Commission implementing decision 2019/1733 of 15 October 2019 on the assessment made pursuant to Regulation (EU) 2018/1139 of the European Parliament and of the Council as regards a temporary exemption from certain provisions of Commission Regulation (EU) No 1178/2011 granted by the United Kingdom (notified under document C(2019) 7401) (Only the English text is authentic) (Text with EEA relevance)

COMMISSION IMPLEMENTING DECISION 2019/1733

of 15 October 2019

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to 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[(1)], and in particular Article 71(2) thereof,

Whereas:

(1) On 19 October 2018 the United Kingdom notified the Commission, the European Union Aviation Safety Agency ('the Agency') and the other Member States that had granted an exemption to all applicants for a pilot licence from point MED.B.001(d)1(i) of Annex IV (Part-MED) to Commission Regulation (EU) No 1178/2011[(2)].

(2) The exemption granted by the United Kingdom extends the application of point MED.B.001(d)1(i) of Regulation (EU) No 1178/2011 to all applicants for the initial issue of commercial pilot licence ('CPL'), Multi-crew Pilot Licence ('MPL') and Airline Transport Pilot Licence ('ATPL').

(3) Under point MED.B.001(d)1(i) only holders of CPL, MPL and ATPL who do not fully meet the requirements for a Class 1 medical certificate may be granted an Operational Multi-Pilot Limitation ('OML') 'valid only as or with qualified co-pilot'.

(4) The United Kingdom explains that the exemption was necessary for 3 reasons. First, according to the United Kingdom, the current wording of point MED.B.001(d)1(i) of Regulation (EU) No 1178/2011 conflicts with UK's Equality Act 2010 that obliges to make reasonable adjustments to avoid putting disabled people at a disadvantage compared to their non-disabled counterparts. Second, the United Kingdom invokes urgent operational needs due to the shortage of qualified flight crew in the United Kingdom, explaining that the exemption would assist the United Kingdom with that systemic challenge. Third, the United Kingdom considers that there was an unjustified inconsistency between the said point MED.B.001(d)1(i) and point MED.A.030 of Regulation (EU) No 1178/2011, the latter one referring to both applicants and holders of commercial licence. Finally, United Kingdom provided a description of various mitigation measures accompanying that exemption.

(5) Following an assessment, on 15 July 2019 the European Union Aviation Safety Agency issued a negative recommendation on the exemption.

(6) The Commission agrees with the Agency's recommendation.

(7) Under Article 71(1) of Regulation (EU) 2018/1139 a Member State is allowed to grant an exemption only if it is granted to any natural or legal person subject to this Regulation 'in the event of urgent unforeseeable circumstances affecting those persons or urgent operational needs of those persons' and provided that all the conditions stipulated in points (a) to (d) of that article are met.

(8) The Commission considers that the exemption is not justified by urgent unforeseeable circumstances affecting the applicants for CPL, MPL or ATPL licence nor does it address an urgent operational need of those persons.

(9) As regards 'urgent unforeseeable circumstances' or 'urgent operational needs', the Commission notes that an applicant for CPL, MPL or ATPL licence with a specific medical condition is not at all performing aircraft operations based on CPL, MPL or ATPL licence. In fact, such an applicant is just willing to enter the aviation profession and therefore no 'urgent unforeseeable circumstance affecting those persons' or 'urgent operational needs of those persons' can be demonstrated. The justifications pertaining to an alleged inequality of applicants do not alter that conclusion, as there is nothing 'urgent' and 'unforeseeable' in those person's medical conditions.

(10) Furthermore, the Commission notes that the granted exemption is of general nature and applies to 'any applicant for initial issue of Class 1 medical certificate that requires OML'. The objective of the exemption is thus to change Union law in a general manner and to open the possibility to apply for OML to a new category of applicants without addressing specific operational needs of those persons. In fact, the exemption addresses the economic problem of a possible future pilot shortage at airlines and not an urgent operational need of those persons.

(11) While the Commission acknowledges that the problem of pilot shortage may be a systemic issue for some Member States, such justification is outside the scope of justifications permitted under Article 71(1) of Regulation (EU) 2018/1139.

(12) Moreover, the Commission considers that the exemption does not meet the condition of point (b) of Article 71(1) of Regulation (EU) 2018/1139, because it does not meet the requirements for safety and is not compliant with applicable essential requirements of Regulation (EU) 2018/1139 and the relevant implementing act, namely Regulation (EU) No 1178/2011.

(13) Point MED.B.001(d)1(i) of Regulation (EU) No 1178/2011 is based on the consideration that only experienced pilots (i.e. holders of CPL, MPL and ATPL) should be exempted from certain medical requirements, because a pilot's experience helps the pilot to better respond to stress factors caused by their medical conditions. Such experienced pilots have also a good knowledge of flight planning and therefore are able to take appropriate safety actions as soon as the first symptoms of their medical condition are perceived. Such experienced pilots are permitted to fly only as or with a qualified co-pilot.

(14) Based on the current level of medical knowledge, one cannot guarantee a sufficient degree of safety when an inexperienced pilot is confronted with his or her medical condition while combined with a stressful or unexpected challenge during the flight. Whilst progress in the medical knowledge may allow lifting constraints on some of those medical conditions, such decisions should only be done with due consideration of safety aspects for each category of medical condition and in consultation with the medical profession and not based on a singular and general exemption that lacks considerations to that effect. The mitigation measures proposed by the United Kingdom do not alter that conclusion. In fact, the United Kingdom did not propose any safety mitigation measures for the exemption in addition to the regular risk assessment performed during all aero-medical examinations.

(15) As a consequence, the level of safety is adversely affected by the implementation of the exemption and the exemption does not comply with the general safety objectives of Regulation (EU) 2018/1139.

(16) 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 (TEU). In accordance with Article 50(3) TEU, the Treaties are to cease to apply to the withdrawing State from the date of entry into force of a withdrawal agreement or, failing that, two years after the notification, unless the European Council, in agreement with the Member State concerned, unanimously decides to extend this period. The period has been extended twice, last time by European Council Decision (EU) 2019/584[(3)], which extended it until 31 October 2019.

(17) On 11 January 2019, by Decision (EU) 2019/274[(4)], the Council authorised the signature of the withdrawal agreement agreed at negotiators' level on 14 November 2018. The Union confirmed that it stands ready to proceed swiftly with its signature and conclusion in the event that the United Kingdom Parliament approves the withdrawal agreement. Part Four of the withdrawal agreement[(5)] provides for a transition period starting on the date of entry into force of the agreement, during which Union law is to continue to apply to and in the United Kingdom, as laid down therein.