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PROPOSAL

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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
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Delegations will find attached document COM(2020) 828 final.

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EUROPEAN
COMMISSION

Brussels, 10.12.2020
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2020/0364 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

**on certain aspects of aviation safety with regard to the end of the transition period
mentioned in the Agreement on the withdrawal of the United Kingdom of Great Britain
and Northern Ireland from the European Union and the European Atomic Energy
Community**

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

•1.1. Reasons for and objectives of the proposal

Since 1 February 2020, the United Kingdom has withdrawn from the Union pursuant to Article 50 of the Treaty on European Union. The Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community¹ ('the Withdrawal Agreement') was concluded by the Union by Council Decision (EU) 2020/135² and entered into force on 1 February 2020. The transition period referred to in Article 126 of the Withdrawal Agreement, during which Union law continues to apply to and in the United Kingdom in accordance with Article 127 of that agreement, ends on 31 December 2020.

If no agreement on the future relationship that covers aviation safety is reached by the end of the transition period, the withdrawal of the United Kingdom from the Union will affect in particular the validity of certificates and licenses issued by the European Union Aviation Safety Agency ("the Agency") on behalf of the United Kingdom, or by certain design organisations based in the United Kingdom, under Regulation (EU) 2018/1139³ and the implementing and delegated acts adopted by virtue of that Regulation or of Regulation (EC) No 216/2008⁴.

In the area of aviation safety, in most cases the effect entailed by the end of the transition period on certificates and approvals can be remedied by stakeholders through various measures, including a "switch" to a civil aviation authority of a Union Member State, or the application for a third-country certificate to be issued by the Agency with effect from the end of the transition period (so-called "early application"). In addition, under Article 41 of the Withdrawal Agreement, parts and appliances for which a person certified by the competent authorities of the United Kingdom issued a valid certificate of conformity under EU aviation safety rules can be used in the EU, in accordance with the applicable provisions, also after the end of the transition period, provided that they have been placed on the market of the EU or the United Kingdom, before the end of the transition period.

However, unlike in other areas of Union law, there are some instances where it is not possible for natural and legal persons to mitigate disproportionate disruptions in the Union. Therefore the Commission should propose measures ensuring continued

¹ OJ L 29, 31.1.2020, p. 7.

² Council Decision (EU) 2020/135 of 30 January 2020 on the conclusion of the 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. 1).

³ Regulation (EU) 2018/1139 of the European Parliament and of the Council of 4 July 2018 on common rules in the field of civil aviation and establishing a European Union Aviation Safety Agency, and amending Regulations (EC) No 2111/2005, (EC) No 1008/2008, (EU) No 996/2010, (EU) No 376/2014 and Directives 2014/30/EU and 2014/53/EU of the European Parliament and of the Council, and repealing Regulations (EC) No 552/2004 and (EC) No 216/2008 of the European Parliament and of the Council and Council Regulation (EEC) No 3922/91, OJ L 212, 22.8.2018, p. 1.

⁴ Regulation (EU) 216/2008 of the European Parliament and of the Council of 20 February 2008 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency, and repealing Council Directive 91/670/EEC, Regulation (EC) No 1592/2002 and Directive 2004/36/EC. OJ L 79, 19.3.2008, p. 1.

validity of certificates for certain aeronautical products, parts, appliances and companies.

Regarding certain aeronautical products ("type certificates") and companies ("organisation approvals"), the United Kingdom resumes, for its jurisdiction as of the end of the transition period, the role of "State of design" under the Convention on International Civil Aviation. Until 31 December 2020, those responsibilities are currently fulfilled by the European Union Aviation Safety Agency.

It is therefore necessary to develop a controlled transition mechanism, ensuring that the affected products or designs, which were certified by the Agency or a design organisation certified by the Agency before the end of the transition period, can continue to be used in Union aircraft without disruption.

The provisions proposed will not lower the requirements regarding the safety or environmental performance of aviation in the Union. The proposal will allow Union manufacturers to continue producing their products and operators to continue operating such products, in compliance with applicable requirements of Union law. An interruption in these activities would cause significant social and economic challenges. In ensuring organisations' compliance with EU law, the proposal will also ensure the protection of consumers and citizens

This act is part of a package of measures which the Commission is adopting.

•1.2. Consistency with existing policy provisions in the policy area

This proposed Regulation is intended as a *lex specialis* that would address some of the consequences ensuing from the fact that Regulation (EU) No 2018/1139 and the implementing and delegated acts adopted thereunder as well as under Regulation (EU) No 216/2008 rules will no longer apply to the United Kingdom. Its provisions are limited to what is necessary to ensure a controlled shift to an aviation market that no longer comprises the United Kingdom. The general provisions of the above mentioned acts will otherwise continue to apply. This proposal is thus fully consistent with the existing legislation and notably with Regulation (EU) No 2018/1139.

•1.3 Consistency with other Union policies

The proposal concerns aviation safety and complements Union Regulation (EC) 2018/1139 to deal specifically with the situation entailed by the end of transition period set in the Withdrawal Agreement in the absence of an agreement covering aviation safety matters applicable by that date.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

•2.1. Legal basis

The legal basis is Article 100(2) of the Treaty on the Functioning of the European Union (TFEU).

•2.2. Subsidiarity (for non-exclusive competence)

As the proposal complements existing Union law, with provisions facilitating its orderly application following the end of the transition period set in the Withdrawal Agreement, its objective can only be achieved through an act at the level of the Union.

•2.3. Proportionality

The proposed Regulation is considered proportionate as it is capable of avoiding disproportionate disruptions through providing for a limited and necessary set of special rules ensuring a controlled shift to an aviation market not including the United Kingdom. It does not go beyond what is necessary to achieve this objective and it refrains from any broader changes or any permanent measures.

•2.4. Choice of the instrument

This proposal contains a limited set of provisions to address a very specific and one-off situation. Therefore, it is considered preferable not to modify Regulation (EU) 2018/1139 and/or the implementing and delegated acts adopted thereunder as well as under Regulation (EC) No 216/2008, but to put in place a stand-alone act. The normal provisions concerning the affected certificates and licenses are covered both by Regulation (EU) 2018/1139 and by detailed rules adopted by the Commission. Taking both this and the urgency of the matter into consideration a regulation of the European Parliament and Council appears to be the only adequate form of legal act.

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

•3.1. Ex-post evaluations/fitness checks of existing legislation

Not applicable due to the exceptional and one-off nature of the event necessitating this proposal.

•3.2. Stakeholder consultations

The specific circumstances surrounding the negotiations for the agreement on the future relationship between the United Kingdom and the Union and the continuously evolving situation posed major limitations on the possibility to consult publicly on the proposal. However, the challenges arising from the fact that the transition period set in the Withdrawal Agreement ends on 31 December 2020, the need to prepare for the inevitable changes on 1 January 2021 and the possible solutions have been raised by various aviation stakeholders and Member States representatives in the context of cross-cutting and specific meetings, held in Brussels and in the Member States.

A common theme in the views presented by the various stakeholders was that there is a need for regulatory intervention in specific areas where stakeholders are not able to take their own contingency measures in order to mitigate the harmful impact of the possible absence of an agreement with the United Kingdom containing the necessary provisions on aviation safety, for the period following the end of the transition period. In particular, companies manufacturing, maintaining or operating aircraft stressed the fact that their operations in the Union could be halted if no adequate arrangements were to apply from the end of the transition period. The main problem appears to be a loss of validity of many certificates that were issued by the Agency or design organisations approved by the Agency and under the Union legal framework. Many stakeholders highlighted the fact that there are globally only a limited number of manufacturers for many of the components used in aircraft (e.g. engines for large airline-type aircraft). The just-on-time nature of modern operations and manufacturing means that it will be impossible to continue operations if the safety certificates concerned become invalid.

•3.3. Collection and use of expertise

In-house legal and technical analysis has been gathered, and the resulting information has been further analysed and verified with the technical experts of the European Union Aviation Safety Agency (the Agency) to ensure that the proposed measure achieves its intended purpose, but is at the same time limited to what is strictly necessary.

•3.4. Impact assessment

An impact assessment is not needed, due to the exceptional nature of the situation and the limited number of certificates originally issued under the Union legal framework for which the specific measures in question are proposed to apply. No policy options materially different from the one proposed are available.

•3.5. Fundamental rights

The proposal has no impact on the application or protection of fundamental rights.

4. BUDGETARY IMPLICATIONS

Not applicable.

5. OTHER ELEMENTS

•5.1. Implementation plans and monitoring, evaluation and reporting arrangements

Not applicable due to the transitional nature of the proposed measure.

•5.2. Detailed explanation of the specific provisions of the proposal

Article 1

This Article specifies the scope of the Regulation, which is limited to the design certificates for which the United Kingdom will take over the role of the State of Design and for which the Agency is not in a position to immediately issue third country certificates.

Article 2

Since the scope of the Regulation is limited to certain certificates governed by Regulation (EU) No 2018/1139, the definitions established in that Regulation and in the implementing and delegated acts adopted thereunder and under Regulation (EC) No 216/2008 should apply. Article 2 provides accordingly.

Article 3

Article 3 stipulates that the certificates listed in the Annex are deemed to have been issued with effect from the first day following that of the expiry of the transition period. The certificates concerned were originally issued by the Agency, fulfilling the functions of State of Design, or by a design organisation certified by the Agency. The UK will deem them to be certificates issued by the UK, in its capacity as State of design, or by a design organisation certified by it, namely from the end of the transition period. The position established by Article 3, as from the same point of time, will concern the Agency as an authority fulfilling the functions of State of Registry.

Article 4

This article establishes that the certificates and the entities holding these certificates remain subject to Union law, especially as regards the possibility of the Agency to oversee them and the applicable rules regarding certification of products.

Article 5

Taking account of the short timeframe available for adoption of this Regulation, it is important that it will enter into force as soon as possible after publication, but it should apply only from the moment the transition period set in the Withdrawal Agreement ends and in the absence of an agreement covering civil aviation matters and the specific certificates targeted by this Regulation.

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on certain aspects of aviation safety with regard to the end of the transition period mentioned in the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community

(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 Committee¹,

Having regard to the opinion of the Committee of the Regions²,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) The Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community³ ('the Withdrawal Agreement') was concluded by the Union by Council Decision (EU) 2020/135⁴ and entered into force on 1 February 2020. The transition period referred to in Article 126 of the Withdrawal Agreement, during which Union law continues to apply to and in the United Kingdom in accordance with Article 127 of that agreement, ends on 31 December 2020.
- (2) The principal objective of Regulation (EU) 2018/1139 of the European Parliament and of the Council⁵ is to establish and maintain a high and uniform level of aviation safety in the Union. For that purpose, a system of certificates has been established for various

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² OJ C , , p. .

³ OJ L 29, 31.1.2020, p. 7.

⁴ Council Decision (EU) 2020/135 of 30 January 2020 on the conclusion of the 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. 1).

⁵ Regulation (EU) 2018/1139 of the European Parliament and of the Council of 4 July 2018 on common rules in the field of civil aviation and establishing a European Union Aviation Safety Agency, and amending Regulations (EC) No 2111/2005, (EC) No 1008/2008, (EU) No 996/2010, (EU) No 376/2014 and Directives 2014/30/EU and 2014/53/EU of the European Parliament and of the Council, and repealing Regulations (EC) No 552/2004 and (EC) No 216/2008 of the European Parliament and of the Council and Council Regulation (EEC) No 3922/91 (OJ L 212, 22.8.2018, p. 1)

aviation activities, in order to achieve the required safety levels and to enable the necessary verifications and the mutual acceptance of certificates issued.

- (3) In the area of aviation safety, the consequences of the end of the transition period on certificates and approvals without an agreement setting out the new aviation safety relationship between the Union and the United Kingdom can be addressed by many stakeholders through various measures. Those measures include the transfer to a civil aviation authority of one of the Member States, and the application, before the end of the transition period, for a certificate issued by the European Union Aviation Safety Agency ('the Agency'), taking effect from the day following the end of the transition period.
- (4) However, for some certificates specific measures need to be put in place to address those consequences. This is particularly the case for design certificates issued before the end of the transition period by the Agency to design organisations with principal place of business in the United Kingdom or by such design organisations approved by the Agency. Until that date, the Agency was carrying out on behalf of the United Kingdom the functions and tasks of the 'State of Design' under the Convention on International Civil Aviation and Annexes thereto, as provided for in Article 77 (1) of Regulation (EU) 2018/1139. Once the transition period ends, those functions and tasks of the 'State of Design' regarding the United Kingdom will be assumed by the UK Civil Aviation Authority. In order to address this change, the United Kingdom has enacted legislation to deem design certificates issued before the transition period as issued under the laws of the United Kingdom with effect from the end of the transition period.
- (5) Specific measures on the Union's part are necessary to ensure that the designs concerned by those certificates continue to be covered by certificates governed by Regulation (EU) 2018/1139, insofar as aircraft registered in the Union are concerned. The measures should allow the aircraft operators concerned to continue using the products in question. It is therefore necessary to lay down that the Agency or, as the case may be, design organisations approved by it, are deemed to have issued the certificates covering those designs with effect from the day following the end of the transition period. Regulation (EU) 2018/1139 and relevant Commission acts contemplate such certificates, issued on the basis that the aircraft in question is registered in a Member State, even though a third country is the State of design.
- (6) It should be clarified that those certificates are subject to the relevant rules set out in Regulation (EU) 2018/1139 and the relevant implementing and delegated acts adopted by virtue of it or of Regulation (EC) No 216/2008 of the European Parliament and of the Council⁶, in particular those applicable to design certification and mandatory continuing airworthiness information.
- (7) In view of the urgency entailed by the end of the transition period, it is appropriate to provide for an exception to the eight-week period referred to in Article 4 of Protocol No 1 on the role of national Parliaments in the Union, annexed to the Treaty on European Union, to the Treaty on the Functioning of the European Union and the Treaty establishing the European Atomic Energy Community.

⁶ Regulation (EC) No 216/2008 of the European Parliament and of the Council of 20 February 2008 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency, and repealing Council Directive 91/670/EEC, Regulation (EC) No 1592/2002 and Directive 2004/36/EC (OJ L 79, 19.3.2008, p. 1)

- (8) The provisions of this Regulation should enter into force as a matter of urgency and should apply from the day following that on which the transition period ends, unless an agreement between the European Union and the United Kingdom governing matters of civil aviation safety related to design certificates addressed in this Regulation has entered into force by that date,

HAVE ADOPTED THIS REGULATION:

Article 1

Subject matter and scope

1. This Regulation lays down specific provisions, in view of the expiry of the transition period referred to in Article 126 of the Withdrawal Agreement for certain aviation safety certificates issued under Regulation (EC) No 216/2008, or Regulation (EU) 2018/1139 to natural and legal persons having their principal place of business in the United Kingdom of Great Britain and Northern Ireland ('the United Kingdom').
2. This Regulation shall apply to the certificates listed in the Annex which are valid on the day preceding the date of application of this Regulation and which have been issued by the Agency to natural or legal persons having their principal place of business in the United Kingdom or by a design organisation having its principal place of business in the United Kingdom. It shall only apply in respect of aircraft registered in the Union.

Article 2

Definitions

For the purposes of this Regulation, the definitions of Regulation (EU) 2018/1139 and of the delegated and implementing acts adopted pursuant to that Regulation and pursuant to Regulation (EC) No 216/2008 apply.

Article 3

Validity of certificates

The certificates referred to in Article 1(2) shall be deemed to have been issued with effect from the date referred to in Article 5(2):

1. by the Agency, in respect of certificates referred to in Article 1(2) that had been issued by the Agency;
2. by an organisation approved by the Agency, in respect of certificates referred to in Article 1(2) that had been issued by a design organisation approved by the Agency.

Article 4

Rules and obligations regarding certificates governed by Article 3

The certificates governed by Article 3 of this Regulation are subject to the rules applicable to them in accordance with Regulation (EU) 2018/1139 and the relevant implementing and delegated acts adopted by virtue of it or of Regulation (EC) No 216/2008, in particular

Commission Regulation (EU) No 748/2012⁷. The Agency shall have the powers established by Regulation (EU) 2018/1139 and the relevant implementing and delegated acts adopted pursuant to that Regulation and to Regulation (EC) No 216/2008 with regard to entities having their principal place of business in a third country.

Article 5

Entry into force and application

1. This Regulation shall enter into force on the day following that of its publication in the Official Journal of the European Union.
2. This Regulation shall apply from the day following that on which Union law ceases to apply to the United Kingdom pursuant to Articles 126 and 127 of the Withdrawal Agreement.
3. This Regulation shall not apply if an agreement between the European Union and the United Kingdom governing matters of civil aviation safety related to the certificates referred to in Article 1(2) of this Regulation has entered into force by the date referred to in paragraph 2 of this Article.

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

⁷ Commission Regulation (EU) No 748/2012 of 3 August 2012 laying down implementing rules for the airworthiness and environmental certification of aircraft and related products, parts and appliances, as well as for the certification of design and production organisations (OJ L 224, 21.8.2012, p. 1).