

## EBA Position Statement The Evolution of Skipper Licensing

### Executive Summary

In recent years worldwide travel has become much more accessible and recreational boaters<sup>1</sup> are taking to the seas and inland waters in increasing numbers to travel the world. As recreational boaters increasingly travel and live in different countries, they seek to operate vessels under a variety of flags and in many different countries. This may be on a boat they own or aboard a boat that has been hired. When doing so they encounter frustrating restrictions on the validity of the recreational boating evidence of competence they hold.

The standards of competence for seafarers are set internationally by the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW), 1978, as amended. However, in its application the STCW Convention excludes “pleasure yachts not engaged in trade”. To date the International Maritime Organisation (IMO) has not considered it necessary to mandate minimum standards of competence for recreational boats not engaged in trade, irrespective of size.

The International Certificate for Operators of Pleasure Craft (ICC) created by the United Nations Economic Commission for Europe (UNECE) Resolution 40<sup>a</sup>, provides a solution for skippers that are crossing borders between States that have accepted Resolution 40 and its standardised format improves recognition in countries that have not accepted Resolution 40, but only within the boundaries set by the national legislation. Ultimately the regulatory framework for skipper licensing for recreational boating is determined by national legislation.

The United Nations Convention on the Law of the Sea (UNCLOS) provides a framework for the use of the oceans. As of the date of this document 168 States or entities have ratified<sup>b</sup> the United Nations Convention on the Law of the Sea (UNCLOS) as in force as from 16/11/1994. UNCLOS defines the territorial limits a country can claim and whether a vessel is under the laws of its flag state alone or also those of the coastal state whose waters it is lying in. As a result, recreational boaters face uncertainty regarding the acceptance of their nationally issued certificates in other countries.

The skipper licensing regulatory framework for recreational boating has not evolved with the international lifestyles people now live. The European Boating Association<sup>2</sup> (EBA) is of the considered opinion that it is time to work towards a regulatory framework to facilitate recreational boat movements across borders worldwide and recreational bareboat chartering overseas.

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<sup>a</sup> UN Economic Commission for Europe Inland Transport Committee Working Party on Inland Water Transport Resolution 40 – International Certificate for Operators of Pleasure Craft. [www.unece.org/trans/doc/finaldocs/sc3/TRANS-SC3-147e.pdf](http://www.unece.org/trans/doc/finaldocs/sc3/TRANS-SC3-147e.pdf)

<sup>b</sup> Source [https://www.un.org/Depts/los/reference\\_files/UNCLOS%20Status%20table\\_ENG.pdf](https://www.un.org/Depts/los/reference_files/UNCLOS%20Status%20table_ENG.pdf) available at [https://www.un.org/Depts/los/convention\\_agreements/convention\\_overview\\_convention.htm](https://www.un.org/Depts/los/convention_agreements/convention_overview_convention.htm)

## Background

### IMO

Until the International Maritime Organisation (IMO)<sup>c</sup> International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW) 1978 came into force in 1984, the training and certification requirements for ships officers and ratings were established by individual governments. This was usually done without reference to practices in other countries.

STCW introduced minimum standards relating to training, certification and watchkeeping for seafarers which contracting countries are obliged to meet or exceed. The Convention was amended in 1995 by a major revision (which entered into force 1997) and introduced the STCW Code. In general terms the basic requirements were detailed in the Convention and were enlarged upon and explained in the Code. The minimum standards of competence required for seagoing personnel are given in detail in a series of tables. A further revision of STCW occurred in 2010 (and entered into force on 1 January 2012).

However, in its application the STCW Convention excludes “pleasure yachts not engaged in trade”. To date the IMO has not considered it necessary to mandate minimum standards of competence for recreational boats not engaged in trade, irrespective of size. The training and certification requirements for skippers of recreational boats are still established by individual governments, usually without reference to practices in other countries.

### Law of the Sea and the Coastal State<sup>d</sup>

The United Nations Convention on the Law of the Sea (UNCLOS) provides a framework for the use of the oceans. The convention defines the territorial limits a country can claim and whether a vessel is under the laws of its Flag State or also those of the state whose waters it is lying in.

Vessels are free to navigate the High Seas within the laws of their Flag State and only a warship of their own nation has the right to intercept them (other than to confirm the nationality of the vessel) unless they are committing an international crime such as piracy.

Under UNCLOS vessels have a right of passage through the territorial waters of another country; all vessels exercising this right of passage must undertake a continuous and expeditious passage through Territorial Waters and may not engage in any activity which does not have direct bearing on the passage. They must also abide by international conventions - such as Safety of Life at Sea (SOLAS), the International Regulations for Preventing Collisions at Sea (COLREGS) - and the Coastal State has the jurisdiction to ensure that they do so. Such passage is referred to in UNCLOS as “innocent passage”.

The Coastal State may also have laws and regulations which such vessels must adhere to, to ensure

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<sup>c</sup> IMO is a specialized agency of the United Nations and is the global standard-setting authority for the safety, security and environmental performance of international shipping. Its main role is to create a regulatory framework for the shipping industry that is fair and effective, universally adopted and universally implemented.

<sup>d</sup> Reproduced with the permission of the Royal Yachting Association.

safe navigation, regulation of maritime traffic, protection of navigational aids, facilities, pipelines, and cables, conservation and preservation of the environment and the living resources of the sea (including fisheries laws) and to prevent against infringement of customs, fiscal, immigration or sanitary laws and regulations of the Coastal State.

The majority of recreational boats will not however be regarded as being on a continuous and expeditious passage as they may be exploring the coastline, perhaps anchoring for lunch and they may also visit several ports within the Coastal State. These activities bring recreational boaters under the jurisdiction of the Coastal State (as does launching from a foreign shore) and they could then be required to adhere to all of the Coastal State's legislation, rules and regulations that apply to foreign flagged boats. This is in addition to any applicable Flag State legislation.

UNCLOS also defines a country's Internal Waters (waters which are landward of the Base Line) which includes many ports, harbours, estuaries and bays and of course the inland waters such as rivers and canals.

If a vessel makes a continuous and expeditious passage through territorial waters to a destination within Internal Waters such as a port, the right of passage ends on entering Internal Waters. By voluntarily entering a port or the Internal Waters of another country a vessel submits to the jurisdiction of that country i.e. the Coastal or Port State, as Internal Waters are considered to be an integral part of a country. The authority of a state over foreign vessels in its Internal Waters is the same as those for a foreigner on its soil. A foreign flagged vessel does not have a right to enter the internal waters and ports of another country. The Coastal State is therefore free to determine whether and, if so, on what terms a vessel may do so.

Cruising within the territorial waters of another country will in most cases bring pleasure boaters under the jurisdiction of that Coastal State. Generally, the Coastal State will refrain from interfering with the internal affairs of foreign flagged vessels as a matter of "comity" – courteous recognition accorded by one nation to the laws and institutions of another. Unless you attract the attention of the authorities for example because your boat is deemed not to be seaworthy, or it is unregistered, you will generally be allowed to go about your business as a visitor without hindrance. However, it is important to be aware that the Coastal State has the right to require foreign flagged vessels cruising within its waters to comply with its regulations.

There are some elements of Coastal State Law that a visiting boat may be expected to comply with. The most common is for the skipper of the vessel to be required to prove that he or she is competent to be in command of the vessel.

Additional requirements may also apply to boats that are being launched from foreign shores and different rules often apply when bareboat chartering abroad.

## **International Certificate for Operators of Pleasure Craft (ICC)**

The regulations for recreational boats can vary considerably from one country to another and the regime for skipper training and licencing can be equally disparate. The International Certificate for Operators of Pleasure Craft created by the United Nations Economic Commission for Europe

(UNECE) Resolution 40<sup>e</sup>, commonly referred to as the International Certificate of Competence or simply ICC provides a solution for skippers that are crossing borders between States that have accepted Resolution 40.

However, the ICC is not universally available. The regulatory framework for the ICC (a resolution originally agreed in 1998) results in restrictions on who the ICC can be issued to. Moving to the 'wrong' country can render your evidence of competence for recreational boating obsolete.

Resolution 40 recommends that the certificate is issued to the implementing Government's "own nationals or residents or to the nationals of any North American country or any country that is not a member of the United Nations Economic Commission for Europe". Furthermore, Resolution 40 does not look after the needs of a liveaboard boater, whose boat may be their habitual residence.

In theory an ICC issued in accordance with Resolution 40 should be accepted in any country that has accepted Resolution 40, because Governments implementing Resolution 40 are requested to "recognize in their territory the documents issued by the competent authorities or by bodies approved by Governments of other countries". In reality this may be done only in part or with caveats and many eligible countries have yet to accept Resolution 40. Acceptance of the ICC therefore remains a matter for national legislation.

The standardised format of the ICC improves recognition and can therefore be helpful in countries that have not accepted Resolution 40, but only within the boundaries set by the national legislation.

In its position statement on the ICC<sup>f</sup>, the EBA urges the European Commission not to seek to introduce its own European Union (EU) recreational boating skipper's licensing regime but instead to encourage member states to adopt Resolution 40. A EU recreational boat skipper licencing regime would only facilitate recreational boating in the EU and not, as recreational boaters desire, worldwide. Elsewhere in the world even for skippers from EU Member States the same problems would endure. Read more in the [EBA Position Statement on the ICC](#).

## Evolution of Skipper Licensing

In many countries around the world recreational boating makes a significant economic contribution. As international travel and lifestyles evolve, a solution is needed which aims to facilitate the movement of recreational boats across borders worldwide and bareboat chartering recreational boats overseas. For the reasons set out above Resolution 40 in its current form doesn't achieve this. An International Convention, which facilitates recreational boating internationally where evidence of competence is required, is therefore desirable.

An arrangement similar to the current STCW Convention but for pleasure yachts not engaged in trade would not be suitable if boaters needed: (1) to apply for a "certificate of equivalent competency" from each foreign flag administration whose vessels they wanted to use it on; and (2)

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<sup>e</sup> UN Economic Commission for Europe Inland Transport Committee Working Party on Inland Water Transport Resolution 40 – International Certificate for Operators of Pleasure Craft. [www.unece.org/trans/doc/finaldocs/sc3/TRANS-SC3-147e.pdf](http://www.unece.org/trans/doc/finaldocs/sc3/TRANS-SC3-147e.pdf)

<sup>f</sup> <http://eba.eu.com/site-documents/eba-position-statements/eba-position-icc.pdf>

to demonstrate proficiency in the official language of that foreign flag.

Greater freedom for recreational boaters is more likely to be reached by following a format similar to the international driving permit (IDP) for road vehicles. *“Today, two conventions cover 98% of world countries: the 1949 Geneva Convention and the 1968 Vienna Convention, and nearly all IDPs are issued under these two conventions’ regulations.”*<sup>8</sup>

As is the case with Resolution 40, such a Convention should not seek to determine when evidence of competence is or isn’t required. Such decisions are and should remain a matter for the government of the country in which the boat is being used. Where evidence of competence is required, the Convention would seek to make it possible for visiting recreational boaters to meet those requirements by presenting a recognised international permit.

A Convention which seeks to create a regime like the IDP for recreational boating worldwide, based on the mutual recognition of national certificates, would be welcomed by the EBA, provided that:

- Any requirement to hold a certificate in any particular country for a particular type of size of vessel should remain a matter for the flag state of the boat and the government of the country in which the boat is being used; and
- Where the issuing of national boating qualifications and ICCs is delegated by governments to boating associations, a similar arrangement should be permitted under a Convention facilitating recreational boat movements across borders and recreational bareboat chartering overseas.
- It makes provision for the recognised international permit to be issued and accepted as evidence of competence whether it is in an electronic format or it is a physical document.

## The EBA Position on the Evolution of Skipper Licensing

At present, the EBA strongly recommends that all governments follow the lead taken by those that have adopted UNECE Resolution 40 so far, recognise it as an acceptable standard in its own right and notify the Executive Secretary of the UN Economic Commission for Europe accordingly.

Resolution 40 provides a model syllabus and a model certificate which is already officially used in over 20 countries that have officially [accepted](#) that resolution. Unofficially the ICC is accepted far more widely.

It is recognised by the EBA that the imposition of any requirement to hold a certificate in a particular country for a particular type or size of vessel should remain a matter for the flag state of the boat and the government of the country in which the boat is being used.

The EBA believes there is scope for a Convention to be developed to facilitate recreational boat movements across borders worldwide and recreational bareboat chartering overseas and would

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<sup>8</sup> Source <https://internationaldrivingpermit.org/what-is-an-idp/>

support any steps the UNECE might take towards developing such a Convention.

## The EBA will

- Encourage its members to recommend full adoption of UNECE Resolution 40 to their respective governments where they have not already done so.
- Support the work of the United Nations through the Economic Commission for Europe<sup>h</sup> (UNECE) to develop a Convention to facilitate recreational boat movements across borders worldwide and recreational bareboat chartering overseas.

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## Notes

### <sup>1</sup> Recreational Boating

The EBA is the European representative organisation for recreational boating.

There is no general consensus as to the terminology used to describe the types of boat used for “recreational boating”, with expressions such as “recreational craft” or “private pleasure craft” being used to describe only subsets of such types of boat for the purposes of specific pieces of EU legislation. “Recreational boating” also includes the use of beach- or slipway-launched water toys such as wind surfers, sailing dinghies, inflatable boats and personal watercraft.

Boats used for “recreational boating” may be small or large, propelled by sail and/or power and used on inland waters and/or at sea. “Recreational boating” at sea can range from close-to-shore to trans-oceanic.

“Recreational boating” also includes the use of such boats privately owned and operated by the owner, hired (on bareboat or skippered charter) or used to provide a service (such as training or race participation).

In the context of this document, therefore, the EBA considers “recreational boating” to mean using boats that are designed or adapted for sport or leisure, whether propelled by sail and/or power, for the purposes for which they are designed or adapted.

### <sup>2</sup> European Boating Association

The European Boating Association, Europäischer Sportschiffahrtsverband, Association Européenne de Navigation de Plaisance, is a civil, not for profit association of recreational boat users’ organisations, founded in 1982, and established as an Unincorporated Association whose members agree to be governed by its constitution. The EBA member organisations (see

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<sup>h</sup> [https://unece.org/DAM/trans/main/sc3/publications/IWW\\_WhitePaper\\_ECE\\_TRANS\\_279.pdf](https://unece.org/DAM/trans/main/sc3/publications/IWW_WhitePaper_ECE_TRANS_279.pdf) (page 69):

*“In 2017, SC.3 established the Informal Working Group on Recreational Navigation, tasked to promote the issue and recognition of ICC. As resolution No. 40 has a recommendatory status, further steps for promoting recreational navigation should be its evolution in an international mandatory instrument.”*

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<http://www.eba.eu.com/participantorgs>) collectively represent in excess of 1.5 million recreational boaters and an estimated 20 million active participants.

The purpose of the EBA is to represent the mutually agreed common interests of national recreational boat users' organisations in Europe, and in particular to:

- Coordinate and develop recreational boating activities in Europe by exchange of information, and action on matters of mutually agreed common interest.
- Promote the practice of all activities on the water, promoting and exchanging knowledge and experience between recreational boat users' organisations in Europe.
- Represent EBA members in environmental, regulatory and technical matters affecting their safe enjoyment of recreational boating activities on the water.
- Encourage the safe, unhampered and environmentally sustainable use of recreational boats on all European waters.
- Provide the link between the European institutions and EBA Members for consultation and information on proposed EU directives and regulations.
- Provide the link between other relevant global and regional organisations and EBA Members.