

Regulation (EU) 2020/2225 of the European Parliament and of the Council of 23 December 2020 on common rules ensuring basic air connectivity following the end of the transition period provided for 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)

REGULATION (EU) 2020/2225 OF THE EUROPEAN
PARLIAMENT AND OF THE COUNCIL

of 23 December 2020

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(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,

After consulting the European Economic and Social Committee,

After consulting the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure⁽¹⁾,

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⁽²⁾ (the ‘Withdrawal Agreement’) was concluded by the Union by means of Council Decision (EU) 2020/135⁽³⁾ and entered into force on 1 February 2020. The transition period provided for in Article 126 of the Withdrawal Agreement (the ‘transition period’), during which Union law continues to apply to and in the United Kingdom of Great Britain and Northern Ireland (United Kingdom) in accordance with Article 127 of the Withdrawal Agreement, ends on 31 December 2020. On 25 February 2020 the Council adopted Decision (EU, Euratom) 2020/266⁽⁴⁾, which authorised the opening of negotiations with the United Kingdom for a new partnership agreement. 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.

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- (2) Regulation (EC) No 1008/2008 of the European Parliament and of the Council⁽⁵⁾ 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 will 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 territory of 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) The crisis arising from the COVID-19 pandemic poses significant logistical challenges to the Member States, in particular as regards the capacity to transport significant volumes of medicines, vaccines and medical equipment to and from third countries at short notice and under particularly demanding storage and logistical conditions. It is necessary to ensure that sufficient air transport capacity is made available and additional exceptional flexibility is provided for to the Member States for that purpose, including the possibility to rely on third-country aircraft. Additional elements of all-cargo fifth freedom traffic rights strictly limited to carrying out that kind of operation on an ad hoc basis should therefore be granted so that use can be made of UK air carriers in such exceptional circumstances. Member States should also be able to authorise additional rights for the provision of air ambulance services.
- (6) In order to reflect its temporary character, this Regulation should apply until 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 of the Treaty on the Functioning of the European Union (TFEU), whichever is earlier.
- (7) In order to maintain mutually beneficial levels of connectivity, certain cooperative marketing arrangements should be provided for in respect of both UK air carriers and Union air carriers, in line with the principle of reciprocity.
- (8) In view of the exceptional and unique circumstances that necessitate the adoption of this Regulation and in accordance with the Treaties, it is appropriate for the Union to exercise temporarily the relevant shared competence conferred upon it by the Treaties. However, any effect of this Regulation on the division of competences between the Union and the Member States should be strictly limited in time. The competence exercised by the Union should therefore only be exercised with respect to the period of application of this Regulation. Accordingly, the shared competence thus exercised will cease to be exercised by the Union as soon as this Regulation ceases to apply. In accordance with Article 2(2) TFEU, Member States will therefore, as of that moment,

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be in the same situation with regard to exercising their competence as they would have been had the Regulation not been adopted. Furthermore, it is recalled that, as set out in Protocol No 25 on the exercise of shared competence annexed to the Treaty on European Union (TEU) and the TFEU, the scope of the exercise of the competence of the Union in this Regulation covers only those elements governed by this Regulation and does not cover the whole area. The respective competences of the Union and of the Member States with respect to the conclusion of international agreements in the area of air transport are to be determined in accordance with the Treaties and taking into account relevant Union law, including Decision (EU, Euratom) 2020/266 authorising the opening of negotiations with the United Kingdom.

- (9) 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.
- (10) 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⁽⁶⁾. 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 relate to situations where the United Kingdom fails to grant equivalent rights to Union air 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.
- (11) 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 TEU. 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.
- (12) In view of the urgency entailed by the end of the transition period, it was considered to be 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 European Union,

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annexed to the TEU, the TFEU and the Treaty establishing the European Atomic Energy Community.

- (13) The territorial scope of this Regulation and any reference to the United Kingdom therein does not include Gibraltar.
- (14) 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.
- (15) 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 unless an agreement governing the future relationship between the Union and the United Kingdom in the field of aviation has entered into force, or as the case may be, provisionally applies 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 following the expiry of the transition period provided for in Article 126 of the Withdrawal Agreement.

Article 2

Exercise of competence

1 The exercise of Union competence pursuant to this Regulation shall be limited to the period of application of this Regulation as defined in Article 15(4). After the end of that period, the Union shall immediately cease to exercise that competence pursuant to this Regulation and the Member States shall be in the same position with regard to the exercise of their competence in accordance with Article 2(2) TFEU as they would have been had the Regulation not been adopted.

2 The exercise of Union competence pursuant to this Regulation shall be without prejudice to the competence of the Member States concerning traffic rights in any ongoing or future negotiations, signature, or conclusion of international agreements related to air services with any other third country, and with the United Kingdom with respect to the period after this Regulation has ceased to apply.

3 The exercise of competence by the Union as referred to in paragraph 1 only covers the elements governed by this Regulation.

4 This Regulation is without prejudice to the respective competences of the Union and the Member States in the area of air transport with regard to elements other than those governed by this Regulation. It is also without prejudice to Decision (EU, Euratom) 2020/266 authorising the opening of negotiations with the United Kingdom for a new partnership agreement.

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Article 3

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) fulfils 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 referred to in the first subparagraph of Article 15(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: