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REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL

pursuant to article 10.2 of Regulation (EC) N° 391/2009 on common rules and standards for ship inspection and survey organisations

I. Introduction

This report reviews the implementation by the Recognised Organisations of Article 10 (1) of Regulation (EC) N° 391/2009 (hereinafter referred to as "the Regulation") regarding harmonisation of their rules and procedures and setting up a system of mutual recognition of their class certificates for equipment, materials and components.

The present report is based on an independent study, in accordance with Article 10 (2) of the aforementioned Regulation[1].

In the exercise of their flag state responsibilities, flag administrations can delegate statutory responsibilities stemming from international conventions to ship inspection and survey organisations ("classification societies"). Each organisation is responsible and accountable to the flag administration for the work that it carries out on the administration's behalf.

Core responsibilities delegated to these organisations are described in international conventions of the International Maritime Organisation or within relevant Union law. Within the EU, the Regulation as well as Directive 2009/15/EC[2] set out common rules and standards for ship inspection and survey organisations and establish the legal framework for recognition of ship inspection and survey organisations and for the relevant activities of maritime administrations of the Member States who can only authorise organisations recognised under the Regulation (EU ROs) for the aforementioned statutory work.

At international level, the International Maritime Organisation Instrument Implementation and Recognised Organisation Codes which are in force since 1st January 2015 establish the relevant legal framework. In view of ensuring compliance with Union legislation with the said Codes the Commission adopted the Commission Implementing Directive 2014/111/EU[3] and the Commission Implementing Regulation (EU) N° 1355/2014[4].

Recital (25) of Commission Implementing Regulation (EU) N° 1355/2014 clarifies that the scheme for the mutual recognition of class certificates for materials, equipment and components laid down by Article 10(1) of Regulation (EC) N° 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).

In the conduct of their activity, classification societies oblige manufacturers to comply with different sets of requirements which are developed by each society. These requirements are important for the construction and operation of ships and play a role in reassuring the ship's owner and insurer, and ultimately the flag State about the safety of the vessel.

The absence of mutual recognition of class certificates between societies results in the need for multiple certifications: in order to be able to operate on a global scale (and to have access to a wide range of ship-owners who select a classification society to supervise the

[1] http://ec.europa.eu/transport/modes/maritime/studies/maritime_en.htm

[2] Directive 2009/15/EC of the European Parliament and of the Council on common rules and standards for ship inspection and survey organisations and for the relevant activities of maritime administrations (OJ L 131, 28.5.2009, p.47).

[3] 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.

[4] 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.

construction of a ship), marine equipment suppliers are required to obtain, for the same piece of equipment, a certificate from different classification societies certifying the conformity with often very similar requirements and sometimes based on identical tests even carried out at the same laboratories (which often happen to be the manufacturer's).This issue is addressed in article 10 (1) of Regulation (EC) N° 391/2009 as the matter of whether a product is to be certified by one or more classification societies is also important from an EU internal market perspective.

The Regulation places an obligation on EU recognised organisations to harmonise their classification rules and set up a system of mutual recognition of their classification certificates for equipment, materials and components. In particular, according to Article 10 (1) of this Regulation, "*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."

This type of harmonisation has to be distinguished from the EU harmonisation for statutory requirements for marine equipment. The Marine Equipment Directive[5] (MED) regulates equipment installed on board a vessel for which a "carriage requirement" under one or more of the international conventions exists (e.g. for marine pollution prevention, fire protection, navigation, life-saving appliances). Member States are not allowed to prohibit the placing on the market or the placing on board an EU-flagged ship of marine equipment which complies with the MED, nor refuse to issue certificates relating hereto to the ships flying their flag. The respective equipment has to bear as a visible sign of conformity with the MED the so called 'wheel mark'. The Union has concluded a Mutual Recognition Agreement[6] with the United States to facilitate trade and to avoid multiple certification of wheel marked equipment.

However, a vast range of marine equipment (e.g. equipment not included in the international conventions) is not within the scope of the MED but subject to certification requirements of classification societies. Such equipment is targeted by Article 10 (1) of the abovementioned Regulation.

II. Progress to date

The Regulation does not set specific ways in which the mutual recognition should be implemented. Neither does it set specific deadlines. Thus it provided flexibility to the EU recognised organisations to cooperate among themselves as well as with other stakeholders, for example the Ships & Maritime Equipment Association (SEA Europe), and decide upon the necessary steps for its implementation.

[5] Council Directive 96/98/EC of 20 December 1996 on marine equipment (OJ L 046, 17.2.1997, p.25), as amended.
[6] http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:JOL_2004_150_R_0042_01&from=EN

Regarding the first requirement (harmonisation), the EU recognised organisations have implemented a systematic approach in harmonising the technical and procedural conditions for certification of products eligible for the mutual recognition scheme. In doing so, the organisations claim they have used the most demanding and rigorous standards as the reference. In terms of the process of harmonisation of rules and procedures, a review of the current state of implementation has provided evidence that so far the extent this is still at its infancy. Although some mutual recognition Certificates have been issued under the "mutual recognition scheme", these exist in the market together with the individual recognised organisation' certificates for these specific products. In other words, the individual recognised organisation's certificates have not been withdrawn from the market. The above highlights the need for additional time to test the new mutual recognition Certificate in practice, which may become common practice and eventually replace the individually issued certificates.

Regarding the second requirement (mutual recognition), the EU recognised organisation considered the following scenarios:

1. to accept directly each other's standards as equivalent, recognising each other's certificates at face value;

2. to select and accept directly rules judged to be the most demanding and rigorous following assessment of all classification rules for products (materials/equipment/components) in question from all EU recognised organisations.

3. to develop afresh common technical requirements as the basis for issuing, in appropriate cases, an additional certificate which they mutually recognise. Individual certificates issued by each EU recognised organisation continue to exist in parallel to the proposed (mutually recognised) Certificate.

The organisations decided to follow the third approach to implement the obligations included in Article 10 (1) of the Regulation.

A risk assessment mechanism was created to assess products across the board according to a 6-level scale of safety criticality, as seen below (figure 1).

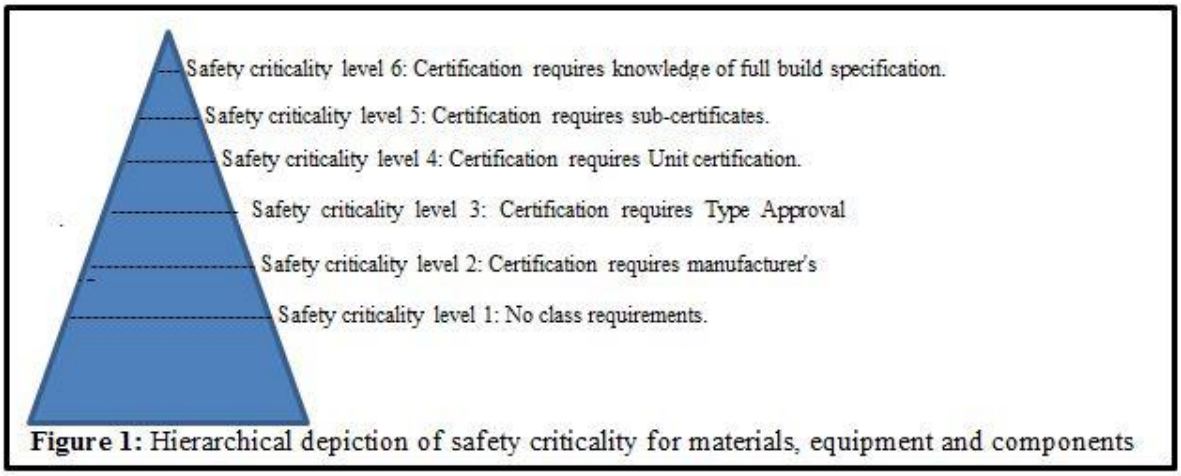

Figure 1: Hierarchical depiction of safety criticality for materials, equipment and components

The scale of safety criticality took the shape of a hierarchical pyramid[7]. Certification for the highest level (6th) of this pyramid requires knowledge of full build specification. Moving lower to the 5th level, the certification requires sub-certificates. Level 4th requires Unit certification, and level 3 requires Type approval alone. For the lower levels (1st and 2nd) there are no class requirements or only a manufacturer's certificate is expected. The EU recognised organisations agreed upon a set of technical requirements for a limited number (currently 34, to be increased to 44 as of 1st July 2015) of products, eligible for "Type Approval" certification, falling under the 3rd level of the safety criticality scale mentioned above. This specific type of certification has become known as the "mutual recognition scheme".

The Technical Requirements[8] for relevant certificates are agreed among EU recognised organisations and are published in Tiers. The progressive development of these Tiers has been accelerated due to accumulated experience over the recent years and has been listed (from initial concept to final release) in the table below:

Number of Tier	Initial concept	Final release
#1	29/6/2010	01/01/2013
#2	06/09/2011	01/07/2013
#3	24/09/2013	01/07/2014
#4	23/04/2014	foreseen for 01/07/2015
#5	21/04/2015	Ongoing work

The first Tier included Technical Requirements for 11 products (3rd safety criticality level) that entered into force in the beginning of 2013 and was followed by a second Tier (11 products, July 2013) and a third Tier (12 products, July 2014) always for the same (3rd) safety criticality level. A fourth Tier of Technical Requirements for 10 products, again of the 3rd safety criticality level enters into force on 1st July 2015. Preparations for the fifth Tier have started, with the industrial sector participating in the selection of the Technical Requirements for products of the fifth Tier, based on a consolidated list of (3rd safety criticality level) products, presented to them by the EU Recognised Organisations Mutual Recognition Group. All Tiers of the mutual recognition scheme are related to products of the Type Approval category because its criticality was shown to be low; thus, experience with the new scheme can be gained while limiting the risk to safety. Upon adoption of the fourth Tier, the 44 Technical Requirements of products eligible for this scheme will cover ca. 50% of the total type approval certification required in the classification rules of EU recognised organisations. The organisations are of the opinion that as the level of safety criticality increases, more complex processes will have to be considered; however, the list of products currently available is not considered going far enough to have added value for business because it only applies to a small market segment, according to the manufacturing sector.

While focussing on harmonisation of technical requirements the organisations could have opted for a simple mutual recognition of each other's certificates, at least regarding 3rd level safety critical products. This may have resulted in a quicker progress which would correspond more to the expectations of the marine equipment manufacturers.

[7] See page 12 (The EU ROs' approach to meeting Article 10) in: http://www.euromr.org/SiteAssets/Document%20Archive/EU_report_1212_L02.pdf
[8] Agreed Technical Requirements for mutual recognition: http://www.euromr.org/technical-requirements

III. On-going issues

Compliance with safety requirements

The mutual recognition scheme appears to be compliant with the safety considerations highlighted in Article 10 (1) of the Regulation. All key stakeholders have agreed that safety is of paramount importance.

The strictest rules apply for the preparation and implementation of the Technical Requirements for the mutual recognition Certificate and all EU recognised organisations follow the same rules for issuing the new mutual recognition Certificate. Moreover, any new mutual recognition Certificates that will be issued will have exactly the same standing worldwide. If however there is a non-acceptance incident of a mutual recognition Certificate by a certain EU recognised organisation, the group on EU recognised organisations have established internal reporting processes in order to establish the reasons why this was performed and address it accordingly, in compliance with the third subparagraph of Article 10 (1).

Involvement of stakeholders

It should be highlighted that the marine equipment industry is involved in the mutual recognition certification process only to a limited extent.

On one side, big original equipment manufacturers (OEMs) are more involved in the mutual recognition process due to their own interest and prior knowledge of similar certification processes in the past through other international collaborations e.g. international standardisation activities for electrical or mechanical products and equipment. However, smaller OEMs are not as well informed or involved due to their inherent market characteristics e.g. smaller size, constraints in terms of administrative and financial resources. It is this part of the marine equipment manufacturers that would appreciate more information regarding the mutual recognition certification scheme. Accordingly, it is this particular group of stakeholders that could most benefit from the Regulation as multiple certificates are less often affordable for these manufacturers.

A range of stakeholders share the view that there is lack of or limited information available[9]. This can be attributed to the limited time that the mutual recognition scheme has been up and running and showcased in the market (all existing mutual recognition Certificates have been issued over the last 18 months).

All EU recognised organisations have developed internal processes for the mutual recognition certification in order to increase awareness within their organisation. The latter has been applied both within the EU and worldwide (i.e. EU recognised organisations headquarters and site offices worldwide), very much related to the global operations of each organisation. At the time of the preparation of this report, a total of 14 mutual recognition Certificates have been published[10]. It is important to note that manufacturers which acquired those certificates do not only have their head offices in EU countries but also in USA, Taiwan and South Korea. This further highlights the global nature of the industry and the importance of as wide as possible acceptance of the issued mutual recognition Certificates.

[9] http://www.easy-content.be/Documents/Open.aspx?guid={0CF8BB9B-3D56-4E4F-ABCF-B3F8991A6A81}
http://ec.europa.eu/transport/modes/maritime/studies/maritime_en.htm

[10] See Appendix V of the independent study referred to in article 10.2 of Regulation (EC) 391/2009: http://ec.europa.eu/transport/modes/maritime/studies/maritime_en.htm

Cost and administrative burden related issues

At present there is also a lack of transparency concerning the **cost** of acquiring a mutual recognition Certificate.

It is difficult to obtain a full picture of the overall cost, as the cost for a new mutual recognition Certificate varies according to the item that it will be issued for. To this extent, for simple mass produced items (e.g. valves, electrical components, etc.), the cost for the new Certificate can vary from similar up to twice the price of one for the same product for which individual RO Type Approval certificates were previously required. However, for another category of specific products (e.g. one-off non-mass produced items) the cost of the new mutual recognition Certificate could potentially be significantly higher than for an individual recognised organisation Type Approval certificate. On the other hand, renewal fees seem to be similar to those for Type Approval certificates. A 5-year term of mutual recognition Certificates' renewal is a general practice among EU recognised organisations relating not only to Certificates issued under the mutual recognition scheme, but also to those of individual RO Type Approval (for the latter see also IMO Circular MSC.1/Circ.1221[11]). The fact that witness testing is required for some of the new mutual recognition Certificates, in combination with the necessity to meet more rigorous standards, has potentially led to an increase in cost in certain cases.

The preliminary data from the independent study demonstrate that the amount of **time** needed to acquire a mutual recognition Certificate varies a lot (from 6 months up to 2 years) depending on the product in question and the complexity of the overall process (i.e. administrative burden). Such fluctuations can partly be attributed also to the fact that there is only a limited number of mutual recognition Certificates already issued, thus making it challenging to draw general conclusions on aspects related to length of time needed. It has been reported[12] that, for a specific product, the mutual recognition Certificate and the individual EU recognised organisation's Type Approval certificate were both issued simultaneously. It is though important to acknowledge that as more mutual recognition Certificates are issued and the overall process becomes more standardised, the time necessary to acquire a new mutual recognition Certificate may be significantly reduced.

IV. Way forward

Safety criticality assessment mechanism

In terms of number of products eligible for the mutual recognition Certificate, the progress so far has been achieved only with regards to the 3rd safety criticality level. The EU recognised organisations have sought to include the marine equipment industry in the process as can be also observed through a long list[13] of meetings and initiatives taking place since 2009. At this stage it is important to address the concerns in the area of safety impact. This can be done by following the same risk based approach process used by the EU recognised organisations including the strictest Technical Requirements for all products[14] belonging to the 3rd safety criticality level that are included within existing Tiers (1, 2 and 3) as well as for the forthcoming two Tiers (4 and 5) of products to be published in the future (1/7/2015 and

[11] http://www.iho.int/mtg_docs/industry/ECDIS_workshop_12/MSC_Circ1221.pdf
[12] http://ec.europa.eu/transport/modes/maritime/studies/maritime_en.htm
[13] See Appendix I of the independent study referred to in article 10.2 of Regulation (EC) 391/2009: http://ec.europa.eu/transport/modes/maritime/studies/maritime_en.htm
[14] See Appendix II of the independent study referred to in article 10.2 of Regulation (EC) 391/2009: http://ec.europa.eu/transport/modes/maritime/studies/maritime_en.htm

summer 2016 respectively), and the need for witnessed testing, when necessary for the acquisition of a mutual recognition Certificate. In this way the approach of the mutual recognition scheme can gain momentum over time and further address safety concerns.

The development of a more advanced and comprehensive risk model for the selection of products belonging to the next (4th) safety criticality level would require the involvement of various stakeholder organisations, including insurers. The EU recognised organisations plan to conduct a 6 month pilot study to ensure that safety is maintained at the higher (4th) level.

End-user involvement

Industry stakeholders within the EU appear to be more active in terms of participation in the EU recognised organisations consultation process while global industry could appreciate higher involvement in the future. An indication of the above is the fact that out of 7 manufacturers already using the new mutual recognition Certificate for some of their products, 3 have their headquarters outside EU (i.e. USA, Taiwan and South Korea). This could enhance the global acceptance of the mutual recognition Certificates. Additional involvement by small OEMs would be also encouraged as they form the group which is less often involved in the current mutual recognition scheme implementation through associations, information workshops and other similar events. In this case the mutual recognition Certificates could increase the market access for Small and Medium sized Enterprises (SMEs). In practice though, due to the current ambiguity of voluntary mutual recognition Certificate acceptance by administrations worldwide, this may only be applicable for EU based SMEs supplying to ships flying the flag of a Member State. However, while global voluntary acceptance should be further promoted, the time to market as well as administrative costs, would be reduced for those companies targeting a wider audience.

Additional considerations

It is not clear at this juncture whether EU recognised organisations will manage to elaborate requirements for mutual recognition certifications for **more complex products in the near future**. Equipment manufacturers are eager to propose a list of possible new products with higher safety criticality. To this end, further steps have been suggested by SEA Europe and EU recognised organisations including planned meetings among major international industry stakeholders in order to discuss and receive feedback and recommendations for incorporating additional products in the scheme.

With regards to the currently existing products, as illustrated by the independent study, a significant proportion of stakeholders (such as manufacturers, ship-operators, insurers, shipyards, shipbuilders, ship repairers) had no information with regard to the use and acceptance of the mutual recognition Certificate nor knew whether mutual recognition Certificates were currently accepted by all EU recognised organisations.

Therefore **dissemination events** (e.g. workshops, seminars, etc.) in combination with wider distribution of existing information on the technical requirements of the eligible products for the mutual recognition scheme to a larger proportion of stakeholders with different industry interests could be envisaged to enlarge the outreach of the mutual recognition scheme to a wider audience. To this end, the two workshops organised by EU recognised organisations and SEA Europe so far have been perceived as an effective step in this direction and should be continued.

Providing for time to process recommendations and receipt of feedback on the scheme through available channels of communication[15] can enhance awareness and thus promote additional involvement by a larger group of interested stakeholders. Products/units that are already subject to common rules among EU recognised organisations could be a good starting point for the expansion of the scheme to the next (4th) level of safety criticality. Informing shipowners, shipbuilders and local surveyors of the mutual recognition scheme could further enhance its acceptance. Other measures that can promote the mutual recognition scheme would be to increase the transparency related to the cost for obtaining mutual recognition Certificates.

V. Conclusions

The mutual recognition scheme developed by EU recognised organisations is compliant with the EU Regulation although manufacturers criticise the application process for mutual recognition Certificates as not yet completely streamlined. Existing experience, which is very limited, shows that component suppliers still apply for individual certificates and additionally the mutual recognition Certificate. When witnessed testing is required for the latter, the cost is often considered overwhelming (especially for SMEs). Whilst there is a general lack of information outside the immediately affected stakeholders, additional information and dissemination events could improve awareness and participation in the mutual recognition certification scheme. Voluntary international acceptance is the most important obstacle to overcome and dialogue between industry representatives as well as between relevant public authorities may increase understanding and acceptance of the mutual recognition certification scheme outside the EU. Through the application of the risk based approach for the selection of items included in all Tiers of technical requirements for products of the 3rd safety criticality level, and the adherence to the strictest rules, safety is fully promoted through the mutual recognition scheme. Still there is room for expansion of the mutual recognition certification scheme to cover a broader range of marine equipment products (e.g. more complex products or materials) under different safety criticality levels.

Overall, at this juncture, the following can be concluded:

- The mutual recognition scheme developed by EU recognised organisations is compliant with the EU Regulation although its scope is still limited and should be further developed.

- At present mutual recognition Certificates co-exist with individual Type Approval certificates for the same products. Recognised organisations should consider simplifying the procedures for mutual recognition Certificates in appropriate cases so that their costs become more competitive and individual certificates can be phased out.

[15] Requesting Changes or Clarification of MR Technical Requirements (TRs) and Related Documentation: http://www.euromr.org/technical-requirements