Regulation (EU) 2019/502 of the European Parliament and of the Council of 25 March 2019 on common rules ensuring basic air connectivity with regard to the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the Union (Text with EEA relevance)

REGULATION (EU) 2019/502 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 25 March 2019

on common rules ensuring basic air connectivity with regard to the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the Union

(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[(1)],

After consulting the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure[(2)],

Whereas:

(1) On 29 March 2017, the United Kingdom submitted the notification of its intention to withdraw from the Union pursuant to Article 50 of the Treaty on European Union. The Treaties will cease to apply to the United Kingdom from the date of entry into force of a withdrawal agreement or failing that, two years after that notification, namely from 30 March 2019, unless the European Council, in agreement with the United Kingdom, unanimously decides to extend that period.

(2) Regulation (EC) No 1008/2008 of the European Parliament and of the Council[(3)] 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) In the absence of any special provisions, the withdrawal of the United Kingdom from the Union would end all rights and obligations ensuing from Union law in respect of market access as established by Regulation (EC) No 1008/2008, insofar as the relationship between the United Kingdom and the remaining 27 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 remaining 27 Member States. In order to ensure a proper equilibrium

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between the United Kingdom and the remaining 27 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 a short period of time, without prejudice to the possible negotiation and entry into force of a future agreement covering the provision of air services with the United Kingdom to which the Union is a party. The Commission should be given, upon its recommendation, as soon as possible, an authorisation to negotiate a comprehensive air transport agreement with the United Kingdom. Such an agreement should be negotiated and concluded without delay.

(6) In order to maintain mutually beneficial levels of connectivity, cooperative marketing arrangements, such as code-sharing, should be foreseen for both UK air carriers and Union air carriers in line with the principle of reciprocity.

(7) 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) of the Treaty on the Functioning of the European Union, Member States will, therefore, again exercise their competence as of that moment. 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 and Treaty on the Functioning of the European Union, 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 legislation.

(8) According to Regulation (EC) No 1008/2008, in order to maintain valid operating licences, Union air carriers are to notably comply at all times with the ownership and control requirements set out in that Regulation. In the event that the withdrawal of the United Kingdom from the Union takes place without the withdrawal agreement, some Union air carriers are likely to encounter difficulties in complying with those requirements as from the withdrawal date. It is therefore necessary to put in place contingency measures. In accordance with the principles of equal treatment and proportionality, those measures should be limited to what is strictly necessary to address the problems ensuing from the disorderly withdrawal of the United Kingdom from the Union. In view of the same principles, it is also necessary to establish mechanisms to allow close monitoring of progress towards compliance with the ownership and control

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requirements and to withdraw the operating licence, where this is warranted. In order to avoid an abrupt cessation of the operations and allow notably for the repatriation of affected passengers, the revocation of a non-complying operating licence, in case no appropriate plan for remedial action has been presented, should be effective two weeks after the revocation decision.

(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 occuring in the context of international agreements. In respect of those authorisations, Member States should not discriminate between Union air carriers.

(10) The Commission and the Member States should resolve the problems that may affect the existing traffic distribution schemes as a result of the withdrawal of the United Kingdom from the Union. In particular, appropriate measures should be taken to ensure full compliance with these schemes and to provide as much as possible for an orderly transition in order to avoid disruption to passengers and companies in the Union.

(11) 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[(4)]. 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 might concern those 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.

(12) 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 a withdrawal agreement, 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.

(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.

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(15) The provisions of this Regulation should enter into force as a matter of urgency and should apply, in principle, from the day following that on which the Treaties cease to apply to the United Kingdom unless a withdrawal agreement concluded with the United Kingdom 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 its withdrawal from the Union.

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 16(4). After the end of this period the Union shall immediately cease to exercise that competence and the Member States shall again exercise their competence in accordance with Article 2(2) of the Treaty on the Functioning of the European Union.

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 the competence by the Union 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.

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;

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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 set out in the first subparagraph of Article 16(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); and

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