in accordance with the correlation table in Annex II.

*Article 19*

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

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Strasbourg, 23 April 2009.

*For the European Parliament*  
The President  
H.-G. PÖTTERING

*For the Council*  
The President  
P. NEČAS

## ANNEX I

**MINIMUM CRITERIA FOR ORGANISATIONS TO OBTAIN OR TO CONTINUE TO ENJOY COMMUNITY RECOGNITION****(referred to in Article 3)**

## A. GENERAL MINIMUM CRITERIA

1. A recognised organisation must have legal personality in the State of its location. Its accounts shall be certified by independent auditors.
2. The recognised organisation must be able to document extensive experience in assessing the design and construction of merchant ships.
3. The recognised organisation must be equipped at all times with significant managerial, technical, support and research staff commensurate with the size of the fleet in its class, its composition and the organisation's involvement in the construction and conversion of ships. The recognised organisation must be capable of assigning to every place of work, when and as needed, means and staff commensurate with the tasks to be carried out in accordance with general minimum criteria under points 6 and 7 and with the specific minimum criteria under part B.
4. The recognised organisation must have and apply a set of own comprehensive rules and procedures, or the demonstrated ability thereto, for the design, construction and periodic survey of merchant ships, having the quality of internationally recognised standards. They must be published and continually upgraded and improved through research and development programmes.
5. The recognised organisation must have its register of ships published on an annual basis or maintained in an electronic database accessible to the public.
6. The recognised organisation must not be controlled by shipowners or shipbuilders, or by others engaged commercially in the manufacture, equipping, repair or operation of ships. The recognised organisation is not substantially dependent on a single commercial enterprise for its revenue. The recognised organisation does not carry out class or statutory work if it is identical to or has business, personal or family links to the shipowner or operator. This incompatibility shall also apply to surveyors employed by the recognised organisation.
7. The recognised organisation must operate in accordance with the provisions set out in the Annex to IMO Resolution A.789(19) on specifications on the survey and certification functions of recognised organisations acting on behalf of the administration, in so far as they cover matters falling within the scope of this Regulation.

## B. SPECIFIC MINIMUM CRITERIA

1. The recognised organisation must provide worldwide coverage by its exclusive surveyors or, in exceptional and duly justified cases, through exclusive surveyors of other recognised organisations.
2. The recognised organisation must be governed by a code of ethics.
3. The recognised organisation must be managed and administered in such a way as to ensure the confidentiality of information required by the administration.
4. The recognised organisation must provide relevant information to the administration, to the Commission and to interested parties.

5. The recognised organisation, its surveyors and its technical staff shall carry out their work without in any way harming the intellectual property rights of shipyards, equipment suppliers, and shipowners, including patents, licences, know-how, or any other kind of knowledge whose use is legally protected at international, Community or national level; under no circumstances, and without prejudice to the assessment powers of Member States and the Commission and in particular under Article 9, may either the recognised organisation or the surveyors and technical staff, whom it employs pass on or divulge commercially relevant data obtained in the course of their work of inspecting, checking, and monitoring ships under construction or repair.
6. The recognised organisation's management must define and document its policy and objectives for, and commitment to, quality and must ensure that this policy is understood, implemented and maintained at all levels in the recognised organisation. The recognised organisation's policy must refer to safety and pollution prevention performance targets and indicators.
7. The recognised organisation must ensure that:
  - (a) its rules and procedures are established and maintained in a systematic manner;
  - (b) its rules and procedures are complied with and an internal system to measure the quality of service in relation to these rules and procedures is put in place;
  - (c) the requirements of the statutory work for which the recognised organisation is authorised are satisfied and an internal system to measure the quality of service in relation to compliance with the international conventions is put in place;
  - (d) the responsibilities, powers and interrelation of personnel whose work affects the quality of the recognised organisation's services are defined and documented;
  - (e) all work is carried out under controlled conditions;
  - (f) a supervisory system is in place which monitors the actions and work carried out by surveyors and technical and administrative staff employed by the recognised organisation;
  - (g) surveyors have an extensive knowledge of the particular type of ship on which they carry out their work as relevant to the particular survey to be carried out and of the relevant applicable requirements;
  - (h) a system for qualification of surveyors and continuous updating of their knowledge is implemented;
  - (i) records are maintained, demonstrating achievement of the required standards in the items covered by the services performed, as well as the effective operation of the quality system;
  - (j) a comprehensive system of planned and documented internal audits of the quality related activities is maintained in all locations;
  - (k) the statutory surveys and inspections required by the harmonised system of survey and certification for which the recognised organisation is authorised are carried out in accordance with the provision set out in the Annex and Appendix to IMO Resolution A.948(23) on survey guidelines under the harmonised system of survey and certification;
  - (l) clear and direct lines of responsibility and control are established between the central and the regional offices of the recognised organisation and between the recognised organisations and their surveyors.

8. The recognised organisation must have developed, implemented and must maintain an effective internal quality system based on appropriate parts of internationally recognised quality standards and in compliance with EN ISO/IEC 17020:2004 (inspection bodies) and with EN ISO 9001:2000 (quality management systems, requirements), as interpreted and certified by the quality assessment and certification entity referred to in Article 11(1).
  9. The rules and procedures of the recognised organisation must be implemented in such a way that the organisation remains in a position to derive from its own direct knowledge and judgment a reliable and objective declaration on the safety of the ships concerned by means of class certificates on the basis of which statutory certificates can be issued.
  10. The recognised organisation must have the necessary means of assessing, through the use of qualified professional staff and pursuant to the provisions set out in the Annex to IMO Resolution A.913(22) on guidelines on implementation of the International Safety Management (ISM) Code by administrations, the application and maintenance of the safety management system, both shore-based and on board ships, intended to be covered in the certification.
  11. The recognised organisation must allow participation in the development of its rules and procedures by representatives of the administration and other parties concerned.
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## ANNEX II

## Correlation table

Directive 94/57/EC	Directive 2009/15/EC	This Regulation
Article 1	Article 1	Article 1
Article 2(a)	Article 2(a)	Article 2(a)
Article 2(b)	Article 2(b)	—
Article 2(c)	Article 2(c)	—
Article 2(d)	Article 2(d)	Article 2(b)
Article 2(e)	Article 2(e)	Article 2(c)
—	Article 2(f)	Article 2(d)
Article 2(f)	Article 2(g)	Article 2(e)
Article 2(g)	Article 2(h)	Article 2(f)
Article 2(h)	Article 2(i)	Article 2(g)
Article 2(i)	Article 2(k)	Article 2(i)
—	Article 2(j)	Article 2(h)
Article 2(j)	Article 2(l)	—
Article 2(k)	—	Article 2(j)
Article 3	Article 3	—
Article 4(1) first phrase	—	Article 3(1)
Article 4(1) second phrase	—	Article 3(2)
Article 4(1) third phrase	—	—
Article 4(1) fourth phrase	—	Article 4(1)
—	—	Article 3(3)
—	—	Article 4(2), (3), (4)
—	—	Article 5
—	—	Article 6
—	—	Article 7
Article 5(1)	Article 4(1)	—
Article 5(3)	Article 4(2)	—
Article 6(1), (2), (3), (4)	Article 5(1), (2), (3), (4)	—
Article 6(5)	—	—
Article 7	Article 6	Article 12
Article 8(1) first indent	Article 7(1), point (a) of first subparagraph	—
Article 8(1) second indent	—	Article 13(1)
Article 8(1) third indent	Article 7(1), point (b) of first subparagraph	—
—	Article 7(1) second subparagraph	Article 13(1) second subparagraph
Article 8(2)	Article 7(2)	—
Article 8(2) second subparagraph	—	Article 13(2)

Directive 94/57/EC	Directive 2009/15/EC	This Regulation
Article 9(1)	—	—
Article 9(2)	—	—
Article 10(1) introductory wording	Article 8	—
Article 10(1)(a), (b), (c), (2), (3), (4)	—	—
Article 11(1), (2)	Article 9(1), (2)	—
Article 11(3), (4)	—	Article 8(1), (2)
Article 12	Article 10	—
Article 13	—	—
Article 14	Article 11(1), (2)	—
—	Article 11(3)	—
—	Article 12	—
—		Article 9
Article 15(1)		Article 10(1), (2)
Article 15(2)		Article 10(3)
Article 15(3)	—	Article 10(4)
Article 15(4)		Article 10(5)
Article 15(5)		Article 10(6) first, second, third, fifth subparagraphs
—		Article 10(6) fourth subparagraph
Article 16	Article 13	—
Article 17	Article 16	—
—	Article 14	—
—	Article 15	—
		Article 11
		Article 14
		Article 15
		Article 16
		Article 17
		Article 18
		Article 19
Annex		Annex I
	Annex I	
	Annex II	Annex II

**COMMISSION IMPLEMENTING REGULATION (EU) No 1355/2014****of 17 December 2014****amending Regulation (EC) No 391/2009 with regard to the adoption by the International Maritime Organization (IMO) of certain Codes and related amendments to certain conventions and protocols****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EC) No 391/2009 of the European Parliament and of the Council of 23 April 2009 on common rules and standards for ship inspection and survey organisations <sup>(1)</sup>, and in particular Article 13(2) thereof,

Acting in accordance with the conformity checking procedure set out in Article 5 of Regulation (EC) No 2099/2002 of the European Parliament and of the Council establishing a Committee on Safe Seas and the Prevention of Pollution from Ships (COSS) <sup>(2)</sup>,

Whereas:

- (1) Pursuant to Article 5(1) of Regulation (EC) No 2099/2002, Member States and the Commission shall cooperate in order to define, as appropriate, a common position or approach in the competent international fora with a view to reducing the risks of conflict between the maritime legislation of the Union and international instruments.
- (2) Regulation (EC) No 391/2009 forms together with Directive 2009/15/EC of the European Parliament and the Council <sup>(3)</sup> one coherent piece of legislation where the activities of recognised organisations are regulated in a consistent manner in accordance with the same principles and definitions. Pursuant to Article 3(2) of Directive 2009/15/EC, if a Member State decides, with respect to ships flying its flag, to authorise an organisation to carry out on its behalf the inspections and surveys related to statutory certificates, it shall entrust these duties only to a recognised organisation, which, pursuant to Article 2(g) of that Directive, means an organisation recognised in accordance with Regulation (EC) No 391/2009. Therefore, the set of rules on the basis of which the organisations concerned are recognised has an impact on both acts.
- (3) The term 'international conventions' as defined in Article 2(b) of Regulation (EC) No 391/2009 means the International Convention for the Safety of Life at Sea of 1 November 1974 (the SOLAS Convention) with the exception of chapter XI-2 of the Annex thereto, the International Convention on Load Lines of 5 April 1966 (the Load Lines Convention) and the International Convention for the Prevention of Pollution from Ships of 2 November 1973 (the MARPOL Convention), together with the protocols and amendments thereto, and the related codes of mandatory status in all Member States, in their up-to-date version.
- (4) The IMO Assembly at its 28th session adopted an IMO Instruments Implementation Code (III Code), as set out in IMO resolution A.1070(28) of 4 December 2013, as well as amendments to the Load Lines Convention, with a view to rendering the III Code mandatory, together with an associated flag State audit scheme, as set out in IMO resolution A.1083(28) of 4 December 2013.
- (5) The IMO Marine Environment Protection Committee (MEPC) at its 66th session adopted amendments to the Protocol of 1978 relating to the MARPOL Convention, as set out in resolution MEPC.246(66) of 4 April 2014, and to the Protocol of 1997 relating to the MARPOL Convention, as modified by the Protocol of 1978 relating thereto, as set out in resolution MEPC.247(66) of 4 April 2014, with a view to rendering the III Code mandatory, together with an associated flag State audit scheme.

<sup>(1)</sup> OJ L 131, 28.5.2009, p. 11.

<sup>(2)</sup> OJ L 324, 29.11.2002, p. 1.

<sup>(3)</sup> Directive 2009/15/EC of the European Parliament and of the Council of 23 April 2009 on common rules and standards for ship inspection and survey organisations and for the relevant activities of maritime administration (OJ L 131, 28.5.2009, p. 47).

- (6) The IMO Maritime Safety Committee (MSC) at its 93rd session adopted amendments to the SOLAS Convention, as set out in resolution MSC.366(93) of 22 May 2014, and to the Protocol of 1988 relating to the Load Lines Convention, as set out in resolution MSC.375(93) of 22 May 2014, with a view to rendering the III Code mandatory, together with an associated flag State audit scheme.
- (7) The MEPC at its 65th session and the MSC at its 92nd session adopted an IMO Code for Recognized Organizations (RO Code), as set out in resolution MSC.349(92) of 21 June 2013.
- (8) The MEPC at its 65th session adopted amendments to the Protocol of 1978 relating to the MARPOL Convention with a view to rendering the RO Code mandatory, as set out in resolution MEPC.238(65) of 17 May 2013.
- (9) The MSC at its 92nd session adopted amendments to the SOLAS Convention and to the Protocol of 1988 relating to the Load Lines Convention with a view to rendering the RO Code mandatory, as set in resolutions MSC.350(92) and MSC.356(92) of 21 June 2013.
- (10) The III and RO Codes are therefore expected to enter into force during the period between 1 January 2015 until 1 January 2018 in accordance with the applicable rules for the adoption, ratification and entry into force of amendments under each of the IMO conventions concerned.
- (11) On 13 May 2013, the Council adopted Council Decision 2013/268/EU on the position to be taken on behalf of the European Union within the International Maritime Organization (IMO) with regard to the adoption of certain Codes and related amendments to certain conventions and protocols <sup>(1)</sup>. Pursuant to Article 5 of that Decision, the Council authorised the Member States to give their consent to be bound, in the interest of the Union and subject to the declaration set in the Annex of that Decision, by the amendments referred to in recitals 4 to 9 of this Regulation.
- (12) The declaration annexed to Council Decision 2013/268/EU states that Member States consider that the III Code and the RO Code contain a set of minimum requirements on which States can elaborate and improve as appropriate for the enhancement of maritime safety and the protection of the environment.
- (13) It also states that nothing in the III Code or RO Code shall be construed to restrict or limit in any way the fulfilment of Member States' obligations under the law of the Union in relation to the definition of 'statutory certificates' and 'class certificates', the scope of the obligations and criteria laid down for recognised organisations, and the duties of the European Commission as regards the recognition, assessment and, where appropriate, the imposition of corrective measures or sanctions on recognised organisations. The same declaration states that, in the case of an IMO audit, Member States will state that only compliance with those provisions of the relevant international conventions which Member States have accepted, including in the terms of this declaration, shall be verified.
- (14) In the legal order of the Union, the scope of Regulation (EC) No 391/2009 as well as that of Directive 2009/15/EC includes references to the 'international conventions' as described in recital 3. In this framework, amendments to IMO conventions are automatically brought into Union law at the same time when they enter into force at the international level, including the related codes of mandatory status such as the III and RO codes, which therefore form part of the IMO instruments relevant for the application of Regulation (EC) No 391/2009.
- (15) Amendments to international conventions may however be excluded from the scope of Union maritime legislation in accordance with the conformity checking procedure if they meet at least one of the two criteria set out in Article 5(2) of Regulation (EC) No 2099/2002.
- (16) The Commission evaluated the amendments to the IMO conventions in accordance with Article 5 of Regulation (EC) No 2099/2002 and determined that a number of discrepancies exist between, on the one hand, the III Code and the RO Code, and, on the other hand, Regulation (EC) No 391/2009 and Directive 2009/15/EC.
- (17) First, paragraph 16.1 of part 2 of the III Code provides for a minimum list of resources and processes which flag States have to establish, including the provision of administrative instructions pertaining, inter alia, to ship class certificates required by the flag State to demonstrate compliance with structural, mechanical, electrical, and/or

<sup>(1)</sup> Council Decision 2013/268/EU of 13 May 2013 on the position to be taken on behalf of the European Union within the International Maritime Organization (IMO) with regard to the adoption of certain Codes and related amendments to certain conventions and protocols (OJ L 155, 7.6.2013, p. 3).

other requirements of an international convention to which the flag State is a party or compliance with a requirement of the flag State's national regulation. As detailed in recital (21) below however, Union law draws a distinction between statutory certificates and class certificates. The latter are documents of a private nature and are neither acts of a flag State nor issued on any flag State's behalf. This provision of the III Code in fact refers to SOLAS Chapter II-1, Part A-1, Regulation 3-1, which provides that ships shall be designed, constructed and maintained in compliance with the structural, mechanical and electrical requirements of a classification society which is recognized by the Administration in accordance with the provisions of regulation XI-1/1. 1. The SOLAS convention clearly identifies the ship or its legal representation vis-à-vis the flag State as the object of this requirement. Furthermore, when acting in its capacity as class society, a recognised organisation issues ship class certificates in accordance with its own rules, procedures, conditions and private contractual arrangements, to which the flag State is not a party. Therefore, this provision of the III Code contradicts the delineation of class and statutory activities as set out in the existing EU legislation.

- (18) Second, paragraph 18.1 of part 2 of the III Code requires the flag State to determine, *'with regard only to ships entitled to fly its flag'*, that a recognised organisation has adequate resources in terms of technical, managerial and research capabilities to accomplish the duties entrusted to it. In contrast, this aspect is addressed under Union law as a requirement for the purpose of the recognition as reflected in criterion A.3 in Annex I of Regulation (EC) No 391/2009, and with regard to the entire fleet in the class of the organisation concerned, without distinction based on flag. Should the above provision of the III Code be incorporated into Union law, it would restrict the application of criterion A.3 in Annex I of Regulation (EC) No 391/2009 to the recognised organisation's performance with regard only to ships flying the flag of Member States, in contradiction with the requirements currently in force.
- (19) Third, paragraph 19 of part 2 of the III Code introduces a prohibition for a flag State to mandate its recognised organisations to apply to ships, other than those entitled to fly its flag, any requirements pertaining to, inter alia, their classification rules, requirements or procedures. Pursuant to Directive 2009/15/EC, Member States can only authorise an organisation to act on their behalf for the statutory certification of their respective fleet if that organisation has been recognised and is being monitored for this purpose in accordance with Regulation (EC) No 391/2009. In this framework, the recognised organisations as such have to comply with certain requirements in their relevant activities across their classed fleet, irrespective of the flag. This relates to most of the criteria set out in Annex I of Regulation (EC) No 391/2009, as well as to other obligations, in particular Article 10(4) of that Regulation. Should the above provision of the III Code be incorporated into Union law, it would restrict the application of the existing recognition requirements in Regulation (EC) No 391/2009, inter alia, if they qualify as rules, requirements and procedures to the recognised organisation's performance with regard only to ships flying the flag of Member States.
- (20) Fourth, section 1.1 of part 2 of the RO Code defines a 'Recognized Organization' as an organisation assessed by a flag State, and found to comply with part 2 of the RO Code. In contrast, Article 2(e) of Regulation (EC) No 391/2009 provides that a recognised organisation is *'an organisation recognised in accordance with this Regulation'*. Based on the Commission's evaluation set out in recitals (21) to (23), it appears that several provisions in part 2 of the RO Code are incompatible with Regulation (EC) No 391/2009. Consequently, a recognised organisation as defined in the RO Code would not fulfil all the requirements of Regulation (EC) No 391/2009 and could therefore not meet the definition of a recognised organisation as set out in Union law.
- (21) Fifth, section 1.3 of part 2 of the RO Code defines 'statutory certification and services' as a single category of activities that a recognised organisation is entitled to perform on behalf of the flag State, including the issuance of certificates pertaining to both statutory and class requirements. In contrast, the definitions set out in Article 2(g) and (i) of Regulation (EC) No 391/2009 draw a clear distinction between 'statutory certificates', which are those certificates issued by or on behalf of a flag State in accordance with the international conventions, and 'class certificates', which are those documents issued by a recognised organisation, in its capacity as class society, certifying the fitness of a ship for a particular use or service in accordance with the rules and procedures laid down and made public by that recognised organisation. It follows that, under Union law, statutory and class certificates are distinct and have different natures. Namely, statutory certificates have a public nature, while class certificates have a private nature, being issued by the class society in accordance with its own rules, procedures and conditions. It follows that classification certificates issued by a recognised organisation for a ship in order to attest compliance with classification rules and procedures, including when verified by a flag State as proof of compliance with SOLAS Chapter II-1, Part A-1, Regulation 3-1, are documents of a strictly private nature which are neither acts of a flag State nor carried out on any flag State's behalf. In the RO Code however, 'statutory certification and services' are systematically referred to as being performed by the RO *'on behalf of the flag State'*, contradicting the legal distinction established in Union law. Notwithstanding this contradiction, this provision of

the RO Code, if accepted as a norm in the Union legal order, entails a manifest risk that the recognition requirements contained in Regulation (EC) No 391/2009 which pertain to the entire activity of the organisation, irrespective of flag, could no longer be enforced within the EU.

- (22) Sixth, section 3.9.3.1 of part 2 of the RO Code provides for a mechanism of cooperation between recognised organisations under the sole framework established by the flag State with the view to standardising processes concerning statutory certification and services for the flag State, as appropriate; whereas section 3.9.3.2 of part 2 of the same Code establishes a framework by a flag State or 'a group of flag States' to regulate cooperation among their recognised organisations on technical and safety-related aspects of 'statutory certification and services of ships [...] on behalf of the said flag State(s)'. In contrast, cooperation between recognised organisations under Union law is governed by Article 10(1) of Regulation (EC) No 391/2009, which requires recognised organisations to consult with each other with a view to maintaining equivalence and aiming for harmonisation of their rules and procedures and the implementation thereof, and sets out a framework for the mutual recognition, in appropriate cases, of class certificates for materials, equipment and components. Those two cooperation processes under Article 10(1) pertain to the private activities of the recognised organisations, in their capacity as classification societies, and therefore apply without distinction based on flag. The cooperation mechanisms provided for in the RO Code, if incorporated into Union law, would therefore limit the scope of the cooperation framework established by Regulation (EC) No 391/2009 to the recognised organisations' activities with regard only to ships flying the flag of Member States, in contradiction with the requirements currently in force.
- (23) Seventh, section 3.9.3.3 of part 2 of the RO Code is identical to paragraph 19 of part 2 of the III Code; therefore the considerations made in recital 19 are equally relevant to this provision of the RO Code.
- (24) Nothing in either the III Code or the RO Code should place any restrictions on the Union's capacity to lay down, in accordance with the Treaties and international law, appropriate conditions for the granting of recognition to organisations wishing to be authorised by the Member States to carry out ship survey and certification activities on their behalf, with a view to achieving the Union's objectives and in particular to enhance maritime safety and the protection of the environment.
- (25) The scheme for the mutual recognition of class certificates for materials, equipment and components laid down by Article 10(1) of Regulation (EC) No 391/2009 is only enforceable within the Union in respect of ships flying the flag of a Member State. As far as foreign vessels are concerned, the acceptance of relevant certificates remains at the discretion of relevant non-EU flag States in the exercise of their exclusive jurisdiction, notably under the United Nations Convention on the Law of the Sea (UNCLOS).
- (26) Based on its evaluation, the Commission determined that the provisions of the III Code and of the RO Code referred to in the preceding recitals are incompatible with Regulation (EC) No 391/2009 and should be excluded from the scope of that Regulation. Therefore Article 2(b) of Regulation (EC) No 391/2009 should be amended accordingly.
- (27) As the RO Code enters into force on 1 January 2015, this Regulation should enter into force as soon as possible after its date of publication.
- (28) The Committee on Safe Seas and the Prevention of Pollution from Ships (COSS) did not deliver an opinion on the measures provided for in this Regulation. An implementing act was deemed to be necessary and the chair submitted the draft implementing act to the appeal committee for further deliberation. The measures provided for in this Regulation are in accordance with the opinion of the appeal committee,

HAS ADOPTED THIS REGULATION:

#### Article 1

In Article 2 of Regulation (EC) No 391/2009, point (b) is replaced by the following:

- '(b) "international conventions" means the International Convention for the Safety of Life at Sea of 1 November 1974 (SOLAS 74) with the exception of chapter XI-2 of the Annex thereto, the International Convention on Load Lines of 5 April 1966 and the International Convention for the Prevention of Pollution from Ships of 2 November 1973 (MARPOL), together with the protocols and amendments thereto, and the related codes of mandatory status in all Member States, with the exception of paragraphs 16.1, 18.1 and 19 of part 2 of the

IMO Instruments Implementation Code, and of sections 1.1, 1.3, 3.9.3.1, 3.9.3.2 and 3.9.3.3 of part 2 of the IMO Code for Recognized Organizations, in their up-to-date version.'

*Article 2*

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

It shall apply from 1 January 2015.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 17 December 2014.

*For the Commission*

*The President*

Jean-Claude JUNCKER

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