Council of the European Union

Brussels, 2 August 2018
(OR. en)

11532/18

Interinstitutional File:
2018/0298 (COD)

MAR 103
CODEC 1358
PREP-BXT 13

PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	1 August 2018
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2018) 567 final
Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulation (EC) No 391/2009 with regard to the withdrawal of the United Kingdom from the Union

Delegations will find attached document COM(2018) 567 final.

Encl.: COM(2018) 567 final

EUROPEAN
COMMISSION

Brussels, 1.8.2018
COM(2018) 567 final

2018/0298 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Regulation (EC) No 391/2009 with regard to the withdrawal of the United Kingdom from the Union

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

On 29 March 2017, the United Kingdom submitted notification of its intention to withdraw from the Union pursuant to Article 50 of the Treaty on European Union. This means that, unless a ratified withdrawal agreement establishes another date, all Union primary and secondary law will cease to apply to the United Kingdom from 30 March 2019, ('the withdrawal date'). The United Kingdom will then become a third country.

Subject to any transitional arrangements that may be contained in a withdrawal agreement, EU legislation on maritime transport will no longer apply to the United Kingdom. One of the areas of Union law that would be affected is the recognition at the Union level of organisations providing services for the inspection and survey of ships flying the flag of Member States ("Recognised Organisations").

In particular, Article 8(1) of Regulation (EC) No 391/2009[1] ('the Regulation') requires ship inspection and survey organisations recognised at EU level by the Commission ('recognised organisations') to be assessed at least every two years by the Commission together with the Member State that submitted the initial request for recognition of the organisation. Organisations which were initially recognised by the relevant Member State under the previous legislation and which presently enjoy EU recognition under Article 15(1) of the Regulation should be assessed in the same way. As a result, the Member State which initially recognised these organisations, under Article 15(1), should be considered the 'sponsor' Member State that participates in the Commission's assessment under Article 8(1) of the Regulation.

Moreover, it follows from Articles 7 and 8 of the Regulation that in order to continue enjoying EU recognition, recognised organisations must continue to meet the requirements and minimum criteria set out in Annex I of the Regulation. This is verified through the continuous re-assessment conducted by the Commission and the 'sponsor' Member State under Article 8(1).

As of its withdrawal, the United Kingdom will no longer be in a position to participate in the assessments carried out pursuant to Article 8(1) of the Regulation for those organisations for which the United Kingdom acts as the 'sponsor' Member State. Consequently, the continued validity of the recognition for these organisations at EU level could be called into question and could not be clarified with sufficient legal certainty under the existing provisions of the Regulation.

Organisations' potential loss of EU recognition due to the United Kingdom's withdrawal could have adverse consequences for the competitiveness and appeal of the EU-27 Member States' flags that have authorised these Recognised Organisations to act on their behalf for the purposes of carrying out statutory ship inspections, surveys and certification. The recognised organisations affected currently have authorisation agreements with the majority of the EU-27 Member States and after the United Kingdom's withdrawal they would not be able to make use of these Recognised Organisations for their flagged fleet. At the same time, shipowners using these organisations also for classification purposes would face the dilemma of either out-flagging their ships to a non-EU flag or risking breaching their current private contracts for classification of their ships with the relevant organisations.

[1] Regulation (EC) 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).

This proposal aims to increase legal certainty, secure business continuity for the affected shipowners and maintain the competitiveness of EU-27 Member States' flags.

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

This proposal is necessitated by the withdrawal of the United Kingdom from the Union and its scope is limited to addressing the relevant consequences. The main policy objectives of the Regulation remain unchanged.

- **Consistency with other Union policies**

This proposal is fully consistent with the Council mandate for the negotiations with the United Kingdom on its withdrawal from the Union.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The proposal is based on Article 100(2) TFEU.

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

As the proposed act would modify the content of the existing Union act, this could only be achieved through action at the Union level.

- **Proportionality**

The proposal is considered proportionate as it provides for the necessary legal change without going beyond the necessary to achieve the objective of lifting the legal uncertainty created by the United Kingdom's withdrawal from the Union. It provides for the necessary legal amendments in order to safeguard the competitiveness of the flags of the EU-27 Member States.

- **Choice of the instrument**

Given that the act amends a Regulation of the European Parliament and of the Council, the proposed amendment is the only adequate form.

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

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

Not applicable.

- **Stakeholder consultations**

The problems regarding the re-assessment process linked to the withdrawal of the UK from the union have been brought to the attention of the concerned stakeholders in a Commission notice on maritime transport[2].

[2] 'Notice to stakeholders — Withdrawal of the United Kingdom and EU rules in the field of maritime transport',
https://ec.europa.eu/transport/sites/transport/files/legislation/brexit-notice-to-stakeholders-maritime-transport.pdf

The stakeholders concerned and the Member States were given the opportunity to provide feedback on the proposed initiative via the European Commission's Better Regulation portal ('Have your say') for a period of two weeks.

During the feedback period from 28 June to 12 July 2018, one stakeholder provided comments. The intention of creating more legal certainty and clarity through the proposed initiative and of maintaining the competitiveness of EU27 ship-owners was generally appreciated. The feedback was taken into consideration in drafting the proposal as relevant.

- **Collection and use of expertise**

Feedback as well as technical expertise was collected from stakeholders and Member States as well as from the European Maritime Safety Agency. The proposal was also underpinned by legal analysis of the consequences of the United Kingdom's withdrawal in the policy area of recognised organisations.

- **Impact assessment**

Under the Better Regulation Guidelines, an impact assessment is not needed, because the envisaged measure is not expected to have significant impact and there are no other materially different policy options available except for the one proposed.

- **Fundamental rights**

This proposal has no consequences for the protection of fundamental rights.

4. BUDGETARY IMPLICATIONS

Not applicable.

5. OTHER ELEMENTS

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

In order to evaluate whether the current initiative has attained the above objective without creating any unintended consequences for competition, a review clause has been introduced in Article 2 of the proposal.

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

The proposal aims to resolve the legal uncertainty created by the United Kingdom's withdrawal in relation to the continued validity of the recognition for organisations for which the United Kingdom acts as the 'sponsor' Member State participating in the Commission's assessment. This would allow the continuation of existing arrangements between those organisations and the EU-27 Member States that have signed authorisation agreements, thus allowing these organisations to conduct ship inspections and surveys on the Member States' behalf, upholding uninterrupted safety.

The proposed legislative measure would amend Article 8(1) of the Regulation by replacing the current requirement, under which only the 'sponsor' Member State shall participate in the regular assessment process conducted by the Commission, by introducing the participation of any Member State which has authorised one of the Recognised Organisations. It would allow the assessment to be carried out by the Commission together with any Member State

which has authorised the relevant recognised organisation to act on its behalf for the purposes of Article 3(2) of Directive 2009/15/EC[3], and not only the 'sponsor' Member State.

The above solution was chosen as the most effective and efficient way of addressing the legal uncertainty created in the area of recognised organisations by the United Kingdom's withdrawal. The proposed act would resolve that legal uncertainty in a non-discriminatory way for the Member States that have authorised recognised organisations to act on their behalf.

In addition, the proposal meets the objective of safeguarding business continuity and the competitiveness of the flags of the EU-27 Member States working with the affected organisations will be attained.

The Regulation should only rectify the potential adverse consequences caused/brought about by the United Kingdom's withdrawal from the Union on the flags of the 27 Member States. The Commission should report on its effects after an adequate/sufficient period of application, in particular with a view to identifying any consequences which could go beyond the scope of this Regulation.

[3] 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 (OJ L 131, 2009, p. 47).

2018/0298 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Regulation (EC) No 391/2009 with regard to the withdrawal of the United Kingdom from the Union

(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 100(2) 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],

Having regard to the opinion of the Committee of the Regions[2],

Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) On 29 March 2017, the United Kingdom notified the European Council of its intention to withdraw from the Union pursuant to Article 50 of the Treaty on European Union. Consequently, unless another date is established in a withdrawal agreement, or the European Council, in agreement with the United Kingdom, unanimously establishes another date, Union law will cease to apply to the United Kingdom from 30 March 2019. The United Kingdom will then become a third country.

(2) Regulation (EC) No 391/2009[3] and Directive 2009/15/EC of the European Parliament and of the Council[4] together constitute the regulatory framework for the activities of recognised ship inspection, survey and certification organisations.

(3) In accordance with Article 8(1) of Regulation (EC) No 391/2009, ship inspection and survey organisations recognised at Union level by the Commission ('recognised organisations') are to be assessed on a regular basis and at least every two years by the Commission, together with the Member State that submitted the relevant request for recognition of the organisation.

(4) For reasons of equal treatment, organisations which were initially recognised by the relevant Member State in accordance with Council Directive 94/57/EC[5] and currently

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1 OJ C , , p. .

2 OJ C , , p. .

3 Regulation (EC) 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).

4 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 (OJ L 131, 2009, p. 47).

enjoy Union recognition under Article 15(1) of Regulation (EC) No 391/2009, should be assessed by the Commission, together with the Member State which initially recognised those organisations.

(5) In accordance with Articles 7 and 8 of Regulation (EC) No 391/2009, in order to continue to benefit from Union recognition, recognised organisations must continue to fulfil the requirements and minimum criteria set out in Annex I to that Regulation. This is verified through the continuous assessment carried out by the Commission, together with the relevant Member State, in accordance with Article 8(1) of Regulation (EC) No 391/2009. Therefore, regular assessments play an important role for continued recognition of organisations.

(6) Following its withdrawal from the Union, the United Kingdom will no longer be able to participate in the assessments carried out pursuant to Article 8(1) of Regulation (EC) No 391/2009.

(7) The recognised organisations which were initially recognised by the United Kingdom currently enjoy Union recognition and have been entrusted by other Member States with duties in relation to the inspection, survey and certification of ships, in accordance with Article 3(2) of Directive 2009/15/EC. It is therefore necessary to amend Article 8(1) of Regulation (EC) No 391/2009 in order to ensure that those organisations will continue to be subject to assessment in accordance with the requirements of that provision.

(8) It is also necessary to take into account the monitoring and oversight obligations that Member States currently have to fulfil under Article 9 of Directive 2009/15/EC. In this regard, the assessment of recognised organisations under Regulation (EC) No 391/2009 should be conducted by the Commission together with the Member State or Member States which authorised the relevant recognised organisation in accordance with Article 3(2) of Directive 2009/15/EC.

(9) This Regulation should apply from the day following that on which Union law, and in particular Regulation (EC) No 391/2009, ceases to apply to the United Kingdom,

HAVE ADOPTED THIS REGULATION:

Article 1

In Article 8 of Regulation (EC) No 391/2009, paragraph 1 is replaced by the following:

‘1. All the recognised organisations shall be assessed by the Commission, together with the Member State(s) which authorised them in accordance with Article 3(2) of Directive 2009/15/EC, on a regular basis and at least every two years to verify that they meet the obligations under this Regulation and fulfil the minimum criteria set out in Annex I. The assessment shall be confined to those activities of the recognised organisations, which fall within the scope of this Regulation.

Article 2

The Commission shall report to the European Parliament and the Council on the effects of this Regulation not later than three years following its date of application.

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[5] Council Directive 94/57/EC of 22 November 1994 on common rules and standards for ship inspection and survey organisations and for the relevant activities of maritime administrations (OJ L 319, 12.12.1994, p. 20).

Article 3

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

It shall apply from the day following that on which Union law ceases to apply to the United Kingdom.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament	*For the Council*
The President	*The President*