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#### 'I' ITEM NOTE

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From:	General Secretariat of the Council
To:	Permanent Representatives Committee (Part 1)
No. Cion doc.:	11532/18 MAR 103 CODEC 1358 PREP-BXT 13
No. prev. doc.:	13266/1/18 REV 1 MAR 145 CODEC 1710 PREP-BXT 37
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 <i>- Mandate for negotiations with the European Parliament</i>

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#### CONTEXT AND CONTENT OF THE PROPOSAL

1. On 1 August 2018, the Commission transmitted the above-mentioned proposal to the European Parliament and to the Council.
2. The Commission proposes to amend Article 8(1) of Regulation (EC) No 391/2009<sup>1</sup> ('the Regulation') in order to adapt the Regulation to the new situation created by the withdrawal of the United Kingdom from the Union.
3. The proposal is a result of the scanning of the *acquis* carried out by the Commission as part of the preparedness exercise in view of the withdrawal of the United Kingdom from the Union. It should therefore be treated as a priority by all EU institutions and bodies.

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<sup>1</sup> 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. Article 8(1) of the Regulation requires ship inspection, survey and certification organisations recognised at Union level ('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 Union 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.
5. Moreover, it follows from Articles 7 and 8 of the Regulation that in order to continue enjoying Union 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).
6. The United Kingdom is the initial 'sponsor' Member State of two recognised organisations. This means that once the Regulation has ceased to apply to the United Kingdom, 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 two organisations, which means that the validity of their recognition could be called into question, with adverse effects for Member States which have authorised those recognised organisations to act on their behalf in carrying out statutory ship inspections, surveys and certification.
7. The Commission proposes to address this problem through a minimal amendment to the Regulation.
8. It should be noted that the proposal was not accompanied by an impact assessment. According to the Commission, 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.

## **WORK WITHIN THE COUNCIL**

9. The proposal was examined by the Shipping Working Party during the autumn of 2018. Given the particular context of the withdrawal of the United Kingdom from the Union, the Shipping Working Party dealt with the proposal as speedily as possible.
10. The Shipping Working Party agreed on a minor amendment to the Commission proposal, namely that the Commission shall facilitate the fulfilment of Member States' obligations as flag States by identifying and exchanging good practices which may be used by Member States on a voluntary basis. This agreement was reached at the Shipping Working Party meeting on 26 October 2018.
11. Furthermore, some changes of a legal and/or linguistic nature have been made to the initial proposal.

## **WORK WITHIN THE EUROPEAN PARLIAMENT**

12. The Committee for Transport and Tourism (TRAN) has appointed Ms Isabella De Monte (S&D, Italy) as rapporteur. The draft report is scheduled for 3 December 2018.

## **WORK WITHIN OTHER EU BODIES**

13. The European Economic and Social Committee adopted an opinion on 17 October 2018. The Committee of the Regions decided not to issue an opinion.

## **COMMISSION POSITION**

14. The Commission maintains at this stage of the procedure a general reservation on any changes to its proposal, pending the European Parliament position at first reading.

## **CONCLUSION**

15. The Permanent Representatives Committee is invited to examine the text, as set out in the Annex to this note, with a view to giving the Presidency a mandate to start negotiations with the European Parliament as soon as possible.

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<sup>1</sup>,

After consulting the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure,

Whereas:

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<sup>1</sup> OJ C , , p. .

- (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. The Treaties will cease to apply to the United Kingdom from the date of entry into force of the Withdrawal Agreement, or failing that, two years after that notification, i.e. on 30 March 2019, unless the European Council, in agreement with the United Kingdom, unanimously decides to extend that period.
- (2) Regulation (EC) No 391/2009 of the European Parliament and of the Council<sup>1</sup> and Directive 2009/15/EC of the European Parliament and of the Council<sup>2</sup> 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, survey and certification 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<sup>3</sup> and currently 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.

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<sup>1</sup> 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).

<sup>2</sup> 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).

<sup>3</sup> 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).

- (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. Article 8(1) of Regulation (EC) No 391/2009 should therefore be amended in order to ensure that those organisations will continue to be subject to assessment in accordance with the requirements of that provision.
- (8) The monitoring and oversight obligations that Member States currently have to fulfil under Article 9 of Directive 2009/15/EC should also be taken into account. 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.
- (8a) In order to ensure coordination of national and Union activities with regard to the monitoring of recognised organisations, the Commission should consult with experts and identify and exchange good practices to avoid duplication of work and make best use of existing capacities and resources.

(9) This Regulation should apply from the day on which 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. The Commission shall facilitate the fulfilment of Member States' obligations as flag States by identifying and exchanging good practices which may be used by Member States on a voluntary basis."

*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.

*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 on which Regulation (EC) No 391/2009 ceases to apply to the United Kingdom.

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

Done at ...,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*

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