



Brussels, 27 February 2018

NOTICE TO STAKEHOLDERS

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

The United Kingdom submitted on 29 March 2017 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 agreement¹ establishes another date, all Union primary and secondary law will cease to apply to the United Kingdom from 30 March 2019, 00:00h (CET) ('the withdrawal date').² The United Kingdom will then become a 'third country'.³

Preparing for the withdrawal is not just a matter for EU and national authorities but also for private parties.

In view of the considerable uncertainties, in particular concerning the content of a possible withdrawal agreement, all operators are reminded of certain legal repercussions stemming from currently applicable rules of Union law in the field of maritime transport when the United Kingdom becomes a third country.

Subject to any transitional arrangement that may be contained in a possible withdrawal agreement, as of the withdrawal date, the EU rules in the field of maritime transport no longer apply to the United Kingdom. This has in particular the following consequences in the different areas of Union law in the field of maritime transport:⁴

¹ Negotiations are ongoing with the United Kingdom with a view to reaching a withdrawal agreement.

² Furthermore, in accordance with Article 50(3) of the Treaty on European Union, the European Council, in agreement with the United Kingdom, may unanimously decide that the Treaties cease to apply at a later date.

³ A third country is a country not member of the EU.

⁴ This notice does not address marine equipment (which is addressed in the *Notice to stakeholders - Withdrawal of the United Kingdom and EU rules in the field of industrial products*, https://ec.europa.eu/growth/single-market/goods_en) nor seafarer qualifications (which is addressed in the *Notice to stakeholders - Withdrawal of the United Kingdom and EU rules on the minimum level of training of seafarers and the mutual recognition of seafarers' certificates*, https://ec.europa.eu/transport/transport-modes/news/2017-12-11-brexit-notice-stakeholders_en).

1. MARKET ACCESS

- **Intra-Union shipping services and third-country traffic:** Regulation (EEC) No 4055/86⁵ stipulates the freedom to provide maritime transport services between Member States, as well as between Member States and third countries, in respect of:
 - "nationals of Member States who are established in a Member State other than that of the person for whom the services are intended";⁶ and
 - "nationals of the Member States established outside the EU", or "shipping companies established outside the EU and controlled by nationals of a Member State, if their vessels are registered in that Member State in accordance with its legislation."⁷

Persons or companies who, as of the withdrawal date, do not meet those criteria will no longer benefit from this Regulation, notably in terms of non-discriminatory treatment as regards international maritime transport connections.

- **Cabotage:** According to Article 1(1) of Regulation (EEC) No 3577/92⁸, the provision of maritime transport services within EU Member States (maritime cabotage) is restricted to **Community shipowners** (as defined in Article 2(2) of that Regulation). As of the withdrawal date it will no longer be possible to provide maritime transport services in accordance with this Regulation if the conditions for constituting a Community shipowner are no longer fulfilled, unless national legislation⁹ allows access to cabotage to vessels flying the flag of a third country.

2. MARITIME SAFETY

- **Recognition of organisations:** The withdrawal of the United Kingdom does not as such affect the recognitions by the Commission in accordance with Article 4 of Regulation (EC) No 391/2009¹⁰ of organisations referred to in Article 2(c) of that Regulation. However, according to Article 8 of Regulation (EC) No 391/2009 Recognised Organisations are to be assessed on a regular basis (at least every two years) by the Commission, together with the Member State that initially

⁵ Council Regulation (EEC) No 4055/86 of 22 December 1986 applying the principle of freedom to provide services to maritime transport between Member States and between Member States and third countries, OJ L 378, 31.12.1986, p.1.

⁶ Article 1(1) of Regulation (EEC) No 4055/86.

⁷ Article 1(2) of Regulation (EEC) No 4055/86.

⁸ 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.

⁹ E.g. the legislation of Denmark, Ireland, Belgium, and the Netherlands.

¹⁰ 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.

submitted the request for recognition for the organisation in question. This also applies to the organisations which had initially been recognised by the relevant Member State and which now enjoy recognition pursuant to Article 15 of Regulation (EC) No 391/2009. As of the withdrawal date, the United Kingdom will no longer be in a position to participate in the assessments carried out in accordance with Article 8 of Regulation (EC) No 391/2009 of organisations initially recognised by it. With respect to this procedural requirement, the Commission is considering the necessary and appropriate steps to allow for the assessment in accordance with the terms of the Regulation.

- **Port State Control:** Directive 2009/16/EC¹¹ sets out the EU Port State Control system. The Directive requires Member States to inspect foreign ships 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,¹² including insurance certificates under Directive 2009/20/EC.¹³ While EU-27 Member States will continue to verify United Kingdom ships calling to EU ports, as of the withdrawal date, the Port State Control inspection system set out in Directive 2009/16/EC no longer applies in the United Kingdom.¹⁴ Relations between the United Kingdom and the EU in respect of Port State Control will be governed by the Paris Memorandum of Understanding on Port State Control.¹⁵
- **Operations of passenger ships:** According to Articles 4, 5 and 6 of Council Directive 1999/35/EC,¹⁶ host States, as defined in that Directive, are to carry out mandatory inspections to provide for assurance of safe operation of regular ro-ro ferry and high-speed passenger craft services to or from ports of the EU. While these ships will continue to be subject to such inspections in the EU-27 Member States to or from which they operate, as of the withdrawal date, the United

¹¹ 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.

¹² Article 13 and Annex IV of Directive 2009/16/EC.

¹³ 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.

¹⁴ Note that, as of the withdrawal date, United Kingdom flagged ships will no longer be required to carry the inventory of hazardous materials that complies with Article 5(2) of Regulation 1257/2013 on ship recycling. However, this obligation becomes applicable again 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.

¹⁵ All EU Member States with sea ports, including the United Kingdom, are members of the Paris Memorandum of Understanding.

¹⁶ Council Directive 1999/35 of 29 April 1999 on a system of mandatory surveys for the safe operation of regular ro-ro ferry and high-speed passenger craft services, OJ L 138, 1.6.1999, p. 1. Note that this Directive is being repealed and replaced by Directive (EU) 2017/2110 that entered into force on 20 December 2017 and will have as deadline for transposition 21 December 2019 (after the withdrawal date).

Kingdom will no longer have to carry out such inspections in accordance with Directive 1999/35/EC.

- **Safety of fishing vessels:** According to Article 3(5) of Directive 97/70/EC,¹⁷ Member States shall 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, namely the technical provisions of that Directive.

In addition, under Article 7(3) of Directive 97/70/EC fishing vessels flying the flag of a third State shall be subject to control by a Member State when in its ports, in order to verify their compliance with the Torremolinos Protocol,¹⁸ once it has entered into force.

The Commission services stand ready to provide further clarifications to interested stakeholders. The website of the Commission on maritime transport (https://ec.europa.eu/transport/modes/maritime_en) provide for general information. 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/>.

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¹⁷ 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.

¹⁸ 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 Protocol relating to the Torremolinos International Convention for the Safety of Fishing Vessels.