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PROPOSAL

From: Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director

date of receipt: 18 February 2021

To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union

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Subject: 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

Delegations will find attached document COM(2021) 71 final.

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Brussels, 18.2.2021
COM(2021) 71 final

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)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

- **Reasons for and objectives of the proposal**

The purpose of this proposal is to amend the transitional provisions of Directive (EU) 2017/2397 on the recognition of professional qualifications in inland navigation ('the Directive') to cover certificates of qualification, service record books and logbooks issued by third countries ('third country documents').

Article 38 of the Directive lays down transitional measures concerning the certificates of qualification, service record books and logbooks issued before 18 January 2022 (the day following the expiry of the period for the transposition of the Directive). In general, the documents concerned remain valid on the Union inland waterways for which they were valid before that date, for a maximum of 10 years.

However, apart from the Rhine navigation licences referred to in Article 1(5) of Directive 96/50/EC, the Directive makes no provision for any transitional measures for documents issued by third countries that are currently recognised by Member States unilaterally or in accordance with their international agreements.

Consequently, from 17 January 2022, third country documents will be recognised in the Union only once the Commission has adopted an implementing act under Article 10(5) of the Directive granting recognition in the Union to the documents issued by that third country.

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 the Directive, it is unlikely that the recognition procedure will be completed before 17 January 2022.

First, for this procedure to be completed before that date, the third countries concerned would have to align their national legislation with the requirements laid down in the Directive.

Secondly, the Commission would have to assess the certification system in the requesting third country and adopt an implementing act under Article 10(5) of the Directive.

In the absence of the implementing act under Article 10(5) of the Directive granting recognition in the Union to the documents issued by the third country concerned, persons holding the documents issued by that third country—will not be allowed to navigate on the Union inland waterways.

This situation could create significant practical difficulties, particularly as regards navigation on the Danube, since crew members holding third country documents represent significant workforce.

The objective of this proposal is to provide for an adequate period 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 documents which are currently recognised by that Member State unilaterally or on the basis of an international agreement. The scope of

this transitional measure is limited to the documents issued before the cut-off date (18 January 2023) which is defined by reference to the day following the expiry of the period for the transposition of the Directive (17 January 2022) extended by one year. This cut-off date takes into account the fact that, first, the third country requesting the recognition will have to align its requirements to those laid down in the Directive and, secondly, the Commission will have to assess the certification systems in the requesting third country and, where appropriate, adopt an implementing act under Article 10(5) of the Directive.

The purpose of this solution is to ensure a smooth transition to the system of the recognition of third country documents provided for in Article 10 of the Directive, by providing for the period of time necessary to allow the third countries to align their requirements to those laid down in the Directive, as well as to enable the Commission to assess their certification systems and, where appropriate to adopt an implementing act under Article 10(5) of the Directive. It will also ensure legal certainty to the individuals and economic operators active in the inland waterway transport sector.

Moreover, it is necessary to take into account the fact that, once the Commission will grant the recognition to the certificates of qualification issued by a third country, the third country concerned may issue new certificates in exchange of the documents which are subject to the transitional arrangements. In this regard, it is necessary to clarify that those new certificates will be recognised on all Union inland waterways only subject to Article 10(3) of the Directive and provided that the conditions for the exchange applied by the third country have been found to be identical to those laid down in Article 38(1) and (3) of the Directive.

Consistency with existing policy provisions in the policy area

This proposal constitutes an amendment of limited scope to Directive (EU) 2017/2397, introducing transitional provisions applicable to third country documents recognised within some Member States before 18 January 2022. It is designed to avoid disruption of the labour market in the inland waterway transport sector. The proposal is thus consistent with existing legislation in this sector.

- **Consistency with other Union policies**

The proposal concerns safety and mobility in the field of inland waterway transport. It amends Directive (EU) 2017/2397 as regards the recognition of third country documents during the transitional period.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The legal basis is Article 91(1) of the Treaty on the Functioning of the European Union (TFEU).

- **Subsidiarity**

The purpose of the proposal is to amend Directive (EU) 2017/2397 as required for the purposes described above. The only means of achieving the objective pursued is an act at Union level.

- **Proportionality**
The proposed Directive is considered proportionate, as it provides for a limited and necessary legal change that should avoid disruption of the labour market, ensure safe and efficient operation on inland waterways. It does not go beyond what is necessary to achieve this objective.
 - **Choice of the instrument**
As the purpose of this proposal is to amend Directive (EU) 2017/2397, it should have the same legal form. A directive of the European Parliament and of the Council is therefore the appropriate legal instrument.
- 3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS**
- **Ex-post evaluations/fitness checks of existing legislation**
Not applicable, as the proposal amends existing legislation. Moreover, it is very limited in scope.
 - **Stakeholder consultations**
The roadmap for this initiative was published for feedback on the Better Regulation website for a four-week period. Given the very limited scope of the amendment, there is no need for further public consultation on the proposal.
 - **Collection and use of expertise**
The proposed measure has been subjected to legal and technical analysis within the Commission to ensure that it achieves its intended purpose while remaining limited to what is strictly necessary.
 - **Impact assessment**
There is no need for an impact assessment, as there are no materially different policy options beyond the one proposed. The purpose of the proposal is to extend the existing situation for a limited period.
 - **Regulatory fitness and simplification**
Not applicable.
 - **Fundamental rights**
The proposal does not affect the application or protection of fundamental rights.
- 4. BUDGETARY IMPLICATIONS**
Not applicable.
- 5. OTHER ELEMENTS**
- **Implementation plans and monitoring, evaluation and reporting arrangements**
Not applicable.
 - **Explanatory documents**
The notification by the Member States of the transposition measures concerned by the proposal is not to be accompanied with a document explaining the relationship

between the components of the amending directive and the corresponding parts of national transposition instruments. The Commission does not see any reason for such document as it is not required for the other provisions of Directive (EU) 2017/2397.

- **Detailed explanation of the specific provisions of the proposal**

Article 1 adds new paragraphs 7 and 8 to Article 38 of Directive (EU) 2017/2397.

New paragraph 7 of Article 38 provides an option for Member States to continue to recognise third country documents on the basis of their national requirements established before the entry into force of Directive (EU) 2017/2397 (16 January 2018). The recognition is limited to the inland waterways situated in territory of the Member State concerned and cannot apply beyond 17 January 2032. The scope of this transitional measure may only cover the documents issued by a third country before the cut-off date (18 January 2023).

New paragraph 8 of Article 38 clarifies that where the third country concerned issues new certificates in exchange of the documents which are subject to the transitional arrangements, those new certificates will be recognised on all Union inland waterways only subject to Article 10(3) of the Directive and provided that the conditions for the exchange applied by the third country have been found to be identical to those laid down in Article 38(1) and (3) of the Directive.

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,

Whereas:

- (1) Directive (EU) 2017/2397 of the European Parliament and of the Council³ 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/EC⁴, 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 established 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

¹ OJ C , , p. .

² OJ C [...], [...], p. [...].

³ 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).

⁴ 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).

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.

- (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 one year.
- (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 certificates of qualification issued by a third country in exchange for the certificates covered by the transitional arrangements should be valid on all Union inland waterways, on the condition that the third country concerned has been granted recognition in accordance with Article 10(3) Directive (EU) 2017/2397 and that the requirements for the exchange applied by that third country have been found to be identical to those provided for by Article 38(1) and (3) of that Directive with regard to the Member States.
- (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*,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

The following paragraphs 7 and 8 are added to Article 38 of Directive (EU) 2017/2397:

‘7. Until 17 January 2032, Member States may continue to recognise, on the basis of national Member State’s requirements established before 16 January 2018, certificates of qualification, service record books and logbooks that have been issued by a third country before 18 January 2023. The recognition shall be limited to the inland waterways on the territory of the Member State concerned.

8. Certificates of qualification issued by a third country in exchange for the certificates of qualification referred to in paragraph 7, shall be valid on all Union inland waterways subject

to Article 10(3) and provided that the conditions for the exchange applied by the third country have been found to be identical to those laid down in paragraphs 1 and 3 of this Article.'.

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.

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