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BREXIT - Expected impact on the shipping industry from a Cyprus perspective

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The UK has long been one of the leading shipping hubs, this role having been enhanced by its European Union membership and involvement with and contribution to the operations of EU institutions, as well as being the largest and most influential common law country to have joined the EU. This role changed, however, once the UK submitted, on 29 March 2017, the notification of its intention to withdraw from the Union pursuant to Article 50 of the Treaty on European Union (the “Brexit”). This means that once the Brexit process is completed (the “Withdrawal Date”) [1], all European Union primary and secondary law will cease to apply to the UK, save for the agreed or residual legislation. Further, the UK will then become a ‘third country’[2] in accordance with EU rules and regulations.

Although a Brexit deal has been recently agreed in principle with the EU and the UK, both the UK and the EU need to approve and sign the withdrawal agreement. If the withdrawal agreement is not signed by the UK and the EU, the UK could still leave with no deal on the Withdrawal Date and thus it will be a ‘no-deal Brexit’. A no-deal Brexit means that the UK will simply leave the EU without any agreements on several matters, including trade and free movement for EU nationals. Shipping is one of the areas to be affected since (a) British flagged vessels will be considered non-EU, and (b) there will be border controls between the UK and the EU.

Therefore, in view of the considerable uncertainties surrounding the contents of a possible withdrawal agreement and/or the ratification of the withdrawal agreement and/or the scenario of a “no-deal Brexit”, there are number of issues which affect, inter alia, the shipping industry in the other Member States. As the Cyprus Shipping Deputy Ministry recently stressed, preparing for Brexit is not just a matter for EU and national authorities but also for private parties and that the relevant affected private parties must also take the necessary actions and make their own preparations for the UK’s withdrawal from the EU.

Thus, British nationals and British Companies that own Cyprus registered vessels should consider whether they need to take steps to ensure that they will continue to meet the requirements set out by the Cyprus Merchant Shipping (Registration of Ships, Sales and Mortgages) laws of 1963 (as amended) (the “**Law**”) in relation to the ownership of a Cyprus flagged vessel, after Brexit. Further, where authorisations licences or certificates will be required pursuant to the relevant Cyprus Law, each affected party will be responsible to apply in good times.

Pursuant to the relevant provisions of the Law, the following conditions of ownership of a Cyprus vessel apply: -

A ship may only be registered in the Register of Cyprus Ships if: (a) more than fifty per cent (50%) of the shares of the ship are owned:

- by Cypriot citizens; or
- by citizens of other Member States (EU/EEA [3]) who in the instance of not being

permanent residents of the Republic of Cyprus will have appointed an authorised representative in the Republic of Cyprus; or

(b) the total (100%) of the shares of the ship are owned by one or more corporations, which have been established and operate:

- in accordance with the laws of the Republic of Cyprus and have their registered office in the Republic; or
- in accordance with the laws of any other Member State (EU/EEA) and have their registered office, central administration or principal place of business within the European Economic Area and which will have either appointed an authorised representative in Cyprus or ensured that the management of the ship is entrusted in full to a Cypriot or a Community ship management company having its place of business in Cyprus; or
- outside Cyprus or outside any other Member State (EU/EEA) but controlled by Cypriot citizens or citizens of Member States and have either appointed an authorised representative in Cyprus or ensured that the management of the ship is entrusted in full to a Cypriot or a Community ship management company having its place of business in Cyprus.

As of the Withdrawal Date and subject to any transitional arrangement that may be contained in a possible withdrawal agreement or a grace period that may be given by the Republic of Cyprus, a Cyprus flag vessel which is owned by a UK citizen or by a UK corporation or by a corporation registered outside the European Union but controlled by UK citizens, will not satisfy the conditions of the Law and consequently such vessels shall lose their eligibility to be registered in the Cyprus Ships Registry and could be faced with termination of their registration whilst other measures may come into play (forced sale, for example).

Thus, the relevant affected parties must be prepared and take the necessary steps and actions so as to comply with the relevant provisions of the Law. For example, the affected parties may transfer such vessels to a Cyprus registered company (the registration of which is straightforward and the corporate income tax rate a competitive 12.5%).

In addition and subject to any transitional arrangement that may be contained in a possible withdrawal agreement or a grace period that may be given by the Republic of Cyprus, the following (inter alia) areas are affected as of the Withdrawal Date:

(a) recognition of seafarer's certificates.

The EU rules in the field of minimum level and mutual recognition of seafarers' certificates shall no longer apply to the UK. This has in particular the following consequences for the validity of certificates:

(i) According to Article 3 of Directive 2008/106/EC [4], seafarers serving on board a vessel flying the flag of an EU Member State have to hold the requisite certificate of competency or certificate of proficiency (hereafter "Certificates") issued by that Member State, by another Member State or by one of the third countries recognised under Article 19 of Directive

2008/106/EC.

Pursuant to Article 3 of Directive 2005/45/EC [5], every Member State shall recognise the certificates issued to seafarers by the other Member States and such recognition must be accompanied by an 'endorsement attesting such recognition'. Pursuant to Article 19(4) of Directive 2008/106/EC, a Member State may decide to endorse the certificates issued by the recognised third countries.

(ii) As of the Withdrawal Date, (i) the certificates issued to seafarers by the UK can no longer be presented for an 'endorsement attesting recognition' by an EU-27 Member State under Directive 2005/45/EC (although the 'endorsement[s] attesting recognition' issued prior to the withdrawal date by EU27 Member States under Directive 2005/45/EC of certificates issued to seafarers by the UK will continue to be valid until their expiry) and (ii) recognition by an EU-27 Member State of certificates issued to seafarers by the UK will be subject to the conditions set out in Article 19 of Directive 2008/106/EC, in line with the new status of the UK as a third country.

(b) maritime security and inspections

The EU rules in the field of maritime security shall no longer apply to the UK. This has in particular the following consequences:

Article 6 of Regulation (EC) No 725/2004 [6] requires the competent authority for maritime security of the Member State to request ships announcing their intention to enter a port to provide certain security information. According to Article 7(1),(2) of Regulation (EC) No 725/2004, Member States can request each other, for international scheduled services operated between them, to exempt these services from providing this mandatory security information. As of the Withdrawal Date, this possibility, as provided by the said Regulation, no longer exists for the UK. This means that, as of the Withdrawal Date, all scheduled services falling within the scope of Article 6 of Regulation (EC) No 725/2004, such as ferry links between the UK and EU Member States, will be subjected to the mandatory provision of security information set out therein.

Further and in accordance to Article 16(2) of Directive 2005/65/EC [7], the personnel carrying out security inspections or handling confidential information requires a security vetting of the Member State of which the person concerned is a national. This means that UK personnel (thus holding a security clearance from the UK) can no longer carry out the security inspections referred to in this Directive. The same applies for inspections under Regulation (EC) No 725/2004 (for International Ship and Port Facility Security (ISPS) compliance).

(c) maritime transport

The EU rules in the field of maritime transport no longer apply to the UK. This has in particular the following consequences in the different areas of Union law in the field of maritime transport:

- Intra-Union shipping services and third-country traffic: Regulation (EEC) No

4055/865 [8] stipulates the freedom to provide maritime transport services between Member States, as well as between Member States and third countries, in respect of: (1) “nationals of Member States who are established in a Member State other than that of the person for whom the services are intended” and (2) “nationals of the Member States established outside the EU”, or “shipping companies established outside the EU and controlled by nationals of a Member State, if their vessels are registered in that Member State in accordance with its legislation.” Thus, persons or companies who, as of the Withdrawal Date, do not meet those criteria will no longer benefit from this Regulation, notably in terms of non-discriminatory treatment as regards international maritime transport connections.

(ii) Cabotage: According to Article 1(1) of Regulation (EEC) No 3577/928 [9], the provision of maritime transport services within EU Member States (maritime cabotage) is restricted to Community shipowners (as defined therein). As of the Withdrawal Date, it will no longer be possible to provide maritime transport services in accordance with this Regulation if the conditions for constituting a Community shipowner are no longer fulfilled, unless national legislation allows access to cabotage to vessels flying the flag of a third country.

(iii) Port State Control: Directive 2009/16/EC [10] requires Member States to inspect foreign ships in ports by Port State Control officers for the purpose of verifying that the condition of a ship and its equipment comply with the requirements of international conventions, and that the vessel is manned and operated in compliance with applicable international law. The said Directive also requires verification of compliance with a number of other EU-law based requirements. While the 27 Member States will continue to verify United Kingdom ships calling to EU ports, as of the Withdrawal Date, the Port State Control inspection system set out in the said Directive no longer applies in the United Kingdom. Relations between the United Kingdom and the EU in respect of Port State Control will be governed by the Paris Memorandum of Understanding on Port State Control.

Thus, British (and other) shipping and shipping related companies are considering the various implications due to Brexit, irrespective of the time and the way in which Brexit will eventually occur, and their focus has turned on other EU alternatives and options in order to maintain the EU status and for easier trading with EU market. One of these options is Cyprus, a nation with naval tradition going back millennia and which historically has close links to the UK and very similar legal system (being a common law country) and approach to shipping. Cyprus could provide these companies with stability and security. Already, UK-regulated ship insurers have identified Cyprus as an attractive jurisdiction for an outpost or base amidst fears that EU exit will hinder their access to the bloc’s financial market. It is noted that the British ferry and shipping freight operator P&O recently decided to shift the registration of its UK vessels to Cyprus.

Further, Cyprus continuously takes steps and actions to safeguard competitiveness, including a smooth and successful prolongation of the Cyprus tonnage tax system, rationalisation of merchant shipping fees and taxes, revising policy on registration of ships under Cyprus flag, reduction of bureaucracy and the creation of one stop service. Growing ship financing possibilities are also available through Cyprus local banks. Although the banks’ portfolios are

still comparatively small, this development will not only increase the size and scope of the maritime cluster and create opportunities, but expand the expertise in this area within Cyprus's financial services sector.

Specifically, (i) on 27 September 2019, the Cypriot House of Representatives approved the Government's bill, regarding the abolishment of the initial registration fees of Seagoing Ships in the Cyprus Ships Registry; (ii) on 23 July, 2019, a new agreement was signed with the twelve Recognised Organisations (Classification Societies) which provide survey and certification services to ocean-going Cyprus flag ships. These twelve specialised and internationally acclaimed Organisations are authorised to carry out assessment, auditing, verification and certification of safety management systems and ISPS Code, on behalf of the Government of the Republic of Cyprus and are recognised by the EU, (iii) the Shipping Deputy Ministry has recently issued a circular informing all registered owners, registered bareboat charterers, managers and representatives of ships flying the Cyprus flag, along with all Recognised Organisations and Recognised Security Organisations, that from now on it is acceptable for statutory certificates issued to Cyprus flagged vessels by Recognised Organisations to be in electronic form. Provided that this is on the condition that they satisfy the requirements set out in the International Maritime Organisation's circular FAL.5/Cir.39/Rev.2, regarding the Guidelines for the use of electronic certificates (however, the existing practice of issuance of hard copy certificates remains applicable) and (iv) on 6 May 2019, the Minister's Cabinet has announced the approval of a draft bill providing for the establishment of Admiralty and Commercial Courts of Cyprus. The new bill aims to constitute the fundamental basis of reforming the Judicial system of Cyprus providing fast and effective remedies for Commercial and Admiralty disputes. Particularly the new bill provides that the Admiralty court will adjudicate shipping and maritime matters which will also be subject to the fast track procedure regardless of the value of the claim. The ultimate aim of this establishment is to strengthen the islands' shipping industry and simultaneously help to attract more investors.

Conclusion

The exact impact and consequences of Brexit to the Cyprus shipping industry cannot be predicted at this stage (as much will depend on the contents of the withdrawal agreement or of a "no-deal Brexit"), but it is inevitable that it will have an impact at least in terms of uniformity of regulations and free movement. Thus, interested parties need to consider how these changes would affect their business and contingency plans in order for the business not to be damaged or adversely affected by these changes, or alternatively, how to use this as a positive development and an opportunity to expand or streamline their affairs. With respect to the latter, many industry professionals are of the view that the competitiveness of the Cypriot shipping framework and strengthening of the Cypriot maritime cluster will have a positive impact as more operators look for new EU based alternatives to the UK for their vessels and companies.

[1] Furthermore, in accordance with Article 50(3) of the Treaty on European Union, the

European Council, in agreement with the United Kingdom, may unanimously decide that the Treaties cease to apply at a later date.

[2] A third country is a country not member of the EU.

[3] EEA is European Economic Area

[4] Directive 2008/106/EC of the European Parliament and of the Council of 19 November 2008 on the minimum level of training of seafarers.

[5] Directive 2005/45/EC of the European Parliament and of the Council of 7 September 2005 on the mutual recognition of seafarers' certificates issued by the Member States.

[6] Regulation (EC) No 725/2004 of the European Parliament and of the Council of 31 March 2004 on enhancing ship and port facility security

[7] Directive 2005/65/EC of the European Parliament and of the Council of 26 October 2005 on enhancing port security

[8] Council Regulation (EEC) No 4055/86 of 22 December 1986 applying the principle of freedom to provide services to maritime transport between Member States and between Member States and third countries

[9] Council Regulation (EEC) No 3577/92 of 7 December 1992 applying the principle of freedom to provide services to maritime transport within Member States (maritime cabotage), OJ L 364, 12.12.1992, p.7.

[10] Directive 2009/16/EC of the European Parliament and of the Council of 23 April 2009 on port State control