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REPORT

From:	General Secretariat of the Council
To:	Permanent Representatives Committee
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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 – Analysis of the final compromise text with a view to agreement

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 391/2009¹ ('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.

¹ Regulation (EC) No 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 proposed to address this problem through a minimal amendment to the Regulation.

STATE OF PLAY

8. The proposal was examined by the Shipping Working Party during the autumn of 2018.
9. The Permanent Representatives Committee agreed on a mandate for negotiations on 14 November 2018, with minor substantive amendments to the Commission proposal (an addition in Article 1 and a related recital 8a) and some changes of a legal and/or linguistic nature.
10. The Committee for Transport and Tourism (TRAN) appointed Ms Isabella De Monte (S&D, Italy) as rapporteur on 23 October 2018. The TRAN Committee adopted its report on the proposal (with one amendment) on 10 January 2019. On 14 January, the EP plenary approved the decision of the TRAN Committee to start negotiations.
11. On 18 January 2019, the Permanent Representatives Committee agreed on a revised mandate for negotiations.
12. The trilogue took place on 21 January 2019.
13. At that trilogue, an agreement *ad referendum* was reached, the elements of which are described below.

THE FINAL COMPROMISE TEXT

14. At the trilogue, the Presidency stressed the importance of a rapid agreement on this proposal, given the urgency of the matter and its essentially technical nature.
15. The Presidency presented the Council position, and the Parliament explained its amendment.
16. Given the irreconcilable positions of the two co-legislators, the Parliament proposed that the co-legislators agree to adopt the original Commission proposal without any substantive changes to the articles.
17. The Presidency agreed to this, in line with the mandate given by the Permanent Representatives Committee.

18. This means that both Parliament and Council withdraw the amendments to the articles, except those changes which are of a legal and/or linguistic nature.

19. The Parliament could, however, accept recital (8a) of the Council text.

CONCLUSION

20. In the light of the above, the Permanent Representatives Committee is invited to:

- examine and approve the final compromise text in the Annex with a view to reaching an agreement at first reading with the European Parliament;
- allow the Presidency to send a letter to the European Parliament stating that if the plenary of the European Parliament were to adopt, subject to revision of the text by the legal-linguist experts, the amended text of the draft Regulation in the same form as set out in the Annex to this report, the Council would adopt the Regulation in the form of the Commission proposal as thus amended by the Parliament.

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 Committee²,

After consulting the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure,

Whereas:

² 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 Council³ and Directive 2009/15/EC of the European Parliament and of the Council⁴ 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/EC⁵ 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.

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, 28.5.2009, p. 47).

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).

- (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 following that 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."

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 following that 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
