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PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2018) 397 final
Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL complementing EU type-approval legislation with regard to the withdrawal of the United Kingdom from the Union

Delegations will find attached document COM(2018) 397 final.

Encl.: COM(2018) 397 final



Brussels, 4.6.2018
COM(2018) 397 final

2018/0220 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
complementing EU type-approval legislation 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

The United Kingdom on 29 March 2017 submitted the 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 arrangement that may be contained in a possible withdrawal agreement, the EU legislative framework governing type approval for a number of products will no longer apply to the United Kingdom as of the withdrawal date, notably:

- Directive 2007/46/EC concerning the type-approvals of motor vehicles and trailers (to be replaced by a Regulation which will be applicable as from 1 September 2020);
- Regulation (EU) No 168/2013 concerning the type-approval of two- and three-wheeled vehicles and quadricycles;
- Regulation (EU) No 167/2013 concerning the type-approval of agricultural and forestry vehicles; and
- Regulation (EU) 2016/1628 concerning the type-approval of engines for use in non-road mobile machinery.

This also means that the United Kingdom type-approval authority will cease to be an EU type-approval authority and will no longer be able to fulfil any of the powers and obligations of a type-approval authority under EU legislation. Manufacturers who obtained approvals in the United Kingdom in the past will thus need to obtain new approvals from EU-27 type approval authorities, including for products already in production, in order to ensure continued compliance with EU legislation and retain access to the Union market.

While the legal framework for these products sets procedural requirements harmonising the way in which type-approvals are granted across the EU, some safeguards make it difficult for relevant manufacturers to take the necessary measures to ensure regulatory compliance and business continuity after the EU acquis ceases to apply to the United Kingdom.

For example, the EU type-approval system allows manufacturers to choose freely the type-approval authority to which they submit their type-approval applications. However, it does not allow for the change of the authority once an approval has been granted, and it is not possible for one authority to amend the approval issued by another authority. Equally, the type-approval legislation requires that a type-approval authority may only accept test reports from technical services which the Member State to whom it belongs has previously designated and notified to the Commission. Furthermore, it is a fundamental principle of the type approval system that a product may only be approved against the requirements applicable to new types (as opposed to new vehicles) at the time when the approval is granted. Finally, once the United Kingdom type-approval authority has ceased to be an EU type-approval authority, it can no longer ensure the conformity of production and in service conformity of products already in circulation. A responsible type-approval authority is also needed for the recall of a product that is not in conformity with safety or environmental requirements.

These issues create significant legal uncertainty for manufacturers with United Kingdom type-approvals. The present proposal aims to address them by modifying temporarily and in a very targeted manner the existing rules to allow concerned manufacturers to obtain new EU-27 approvals that replace their existing UK type-approved products. The proposal:

- Explicitly allows concerned manufacturers to apply to an EU-27 type-approval authority for new approvals for existing types;
- Allows that tests underpinning the UK type approvals do not have to be repeated because the technical service was not designated and notified by the EU-27 type approval authority before;
- Provides that such approvals may be granted if the requirements for new vehicles, systems, components and separate technical units are met rather than those for new types;
- Proposes to help identify new type-approval authorities for those products already on the market prior to the withdrawal, to avoid that no authority would be in charge of carrying out in-service conformity checks or issuing a possible future recall.

The provisions proposed in the proposal will not lower the requirements regarding the safety or environmental performance of the vehicles, systems, components or separate technical units. It will not grant any advantages to manufacturers with UK type-approvals, compared to manufacturers with EU-27 type-approvals. On the contrary, the initiative will simply allow manufacturers to continue producing their products in compliance with applicable legal requirements without interrupting their existing production, which could have caused significant social and economic impacts. In facilitating manufacturers' compliance with EU law, the initiative will also ensure the protection of consumers and citizens.

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

This proposal will be *lex specialis* to the four acts listed in its scope only to the extent it deviates from them; the general provisions of these acts will otherwise continue to apply. This proposal is thus fully consistent with the existing legislation.

- **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 legal basis of the proposal is Article 114 of the Treaty on the Functioning of the European Union (TFEU).

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

As the proposed act would complement four Union acts and modify their content, this could only be achieved through action at Union level and not through action at Member-State level.

- **Proportionality**

The proposal is considered proportionate as it provides for the necessary legal change and at the same time does not go beyond what is necessary to achieve the objectives of allowing

manufacturers with United Kingdom type-approvals to comply with type-approval legislation. It provides for the necessary legal conditions to uphold, to the extent possible, a level playing field among manufacturers.

- **Choice of the instrument**

Given that the act defines specific rules to address a very specific and one-off situation, it will exceptionally not modify these acts, but apply as a stand-alone act for a limited duration. As three of the concerned acts are regulations and one is a directive (soon to be replaced by a regulation applicable as of 1 September 2020), a regulation seems the only adequate form of act, which allows Member States to deviate from the otherwise applicable relevant general rules. A regulation also best responds to the urgency of the matter.

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

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

Not applicable.

- **Stakeholder consultations**

The challenges arising for type-approval from the United Kingdom's withdrawal from the EU were raised and discussed at several meetings with Member States. They were also brought to the attention of the Commission by manufacturers and associations representing them.

Stakeholders had the possibility to provide feedback on the initiative via the Better Regulation portal ("Have your say") of the European Commission.

During the feedback period from 26 April 2018 to 10 May 2018, 15 stakeholders provided comments, among them nine European stakeholder associations, three UK associations, two manufacturers and one citizen. The intention to create more legal certainty was generally appreciated. Several comments concerned issues of a horizontal nature for all types of goods, the ongoing negotiations on the withdrawal agreement and the future relationship of the Union with the United Kingdom. The feedback was taken into consideration in the preparation of the proposal as relevant.

- **Collection and use of expertise**

Oral and written feedback from manufacturers and Member States, see above.

A legal analysis of the type-approval legislation underpinning two notices to stakeholders: Guidance to stakeholders on impact on type-approval of motor vehicles of 8 February 2018 and Guidance to stakeholders on impact on type-approval of certain vehicles and engines of 28 March 2018.

- **Impact assessment**

Not applicable.

- **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**

Not applicable.

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

complementing EU type-approval legislation 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 114 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,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) On 29 March 2017, the United Kingdom submitted the 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 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) A comprehensive EU type-approval legislative framework was established by Directive 2007/46/EC of the European Parliament and the Council¹, Regulation (EU) No 167/2013 of the European Parliament and the Council², Regulation (EU) No 168/2013 of the European Parliament and the Council³ and Regulation (EU) 2016/1628 of the European Parliament and the Council⁴.
- (3) Those acts leave to manufacturers the choice of the authority from which to obtain a type-approval that allows them to place products on the market in all Member States.

¹ Directive 2007/46/EC of the European Parliament and of the Council of 5 September 2007 establishing a framework for the approval of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles (OJ L 261, 9.10.2007, p. 1).

² Regulation (EU) No 167/2013 of the European Parliament and of the Council of 5 February 2013 on the approval and market surveillance of agricultural and forestry vehicles (OJ L 60, 2.3.2013, p. 1).

³ Regulation (EU) No 168/2013 of the European Parliament and of the Council of 15 January 2013 on the approval and market surveillance of two- or three-wheel vehicles and quadricycles (OJ L 60, 2.3.2013, p. 52).

⁴ Regulation (EU) 2016/1628 of the European Parliament and of the Council of 14 September 2016 on requirements relating to gaseous and particulate pollutant emission limits and type-approval for internal combustion engines for non-road mobile machinery, amending Regulations (EU) No 1024/2012 and (EU) No 167/2013, and amending and repealing Directive 97/68/EC (OJ L 252, 16.9.2016, p. 53).

- (4) The withdrawal of the United Kingdom from the Union would, in the absence of any special provisions, have the effect that type-approvals previously granted by the type-approval authority of the United Kingdom could no longer ensure access to the Union market. Such approvals are also held by manufacturers established within the Member States other than the United Kingdom. While vehicles, systems, components and separate technical units type-approved by the United Kingdom may be placed on the Union market until Union law ceases to apply to and in the United Kingdom, it is necessary to establish special provisions for the purposes of facilitating the placing on the Union market of those products after that date.
- (5) Currently, the Union legislation does not provide for the possibility to re-approve types already approved elsewhere in the Union. However, manufacturers should be able to continue the production of vehicles, systems, components and separate technical units previously based on types-approvals granted by the United Kingdom, and to continue to place such products on the Union market. It is therefore necessary to allow manufacturers to obtain new approvals from authorities within the Member States of the Union other than the United Kingdom.
- (6) This Regulation should also ensure that manufacturers continue to have the greatest possible freedom to choose the new approval authority. In particular, that choice by the manufacturer should not be dependent on the consent of the type-approval authority of the United Kingdom or the existence of any arrangements between the type-approval authority of the United Kingdom and the new type-approval authority.
- (7) In order to provide the necessary legal certainty for all stakeholders concerned and to ensure a level-playing field for manufacturers, it is necessary to lay down, in a transparent manner, equal conditions applicable in all Member States.
- (8) In order to enable the continued production and placing on the market of the vehicles, systems, components and separate technical units, the requirements with which such types are to comply in order to be approved by the authority of a Member State of the Union other than the United Kingdom should be those applicable to the placing on the market of new vehicles, systems, components and separate technical units and not those applicable to new types.
- (9) The requirements for new vehicles, systems, components and separate technical units are likewise applicable to manufacturers holding type-approvals granted by the Member States other than the United Kingdom. Setting the same requirements for the approval of types under this Regulation and for the placing on the market of new vehicles, systems, components and separate technical units thus aims at ensuring equal treatment of manufacturers affected by the withdrawal of the United Kingdom and those holding type-approvals granted by Member States other than the United Kingdom.
- (10) Nothing in this Regulation should prevent the manufacturer of a vehicle from applying on a voluntary basis for a Union approval of a vehicle type previously approved in the United Kingdom against certain requirements applicable to new types of systems, components or separate technical units where the type of vehicle remains otherwise identical to the one approved in the United Kingdom.
- (11) Approvals sought for entirely new types of vehicles, systems, components or separate technical units should not fall within the scope of this Regulation.
- (12) It should be possible for type-approvals granted on the basis of this Regulation to be based on test reports already presented for the purposes of obtaining the approvals in

the United Kingdom, where the requirements being the basis of such test reports have not changed. In order to allow for such continued use of test reports issued by the technical service notified by the United Kingdom, this Regulation should provide for an exemption from the requirement that such technical service must be designated by the authority granting the type-approval and notified to the Commission. In order to also cover the time when Union law has ceased to apply to and in the United Kingdom, this Regulation should also provide for an exemption from the specific requirements concerning the designation and notification of technical services of third countries.

- (13) At the same time, since type-approval authorities are to be fully responsible for the new approvals they grant, they should have the discretion to require new tests to be carried out for any element of the approval they see fit.
- (14) Insofar as this act does not provide otherwise, the general rules on EU type-approval should continue to apply.
- (15) It should be taken into account that the role attributed to type-approval authorities does not end with the production or placing on the market of a vehicle, system, component or a separate technical unit, but extends over several years after the placing on the market of those products. This applies especially with regard to in-service conformity obligations for vehicles falling under Directive 2007/46/EC and with regard to repair and maintenance information obligations, potential recalls for vehicles, systems, components and separate technical units falling under Directive 2007/46/EC, Regulation (EU) No 167/2013, Regulation (EU) No 168/2013 or Regulation (EU) 2016/1628. It is therefore necessary that the authority granting the type-approval in accordance with this Regulation takes on those obligations also with respect to vehicles, systems, components and separate technical units based on the same type and already placed on the market in the Union on the basis of the type-approval granted in the United Kingdom to ensure that there is a responsible type-approval authority.
- (16) For the same reasons, it is also necessary that a Union type-approval authority takes on certain obligations with respect to vehicles, systems, components and separate technical units that were placed on the market in the Union on the basis of type-approvals granted by the United Kingdom that are either no longer valid pursuant to Article 17 of Directive 2007/46/EC, Article 32 of Regulation (EU) No 167/2013, Article 37 of Regulation (EU) No 168/2013 or Article 30 of Regulation (EU) 2016/1628 or for which no type-approval is sought under this Regulation. To ensure that there is a responsible type-approval authority, manufacturers should be required to request the authority approving types previously approved in the United Kingdom to assume obligations regarding recalls, repair and maintenance information and in-service conformity checks with respect to its vehicles, systems, components and separate technical unit based on other types and already placed on the Union market. To limit the extent of the obligations taken on by the Union type-approval authority, those obligations should only concern products based on UK type-approvals that were granted after 1 January 2008.
- (17) Since the objective of this Regulation, namely to complement Directive 2007/46/EC, Regulation (EU) No 167/2013, Regulation (EU) No 168/2013 and Regulation (EU) 2016/1628 with special rules relating to the withdrawal of the United Kingdom from the Union, cannot be sufficiently achieved by the Member States but can rather, by reason of the scale and effects of those rules, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out

in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.

- (18) In order to allow manufacturers to take the necessary measures to prepare without delay for the withdrawal of the United Kingdom with regard to type-approval legislation, this Regulation should enter into force on the third day following its publication.

HAVE ADOPTED THIS REGULATION:

Article 1

Subject matter

This Regulation complements Directive 2007/46/EC, Regulation (EU) No 167/2013, Regulation (EU) No 168/2013 and Regulation (EU) 2016/1628 by establishing special provisions for the EU type-approval and the placing on the market of vehicles, systems, components and separate technical units which have been type-approved by the approval authority of the United Kingdom before the day Union law ceases to apply to and in the United Kingdom ('UK type-approval authority').

Article 2

Scope

1. This Regulation shall apply to vehicles, systems, components and separate technical units which fall within the scope of Directive 2007/46/EC, Regulation (EU) No 167/2013, Regulation (EU) No 168/2013 or Regulation (EU) 2016/1628 and their types which have been approved by the UK type-approval authority on the basis of those acts or any act listed in Annex IV to Directive 2007/46/EC or any act repealed by those acts.

2. References to separate technical units under this Regulation shall be understood as covering references to engines under Regulation (EU) 2016/1628.

Article 3

Definitions

For the purposes of this Regulation, the following definitions shall apply:

- (1) 'Union type-approval authority' means a type-approval authority of a Member State other than the United Kingdom;
- (2) 'UK type-approval' means an EU or EC type-approval granted by the UK type-approval authority;
- (3) 'Union type-approval' means an EU type-approval granted by a Union type-approval authority in accordance with this Regulation.

Article 4

Application for a Union type-approval

1. By way of derogation from Article 6(6) of Directive 2007/46/EC, Article 21(2) of Regulation (EU) No 167/2013, Article 26(2) of Regulation (EU) No 168/2013 and Article 20(1) of Regulation (EU) 2016/1628, a manufacturer holding a UK type-approval that has not become invalid pursuant to Article 17 of Directive 2007/46/EC, Article 32 of Regulation (EU) No 167/2013, Article 37 of Regulation (EU) No 168/2013 or Article 30 of Regulation (EU) 2016/1628 may, before the day when Union law ceases to apply in and to the United Kingdom, apply with a Union type-approval authority for a Union approval of the same type.
2. In order to be approved, the type must comply at least with the requirements for the placing on the market, registration or entry into service of new vehicles, systems, components or separate technical units applicable at the time when the Union type-approval takes effect.
3. By submitting the application pursuant to paragraph 1, the manufacturer shall be liable to pay adequate fees for any costs resulting from the exercise of the powers and the fulfilment of the obligations of the Union type-approval authority in relation to the Union type-approval.

Article 5

Conditions for the granting of a Union type-approval and its effects

1. By way of derogation from Article 8(2), Article 9(1)(a) and paragraphs 1 and 2 of Article 10 of Directive 2007/46/EC, Article 6(2) of Regulation (EU) No 167/2013, Article 7(2) and 18 of Regulation (EU) No 168/2013 and Article 6(2) of Regulation (EU) 2016/1628, the Union type-approval authority which has received an application in accordance with Article 4 of this Regulation may grant a Union type-approval with respect to a vehicle, system, component or separate technical unit if that type meets, at the time when the approval takes effect, at least all the requirements applicable for the placing on the market, registration or entry into service of new vehicles, systems, components or separate technical units.
2. Insofar as no new requirements are applicable and without prejudice to paragraph 3, the Union type-approval may be granted on the basis of the same test reports which had previously been used for the granting of the UK type-approval in accordance with the applicable provisions, regardless of whether the technical service that issued the test report has been designated and notified by the Member State of the Union type-approval in accordance with Directive 2007/46/EC, Regulation (EU) No 167/2013, Regulation (EU) No 168/2013 or Regulation (EU) 2016/1628, even after Union law ceases to apply to and in the United Kingdom.
3. Before granting a Union type-approval, the Union type-approval authority may request the repetition of specific tests. In that case the test must be carried out by a technical service which has been designated and notified by the Member State of the Union type-approval authority in accordance with Directive 2007/46/EC, Regulation (EU) No 167/2013, Regulation (EU) No 168/2013 or Regulation (EU) 2016/1628.

4. The type approved in accordance with paragraph 1 shall receive an EU type-approval certificate with a number consisting of the distinguishing number of the Member State whose type-approval authority granted the Union type-approval and of the number of the applicable act referred to in Article 2(1). It shall also include the number of the latest amending act containing requirements for type-approval in accordance with which the Union type-approval is granted. For vehicles, the type-approval certificate and the certificate of conformity shall, under 'Remarks:', contain the mention "Previously type-approved as" and refer to the number of the type-approval certificate received following the UK type-approval. For systems, components or separate technical units, the type-approval certificate shall contain the mention "Previously type-approved and marked as" and refer to the marking received following the UK type-approval.

5. The Union type-approval shall take effect on the day of its granting or on a later date determined therein. The UK type-approval becomes invalid at the latest as of the day the Union type-approval takes effect.

6. A Union type-approval shall be considered an EC or EU type-approval within the meaning of Directive 2007/46/EC or any act listed in Annex IV to that Directive, Regulation (EU) No 167/2013, Regulation (EU) No 168/2013 or Regulation (EU) 2016/1628. All provisions of those acts not derogated from in this Regulation shall continue to apply. The Union type-approval authority shall take full responsibility for the obligations stemming from the Union type-approval.

The Union type-approval authority shall also, as from the date of effect of the Union type-approval, exercise all the powers and fulfil all the obligations of the UK type-approval authority with respect to all vehicles, systems, components or separate technical units produced on the basis of the UK type-approval and already placed on the market, registered or in service in the Union. This shall not cover any liability for any acts or omissions attributable to the UK type-approval authority.

Article 6

Union type-approval authority responsible for vehicles, systems, components or separate technical units of types not approved under this Regulation

1. When applying for type-approval under Article 4, a manufacturer shall request the Union type-approval authority in question to take over the obligations of the UK type-approval authority for vehicles, systems, components or separate technical units placed on the market, registered or in service in the Union on the basis of UK type-approvals that have become invalid pursuant to Article 17 of Directive 2007/46/EC, Article 32 of Regulation (EU) No 167/2013, Article 37 of Regulation (EU) No 168/2013 or Article 30 of Regulation (EU) 2016/1628, or for which no Union type-approval is sought under Article 5 of this Regulation.

Such request shall be made for all vehicles, systems, components and separate technical units based on UK type-approvals held by the manufacturer that were granted after 1 January 2008 unless the manufacturer presents proof to the Union type-approval authority that it has an

agreement with another Union type-approval authority covering those vehicles, systems, components and separate technical units.

2. The Union type-approval authority may only grant a Union type-approval in accordance with Article 5 after it has accepted the request made pursuant to paragraph 1 and after the manufacturer has agreed to cover the costs that the Union type-approval authority may incur as a result of exercising its powers and fulfilling its obligations in respect of the vehicles, systems, components and separate technical units concerned.

3. After accepting the request referred to in paragraph 1 and issuing the Union type-approval in accordance with Article 5, the Union type-approval authority shall exercise all the powers and fulfil all the obligations of the UK type-approval authority with respect to all vehicles, systems, components or separate technical units produced on the basis of the UK type-approvals referred to in paragraph 1 regarding recalls, repair and maintenance information and in-service conformity checks. This shall not cover any liability for any acts or omissions attributable to the UK type-approval authority.

4. The Union type-approval authority shall inform the type-approval authorities of the other Member States and the Commission of the types for which it accepted to take over the obligations of the UK type-approval authority in accordance with paragraph 1.

Article 7

Entry into force and application

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

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

Done at Brussels,

For the European Parliament
The President

For the Council
The President