



Brussels, 4 June 2020  
REV1 – replaces the notices dated  
27 February 2018 (maritime transport)  
and 11 October 2019 (seafarer  
qualifications, REV1)

## NOTICE TO STAKEHOLDERS

### WITHDRAWAL OF THE UNITED KINGDOM AND EU RULES IN THE FIELD OF MARITIME TRANSPORT

Since 1 February 2020, the United Kingdom has withdrawn from the European Union and has become a “third country”.<sup>1</sup> The Withdrawal Agreement<sup>2</sup> provides for a transition period ending on 31 December 2020.<sup>3</sup> Until that date, EU law in its entirety applies to and in the United Kingdom.<sup>4</sup>

During the transition period, the EU and the United Kingdom will negotiate an agreement on a new partnership, providing notably for a free trade area. However, it is not certain whether such an agreement will be concluded and will enter into force at the end of the transition period. In any event, such an agreement would create a relationship which in terms of market access conditions will be very different from the United Kingdom’s participation in the internal market,<sup>5</sup> in the EU Customs Union, and in the VAT and excise duty area.

Therefore, all interested parties, and especially economic operators, are reminded of the legal situation applicable after the end of the transition period.

#### **Advice to stakeholders:**

- <sup>1</sup> A third country is a country not member of the EU.
- <sup>2</sup> Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, OJ L 29, 31.1.2020, p. 7 (“Withdrawal Agreement”).
- <sup>3</sup> The transition period may, before 1 July 2020, be extended once for up to 1 or 2 years (Article 132(1) of the Withdrawal Agreement). The UK government has so far ruled out such an extension.
- <sup>4</sup> Subject to certain exceptions provided for in Article 127 of the Withdrawal Agreement, none of which is relevant in the context of this notice.
- <sup>5</sup> In particular, a free trade agreement does not provide for internal market concepts (in the area of goods and services) such as mutual recognition, the “country of origin principle”, and harmonisation. Nor does a free trade agreement remove customs formalities and controls, including those concerning the origin of goods and their input, as well as prohibitions and restrictions for imports and exports.

To address the consequences set out in this notice, operators in the maritime transport sector are in particular advised the following:

- Operators of shipping services should assess whether they are affected by the change in market access rights and take the necessary precautionary steps when selling shipping services after the end of the transition period; and
- Operators of vessels flying the flag of an EU Member State should ensure that certificates issued to seafarers in the United Kingdom are recognised in the EU in accordance with the appropriate procedure.

**Please note:**

This notice does not address:

- EU rules on marine equipment;
- EU rules on maritime security;
- EU rules on ship recycling;
- EU rules on emissions, including CO<sub>2</sub> emissions in maritime transport;
- EU rules for controls of persons entering and exiting the EU;
- the general EU framework for the recognition of professional qualifications.

For these aspects, other notices are in preparation or have been published.<sup>6</sup>

After the end of the transition period, EU law on maritime transport, including EU rules in the field of minimum level and mutual recognition of seafarers' certificates, and in particular Directive 2008/106/EC of the European Parliament and of the Council of 19 November 2008 on the minimum level of training of seafarers,<sup>7</sup> no longer apply to the United Kingdom. This has in particular the following consequences:

## 1. Cabotage

Article 1(1) of Regulation (EEC) No 3577/92<sup>8</sup> liberalises the provision of maritime transport services within EU Member States (maritime cabotage) to all **Community shipowners**, who have their ships registered in, and flying the flag of a Member State. The notion of Community shipowner, as defined in Article 2(2) of that Regulation, covers:

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<sup>6</sup> [https://ec.europa.eu/info/european-union-and-united-kingdom-forging-new-partnership/future-partnership/preparing-end-transition-period\\_en](https://ec.europa.eu/info/european-union-and-united-kingdom-forging-new-partnership/future-partnership/preparing-end-transition-period_en)

<sup>7</sup> OJ L 323, 3.12.2008, p. 33.

<sup>8</sup> 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.

(a) nationals<sup>9</sup> of a Member State established in a Member State in accordance with the legislation of that Member State and pursuing shipping activities;

(b) shipping companies established in accordance with the legislation of a Member State and whose principal place of business is situated, and effective control exercised, in a Member State; or

(c) nationals of a Member State established outside the Union or shipping companies established outside the Union and controlled by nationals of a Member State, if their ships are registered in and fly the flag of a Member State in accordance with its legislation.

after the end of the transition period, economic operators who no longer fulfil the conditions laid down in the definition of a Community shipowner will no longer enjoy the right to provide maritime cabotage services in accordance with this Regulation. It may be noted that a Member State may, under its national law, decide not to impose restrictions on cabotage by ships flying the flag of a third country.

## **2. MARITIME SAFETY**

### **2.1. Recognised organisations**

The withdrawal of the United Kingdom does not as such affect the recognition granted by the Commission in accordance with Article 4 of Regulation (EC) No 391/2009<sup>10</sup> to the organisations referred to in Article 2(c) of that Regulation.

Article 8 of Regulation (EC) No 391/2009 concerning the involvement of Member States in the regular assessment of recognised organisations has been amended by Regulation (EU) 2019/492<sup>11</sup>, so as to provide that the assessment is carried out 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<sup>12</sup>. The amended provision applies from the day following that on which Regulation (EC) No 391/2009 ceases to apply to the United Kingdom.

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<sup>9</sup> This notion includes both natural and legal persons.

<sup>10</sup> 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.

<sup>11</sup> Regulation (EU) 2019/492 of the European Parliament and of the Council of 25 March 2019 amending Regulation (EC) No 391/2009 with regard to the withdrawal of the United Kingdom from the Union, OJ L 85I, 27.3.2019, p. 5.

<sup>12</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, 28.5.2009, p. 47.

## 2.2. Port State Control

Directive 2009/16/EC<sup>13</sup> sets out the EU Port State Control system. The Directive requires Member States to ensure that foreign ships are inspected 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. Directive 2009/16/EC also requires verification of compliance with a number of other EU-law based requirements,<sup>14</sup> including insurance certificates under Directive 2009/20/EC<sup>15</sup>.

While EU Member States will continue to inspect United Kingdom ships calling to EU ports, after the end of the transition period, the Port State Control inspection system set out in Directive 2009/16/EC no longer applies in the United Kingdom.<sup>16</sup> Relations between the United Kingdom and the EU in respect of Port State Control will be regulated by the Paris Memorandum of Understanding on Port State Control.<sup>17</sup>

## 2.3. Safety of fishing vessels

According to Article 3(5) of Directive 97/70/EC,<sup>18</sup> Member States are to prohibit fishing vessels flying the flag of a third country from operating in their internal waters or territorial sea or landing their catch in their ports unless they are certified by their flag State administration to comply with the requirements referred to in Article 3(1)-(4) and Article 5 of Directive 97/70/EC, which contain technical provisions.

In addition, under Article 7(3) of Directive 97/70/EC fishing vessels flying the flag of a third State, which are not operating in the internal waters or territorial sea of a Member State nor landing their catch in the ports of a Member State, are subject to control by a Member State when in its ports, in

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<sup>13</sup> Directive 2009/16/EC of the European Parliament and of the Council of 23 April 2009 on port State control, OJ L 131, 28.5.2009, p. 57.

<sup>14</sup> Article 13 and Annex IV of Directive 2009/16/EC.

<sup>15</sup> Point 41 of Annex IV to Directive 2009/16/EC and Article 4(1) of Directive 2009/20/EC of the European Parliament and of the Council of 23 April 2009 on the insurance of shipowners for maritime claims, OJ L 131/128, 28.05.2009.

<sup>16</sup> Note that, after the end of the transition period, United Kingdom flagged ships would in principle no longer be subject to requirement applicable to Union flagged ships to carry the inventory of hazardous materials that complies with Article 5(2) of Regulation 1257/2013 on ship recycling. However, an analogous obligation will be applicable to ships flying the flag of a third country as of 31 December 2020 (Articles 12 and 32(2)(b) of Regulation (EU) No 1257/2013 of the European Parliament and of the Council of 20 November 2013 on ship recycling, OJ L 330, 10.12.2013, p. 1). The certificate will be verified in accordance with Point 49 of Annex IV to Directive 2009/16/EC.

<sup>17</sup> All EU Member States with sea ports, as well as the United Kingdom, are members of the Paris Memorandum of Understanding.

<sup>18</sup> Council Directive 97/70/EC of 11 December 1997 setting up a harmonised safety regime for fishing vessels of 24 metres in length and over, OJ L 34, 9.2.1998, p. 1.

order to verify their compliance with the Torremolinos Protocol,<sup>19</sup> once it has entered into force.

### 3. SEAFARER QUALIFICATIONS

According to Article 3 of Directive 2008/106/EC,<sup>20</sup> seafarers serving on board of a vessel flying the flag of an EU Member State have to hold the requisite certificate of competency, certificate of proficiency or documentary evidence (hereafter "certificates") issued by that Member State, by another EU Member State in accordance with the procedure laid down in Article 5b or by one of the third countries recognised under Article 19 of Directive 2008/106/EC. Each Member State, with respect to ships flying its flag, recognises the certificates issued to seafarers by the other Member States or by the recognised third countries, in order for the seafarers holding such certificates to be able to work onboard. Directive 2008/106/EC provides for two distinct recognition procedures applicable, respectively, to the certificates issued by the other Member States and to those issued by the recognised third countries:

- Article 5b of Directive 2008/106/EC provides that every Member State is to endorse ("endorsement attesting recognition") or to accept, as applicable, the certificates issued to seafarers by the other Member States;
- Article 19(4) of Directive 2008/106/EC provides that a Member State may, with respect to ships flying its flag, decide to endorse the certificates issued by the recognised third countries.

#### "Acceptance" under Article 5b of Directive 2008/106/EC:

The certificates issued to seafarers by the United Kingdom are no longer "accepted" by an EU Member State under Article 5b of Directive 2008/106/EC after the end of the transition period.

Thus, a master or an officer holding a certificate issued by the United Kingdom "accepted" by an EU Member State will not be able to continue working on board vessels flying the flag of that Member State after the end of the transition period.

#### "Endorsement attesting recognition" under Article 5b of Directive 2008/106/EC:

The certificates issued to seafarers by the United Kingdom can no longer be endorsed ("endorsement attesting recognition") by an EU Member State under

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<sup>19</sup> The Torremolinos Protocol of 2 April 1993 relating to the Torremolinos International Convention for the Safety of Fishing Vessels, 1977 (the "Torremolinos Protocol"). A number of provisions of the Torremolinos Protocol were updated and amended by the Cape Town Agreement of 2012 on the Implementation of the Provisions of the 1993 Torremolinos Protocol.

<sup>20</sup> Directive 2008/106/EC of the European Parliament and of the Council of 19 November 2008 on the minimum level of training of seafarers (recast), OJ L 323, 3.12.2008, p. 33. Note that 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 and amending Directive 2001/25/EC (OJ L 255, 30.9.2005, p. 160) was repealed by Article 2 of Directive (EU) 2019/1159 of the European Parliament and of the Council of 20 June 2019 amending Directive 2008/106/EC, OJ L 188, 12.7.2019, p. 94.

Article 5b of Directive 2008/106/EC after the end of the transition period. The “endorsement[s] attesting recognition” issued prior to the end of the transition period by EU Member States under Article 5b of Directive 2008/106/EC of certificates issued to seafarers by the United Kingdom will continue to be valid until the expiry of the relevant endorsement.

Thus, a master or an officer holding an “endorsement attesting recognition” issued by a Member State with respect to a certificate issued by the United Kingdom will be able to continue working on board vessels flying the flag of that Member State.

However, after the end of the transition period, it is not possible to obtain “endorsement attesting recognition” under Article 5b of Directive 2008/106/EC from another EU Member State in order to work on board a vessel flying the flag of that other Member State.

after the end of the transition period, recognition by an EU Member State of certificates issued to seafarers by the United Kingdom will be subject to the conditions and the procedure set out in Article 19<sup>21</sup> of Directive 2008/106/EC, in line with the new status of the United Kingdom as a third country.

The website of the Commission on maritime transport ([https://ec.europa.eu/transport/modes/maritime\\_en](https://ec.europa.eu/transport/modes/maritime_en)) provides general information, including on seafarers ([https://ec.europa.eu/transport/modes/maritime/seafarers\\_en](https://ec.europa.eu/transport/modes/maritime/seafarers_en)). These pages will be updated with further information, where necessary. Further information on other maritime safety related questions is available on European Maritime Safety Agency’s website at the following link: <https://www.emsa.europa.eu/>.

European Commission  
Directorate-General for Mobility and Transport

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<sup>21</sup> The conditions for recognition set out in Article 19 of Directive 2008/106/EC were recently amended by Directive (EU) 2019/1159.