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 (Text with EEA relevance)

DIRECTIVE (EU) 2017/2397 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

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on the recognition of professional qualifications in inland navigation and repealing Council Directives 91/672/EEC and 96/50/EC

(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 Committee[(1)],

After consulting the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure[(2)],

Whereas:

(1) Council Directives 91/672/EEC[(3)] and 96/50/EC[(4)] are the first steps taken towards the harmonisation and recognition of professional qualifications for crew members in inland navigation.

(2) The requirements for crew members navigating on the Rhine river fall outside the scope of Directives 91/672/EEC and 96/50/EC and are established by the Central Commission for the Navigation of the Rhine (CCNR), pursuant to the Regulations for Rhine Navigation Personnel.

(3) Directive 2005/36/EC of the European Parliament and of the Council[(5)] applies to inland waterway occupations other than boatmasters. The mutual recognition of diplomas and certificates under Directive 2005/36/EC is not, however, fully adapted to regular and frequent cross-border activities of inland waterway occupations that notably exist on inland waterways linked to inland waterways of another Member State.

(4) An evaluation study carried out by the Commission in 2014 highlighted the fact that the limitation of the scope of Directives 91/672/EEC and 96/50/EC to boatmasters, and the lack of automatic recognition of boatmasters' certificates issued in accordance

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with those Directives on the Rhine, hinder the mobility of crew members in inland navigation.

(5) To facilitate mobility, to ensure the safety of navigation and to ensure the protection of human life and the environment, it is essential for deck crew members, and especially for persons in charge of emergency situations on board passenger vessels and for persons involved in the bunkering of liquefied natural gas-fuelled vessels, to hold certificates proving their qualifications. For efficient enforcement, they should carry such certificates while exercising their occupation. Those considerations also apply to young persons, for whom it is important that their safety and health at work is protected in accordance with Council Directive 94/33/EC[(6)].

(6) Navigation for sport or pleasure, the operation of ferries that do not move independently, and navigation by armed forces or by emergency services, are activities that do not require qualifications similar to those qualifications required for professional navigation for the transport of goods and people. Therefore, persons carrying out those activities should not be covered by this Directive.

(7) Boatmasters who sail in circumstances that present a particular safety hazard should hold specific authorisations, in particular for sailing large convoys, sailing liquefied natural gas-fuelled craft, sailing in conditions of reduced visibility, sailing on inland waterways with a maritime character or sailing on waterways that present specific risks for navigation. In order to obtain such authorisations, boatmasters should be required to demonstrate specific additional competences.

(8) For ensuring safety of navigation, Member States should identify inland waterways with a maritime character in accordance with harmonised criteria. The competence requirements for navigating on these waterways should be defined at Union level. Without unnecessarily limiting the mobility of boatmasters, when it is necessary for ensuring the safety of navigation, and where appropriate in cooperation with the relevant European River Commission, Member States should also have the possibility to identify the waterways that present specific risks for navigation in accordance with harmonised criteria and procedures pursuant to this Directive. In such cases, the related competence requirements should be set at national level.

(9) With a view to contributing to the mobility of persons involved in the operation of craft across the Union, and considering that all certificates of qualification, service record books and logbooks issued in accordance with this Directive should comply with required minimum standards in accordance with harmonised criteria, Member States should recognise the professional qualifications certified in accordance with this Directive. Consequently the holders of such qualifications should be able to exercise their profession on all Union inland waterways.

(10) In view of the lack of cross-border activities on certain national inland waterways and in order to reduce costs, Member States should have the possibility of not making Union certificates of qualification compulsory on national inland waterways that are not linked to a navigable inland waterway of another Member State. However, Union certificates should allow access to navigation activities on those non-linked waterways.

(11) Directive 2005/36/EC remains applicable for deck crew members who are exempt from the obligation of holding a Union certificate of qualification issued in accordance with this Directive, and also remains applicable for inland waterways qualifications not covered by this Directive.

(12) Where Member States grant exemptions from the obligation to carry a Union certificate of qualification, they should recognise Union certificates of qualification for persons who operate on their national inland waterways that are not linked to the navigable network of another Member State where the exemption is applied. Those Member States should also ensure that, regarding those inland waterways, the data regarding navigation time and journeys carried out are validated in the service record books of persons who hold a Union certificate of qualification, if the crew member so requests. Furthermore, those Member States should take and enforce appropriate measures and penalties to prevent fraud and other unlawful practises that involve Union certificates of qualification and service record books on those non-linked inland waterways.

(13) Member States that apply exemptions to the obligation of carrying a Union certificate of qualification should have the possibility to suspend Union certificates of qualification for persons who operate on their national inland waterways that are not linked to the navigable network of another Member State where the exemption is applied.

(14) A Member State, none of the inland waterways of which are linked to the navigable network of another Member State, that decides not to issue Union certificates of qualification in accordance with this Directive, would be under a disproportionate and unnecessary obligation if it had to transpose and implement all the provisions of this Directive. Such a Member State should therefore be exempt from the obligation to transpose and implement the provisions related to the certification of qualifications for as long as it decides not to issue Union certificates of qualification. Such a Member State should nevertheless be required to recognise the Union certificate of qualifications on its territory in order to promote the mobility of workers within the Union, to decrease the administrative burden associated with labour mobility and to increase the attractiveness of the profession.

(15) In a number of Member States, inland navigation is an infrequent activity, serving only local or seasonal interests in waterways with no connections to other Member States. While the principle of the recognition of professional certificates under this Directive should also be respected in those Member States, the administrative burden should be proportional. Implementing tools such as databases and registers would create a significant administrative burden without presenting a real benefit, as the flow of information between Member States can also be achieved through other means of cooperation. It is therefore justified to allow the Member States concerned to transpose only the minimum provisions needed for the recognition of professional certificates issued in accordance with this Directive.

(16) In certain Member States, inland waterway navigation is not technically possible. Requiring those Member States to transpose this Directive would therefore be a disproportionate administrative burden on them.

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(17) It is important that the inland waterway sector is able to provide programmes focused both on retaining people over the age of 50 and on improving the skills and employability of young people.

(18) The Commission should ensure a level playing field for all crew members practising their trade on an exclusive and regular basis in the Union, and should stop any downward spiral in salaries, as well as any discrimination on grounds of nationality, place of residence or flag of registration.

(19) In view of the established cooperation between the Union and the CCNR since 2003 which has led to the establishment of the European Committee for drawing up Standards in Inland Navigation (CESNI) under the auspices of the CCNR, and in order to streamline the legal frameworks governing the professional qualifications in Europe, certificates of qualification, service record books and logbooks, issued in accordance with the Regulations for Rhine Navigation Personnel which lay down requirements that are identical to those of this Directive, should be valid on all Union inland waterways. Such certificates of qualification, service record books and logbooks issued by third countries should be recognised in the Union, conditional upon reciprocity.

(20) It is important that employers apply the social and labour laws of the Member State in which the activity is carried out when employing in the Union deck crew members who hold certificates of qualification, record books and logbooks which have been issued by third countries and which have been recognised by the responsible authorities in the Union.

(21) To further remove barriers to labour mobility and to further streamline the legal frameworks governing the professional qualifications in Europe, any certificate of qualification, service record book or logbook issued by a third country on the basis of requirements which are identical to those laid down in this Directive may also be recognised on all Union waterways, subject to an assessment by the Commission, and subject to recognition by that third-country of documents issued in accordance with the this Directive.

(22) Member States should issue certificates of qualification only to persons who have the minimum levels of competence, the minimum age, the medical fitness and the navigation time required for obtaining a specific qualification.

(23) It is important that the Commission and the Member States encourage young people to seek professional qualifications in inland navigation and that the Commission and the Member States set up specific measures to support social partners' activities in this regard.

(24) To safeguard the mutual recognition of qualifications, certificates of qualification should be based on the competences necessary for the operation of craft. Member States should ensure that persons receiving certificates of qualification have the corresponding minimum levels of competence, verified following an appropriate assessment. Such assessments could take the form of an administrative examination, or could form part of approved training programmes carried out in accordance with common standards in

order to ensure a comparable minimum level of competence in all Member States for various qualifications.

(25) When navigating on the Union inland waterways, boatmasters should be able to apply knowledge about the rules on traffic on inland waterways, such as the European Code for Navigation on Inland Waterways (CEVNI) or other relevant traffic regulations, and about the applicable rules on manning of craft, including on resting time, as laid down in Union or national legislation or in specific regulations agreed at a regional level, such as the Regulations for Rhine Navigation Personnel.

(26) Due to the responsibility with respect to safety when exercising the profession of boatmaster, sailing with the aid of radar and bunkering liquefied natural gas-fuelled craft or sailing liquefied natural gas-fuelled craft, verification through practical examinations on whether the required level of competence has effectively been reached is required. Such practical examinations might be carried out using approved simulators, with a view to further facilitating the evaluation of competence.

(27) Skills to operate the on-board radio are crucial to ensure the safety of inland navigation. It is important that Member States encourage any deck crew member who might need to navigate the craft to have training and certification regarding the operation of such radios. For boatmasters and helmsmen, such training and certification should be compulsory.

(28) Approval of training programmes is necessary to verify that the programmes comply with common minimum requirements regarding content and organisation. Such compliance allows for the elimination of unnecessary barriers to entering the profession, by preventing unnecessary additional examinations from being imposed on persons who have already acquired the necessary skills during their vocational training. The existence of approved training programmes could also facilitate the entry of workers with prior experience from other sectors into the profession of inland navigation, as they could benefit from dedicated training programmes that take account of their already acquired competences.

(29) To further facilitate mobility for boatmasters, Member States should, subject to the consent of the Member State in which a stretch of inland waterway with specific risks is located, be allowed to assess the competences necessary for navigating on that specific stretch of inland waterway.

(30) The navigation time should be verified by means of validated entries in service record books. To allow for such verification, Member States should issue service record books and logbooks and ensure that the latter provide a record of the journeys of craft. The medical fitness of a candidate should be certified by an approved medical practitioner.

(31) Where loading and unloading activities require active navigational operations, such as dredging or manoeuvres between loading or unloading points, Member States should regard the time used for such activities as navigation time and record it accordingly.

(32) Whenever the measures provided for in this Directive entail the processing of personal data, it should be carried out in accordance with Union law on the protection of personal