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**PROPOSAL**

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From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	10 December 2020
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2020) 827 final
Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on common rules ensuring basic air connectivity following 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

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Delegations will find attached document COM(2020) 827 final.

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Encl.: COM(2020) 827 final



Brussels, 10.12.2020  
COM(2020) 827 final

2020/0363 (COD)

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**on common rules ensuring basic air connectivity following 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

#### • 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Since 1 February 2020, the United Kingdom has withdrawn from the Union pursuant to Article 50 of the Treaty on European Union.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 Community<sup>1</sup> ('the Withdrawal Agreement') was concluded by the Union by Council Decision (EU) 2020/135<sup>2</sup> 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.

On 25 February 2020, the Council adopted Decision (EU, Euratom) 2020/266 authorising the opening of negotiations with the United Kingdom of Great Britain and Northern Ireland for a new partnership agreement.<sup>3</sup> As implied by the negotiation directives, the authorisation covers inter alia the elements needed to address comprehensively the aviation relationship with the United Kingdom after the end of the transition period.

However, it is uncertain whether an agreement between the Union and the United Kingdom governing their future relationship in this area will have entered into force by the end of that period.

International air transport cannot take place without the explicit consent of the States involved; this is a consequence of their complete and exclusive sovereignty over the air space above their territory. It is customary for States to organise air transport between them by means of bilateral Air Services Agreements (ASA) which lay down the specific rights mutually granted and the conditions of their exercise. Traffic rights and services directly related to their exercise are expressly excluded from the scope of the General Agreement on Trade in Services<sup>4</sup>.

Within the Union, the freedom for the Member States' air carriers (Union air carriers) to provide intra-EU air services exclusively stems from Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community, which also lays down the rules for the licensing of those carriers.

At the end of the transition period, air services between the United Kingdom and the Member States will cease to be governed by the said Regulation.

It follows that, in the absence of an agreement between the Union and the United Kingdom governing the matter, there would be no legal basis for the provision of air services between

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<sup>1</sup> OJ L 29, 31.1.2020, p. 7.

<sup>2</sup> 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).

<sup>3</sup> OJ L 58, 27.2.2020, p. 53.

<sup>4</sup> Annex 1B of the Marrakesh Agreement Establishing the World Trade Organization, done at Marrakesh on 15 April 1994.

the United Kingdom and the Member States by the respective carriers after the end of the transition period under the Withdrawal Agreement.

Direct air transport services between the United Kingdom and the Member States are almost entirely in the hands of United Kingdom and Union air carriers. The loss by those air carriers of their right to provide air services between the United Kingdom and the Member States would therefore result in serious disruption. Most, if not all, air routes between the Union and the United Kingdom would cease to be served. In contrast, intra-Union routes no longer served by United Kingdom carriers following the end of the transition period would remain fully accessible to Union carriers.

In a no-deal scenario, it is expected that the consequences for the respective economies would be severe, as described further down: air travel time and costs would significantly increase as alternative routes are sought, and so would pressure on the air transport infrastructure within those alternative routes, while air transport demand would fall. As a result, not only the air transport sector, but also other sectors of the economy which are largely dependent on air transport would be hit. The resulting barriers to trade would hinder business in distant markets as well as business (re)location. The disruption of air transport connectivity would represent the loss of a strategic asset for the Union and the Member States.

The present proposal thus has the objective to lay down provisional measures to govern air transport between the Union and the United Kingdom following the end of the transition period in case no agreement governing the matter can be reached.

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

- **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 (EC) No 1008/2008 will no longer apply to air transport between the United Kingdom and the Member States as from the end of the transitional period and the absence of an agreement governing the future relationship between the Union and the United Kingdom. The proposed terms are limited to what is necessary in this respect, so as to avoid disproportionate disruptions. This proposal is therefore fully consistent with the existing legislation and notably with Regulation (EC) No 1008/2008.

In this respect, the proposed Regulation is intended as a temporary measure, in order to maintain connectivity and preserve the Union's interest during a limited period and until an agreement between the Union and the United Kingdom governing the matter can be concluded and enter into force.

The proposed Regulation would be without prejudice to the design of a future aviation agreement with the United Kingdom.

- **Consistency with other Union policies**

This proposal complements Union Regulation (EC) No 1008/2008. Although the approach followed in the Union's air transport agreements with third countries has been respected in some areas (e.g. operating authorisations), the specific purpose and context of this Regulation, as well as its unilateral nature, necessarily require a more restrictive approach in the grant of rights, as well as specific provisions intended to preserve equality of rights and a level playing field.

## **2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY**

- **Legal basis**

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

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

The proposed act would complement Union Regulation (EC) No 1008/2008, so that basic connectivity is ensured despite the fact that that Regulation will have ceased to apply in respect of the transport operations in question. Such connectivity would be ensured in an equal manner for traffic to and from all points in the Union, which avoids distortions in the internal market. Action is therefore indispensable at Union level and the result could not be achieved through action at Member-State level.

- **Proportionality**

The proposed Regulation is considered proportionate as it is capable of avoiding disproportionate disruptions in a manner that also ensures equal conditions of competition for Union carriers. It does not go beyond what is necessary to achieve this objective. This is the case, in particular, for the conditions under which the relevant rights are conferred, which inter alia pertain to the need that equivalent rights be conferred by the United Kingdom and to fair competition, and for the limitation of the regime in time until an EU aviation agreement with the United Kingdom is in place.

- **Choice of the instrument**

Since the act governs matters closely related to Regulation (EC) No 1008/2008 and is intended, like this Regulation, to ensure fully harmonised conditions of competition, it should come in form of a Regulation. This form also best responds to the urgency of the situation/context, since the time available before the end of the transition period (without an agreement governing the future relationship between the Union and the United Kingdom being concluded) is too short to allow for a transposition of provisions contained in a Directive.

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

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

This is not applicable due to the exceptional, temporary and one-off nature of the event necessitating this proposal which does not relate to the objectives of existing legislation.

- **Stakeholder consultations**

The challenges arising from the negotiations for an agreement between the Union and the United Kingdom and possible solutions have been raised by various aviation stakeholders and Member States representatives before and after the conclusion of the Withdrawal Agreement.

The fact that the transition period set in the Withdrawal Agreement ends on 31 December 2020, the need to prepare for inevitable changes on 1 January 2021 and the possible additional measures to be envisaged in the event of no deal have been discussed with Member States representatives and various aviation stakeholders in the context of cross-cutting and specific meetings, held in Brussels and in the Member States.

A common theme in the presented views was the need for a regulatory intervention in order to maintain a certain degree of air connectivity once Union law would cease to apply to the United Kingdom. When it comes to traffic rights, stakeholders are not able to take their own contingency measures in order to mitigate the harmful impact of the possible absence of an agreement governing the matter. At least six air carriers' and groups of air carriers' and airports' representatives expressed the view that a high level air connectivity should be maintained with UK air carriers by keeping a high level of market access. However, other stakeholders (mostly EU air carriers' representatives) to the contrary highlighted that the status quo should not be maintained in the absence of full regulatory alignment, in order to ensure a level playing field in the market. Most of the comments received before the withdrawal, including by Member States in the context of workshops organised by the Commission in 2018, have been confirmed and expanded thereafter including in the perspective of the future relationship.

- **Collection and use of expertise**

Several forms of assessment of the consequences of the United Kingdom's withdrawal for the air transport sector were shared with the Commission by relevant stakeholders. These assessments conclude that absence of air traffic between the EU and the UK would cause significant disruptions in the EU. Air connectivity plays a crucial role within the wider economy. More than facilitating mobility, aviation is a strong driver of trade, growth and jobs. The direct contribution of aviation to the EU GDP is €168 billion, while the overall impact, including tourism, is as large as €672 billion through the multiplier effect<sup>5</sup>. In total, passengers travelling between the EU and the UK represented 24% of all intra-EU traffic in 2019, although this figure varied significantly between EU Member States. Furthermore, in 2019, 19,5% of the intra-EU scheduled seats available were offered by UK licenced air carriers, while 50,4 % of the supply traffic between the EU and the UK was offered by EU licensed air carriers. Alternative transport options are available notably with rail and sea links but only for a small number of countries such as Belgium, France and Ireland. For other countries that are further away in the East and South of the Union, road and rail travel times make such not substitutable to air travel. Consequently, the significant damaging impact of the total loss of air connectivity on the EU economy and citizens needs to be mitigated.

It is clear that the negative impact of severe disruptions in air connectivity between the United Kingdom and the Union would only be amplified during and in the wake of the current pandemic crisis, which has taken an unprecedented toll on the Union's aviation industry and the economy at large.

- **Impact assessment**

An impact assessment is not needed, due to the exceptional nature of the situation and limited needs of the period during which the change of status of the United Kingdom is implemented. No materially and legally different policy options are available other than the one proposed.

- **Fundamental rights**

This proposal has no consequence for the protection of fundamental rights.

#### **4. BUDGETARY IMPLICATIONS**

Not applicable.

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<sup>5</sup> Air Transport Action Group (ATAG), "Aviation: Benefits Beyond Borders report for 2020".

## 5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

Not applicable.

- **Explanatory documents (for directives)**

Not applicable.

- **Detailed explanation of the specific provisions of the proposal**

As mentioned above, the present proposal has the objective to lay down provisional measures to govern air transport between the Union and the United Kingdom following the end of the transition period in case no agreement governing the matter can be reached (Article 1). These measures are intended to maintain basic connectivity for a transitional period until such an agreement can be concluded (Article 14).

In the first place (Article 3), the proposed Regulation provides for the unilateral grant of first, second, third and fourth freedom traffic rights to United Kingdom air carriers so that these can continue to overfly and make technical stops in Union's territory, as well as serve direct routes between the respective territories. No distinction is made between passenger and cargo operations, or scheduled and non-scheduled services. It will also be possible (Article 4) for UK carriers to provide those services by means of code-sharing or blocked-space arrangements, and to enter into leasing arrangements under strict conditions (Article 5) but other usual operational flexibility devices (such as change of gauge or co-terminalisation) have not been foreseen.

The rights granted to United Kingdom carriers being subject to a principle of “reciprocity”, the proposed Regulation (Article 6) lays down a mechanism to ensure that the rights enjoyed by Union carriers in the United Kingdom stay equivalent to those granted to UK carriers under the proposed Regulation. If that is not the case, the Commission is empowered to adopt the necessary measures to correct the situation by means of implementing acts, including the limitation or withdrawal of operating authorisations of United Kingdom air carriers. The assessment of the level of equivalence and the adoption of corrective measures by the Commission are not solely linked to strict, formal correspondence between the two legal orders; this is because of the marked differences between the respective markets and in order to avoid a blind mirroring approach - which might in the end prove counter to the Union interest.

Just as the Union strives to achieve in all its air services agreements, the proposed Regulation, even though it aims to temporarily ensure basic connectivity, lays down a flexible mechanism to ensure that Union air carriers enjoy fair and equal opportunities to compete with United Kingdom carriers once the United Kingdom will no longer be bound by Union law. A level playing field requires that, even after the end of the transition period, the United Kingdom continues to apply sufficiently high standards in the area of air transport as regards: fair competition including the regulation of cartels, abuse of dominant position and mergers; the prohibition of unjustified government subsidies; the protection of workers; the protection of the environment; safety and security. Moreover, it must be ensured that Union carriers are not discriminated against in the United Kingdom, be it *de iure* or *de facto*. The proposed Regulation thus charges the Commission (Article 7) with the task to monitor the conditions of competition between Union and United Kingdom air carriers and empowers it to adopt the

necessary measures, by means of implementing acts, to ensure that those conditions remain fulfilled at all times.

The necessary procedures are established so as to enable the Member States to verify that air carriers, aircraft and crews flying into their territories under this Regulation are licensed or certified by the United Kingdom in accordance with internationally recognised safety standards, that all relevant national and Union legislation is complied with and that the allowed rights are not exceeded (Articles 8 to 11).

Explicit provision is made to recall that Member States must not negotiate nor enter into any bilateral air services agreements with the United Kingdom on matters falling under the scope of this Regulation and that they must not otherwise grant UK carriers, in connection with air transport, any rights other than those granted in this Regulation (Article 3). Nevertheless, the respective competent authorities will of course be able to cooperate as necessary for the good implementation of the Regulation (Article 12), so that the least possible disturbance is brought to the management of the air services that will continue to be provided under its aegis after the end of the transition period.

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**on common rules ensuring basic air connectivity following 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 Committee<sup>1</sup>,

Having regard to the opinion of the Committee of the Regions<sup>2</sup>,

Acting in accordance with the ordinary legislative procedure<sup>3</sup>,

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 Community<sup>4</sup> ('the Withdrawal Agreement') was concluded by the Union by Council Decision (EU) 2020/135<sup>5</sup> 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. On 25 February 2020, the Council adopted Decision (EU, Euratom) 2020/266 authorising the opening of negotiations with the United Kingdom of Great Britain and Northern Ireland for a new partnership agreement.<sup>6</sup> As implied by the negotiation directives, the authorisation covers inter alia the elements needed to address comprehensively the aviation relationship with the

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<sup>1</sup> Opinion of ....

<sup>2</sup> Opinion of ....

<sup>3</sup> Position of the European Parliament of ...

<sup>4</sup> OJ L 29, 31.1.2020, p. 7.

<sup>5</sup> 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).

<sup>6</sup> OJ L 58, 27.2.2020, p. 53.

United Kingdom after the end of the transition period. However, it is uncertain whether an agreement between the Union and the United Kingdom governing their future relationship in this area will have entered into force by the end of that period.

- (2) Regulation (EC) No 1008/2008 of the European Parliament and of the Council<sup>7</sup> sets out the conditions for the granting of the Union operating licence to air carriers and establishes the freedom to provide intra-EU air services.
- (3) At the end of the transition period and in the absence of any special provisions, all rights and obligations ensuing from Union law in respect of market access as established by Regulation (EC) No 1008/2008 would end, insofar as the relationship between the United Kingdom and the Member States is concerned.
- (4) It is therefore necessary to establish a temporary set of measures enabling carriers licensed in the United Kingdom to provide air transport services between the territory of the latter and the Member States. In order to ensure a proper equilibrium between the United Kingdom and the Member States, the rights thus conferred should be conditional upon the conferral of equivalent rights by the United Kingdom to air carriers licensed in the Union and be subject to certain conditions ensuring fair competition.
- (5) In order to reflect its temporary character, the application of this Regulation should be limited to 30 June 2021, or until the entry into force or, where stipulated, provisional application of a future agreement covering the provision of air services with the United Kingdom to which the Union is a party, negotiated by the Commission in accordance with Article 218 TFEU, whichever is earlier.
- (6) In order to maintain mutually beneficial levels of connectivity, certain cooperative marketing arrangements should be provided for both for UK air carriers and Union air carriers in line with the principle of reciprocity.
- (7) This Regulation should not prevent Member States from issuing authorisations for the operation of scheduled air services by Union air carriers in the exercise of rights granted to them by the United Kingdom, similarly to situations occurring in the context of international agreements. In respect of those authorisations, Member States should not discriminate between Union air carriers.
- (8) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission as regards the adoption of measures to guarantee a fair degree of reciprocity between the rights unilaterally granted by the Union and the United Kingdom to each other's air carriers, and to ensure that Union air carriers can compete with UK air carriers under fair conditions in the provision of air services. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council<sup>8</sup>. Given their potential impact on the air connectivity of the Member States, the examination procedure should be used for the adoption of those measures. The Commission should adopt immediately applicable implementing acts where, in duly justified cases, imperative grounds of urgency so require. Such duly justified cases could be found in situations where the United Kingdom fails to grant equivalent rights to Union air

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<sup>7</sup> Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community (OJ L 293, 31.10.2008, p. 3).

<sup>8</sup> Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

carriers and thereby causes a manifest imbalance, or where less favourable conditions of competition than those enjoyed by UK air carriers in the provision of air transport services covered by this Regulation threaten the economic viability of Union air carriers.

- (9) Since the objective of this Regulation, namely to lay down provisional measures governing air transport between the Union and the United Kingdom in the event of the absence of an agreement governing their future relationship in the field of aviation at the end of the transition period, cannot be sufficiently achieved by the Member States but can rather, by reason of its scale and effects, 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.
- (10) In view of the urgency entailed by the end of the transition period referred to above, 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.
- (11) The territorial scope of this Regulation and any reference to the United Kingdom therein does not include Gibraltar.
- (12) This Regulation is without prejudice to the legal position of the Kingdom of Spain with regard to the sovereignty over the territory in which the airport of Gibraltar is situated.
- (13) The provisions of this Regulation should enter into force as a matter of urgency and should apply, in principle, from the day following the end of the transition period referred to in the Withdrawal Agreement unless an agreement governing the future relationship between the Union and the United Kingdom in the field of aviation has entered into force by that date. However, in order to allow for the necessary administrative procedures to be conducted as early as possible, certain provisions should apply as from the entry into force of this Regulation,

HAVE ADOPTED THIS REGULATION:

*Article 1*  
*Scope*

This Regulation lays down a temporary set of measures governing air transport between the Union and the United Kingdom of Great Britain and Northern Ireland ("United Kingdom") following the expiry of the transition period referred to in Article 126 of the Withdrawal Agreement.

*Article 2*  
*Definitions*

For the purposes of this Regulation the following definitions apply:

- 1) "air transport" means the carriage by aircraft of passengers, baggage, cargo, and mail, separately or in combination, held out to the public for remuneration or hire, including scheduled and non-scheduled air services;
- 2) "international air transport" means air transport that passes through the airspace over the territory of more than one State;
- 3) "Union air carrier" means an air carrier with a valid operating licence granted by a competent licensing authority in accordance with Chapter II of Regulation (EC) No 1008/2008;
- 4) "UK air carrier" means an air carrier which:
  - (a) has its principal place of business in the United Kingdom; and
  - (b) fulfills one of the following two conditions:
    - (i) The United Kingdom and/or nationals of the United Kingdom own more than 50% of the undertaking and effectively control it, whether directly or indirectly through one or more intermediate undertakings, or
    - (ii) Union Member States and/or nationals of Union Member States and/or other Member States of the European Economic Area and/or nationals of such States, in any combination, whether alone or together with the United Kingdom and/or nationals of the United Kingdom, own more than 50% of the undertaking and effectively control it, whether directly or indirectly through one or more intermediate undertakings.
  - (c) in the case referred to in point (b)(ii), held a valid operating licence in accordance with Regulation (EC) No 1008/2008 on the day before the first day of application of this Regulation as set out in the first subparagraph of Article 14(2).
- 5) "effective control" means a relationship constituted by rights, contracts or any other means which, either separately or jointly and having regard to the considerations of fact or law involved, confer the possibility of directly or indirectly exercising a decisive influence on an undertaking, in particular by:
  - (a) the right to use all or part of the assets of an undertaking;
  - (b) rights or contracts which confer a decisive influence on the composition, voting or decisions of the bodies of an undertaking or otherwise confer a decisive influence on the running of the business of the undertaking;
- 6) "competition law" means law which addresses the following conduct, where it may affect air transport services:
  - (a) conduct that consists of:

(i) agreements between air carriers, decisions by associations of air carriers and concerted practices which have as their object or effect the prevention, restriction or distortion of competition;

(ii) abuses by one or more air carriers of a dominant position;

(iii) measures taken or maintained in force by the United Kingdom in case of public undertakings and undertakings to which the United Kingdom grants special or exclusive rights and which are contrary to points (i) or (ii);

(b) concentrations between air carriers which significantly impede effective competition, in particular as a result of the creation or strengthening of a dominant position;

7) "subsidy" means any financial contribution granted to an air carrier or an airport by the government or any other public body at any level, conferring a benefit, and including:

(a) the direct transfer of funds, such as grants, loans or equity infusion, the potential direct transfer of funds, the assumption of liabilities, such as loan guarantees, capital injections, ownership, protection against bankruptcy or insurance;

(b) the foregoing or non-collection of revenue that is otherwise due;

(c) the provision of goods or services other than general infrastructure, or the purchase of goods or services;

(d) the making of payments to a funding mechanism or entrustment or direction to a private body to carry out one or more of the functions mentioned under points (a), (b) and (c) which would normally be vested in the government or other public body and the practice in no real sense differs from practices normally followed by governments;

no benefit is deemed to be conferred by a financial contribution carried out by a government or other public body if a private market operator solely driven by profitability prospects, in the same situation as the public body in question, would have carried out the same financial contribution;

8) "independent competition authority" means an authority which is in charge of the application and enforcement of competition law, as well as the control of subsidies, and fulfils the following conditions:

(a) the authority is operationally independent and is appropriately equipped with the resources necessary to carry out its tasks;

(b) in performing its duties and exercising its powers, the authority has the necessary guarantees of independence from political or other external influence and acts impartially; and

(c) the decisions of the authority are subject to judicial review;

9) "discrimination" means differentiation of any kind without objective justification in respect of the supply of goods or services, including public services, employed for the operation of air transport services, or in respect of their treatment by public authorities relevant to such services;

10) "scheduled air transport service" means a series of flights possessing the following characteristics:

(a) on each flight seats and/or capacity to transport cargo and/or mail are available for individual purchase by the public (either directly from the air carrier or from its authorised agents);

(b) it is operated so as to serve traffic between the same two or more airports, either:

- (i) according to a published timetable, or
  - (ii) with flights so regular or frequent that they constitute a recognisably systematic series;
- 11) "non-scheduled air transport service" means a commercial air transport service performed other than as a scheduled air service;
- 12) "territory of the Union" means the land territory, internal waters and territorial sea of the Member States to which the Treaty on European Union and the Treaty on the Functioning of the European Union apply and under the conditions laid down in those Treaties, and the air space above them;
- 13) "territory of the United Kingdom" means the land territory, internal waters and territorial sea of the United Kingdom and the air space above them;
- 14) "Chicago Convention" means the Convention on International Civil Aviation, signed in Chicago on 7 December 1944.

*Article 3*  
*Traffic rights*

1. UK air carriers may, under the conditions laid down in this Regulation:
- (a) fly across the territory of the Union without landing;
  - (b) make stops in the territory of the Union for non-traffic purposes, within the meaning of the Chicago Convention;
  - (c) perform scheduled and non-scheduled international air transport services for passengers, combination of passengers and cargo and all-cargo services between any pair of points of which one is situated in the territory of the United Kingdom and the other one is situated in the territory of the Union.
3. The Member States shall neither negotiate nor enter into any bilateral agreements or arrangements with the United Kingdom on matters falling within the scope of this Regulation with respect to the period during which this Regulation applies. With respect to that period, they shall not otherwise grant UK air carriers, in connection with air transport, any rights other than those granted by this Regulation.
4. Notwithstanding paragraph 3, the Member States may authorise, in accordance with national law, the provision of air ambulance services in their territory by means of aircraft registered in the United Kingdom.

*Article 4*  
*Cooperative marketing arrangements*

1. Air transport services in accordance with Article 3 may be provided by means of blocked-space or code-sharing arrangements, as follows:
- (a) the UK air carrier may act as the marketing carrier, with any operating carrier that is a Union air carrier or a UK air carrier, or with any operating carrier of a third country which, under Union law or, as applicable, under the law of the Member State or Member States concerned, enjoys the necessary traffic rights as well as the right for its carriers to exercise those rights by means of the arrangement in question;
  - (b) the UK air carrier may act as the operating carrier, with any marketing carrier which is a Union air carrier or a UK air carrier, or with any marketing carrier of a third country which, under Union law or, as applicable, under the law of the Member State or Member States

concerned, enjoys the necessary route rights as well as the right for its carriers to exercise those rights by means of the arrangement in question.

2. In no case shall the rights granted to UK air carriers under paragraph 1 be construed as conferring on air carriers of a third country any rights other than those that they enjoy under Union law or under the law of the Member State or Member States concerned.

3. Recourse to blocked-space or code-sharing arrangements, whether as an operating carrier or as a marketing carrier, shall not result in a UK air carrier exercising rights other than those provided for in Article 3(1).

This shall not prevent UK carriers from providing air transport services between any pair of points of which one is situated in the territory of the Union and the other is situated in a third country, provided that the following conditions are fulfilled:

(a) the UK carrier acts as the marketing carrier under a blocked-space or a code-sharing arrangement with an operating carrier benefitting, under Union law or the law of the Member State or Member States concerned from the necessary traffic rights as well as from the right to exercise those rights by means of the arrangement in question;

(b) the transport service in question forms part of a carriage by that UK carrier between a point in the territory of the United Kingdom and the relevant point in the third country concerned.

4. The Member States concerned shall require the arrangements referred to in this Article to be approved by their competent authorities for the purpose of verifying compliance with the conditions set out in this Article and with the applicable requirements in Union and national law, in particular as regards safety and security.

#### *Article 5 Aircraft leasing*

1. In exercising the rights provided for in Article 3(1), a UK air carrier may provide air transport services with its own aircraft and in all the following cases:

(a) using aircraft leased without crew from any lessor;

(b) using aircraft leased with crew from any other UK air carrier;

(c) using aircraft leased with crew from air carriers of any country other than the United Kingdom, provided that the leasing is justified on the basis of exceptional needs, seasonal capacity needs or operational difficulties of the lessee and the leasing does not exceed the duration which is strictly necessary to fulfil those needs or overcome those difficulties.

2. The Member States concerned shall require the arrangements referred to in paragraph 1 to be approved by their competent authorities for the purpose of verifying compliance with the conditions set out therein and with the applicable requirements in Union and national law, in particular as regards safety and security.

#### *Article 6 Equivalence of rights*

1. The Commission shall monitor the rights granted by the United Kingdom to Union air carriers and the conditions for their exercise.

2. Where the Commission determines that the rights granted by the United Kingdom to Union air carriers are not, de jure or de facto, equivalent to those granted to UK air carriers

under this Regulation, or that those rights are not equally available to all Union carriers, the Commission shall, without delay and in order to restore equivalence, adopt implementing acts to:

- (a) establish limits to the allowable capacity for scheduled air transport services available to UK air carriers and require the Member States to adapt the operating authorisations of UK air carriers, both existing and newly granted, accordingly;
- (b) require the Member States to refuse, suspend or revoke the said operating authorisations; or
- (c) impose financial duties or operational restrictions.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 13(2). They shall be adopted in accordance with the urgency procedure referred to in Article 13(3) where, in duly justified cases of serious lack of equivalence for the purposes of paragraph 2, imperative grounds of urgency so require.

#### *Article 7* *Fair competition*

1. The Commission shall monitor the conditions under which Union air carriers and Union airports compete with UK air carriers and United Kingdom airports for the provision of air transport services covered by this Regulation.

2. Where it determines that, as a result of any of the situations referred to in paragraph 3, those conditions are appreciably less favourable than those enjoyed by UK air carriers, the Commission shall, without delay and in order to remedy that situation, adopt implementing acts to:

- (a) establish limits to the allowable capacity for scheduled air transport services available to UK air carriers and require the Member States to adapt the operating authorisations of UK air carriers, both existing and newly granted, accordingly;
- (b) require the Member States to refuse, suspend or revoke the said operating authorisations for some or all UK air carriers; or
- (c) impose financial duties or operational restrictions.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 13(2). They shall be adopted in accordance with the urgency procedure referred to in Article 13(3) where, in duly justified cases of threat to the economic viability of one or more operations of Union air carriers, imperative grounds of urgency so require.

3. The implementing acts referred to in paragraph 2 shall, subject to the conditions specified in that paragraph, be adopted to remedy the following situations:

- (a) the granting of subsidies by the United Kingdom;
- (b) failure, by the United Kingdom to have in place or to effectively apply competition law;
- (c) failure by the United Kingdom to establish or maintain an independent competition authority;
- (d) the application by the United Kingdom of standards in the protection of workers, safety, security, the environment, or passenger rights, which are inferior to those laid down in Union law or, in the absence of relevant provisions in Union law, inferior to those applied by all Member States or, in any event, inferior to relevant international standards;

(e) any form of discrimination against Union air carriers.

4. For the purposes of paragraph 1, the Commission may request information from the competent authorities of the United Kingdom, UK air carriers or United Kingdom airports. Where the competent authorities of the United Kingdom, the UK air carrier or United Kingdom airport do not provide the information requested within the reasonable period prescribed by the Commission, or provide incomplete information, the Commission may proceed in accordance with paragraph 2.

5. Regulation (EU) 2019/712 of the European Parliament and of the Council<sup>9</sup> shall not apply to matters falling within the scope of this Regulation.

#### *Article 8* *Operating authorisation*

1. Without prejudice to Union and national law in the area of aviation safety, in order to exercise the rights granted to them under Article 3, UK air carriers shall be required to obtain an operating authorisation from each Member State in which they wish to operate.

2. On receipt of an application for an operating authorisation from a UK air carrier, the Member State concerned shall grant the appropriate operating authorisation without undue delay, provided that:

(a) the applicant UK air carrier holds a valid operating licence in accordance with the legislation of the United Kingdom; and

(b) effective regulatory control over the applicant UK air carrier is exercised and maintained by the United Kingdom, the competent authority is clearly identified and the UK air carrier holds an air operator certificate delivered by the said authority.

3. Without prejudice to the need to allow for sufficient time for the carrying out of the necessary assessments, UK air carriers shall be entitled to submit their applications for operating authorisations from the day of entry into force of this Regulation. The Member States shall have the power to approve those applications as from that day, provided that the conditions for such approval are met. However, any authorisations thus granted shall take effect no earlier than on the first day of application of this Regulation as set out in the first subparagraph of Article 14(2).

#### *Article 9* *Operational plans, programmes and schedules*

1. UK air carriers shall submit the operational plans, programmes and schedules for air services to the competent authorities of each Member State concerned, for their approval. Any such submission shall be made at least 30 days prior to the start of the operations.

2. Subject to Article 8, the operational plans, programmes and schedules for the IATA season that is in progress on the first day of application of this Regulation as set out in the first subparagraph of Article 14(2) and those for the first season thereafter may be submitted and approved before that date.

3. This Regulation shall not prevent Member States from issuing authorisations for the operation of scheduled air services by Union carriers in the exercise of rights granted to them

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<sup>9</sup> Regulation (EU) 2019/712 of the European Parliament and of the Council of 17 April 2019 on safeguarding competition in air transport, and repealing Regulation (EC) No 868/2004 (OJ L 123, 10.5.2019, p. 4).

by the United Kingdom. In respect of those authorisations, Member States shall not discriminate between Union carriers.

#### *Article 10*

##### *Refusal, revocation, suspension and limitation of authorisation*

1. Member States shall refuse, or as the case may be, revoke or suspend the operating authorisation of a UK air carrier where:
  - (a) the air carrier does not qualify as a UK air carrier under this Regulation; or
  - (b) the conditions laid down in Article 8(2) are not complied with.
2. The Member States shall refuse, revoke, suspend, limit or impose conditions on the operating authorisation of a UK air carrier, or limit or impose conditions on its operations in any of the following circumstances:
  - (a) the applicable safety and security requirements are not complied with;
  - (b) the applicable requirements relating to the admission to, the operation within, or the departure from the territory of the Member State concerned of aircraft engaged in air transport are not complied with;
  - (c) the applicable requirements relating to the admission to, operation within, or departure from the territory of the Member State concerned of passengers, crew, baggage, cargo, and/or mail on aircraft (including regulations relating to entry, clearance, immigration, passports, customs and quarantine, or in the case of mail, postal regulations) are not complied with.
3. The Member States shall refuse, revoke, suspend, limit or impose conditions on the operating authorisations of UK air carriers, or limit or impose conditions on their operations, where they are required to do so by the Commission in accordance with Article 6 or 7.
4. The Member States shall inform the Commission and the other Member States of any decisions to refuse or revoke the operating authorisation of a UK air carrier pursuant to paragraphs 1 and 2, without undue delay.

#### *Article 11*

##### *Certificates and licences*

Certificates of airworthiness, certificates of competency and licences issued or rendered valid by the United Kingdom and still in force shall be recognised as valid by the Member States for the purpose of the operation of air transport services by UK air carriers under this Regulation, provided that such certificates or licences were issued or rendered valid pursuant to, and in conformity with, as a minimum, the relevant international standards established under the Chicago Convention.

#### *Article 12*

##### *Consultation and cooperation*

1. The Member States' competent authorities shall consult and cooperate with the competent authorities of the United Kingdom as necessary in order to ensure the implementation of this Regulation.
2. Member States shall, upon request, provide the Commission without undue delay with any information obtained pursuant to paragraph 1 of this Article or any other information relevant for the implementation of Articles 6 and 7.

*Article 13*  
*Committee*

1. The Commission shall be assisted by the Committee established by Regulation (EC) No 1008/2008. That committee shall be a committee within the meaning of Regulation (EU) 182/2011.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) 182/2011 shall apply.
3. Where reference is made to this paragraph, Article 8 of Regulation (EU) 182/2011, in conjunction with Article 5 thereof, shall apply.

*Article 14*  
*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. It 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.  
However, Articles 8(3) and 9(2) shall apply from the entry into force of this Regulation.
3. This Regulation shall not apply if an agreement governing comprehensively the provision of air transport with the United Kingdom, to which the Union is a party, has entered into force by the date referred to in the first subparagraph of paragraph 2.
4. This Regulation shall cease to apply on the earlier of the following dates:
  - (a) 30 June 2021;
  - (b) the date on which an agreement as referred to in paragraph 3 enters into force, or, as the case may be, the date from which it is provisionally applied.

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*