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REPORT

From: General Secretariat of the Council
To: Permanent Representatives Committee

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Subject: **Preparation of the Council meeting (Transport, Telecommunications and Energy) on 3 June 2021**
Proposal for a Directive of the European Parliament and of the Council amending Directive (EU) 2017/2397 as regards the transitional measures for the recognition of third countries certificates
– General approach

CONTEXT AND CONTENT OF THE PROPOSAL

1. On 18 February 2021, the Commission transmitted the above-mentioned proposal to the European Parliament and to the Council.
2. Crew members holding third country certificates represent a significant workforce – especially on certain waterways within the Union – in a sector which already suffers from a deficit of qualified workers.

3. Against that background, and to take account of that situation, the objective of the proposal is to amend the transitional provisions of Directive (EU) 2017/2397 on the recognition of professional qualifications in inland navigation¹ to cover third country certificates.
4. Article 38 of that Directive lays down transitional measures concerning third country certificates issued before 18 January 2022. In general, those certificates remain valid on the Union inland waterways for which they were valid before that date for a maximum of ten years.
5. However, the Directive makes no provision for any transitional measures for third country certificates that are currently recognised by Member States unilaterally or in accordance with their international agreements.
6. Consequently, from 17 January 2022, third country certificates would be recognised in the Union only once the Commission has adopted an implementing act granting recognition in the Union to the documents issued by that third country. Given that the procedure for recognition of third country documents is rather lengthy and might not be finalised on time, the Commission has proposed to provide for an adequate period (until 17 January 2032) during which a Member State may continue to recognise, on the basis of its national requirements established before 16 January 2018 and with respect to the territory of the Member State in question, third country certificates which are currently recognised by that Member State unilaterally or on the basis of an international agreement.
7. The Commission therefore proposes to amend Article 38 of Directive (EU) 2017/2397 by adding two new paragraphs 7 and 8.

WORK WITHIN THE COUNCIL

8. The members of the Shipping Working Party examined the proposal at several informal meetings during the first semester of 2021, starting with a presentation by the Commission and a first examination on 1 March 2021.
9. At its informal meeting on 7 May 2021, the members of the Shipping Working Party examined the latest Presidency compromise proposal, as set out in the annex to this report.

¹ Directive (EU) 2017/2397 of the European Parliament and of the Council of 12 December 2017 on the recognition of professional qualifications in inland navigation and repealing Council Directives 91/672/EEC and 96/50/EC (OJ L 345, 27.12.2017, p. 53).

10. Based on the deliberations, a small number of amendments were proposed and agreed in order to clarify the proposal or make it more flexible:
- a clear reference to Member States’ international agreements has been inserted in the proposed new paragraph 8;
 - it is proposed that Member States may continue to recognise certificates issued by a third country before 18 January 2024 (and not 18 January 2023 as proposed by the Commission);
 - most importantly, the provisions on transposition have been clarified: the obligation to transpose the amending Directive has been aligned with the obligation to transpose (including not to transpose at all) Directive (EU) 2017/2397, thereby not creating additional administrative burden compared to the Member States’ obligations according to that latter Directive. This is done through an amendment to Article 10(3) of the existing Directive (instead of the new paragraph 8 proposed by the Commission, which has been deleted in the Presidency compromise).

WORK WITHIN THE EUROPEAN PARLIAMENT AND OTHER UNION BODIES

11. The European Parliament Committee for Transport and Tourism (TRAN) appointed Mr Andris Ameriks (S&D-Latvia) as rapporteur on 18 March 2021.
12. The European Economic and Social Committee adopted its opinion on 24 March 2021².

OUTSTANDING ISSUES

13. As an initial remark, the Presidency would like to underline that the text as set out in the annex has been carefully drafted in order to take into account all concerns expressed by Member States and the Commission, in particular to provide legal certainty and clarity on the issue of transposition.
14. However, Lithuania maintains the following position: the derogation laid down in Article 39(2) of the current Directive should be applied regarding the obligation to transpose the new paragraph 7 in the proposal. Currently, the only provisions in Directive (EU) 2017/2397 imposing the obligation on the Member State to request for deck crew members navigating on its waterways to carry either a Union certificate of qualification or a certificate recognised in

² 7463/21

accordance with Article 10(2) or (3) are laid down in Article 4(1), Article 5(1) and Article 6 of the said Directive. Having in mind that Article 39(2) of Directive (EU) 2017/2397 exempts a Member State³ from the obligation to bring into force those measures which are necessary to ensure the compliance with Articles 4(1), Article 5(1) and Article 6, it is understood that such a Member State is not bound by the imperative of the provisions set out in Article 4(1), Article 5(1) and Article 6 to request to hold only a certain type certificates; therefore, that Member State may continue enjoying the right of the decision in regard to which certificates of qualifications are requested to be held by the deck crew members operating on its territory as long as, in addition to other certificates of qualifications (whether national or issued by another country), Union certificates of qualification or certificates recognized in accordance with Article 10(2) or (3) are recognized by that Member State as well.

15. The Commission maintains at this stage of the procedure a general reservation on any changes to its proposal, pending the European Parliament position at first reading.

CONCLUSION

16. The Permanent Representatives Committee is invited to confirm the compromise reached at the level of the working party and to forward the revised text of the Commission proposal, as set out in the annex, to Council for its agreement on a general approach.

³ I.e. a Member State in which all persons referred to in Article 4(1), Article 5(1) and Article 6 operate exclusively on national inland waterways that are not linked to the navigable network of another Member State.

2021/0039 (COD)

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Directive (EU) 2017/2397 as regards the transitional measures for the recognition of third countries certificates

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 91(1) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee¹,

Having regard to the opinion of the Committee of the Regions²,

Acting in accordance with the ordinary legislative procedure,

¹ OJ C [...], [...], p. [...].

² OJ C [...], [...], p. [...].

Whereas:

- (1) Directive (EU) 2017/2397 of the European Parliament and of the Council¹ sets out transitional measures in order to ensure the continued validity of certificates of qualification, service record books and logbooks issued before the end of its transposition period and to give skilled crew members reasonable time in which to apply for a Union certificate of qualification or another certificate recognised as equivalent. However, with the exception of the Rhine navigation licences referred to in Article 1(5) of Council Directive 96/50/EC², those transitional measures do not apply to the certificates of qualification, service record books and logbooks issued by third countries that are currently recognised by Member States under their national requirements or international agreements applicable before the entry into force of Directive (EU) 2017/2397.
- (2) Article 10(3), (4) and (5) of Directive (EU) 2017/2397 lay down the procedure and the conditions for the recognition of certificates, service record books or logbooks issued by the authorities of a third country.
- (3) Given that the procedure for recognition of third country documents is based on the assessment of the certification systems in the requesting third country, with the purpose to determine whether the issuing of the certificates, service record books or logbooks specified in the request is subject to requirements that are identical to those laid down in Directive (EU) 2017/2397, it is unlikely that the recognition procedure will be completed before 17 January 2022.

¹ Directive (EU) 2017/2397 of the European Parliament and of the Council of 12 December 2017 on the recognition of professional qualifications in inland navigation and repealing Council Directives 91/672/EEC and 96/50/EC (OJ L 345, 27.12.2017, p. 53).

² Council Directive 96/50/EC of 23 July 1996 on the harmonization of the conditions for obtaining national boatmasters' certificates for the carriage of goods and passengers by inland waterway in the Community (OJ L 235, 17.9.1996, p. 31).

- (4) In order to ensure a smooth transition to the system of the recognition of third country documents provided for in Article 10 of Directive (EU) 2017/2397, it is necessary to provide for transitional measures which would allow the time needed for the third countries to align their requirements to those laid down in that Directive, as well as for the Commission to assess their certification systems and, where appropriate to adopt an implementing act under Article 10(5) of that Directive. Those measures would also ensure legal certainty to the individuals and economic operators active in the inland waterway transport sector. In the light of those objectives, it is appropriate to set the cut-off date for third country documents falling within the scope of those transitional measures, by reference to the period for the transposition of that Directive extended by two years.
- (5) To ensure consistency with the transitional measures applicable to the Member States pursuant to Article 38 of Directive (EU) 2017/2397, the transitional measures applicable to certificates of qualification, service record books and logbooks issued by third countries and recognised by the Member States should not apply beyond 17 January 2032. Moreover, the recognition of such certificates of qualification, service record books and logbooks should be restricted to the Union inland waterways situated in the Member State concerned.
- (6) In order to ensure consistency with the transitional measures applicable to certificates of qualification issued by Member States, it is appropriate to clarify that as regards third country certificates, the identical requirements referred to in Article 10(3) of Directive (EU) 2017/2397 also include the requirements for the exchange of the existing certificates set out in Article 38(1) and (3) of that Directive.
- (7) Therefore, in order to provide inland waterway transport companies and workers with legal clarity and certainty, Directive (EU) 2017/2397 should be amended accordingly.

- (8) In order to enable Member States to promptly proceed with the transposition of the measures for which this Directive provides, it should enter into force on the day following that of its publication in the *Official Journal of the European Union*;
- (9) In accordance with Article 39(4) of Directive (EU) 2017/2397, Member States where inland waterway navigation is not technically possible are not obliged to transpose that Directive. The same derogation should apply to this Directive,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Directive (EU) 2017/2397 is amended as follows:

(1) in Article 10, paragraph 3 is replaced by the following:

‘3. Without prejudice to paragraph 2, any certificate of qualification, service record book or logbook that has been issued in accordance with the national rules of a third country laying down requirements that are identical to those of this Directive, including those set out in Article 38(1) and (3), shall be valid on all Union inland waterways, subject to the procedure and the conditions set out in paragraphs 4 and 5.’;

(2) in Article 38, the following paragraph is added:

‘7. Until 17 January 2032, Member States may continue to recognise, on the basis of national Member State’s requirements or international agreements applicable before 16 January 2018, certificates of qualification, service record books and logbooks that have been issued by a third country before 18 January 2024. The recognition shall be limited to the inland waterways on the territory of the Member State concerned.’.

Article 2

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 17 January 2022 at the latest. They shall forthwith communicate to the Commission the text of those provisions.

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.

The derogation laid down in Article 39(4) of Directive 2017/2397 shall apply accordingly.

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,

For the European Parliament
The President

For the Council
The President
