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Proposal for a

COUNCIL DECISION

on the signing, on behalf of the European Union, of the United Nations Convention on the International Effects of Judicial Sales of Ships, adopted by the United Nations General Assembly in New York on 7 December 2022

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

Maritime transport plays a leading role in international trade, and it is estimated that more than 90 % of worldwide traded goods are transported by sea. This makes the ship a vital asset without which global commerce would not be possible. Therefore, considering that ships are the most cost-effective mode of transport, it is irrefutable that shipping is crucial for the world's economic development. On the other hand, matters related to international shipping are often afflicted with legal difficulties arising from the lack of international harmonisation.

Currently, in most States including EU Member States, courts have the authority to order the sale of a ship to satisfy a claim that is brought against the ship or ship-owner. Such a claim is typically brought to foreclose a ship mortgage (in the event of default in repayment) or to enforce a maritime lien against the ship. The judicial sale procedure is typically preceded by the arrest of the ship. While the international community has achieved significant progress in harmonising the rules on arresting ships, much less progress has been achieved in harmonising rules on the judicial sale of ships, which remain subject to widely varying domestic laws. The situation has changed with the adoption of the **United Nations Convention on the International Effects of Judicial Sales of Ships ('the Beijing Convention on Judicial Sale of Ships')**¹ on 7 December 2022.

This Convention, adopted under the auspices of the United Nations Commission on International Trade Law ('UNCITRAL'), which is a body established by and subordinate to the General Assembly of the United Nations, has the potential to promote legal certainty and predictability at international and European level by creating a uniform regime for the international effects of judicial sales of ships.

The adoption of this Convention that is acceptable to States with different legal, social and economic systems would complement the existing international legal framework on shipping and navigation and contribute to the development of harmonious international economic relations. It is expected to provide legal protection for purchasers of ships sold by judicial sale, while safeguarding the interests of ship-owners and creditors. It does this by providing uniform rules that promote the dissemination of information on prospective judicial sales to interested parties and give international effects to judicial sales of ships sold free and clear of any mortgage or *hypothèque* and of any charge, including for ship registration purposes².

This means that EU stakeholders, and specifically prospective purchasers of ships could benefit from the necessary and adequate protection, which in turn would bolster international maritime trade and commerce. By providing certain guarantees and the required degree of uniformity, transparency and legal certainty, enabling the purchased ship to be traded freely, this Convention could have a positive impact on the sale price of the ship which will not have to be discounted in order to factor in legal risks and is therefore likely to be higher. This will benefit all the related parties, including creditors. Moreover, it could also permit EU financiers to provide ship finance with greater confidence since the purchase of vessels is generally financed by a ship mortgage where the financier's main security for repayment is the ship itself. Finally, this Convention could meet the commercial needs of the maritime industry and the financial industry, and consequently could help to further boost the EU financial market.

¹ A/RES/77/100: United Nations Convention on the International Effects of Judicial Sales of Ships

² See Preamble of the Beijing Convention on Judicial Sale of Ships.

The European Union continually strives to support multilateral instruments which underpin the growth of trade through increased legal certainty and which will promote a stronger Europe in the world. The Commission, representing the EU, which has observer status at UNCITRAL, was therefore actively involved in the negotiation process for the Convention, with a view to its possible signature and the ratification of this future international system. On the basis of the mandate including negotiating directives³ given by the Council to the European Commission, the Commission represented the interests of the EU during the negotiation process at UNCITRAL.

The Beijing Convention on judicial sale of ships was successfully adopted in December 2022 and will be open for signature, ratification or accession by the last quarter of 2023. Should the EU sign this Convention as proposed by the Commission (and later ratify it), the Convention would give international effects to judicial sales of ships, sold free and clear of any mortgage or *hypothèque* and of any charge, including for ship registration purposes, among the EU Member States that sign and ratify it and with other Contracting States of the Convention.

The Member States should sign the Convention after the signature of the Convention by the Union.

This proposal is in line with the objectives of the Commission set out in the Political Guidelines for the European Commission (2019-2024)⁴, in particular related to the priority ‘A stronger Europe in the world’⁵. It is in line with the EU’s commitment to multilateralism in international relations, and it is likely to encourage other countries and EU trading partners to join the Beijing Convention on Judicial Sale of Ships.

- **Consistency with existing policy provisions in the policy area**

Since the entry into force of the Lisbon Treaty, judicial cooperation in civil and commercial matters has been covered by Article 81 of the Treaty on the Functioning of the European Union (TFEU). Article 81(2)(a) provides for measures aimed at ensuring ‘the mutual recognition and enforcement between Member States of judgments and of decisions in extrajudicial cases’ and Article 81(2)(c) covers the compatibility of the rules applicable in the Member States concerning jurisdiction, including for example in relation to actions concerning the annulment or suspension of the judicial sale of a ship. Article 81(2)(b) further provides for ‘the cross-border service of judicial and extrajudicial documents’. Moreover, Article 81(2)(e) aims to ensure ‘effective access to justice’.

In line with the policy objective of facilitating access to justice, in particular by providing rules on (i) the jurisdiction of courts and (ii) rapid and simple recognition and enforcement of judgments in civil and commercial matters given in the Member States, the European Parliament and the Council of the EU adopted Regulation (EU) No 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast)⁶. This Regulation determines the courts of which Member State have jurisdiction to decide on a civil and commercial dispute where there is an international element. It further provides that a judgment given in a Member State must be recognised in the other Member States without any special procedure being required, and that judgments as well as authentic instruments given in a Member State and enforceable in that State must be enforced in another Member

³ See ‘I/A’ Item Note of the Council Meeting on Justice and Home Affairs (No. 9711/22) of 9 and 10 June 2022 and the Draft Council Decision (No. 9026/22) authorising the opening of negotiations on a Convention on the International Effects of Judicial Sale of Ships in the framework of UNICTRAL.

⁴ https://commission.europa.eu/strategy-and-policy/priorities-2019-2024_en

⁵ While also supporting the objectives of the headline categories “An economy that works for people” and “A new push for European democracy”.

⁶ OJ L 351, 20.12.2012, p. 1.

State without any declaration of enforceability being required. It also provides for two forms; the certificate concerning a judgment and the certificate concerning an authentic instrument or court settlement.

In addition, the EU has an internally well-developed system regulating the cross-border service of judicial and extrajudicial documents between the Member States. The service of documents system, which has applied since May 2001, provides a procedure for the serving documents via designated ‘transmitting agencies’ and ‘receiving agencies’ without recourse to consular and diplomatic channels, and other methods of serving documents. The system of judicial cooperation in serving documents has been modernised by the adoption Regulation (EU) 2020/1784 of the European Parliament and of the Council of 25 November 2020 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters⁷. This Regulation introduces new rules seeking to improve the efficiency and speed of cross-border judicial proceedings by taking advantage of digitalisation and the use of modern technology, aiming to ultimately advance access to justice and a fair trial for the parties.

At the international level, matters concerning international jurisdiction and the recognition and enforcement of judgments in civil and commercial matters are addressed by the following multilateral agreements to which the EU is a party: The Hague Convention of 2005 on Choice of Court Agreements⁸; the 2007 Lugano Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters; the parallel agreement concluded with Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters⁹; and The Hague Convention of 2019 on the Recognition and Enforcement of Foreign Judgments¹⁰.

There is currently no specific international framework for the judicial sales of ships and specifically the recognition of foreign judicial sales of ships and their effects. This situation creates legal uncertainty, which does not benefit international trade or commerce.

On the issue of rights over ships, several attempts were made (with no success) to harmonise the rules of judicial sales of ships starting with the adoption of the International Conventions for the Unification of Certain Rules relating to Maritime Liens and Mortgages of 1926¹¹ and 1967¹² and the 1993 Arrest Convention¹³. Although these three Conventions contained provisions on the judicial sale of ships, they have not been widely accepted.

Beyond these unsuccessful Conventions, many jurisdictions already recognised the effects of foreign judicial sales including the clean title afforded by them, for instance on the basis of comity. However, no global multilateral framework exist for the recognition of effects of foreign judicial sales of ships.

The Beijing Convention on Judicial Sale of Ships would thus complement the existing framework in the EU when it is signed and eventually ratified by Member States, and on the international scene on the recognition and enforcement of judgments in civil and commercial matters, ensuring that the effects of judicial sales of ships are recognised internationally.

⁷ OJ L 405, 2.12.2020, p. 40.

⁸ OJ L 133, 29.5.2009 (Annex I).

⁹ OJ L 339, 21.12.2007, p. 3.

¹⁰ OJ L 187, 14.7.2022, p. 4 (The date of entry into force of the Convention will be published in the *Official Journal of the European Union* by the General Secretariat of the Council).

¹¹ Concluded on 10 April 1926 in Brussels.

¹² Concluded on 27 May 1967 in Brussels.

¹³ Adopted on 12 March 1999 by the United Nations/International Maritime Organization Diplomatic Conference (“UN/IMO Diplomatic Conference”).

- **Consistency with other Union policies**

This proposal for a Council Decision is consistent with the general policy of the EU to take action to ensure that the EU's exclusive external competence is respected in the international framework, by joining international conventions that include provisions under EU exclusive external competence, when this is permitted by the presence of a REIO clause, allowing (as in this present case) Regional Economic Integration Organisations to sign, accept, approve or accede to an international instrument, or by authorising EU Member States to do so on behalf of the EU.

The disconnection clause in Article 18(4) of the Beijing Convention will ensure a smooth link between the instruments of EU law and the convention and, as far as possible and where appropriate, safeguard the application of current or future Union instruments, in particular the rules contained in the Brussels Ia Regulation and the Service of Documents Regulation. Notably, the disconnection clause will ensure that the EU jurisdictional rules on proceedings concerned with the enforcement of judgments as between Member States will not be affected. The disconnection clause should also ensure that where a service of a document has to take place and the addressee is domiciled within the EU, the EU rules on service of documents apply between the transmitting and receiving states.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

This proposal for a Council Decision is based on Article 81(2) points (a) and (b), in conjunction with Article 218(5) of the Treaty on the Functioning of the European Union (TFEU) because the Beijing Convention on Judicial Sale of Ships is an international instrument. Judicial cooperation in civil and commercial matters is governed by Article 81 of the TFEU, which is therefore the legal basis of the EU's competence in this area.

Based on Article 3(2) of the TFEU, some provisions of the Beijing Convention on Judicial Sale of Ships fall within the scope of the EU's exclusive external competence because they *'may affect common rules or alter their scope'*.

The Beijing Convention on Judicial Sale of Ships contains provisions on jurisdiction which may affect the application of Regulation (EU) No 1215/2012 on jurisdiction and the recognition and enforcement of judgment in civil and commercial matters¹⁴ (i.e. Article 9 of the Beijing Convention on judicial sale of ships *'Jurisdiction to avoid and suspend judicial sale'*).

This Convention also contains provisions on serving notice of judicial sale of ships which may affect the application of Regulation (EU) 2020/1784 of the European Parliament and of the Council of 25 November 2020 on the service in the Member States of judicial and extrajudicial documents in civil and commercial matters¹⁵ (i.e. Article 4 of the Beijing Convention on judicial sale of ship *'Notice of judicial sale'*).

- **Declarations on matters falling under the scope of European Union's exclusive competence**

Article 18(2) (Participation by regional economic integration organisations) of the Beijing Convention on Judicial Sale of Ships requires that the European Union, when signing the

¹⁴ OJ L 351, 20.12.2012, p. 1.

¹⁵ OJ L 405, 2.12.2020, p. 40–78.

Convention, makes a declaration to Depository specifying the matters governed by this Convention in respect of which competence has been transferred to the European Union by its Member States.

That declaration is annexed to this proposal.

- **Subsidiarity (for non-exclusive competence)**

Not applicable

- **Proportionality**

The objectives of this proposal are (i) to increase access to justice for EU parties by ensuring the recognition of the effects of foreign judicial sales of ships and (ii) to increase legal certainty for business and citizens involved in international dealings. At the same time, this Convention has the potential to decrease the costs and length of proceedings in cross-border court litigation.

These objectives could only be achieved by adhering to a system providing a set of uniform rules that promote the dissemination of information on prospective judicial sales to interested parties and which give international effects to judicial sales of ships sold free and clear of any mortgage or *hypothèque* and of any charge, including for ship registration purposes, such as the one adopted in the Beijing Convention on Judicial Sale of Ships.

Unilateral action at EU level would not achieve these objectives because it could not ensure that the effects of judicial sales of ships carried out in the EU would be recognised in countries outside the EU, where the ship sold by a judicial sale could be registered. This situation would not avoid the problems resulting from the *status quo* in the international arena, i.e. the absence of agreed rules on recognising a clean title over ships following judicial sales and the resulting lack of legal certainty.

Signing a multilateral framework such as the Beijing Convention on Judicial Sale of Ships would be more efficient than entering into bilateral negotiations with non-EU States. Depending on how many States will adhere to this Convention, it would ensure a common legal framework for dealing with the recognition of the effects of judicial sale of ships, wherever such a sale occurs. It would also ensure one common legal framework for EU citizens and companies seeking the recognition of the clean title over a ship acquired by a judicial sale both in non-EU States and within the EU.

Finally, this proposal does not go beyond the aim of ensuring that the EU's exclusive external competence on certain provisions of the Beijing Convention on Judicial Sale of Ships is respected and that this Convention does not impede the application of EU law between EU Member States.

- **Choice of the instrument**

Not applicable

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Ex-post evaluations/fitness checks of existing legislation**

Not applicable

- **Stakeholder consultations**

Since UNCITRAL convened a first exploratory meeting on a draft instrument on judicial sale of ships in May 2019, Member States were regularly informed and consulted in the Council

Working Party on Civil Law Matters (General Questions) about the different options and the coordinated lines to take in relation to the EU position in the framework of the discussions of UNCITRAL's Working Group VI (Judicial Sale of Ships). In addition, the delegates of the Member States were regularly consulted on the spot in either Vienna or New York during the sessions of the Working Group. The Commission reported on the outcome of the meetings of Working Group VI after each UNCITRAL session in the Council Working Party on Civil Law Matters (General Questions).

- **Collection and use of expertise**

In the process of negotiating the Beijing Convention on Judicial Sale of Ships, the Commission has consistency and in full transparency consulted with and relied on the expertise provided by experts in the field from the Member States.

In addition, the Commission has relied in its work on the expertise gathered from the Colloquium dedicated to the issues connected with the work on the future international instrument on judicial sale of ships organised under the patronage of the Croatian Presidency on 7 September 2020. The Colloquium panel was composed of various international experts in maritime law and specifically in judicial sales of ships, and attracted the participation of a wide-range of specialists from the maritime, international trade and finance industries.

The feedback received from stakeholders in response to an invitation to provide views on the Commission's understanding of the problem and possible solutions as suggested in the UNCITRAL project, has been very useful to the Commission's work.

In the work undertaken on this Convention, the Member States' delegations at UNCITRAL Working Group VI were composed of experts, including academics and government officials.

Consultations with the world-wide maritime industry carried out by the Commission's active participation at the 2022 Comité Maritime International (CMI) Conference (18-21 October 2022 in Antwerp, Belgium) showed general interest and strong support for the Beijing Convention on the Judicial Sale of Ships.

Finally, the Commission has relied on the extensive expertise at EU level on the recognition and enforcement of judgments at EU level under Regulation No 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters and its predecessor Regulation No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters¹⁶, which itself was the successor of the 1968 Brussels Convention on jurisdiction and the enforcement of judgments in civil and commercial matters¹⁷ on the same subject. Extensive guidance by the Court of Justice of the European Union exists in relation to the interpretation and application of these instruments.

- **Impact assessment**

This proposal is not supported by an impact assessment.

However, as also indicated above, intensive consultations were held with the Member States' experts and the maritime industry at large before the work on the draft convention commenced. A high-level Colloquium was also held in Valletta, Malta, on 27 February 2018 where the original draft proposal for a convention on judicial sales of ships received support from a cross-section of the international maritime industry, including representatives of the Baltic and International Maritime Council (BIMCO), the International Transport Workers Federation (ITF) and the Federation of National Associations of Ship Brokers and Agents

¹⁶ OJ L 12, 16.1.2001, p. 1–23.

¹⁷ OJ L 299, 31.12.1972, p. 32 - 42.

(FONASBA), as well as ship financiers, ship-owners, bunker suppliers, ship repairers, harbour authorities and ship registries.

The Government of Switzerland also prepared a detailed paper¹⁸ which included the outcomes and conclusions of the high-level Colloquium, and which was discussed and duly considered by the UNCITRAL Commission at its fifty-first session (New York, 25 June–13 July 2018).

These consultations and work continued throughout the course of the negotiation process in UNCITRAL both at EU level and internationally.

- **Regulatory fitness and simplification**

Not applicable

- **Fundamental rights**

This proposal aims at facilitating and improving access to justice for EU businesses and citizens because having a legal framework for the international recognition of the effects of the judicial sale of ships will contribute to due process with respect to judicial sale and ensure that all affected parties have the opportunity to assert their rights.

Moreover, the Beijing Convention on Judicial Sale of Ships will improve protection and judicial remedies to good faith creditors, who typically aim to maximise their claims and this to a certain extent reflects the internal EU rules governing the recognition and enforcement of judgments set out in the Brussels Ia Regulation, and those on serving of documents that are laid down in the Service of Documents Regulation and its recast.

The possibilities in the Convention bring a claim or application to avoid a judicial sale of ships that confers clean title to the ship or to suspend its effects (Article 9 '*Jurisdiction to avoid and suspend judicial sale*') and a provision on public policy (Article 10 '*Circumstances in which judicial sale has no international effect*') in the Convention are in line with EU fundamental rights and principles of procedural fairness and with the public policy of the State where the recognition of the effects of the judicial sale is being sought. Consequently, this will help to ensure, that fundamental rights such as the right of the defence or the right to a fair trial have been duly observed in a non-EU country.

4. BUDGETARY IMPLICATIONS

Not applicable

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

Not applicable

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

Not applicable

¹⁸ Annex II of A/CN.9/WG.VI/WP.81 (<https://documents-dds-ny.un.org/doc/UNDOC/LTD/V19/008/27/PDF/V1900827.pdf?OpenElement>)

Proposal for a

COUNCIL DECISION

on the signing, on behalf of the European Union, of the United Nations Convention on the International Effects of Judicial Sales of Ships, adopted by the United Nations General Assembly in New York on 7 December 2022

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 81(2) points (a) and (b), in conjunction with Article 218(5) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) On 23 May 2022, the Council authorised the Commission to open negotiations on a convention on the international effects of judicial sale of ships. These negotiations were successfully concluded by the adoption of the text of the convention by United Nations General Assembly in New York on 7 December 2022.
- (2) The United Nations Convention on the International Effects of Judicial Sales of Ships ('Beijing Convention on the Judicial Sale of Ships'), adopted by United Nations General Assembly in New York on 7 December 2022, strengthens the existing international legal framework on shipping and navigation and makes a useful contribution to the development of harmonious international economic relations. It is therefore desirable that the provisions of this instrument are applied as soon as possible.
- (3) The European Union is working towards the establishment of a common judicial area based on the principle of mutual recognition of judicial decisions. In that context, the Union legislator has adopted, amongst others, Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters¹⁹ and Regulation (EU) 2020/1784 of the European Parliament and of the Council of 25 November 2020 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters²⁰.
- (4) Some of the matters dealt with in the Beijing Convention on the Judicial Sale of Ships affect Regulation (EU) No 1215/2012 and Regulation (EU) 2020/1784. The Union therefore has exclusive competence over these matters, while the other matters dealt with in the Beijing Convention on the Judicial Sale of Ships do not fall under that competence.
- (5) Member States should sign the Beijing Convention on Judicial Sale of Ships in order to ensure the full application of the Convention between the Union and third states.

¹⁹ OJ L 351, 20.12.2012, p. 1.

²⁰ OJ L 405, 2.12.2020, p. 40.

- (6) Article 18(1) of the Beijing Convention on Judicial Sale of Ships provides that Regional Economic Integration Organisations which have competence over certain matters governed by the Beijing Convention on judicial sale of ships may sign, accept, approve or accede that Convention.
- (7) Article 18(2) of the Beijing Convention on Judicial Sale of Ships provides that, at the time of signature, acceptance, approval or accession, a Regional Economic Integration Organisation is to make a declaration specifying the matters governed by that Convention in respect of which competence has been transferred to that organisation by its Member States. The Union should consequently make such a declaration at the time of signature of the Beijing Convention on Judicial Sale of Ships.
- (8) Therefore, the Beijing Convention on Judicial Sale of Ships should be signed on behalf of the Union, subject to its conclusion at a later date and the attached Declaration be approved.
- (9) [In accordance with Article 3 of the Protocol (No 21) on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union, Ireland has notified its wish to take part in the adoption and application of this Decision.]

OR

[In accordance with Articles 1 and 2 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of that Protocol, Ireland is not taking part in the adoption of this Decision and is not bound by it or subject to its application.].

- (10) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the Treaty on the European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Decision and is not bound by it or subject to its application.

HAS ADOPTED THIS DECISION:

Article 1

The signing of the United Nations Convention on the International Effects of Judicial Sales of Ships ('Beijing Convention on the Judicial Sale of Ships'), adopted by United Nations General Assembly in New York on 7 December 2022, is hereby approved on behalf of the Union, subject to its conclusion.

The text of the Beijing Convention on Judicial Sale of Ships is attached to this Decision.

Article 2

The Declaration attached to this Decision shall be approved on behalf of the Union. When signing the Beijing Convention on Judicial Sale of Ships, the Union shall make the Declaration attached to this Decision, in accordance with Article 18(2) of the Beijing Convention on Judicial Sale of Ships.

Article 3

The Council shall authorise the Commission to nominate the person who shall have the full powers to sign the Convention, subject to its conclusion, on behalf of the Union.

Article 4

This Decision shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Done at Brussels,

For the Council
The President
[...]