

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 wheelmark in accordance with Council Directive 96/98/EC of 20 December 1996 on marine equipment¹.

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.”

The following paragraphs analyse the text of Article 10 (1), in order to clarify the new obligations on recognised organisations (Class Societies) and the role that the marine equipment industry can play in the reform of the classification/certification process.



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Efficient Classification: a win-win-win situation for the **Maritime Industry**

The Way Forward



Introduction

On the 11th of March 2009, the European Parliament adopted the new Class Regulation, as part of the third Maritime Safety Package. The recently adopted measure brings important innovation in the legal framework regulating the activities of classification societies (in the text of the Regulation defined as “recognised organisations”).

Article 10 (1) of the Regulation is particularly relevant for marine equipment suppliers. This provision, whose adoption EMEC has supported throughout the whole legislative procedure, reads as follows:

“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 therefore.

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

¹OJ L 46, 17.2.1997, p. 25.

Harmonisation

The first and second sentence of Article 10 (1) says that **“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.”**

Pursuant to the provision above; recognised organisations have a duty to engage in a regular process of consultation with a view to:

- 1.Maintaining equivalence of their rules and procedures and the implementation thereof;
- 2.Harmonising the rules, procedures (and their implementation) which are not “equivalent”.

Recognised organisations shall also cooperate to achieve a consistent interpretation of the international conventions, without prejudice to the power of flag States to adopt a particular interpretation of those conventions.

The advantages of this provision, in the medium to long term, are evident: the industry shall be able to rely on rules which will provide for an equivalent level of safety. Once harmonisation is introduced, marine equipment complying with the rules and procedures of a given recognised organisation should be deemed to be in compliance with the rules and procedures of all the other recognised organisations.

Achieving the result prescribed by the Regulation is a task that EC law assigns to recognised organisations. Yet, in the general interest, it is important that equipment suppliers (e.g. through EMEC and/or national associations) ensure their availability with a view to providing the know-how and the experience that is necessary to guarantee that the harmonised framework reflects the best available standards for safety and efficiency of shipping.

Mutual Recognition

The first paragraph of Article 10 (1) goes on as follows:

“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.”

Pursuant to the provision above, recognised organisations have the duty (in appropriate cases) to agree on the technical and procedural conditions which must be met for the **mutual recognition** of class certificates for marine equipment. Certificates must be based on equivalent standards in order to be mutually recognised and, when agreeing on technical and procedural conditions for mutual recognition, recognised organisations must take the most demanding and rigorous standards as the reference.

The benefits stemming from this provision are clear: recognised organisation must define a common standard (according to the law, the most demanding and rigorous available) for issuing certificates for marine equipment. Certificates based on that standard shall be **accepted** by all recognised organisations. Equipment suppliers shall no longer be forced to apply for as many certificates as are the recognised organisation. Their products and services will be tested **only once**, according to the most demanding and rigorous standards. The efficiency and competitiveness of both equipment suppliers and recognised organisations is expected to increase greatly: the latter shall compete in order to improve the reliability of their certificates and to meet the quality standards which are required by the Regulation, while the former will be able to focus on research and development of marine equipment, using the resources until now employed to carry out the burdensome certification process. Accordingly, there will be improvements for safety and quality of shipping.

Marine equipment suppliers, although not formally included in the process that will lead to mutual recognition, are invited to join EMEC and to cooperate with recognised organisations in order to advise on the best practises that shall allow mutual recognition of certificates with full guarantees for safety.

Exceptions

Article 10 (1) provides for certain general and individual exceptions to the principle of mutual recognition.

Under the **general exception**, recognised organisations may not agree on the mutual recognition of certain type of certificates for marine equipment “for serious safety reasons”. In those cases, they have nevertheless the duty of **“clearly stat(ing) the reasons therefore”**. It is up for recognised organisations to detect and specify the cases when mutual recognition would create a concrete risk for safety. In any case, the recognised organisations are bound to provide a valid justification for not mutually recognising certain types of certificates and that reasoning shall be subject to scrutiny by the Commission.

A **specific exception** from mutual recognition is foreseen for the case in which a material, a piece of equipment or component is not in compliance with its certificate. Recognised organisations may refuse to authorise the placing on board of that material, piece of equipment or component. This exception constitutes a safeguard for safety.

The individual recognised organisations are to decide how this rule will be applied in practice. It is clear, however, that this exception is not a waiver to systematically re-check all equipment that is placed on board: checks on compliance of equipment with certificates should depend on the nature of the equipment, the reliability of the manufacturer and the reliability of the recognised organisation that has issued the first certificate. Article 10 (1) prescribes that, in case the individual exception is accepted, **“the recognised organisation shall immediately inform the other recognised organisations, stating the reasons for its refusal.”** Ideally, look-alike and counterfeited products should find greater obstacles to be placed on board. This is in the interest of all parties concerned.

Automatic Recognition

Article 10 (1) of the Regulation prescribes that **“Recognised organisations shall recognise, for classification purposes, certificates of marine equipment bearing the wheelmark in accordance with Council Directive 96/98/EC of 20 December 1996 on marine equipment¹”**.

This provision has immediate and direct applicability and introduces mutual recognition for certificates issued on the basis of Directive 96/98/EC (the Marine Equipment Directive). Certificates bearing the wheelmark shall be recognised not only for statutory certification, but also for class certification.

Mutual recognition of wheelmark certificates for classification purpose will constitute an important benchmark for the introduction of mutual recognition of all class certificates.

Monitoring

The last sentence of Article 10 (1) of the Regulation states that recognised organisations **“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.”**

Pursuant to Article 10 (2) of the Regulation, **“the Commission shall submit a report to the European Parliament and the Council [...] 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”**

These two provisions clarify the importance that harmonisation and mutual recognition have for the EU Institutions and Member States. Recognised organisations shall inform the Commission and Member States of the progress in the application of Article 10 (1) of the Regulation. The Commission shall, in turn, inform the European legislator on the results achieved in the implementation of the Regulation. Should these results be unsatisfactory, the European Commission may be asked to adopt more stringent measures to encourage recognised organisation in advancing in the path of harmonisation and mutual recognition.

Indeed the Regulation currently in force entrusts recognised organisations with the task of conducting the process leading to greater harmonisation and mutual recognition. Marine equipment suppliers are called to support this process with the view to helping recognised organisations defining convergent rules and procedures and common standards for mutual recognition of certificates: the marine equipment industry has the technical competence and the know-how which are necessary to ensure that the revision of rules required by Article 10 (1) of the Regulation lead to the highest possible level of maritime safety and be beneficial to the whole shipping industry, stimulating at the same time a dynamic response from the market.

EMEC will continue its activity in the field of efficient class and will provide assistance to the European Commission and recognised organisations to ensure that Article 10 of the Regulation is correctly and successfully implemented.

¹OJ L 46, 17.2.1997, p. 25.