COUNCIL DECISION (EU) 2023/2650

of 20 November 2023

on the position to be adopted, on behalf of the European Union, within the EEA Joint Committee concerning the amendment to Annex XIII (Transport) to the EEA Agreement (Ship inspection)

(Text with EEA relevance)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 100(2) in conjunction with Article 218(9) thereof,

Having regard to Council Regulation (EC) No 2894/94 of 28 November 1994 concerning arrangements for implementing the Agreement on the European Economic Area ([1]), and in particular Article 1(3) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) The Agreement on the European Economic Area ([2]) (the 'EEA Agreement') entered into force on 1 January 1994.

(2) Pursuant to Article 98 of the EEA Agreement, the EEA Joint Committee may decide to amend, inter alia, Annex XIII (Transport) to the EEA Agreement.

(3) Regulation (EC) No 391/2009 of the European Parliament and of the Council, ([3]) as well as 14 related legal acts, should be incorporated into the EEA Agreement.

(4) Annex XIII (Transport) to the EEA Agreement should therefore be amended accordingly.

(5) The position of the Union within the EEA Joint Committee should therefore be based on the attached draft Decision,

HAS ADOPTED THIS DECISION:

Article 1

The position to be adopted, on behalf of the Union, within the EEA Joint Committee on the proposed amendment to Annex XIII (Transport) to the EEA Agreement shall be based on the draft Decision of the EEA Joint Committee attached to this Decision.

Article 2

This Decision shall enter into force on the date of its adoption.

Done at Brussels, 20 November 2023

For the Council
The President
H. CREVITS

([1]) OJ L 305, 30.11.1994, p. 6.
([2]) OJ L 1, 3.1.1994, p. 3.
([3]) Regulation (EC) No 391/2009 of the European Parliament and of the Council of 23 April 2009 on common rules and standards for ship inspection and survey organisations (OJ L 131, 28.5.2009, p. 11).

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DECISION OF THE EEA JOINT COMMITTEE No …

of …

amending Annex XIII (Transport) to the EEA Agreement

THE EEA JOINT COMMITTEE,

Having regard to the Agreement on the European Economic Area (the 'EEA Agreement'), and in particular Article 98 thereof,

Whereas:

(1) Regulation (EC) No 391/2009 of the European Parliament and of the Council of 23 April 2009 on common rules and standards for ship inspection and survey organisations (Recast) ([1]), as corrected by OJ L 74, 22.3.2010, p. 1, is to be incorporated into the EEA Agreement.

(2) Regulation (EU) 2019/492 of the European Parliament and of the Council of 25 March 2019 amending Regulation (EC) No 391/2009 with regard to the withdrawal of the United Kingdom from the Union ([2]) is to be incorporated into the EEA Agreement.

(3) Commission Regulation (EU) No 788/2014 of 18 July 2014 laying down detailed rules for the imposition of fines and periodic penalty payments and the withdrawal of recognition of ship inspection and survey organisations pursuant to Article 6 and 7 of Regulation (EC) No 391/2009 of the European Parliament and of the Council ([3]), as corrected by OJ L 234, 7.8.2014, p. 15, is to be incorporated into the EEA Agreement.

(4) Commission Implementing Regulation (EU) No 1355/2014 of 17 December 2014 amending Regulation (EC) No 391/2009 with regard to the adoption by the International Maritime Organization (IMO) of certain Codes and related amendments to certain conventions and protocols ([4]) is to be incorporated into the EEA Agreement.

(5) Directive 2009/15/EC of the European Parliament and of the Council of 23 April 2009 on common rules and standards for ship inspection and survey organisations and for the relevant activities of maritime administrations (Recast) ([5]) is to be incorporated into the EEA Agreement.

(6) Commission Implementing Directive 2014/111/EU of 17 December 2014 amending Directive 2009/15/EC with regard to the adoption by the International Maritime Organization (IMO) of certain Codes and related amendments to certain conventions and protocols ([6]) is to be incorporated into the EEA Agreement.

(7) Commission Decision 2009/728/EC of 30 September 2009 extending without limitations the Community recognition of the Polish Register of Shipping ([7]) is to be incorporated into the EEA Agreement.

(8) Commission Decision (EU) 2015/669 of 24 April 2015 repealing Decision 2007/421/EC on the publication of the list of recognised organisations which have been notified by Member States in accordance with Council Directive 94/57/EC ([8]) is to be incorporated into the EEA Agreement.

([1]) OJ L 131, 28.5.2009, p. 11.
([2]) OJ L 85I, 27.3.2019, p. 5.
([3]) OJ L 214, 19.7.2014, p. 12.
([4]) OJ L 365, 19.12.2014, p. 82.
([5]) OJ L 131, 28.5.2009, p. 47.
([6]) OJ L 366, 20.12.2014, p. 83.
([7]) OJ L 258, 1.10.2009, p. 34.
([8]) OJ L 110, 29.4.2015, p. 24.

(9) Commission Implementing Decision 2013/765/EU of 13 December 2013 amending the recognition of Det Norske Veritas pursuant to Regulation (EC) No 391/2009 of the European Parliament and of the Council on common rules and standards for ship inspection and survey organisations ([9]) is to be incorporated into the EEA Agreement.

(10) Commission Implementing Decision 2014/281/EU of 14 May 2014 granting EU recognition to the Croatian Register of Shipping pursuant to Regulation (EC) No 391/2009 of the European Parliament and of the Council on common rules and standards for ship inspection and survey organisations ([10]) is to be incorporated into the EEA Agreement.

(11) Commission Implementing Decision (EU) 2015/668 of 24 April 2015 on amending the recognitions of certain organisations in accordance with Article 16 of Regulation (EC) No 391/2009 of the European Parliament and of the Council ([11]) is to be incorporated into the EEA Agreement.

(12) Commission Implementing Decision (EU) 2016/1327 of 1 August 2016 granting EU recognition to the Indian Register of Shipping in accordance with Regulation (EC) No 391/2009 of the European Parliament and of the Council on common rules and standards for ship inspection and survey organisations ([12]) is to be incorporated into the EEA Agreement.

(13) Commission Implementing Decision of 24.3.2017 amending the recognition of Bureau Veritas SA – Registre international de classification de navires et d'aeronefs (BV) in accordance with Article 16 of Regulation (EC) No 391/2009 of the European Parliament and of the Council on the common rules and standards for ship inspection and survey organisations (C(2017) 1881 final) is to be incorporated into the EEA Agreement.

(14) Commission Implementing Decision of 29.6.2020 amending the recognition of Bureau Veritas Marine & Offshore SAS in accordance with Article 16 of Regulation (EC) No 391/2009 of the European Parliament and of the Council (C(2020) 4226 final) is to be incorporated into the EEA Agreement.

(15) Commission Implementing Decision (EU) 2021/1227 of 27 July 2021 amending the recognition of DNV GL AS in accordance with Article 16 of Regulation (EC) No 391/2009 of the European Parliament and of the Council ([13]) is to be incorporated into the EEA Agreement.

(16) List of organisations recognised on the basis of Regulation (EC) No 391/2009 of the European Parliament and of the Council of 23 April 2009 on common rules and standards for ship inspection and survey organisations 2022/C 466/07 ([14]) is to be incorporated into the EEA Agreement.

(17) Regulation (EC) No 391/2009 lays down recognition criteria and obligations for recognised organisations, including provisions on fines and periodic penalty payments.

(18) Due to the special circumstances, namely that the Commission grants recognition to organisations, that the infringements affect the Union and its interests, and the complex and technical nature of the assessment and infringement procedures, the EFTA Surveillance Authority should cooperate closely with the Commission and await the Commission's assessment and proposal for action before taking a decision regarding the application of fines and periodic penalty payments to organisations recognised based on a request from an EFTA State and having their principal place of business in an EFTA State.

([9]) OJ L 338, 17.12.2013, p. 107.
([10]) OJ L 145, 16.5.2014, p. 43.
([11]) OJ L 110, 29.4.2015, p. 22.
([12]) OJ L 209, 3.8.2016, p. 15.
([13]) OJ L 269, 28.7.2021, p. 143.
([14]) OJ C 466, 7.12.2022, p. 24.

(19) Nothing in this Decision shall be construed to restrict or limit in any way the fulfilment of the Commission's obligations under the law of the European Union in relation to its duties as regards the recognition, assessment and, where appropriate, the imposition of corrective measures or sanctions on recognised organisations which have not been recognised on a request from an EFTA State and which do not have their principal place of business in an EFTA State.

(20) Annex XIII to the EEA Agreement should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

Annex XIII to the EEA Agreement shall be amended as follows:

1. The text of point 55b (Council Directive 94/57/EC) shall be replaced by the following:

'**32009 L 0015**: Directive 2009/15/EC of the European Parliament and of the Council of 23 April 2009 on common rules and standards for ship inspection and survey organisations and for the relevant activities of maritime administrations (Recast) (OJ L 131, 28.5.2009, p. 47), as amended by:

— **32014 L 0111**: Commission Implementing Directive 2014/111/EU of 17 December 2014 (OJ L 366, 20.12.2014, p. 83).'

2. The following is inserted after point 55d (Directive 2009/21/EC of the European Parliament and of the Council):

'55e. **32009 R 0391**: Regulation (EC) No 391/2009 of the European Parliament and of the Council of 23 April 2009 on common rules and standards for ship inspection and survey organisations (Recast) (OJ L 131, 28.5.2009, p. 11), as corrected by OJ L 74, 22.3.2010, p. 1, as amended by:

— **32014 R 1355**: Commission Implementing Regulation (EU) No 1355/2014 of 17 December 2014 (OJ L 365, 19.12.2014, p. 82).

— **32019 R 0492**: Regulation (EU) 2019/492 of 25 March 2019 (OJ L 85I, 27.3.2019, p. 5).

The provisions of the Regulation shall, for the purposes of this Agreement, be read with the following adaptations:

(a) In Article 3:

(i) in paragraph 1, the following subparagraph shall be added:

"EFTA States which wish to grant an authorisation to any organisation which is not yet recognised shall submit a request for recognition to the EFTA Surveillance Authority together with complete information on, and evidence of, the organisation's compliance with the minimum criteria set out in Annex I and on the requirement and its undertaking that it shall comply with the provisions of Articles 8(4), 9, 10 and 11. The EFTA Surveillance Authority shall further submit the request to the Commission."

(ii) in paragraph 2, the following subparagraph shall be added:

"If the request was submitted by an EFTA State, the Commission, together with the respective EFTA State, and in close cooperation with the EFTA Surveillance Authority, shall carry out assessments of the organisations for which the request for recognition was received in order to verify that the organisations meet and undertake to comply with the requirements referred to in paragraph 1."

(b) The following subparagraph shall be added in Article 5:

"In the case of organisations which have their principal place of business in an EFTA State and have been recognised on the basis of a request from an EFTA State, the above tasks assigned to the Commission shall be carried out in close cooperation with the EFTA Surveillance Authority. Any preventive and remedial action towards organisations which have their principal place of business in an EFTA State and have been recognised on the basis of a request from an EFTA State shall be taken by the EFTA Surveillance Authority. The Commission shall provide the EFTA Surveillance Authority with its assessment and a proposal on how to act."

(c) In Article 6:

(i) in paragraphs 1 and 2, the following subparagraph shall be added:

"In the case of organisations which have their principal place of business in an EFTA State and have been recognised on the basis of a request from an EFTA State, the above tasks assigned to the Commission shall be carried out by the EFTA Surveillance Authority. The Commission shall provide the EFTA Surveillance Authority with its assessment and a proposal on how to act."; and

(ii) in paragraph 4, the words "or, as regards decisions taken by the EFTA Surveillance Authority, the EFTA Court" shall be inserted after the words "Court of Justice of the European Communities".

(d) In Article 7:

(i) in paragraph 1(c), the words "and, as regards organisations which have their principal place of business in an EFTA State and have been recognised on the basis of a request from an EFTA State, the assessment of the EFTA Surveillance Authority" shall be inserted after the word "Commission".

(ii) in paragraph 2(a), the words "and, as regards organisations which have their principal place of business in an EFTA State and have been recognised on the basis of a request from an EFTA State, the assessment of the EFTA Surveillance Authority" shall be inserted after the words "its own assessment".

(iii) in paragraph 3, the words ", at the request of the EFTA Surveillance Authority as regards organisations which have their principal place of business in an EFTA State and have been recognised on the basis of a request from an EFTA State," shall be inserted after the word "initiative".

(e) In Article 8:

(i) in paragraphs 1 and 2, the following subparagraph shall be added:

"In the case of organisations which have their principal place of business in an EFTA State and have been recognised on the basis of a request from an EFTA State, the EFTA Surveillance Authority, together with the respective EFTA State, and in close cooperation with the Commission, shall carry out the assessments."

(ii) in paragraph 3, the following subparagraph shall be added:

"In the case of organisations which have their principal place of business in an EFTA State and have been recognised on the basis of a request from an EFTA State, the above tasks assigned to the Commission shall be carried out by the EFTA Surveillance Authority in close cooperation with the Commission."

(f) In Article 10:

(i) in paragraph 1, the words ", or as regards organisations recognised on the basis of a request from an EFTA State, the EFTA Surveillance Authority" shall be inserted after the word "Commission".

(ii) in paragraph 4, the words "and EFTA States'" shall be inserted after the words "Member States'", and the words "and the EFTA Surveillance Authority, as the case may be," shall be inserted after the word "Commission".

(g) In Article 11:

(i) in paragraph 5, the words ", the EFTA Surveillance Authority" shall be inserted after the words "flag States".

(ii) in paragraph 7, the words "and to the EFTA States" shall be inserted after the words "Member States".

(h) In Article 16, the words "and the EFTA States" shall be inserted after the words "the Member States".

55ea. **32009 D 0728**: Commission Decision 2009/728/EC of 30 September 2009 extending without limitations the Community recognition of the Polish Register of Shipping (OJ L 258, 1.10.2009, p. 34).

55eb. **32013 D 0765**: Commission Implementing Decision 2013/765/EU of 13 December 2013 amending the recognition of Det Norske Veritas pursuant to Regulation (EC) No 391/2009 of the European Parliament and of the Council on common rules and standards for ship inspection and survey organisations (OJ L 338, 17.12.2013, p. 107), as amended by:

— Commission Implementing Decision C(2017) 1881 of 24.3.2017,

— Commission Implementing Decision C(2020) 4226 of 29.6.2020,

— Commission Implementing Decision (EU) 2021/1227 of 27 July 2021 (OJ L 269, 28.7.2021, p. 143).

55ec. **32014 D 0281**: Commission Implementing Decision 2014/281/EU of 14 May 2014 granting EU recognition to the Croatian Register of Shipping pursuant to Regulation (EC) No 391/2009 of the European Parliament and of the Council on common rules and standards for ship inspection and survey organisations (OJ L 145, 16.5.2014, p. 43).

55ed. **32015 D 0668**: Commission Implementing Decision (EU) 2015/668 of 24 April 2015 on amending the recognitions of certain organisations in accordance with Article 16 of Regulation (EC) No 391/2009 of the European Parliament and of the Council (OJ L 110, 29.4.2015, p. 22).

55ee. **32015 D 0669**: Commission Decision (EU) 2015/669 of 24 April 2015 repealing Decision 2007/421/EC on the publication of the list of recognised organisations which have been notified by Member States in accordance with Council Directive 94/57/EC (OJ L 110, 29.4.2015, p. 24).

55ef. **32016 D 1327**: Commission Implementing Decision (EU) 2016/1327 of 1 August 2016 granting EU recognition to the Indian Register of Shipping in accordance with Regulation (EC) No 391/2009 of the European Parliament and of the Council on common rules and standards for ship inspection and survey organisations (OJ L 209, 3.8.2016, p. 15).

55eg. **52022XC1207(01)**: List of organisations recognised on the basis of Regulation (EC) No 391/2009 of the European Parliament and of the Council of 23 April 2009 on common rules and standards for ship inspection and survey organisations (2022/C 466/07) (OJ C 466, 7.12.2022, p. 24).

55f. **32014 R 0788**: Commission Regulation (EU) No 788/2014 of 18 July 2014 laying down detailed rules for the imposition of fines and periodic penalty payments and the withdrawal of recognition of ship inspection and survey organisations pursuant to Article 6 and 7 of Regulation (EC) No 391/2009 of the European Parliament and of the Council (OJ L 214, 19.7.2014, p. 12), as corrected by OJ L 234, 7.8.2014, p. 15.

The provisions of the Regulation shall, for the purposes of this Agreement, be read with the following adaptations:

(a) As regards the provisions on the implementation of Article 6 of Regulation (EC) No 391/2009, the word "Commission" shall read "the EFTA Surveillance Authority in the case of organisations which have their principal place of business in an EFTA State and have been recognised on the basis of a request from an EFTA State".

(b) In Article 10(1), the words ", at the request of the EFTA Surveillance Authority in the case of organisations which have their principal place of business in an EFTA State and have been recognised on the basis of a request from an EFTA State," shall be inserted after the word "initiative".

(c) In Article 11:

(i) The following subparagraph shall be added in paragraph 1:

"As regards the EFTA States, the request shall be submitted to the EFTA Surveillance Authority, together with the documentary evidence referred to in paragraph 3. The EFTA Surveillance Authority shall pass the request and the documentary evidence on to the Commission."

(ii) The following subparagraph shall be added to paragraph 7:

"Where the request was made by an EU Member State and concerns organisations which have their principal place of business in an EFTA State and have been recognised on the basis of a request from an EFTA State, the Commission shall also pass on the request and its accompanying evidence to the EFTA Surveillance Authority."

(d) The following paragraph shall be added to Article 16:

"6. Access to documents and other evidence compiled by the EFTA Surveillance Authority shall be governed by the applicable rules of the EFTA Surveillance Authority."

(e) In Article 22(4), the words "or the EFTA Court in the case of decisions taken by the EFTA Surveillance Authority" shall be inserted after the words "Court of Justice of the European Union".

(f) In Article 23(4)(b), the words "or the EFTA Court in the case of decisions taken by the EFTA Surveillance Authority" shall be inserted after the words "Court of Justice of the European Union".'

Article 2

The texts of Regulations (EC) No 391/2009, as corrected by OJ L 74, 22.3.2010, p. 1, (EU) No 788/2014, as corrected by OJ L 234, 7.8.2014, p. 15 and (EU) 2019/492, Implementing Regulation (EU) No 1355/2014, Directive 2009/15/EC, Implementing Directive 2014/111/EU, Decisions 2009/728/EC and (EU) 2015/669, Implementing Decisions 2013/765/EU, 2014/281/EU, (EU) 2015/688, (EU) 2016/1327 and (EU) 2021/1227 and Implementing Decisions C(2017) 1881 of 24.3.2017 and C(2020) 4226 of 29.6.2020, and List 2022/C 466/07 in the Icelandic and Norwegian languages, to be published in the EEA Supplement to the *Official Journal of the European Union*, shall be authentic.

Article 3

This Decision shall enter into force on …, provided that all the notifications under Article 103(1) of the EEA Agreement have been made *.

Article 4

This Decision shall be published in the EEA Section of, and in the EEA Supplement to, the *Official Journal of the European Union*.

Done at Brussels, …

For the EEA Joint Committee
The President

The Secretaries
To the EEA Joint Committee

* [No constitutional requirements indicated.] [Constitutional requirements indicated.]