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23 October 2018

NOTICE TO STAKEHOLDERS

WITHDRAWAL OF THE UNITED KINGDOM AND EU RULES IN THE FIELD OF AVIATION SECURITY AND MARITIME SECURITY

Since 1 February 2020, the United Kingdom has withdrawn from the European Union and has become a “third country”.¹ The Withdrawal Agreement² provides for a transition period ending on 31 December 2020.³ Until that date, EU law in its entirety applies to and in the United Kingdom.⁴

During the transition period, the EU and the United Kingdom will negotiate an agreement on a new partnership, providing notably for a free trade area. However, it is not certain whether such an agreement will be concluded and will enter into force at the end of the transition period. In any event, such an agreement would create a relationship which in terms of market access conditions will be very different from the United Kingdom’s participation in the internal market,⁵ in the EU Customs Union, and in the VAT and excise duty area.

Therefore, all interested parties, and especially economic operators, are reminded of the legal situation applicable after the end of the transition period

After the end of the transition period, the EU rules in the field of aviation security and maritime security no longer apply to the United Kingdom. This has, in particular, the following consequences:

¹ A third country is a country not member of the EU.

² 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. 7 (“Withdrawal Agreement”).

³ The transition period may, before 1 July 2020, be extended once for up to 1 or 2 years (Article 132(1) of the Withdrawal Agreement). The UK government has so far ruled out such an extension.

⁴ Subject to certain exceptions provided for in Article 127 of the Withdrawal Agreement, none of which is relevant in the context of this notice.

⁵ In particular, a free trade agreement does not provide for internal market concepts (in the area of goods and services) such as mutual recognition, the “country of origin principle”, and harmonisation. Nor does a free trade agreement remove customs formalities and controls, including those concerning the origin of goods and their input, as well as prohibitions and restrictions for imports and exports.

1. AVIATION SECURITY

Regulation (EC) No 300/2008⁶ lays down common rules and basic standards on aviation security and procedures to monitor the implementation of the common rules and standards. Regulation (EU) No 2015/1998⁷ lays down detailed measures for the implementation of the common basic security standards as set out in Article 4 and the Annex to Regulation (EU) No 300/2008.

Regulation (EU) 2019/413⁸ amends Regulation (EU) 2015/1998 as regards third countries recognised as applying security standards equivalent to the common basic standards on civil aviation security. Under this legal framework, the United Kingdom has been listed as a third country that will be, as of the end of the transition period, recognised by the EU as applying security standards equivalent to the common basic, standards on civil aviation security, regarding aircraft security, passengers and their cabin baggage, hold baggage, cargo and mail, as described below.

1.1. Aircraft security, passengers, cabin baggage, hold baggage

Regulation (EC) No 300/2008 requires an aircraft security check/aircraft security search,⁹ the screening of transfer and transit passengers and their cabin baggage,¹⁰ and the screening of transfer hold baggage,¹¹ unless the aircraft arrives from a third country 'listed' by the Commission.

The United Kingdom has been listed in attachments 3-B, 4-B, and 5-A of the Annex to Commission Implementing Regulation (EU) 2015/1998.¹²

Consequently, as of the end of the transition period, aircraft, passengers and their cabin baggage, hold baggage, on flights originating from the United Kingdom may be exempted from further searches or screening procedures when transferring in the EU.

⁶ Regulation (EC) No 300/2008 of the European Parliament and of the Council of 11 March 2008 on common rules in the field of civil aviation security, OJ L 97 9.4.2008, p. 72.

⁷ Commission Implementing Regulation (EU) 2015/1998 of 5 November 2015 laying down detailed measures for the implementation of the common basic standards on aviation security, OJ L 299, 14.11.2015, p. 1.

⁸ Commission Implementing Regulation (EU) 2019/413 of 14 March 2019 amending Implementing Regulation (EU) 2015/1998 as regards third countries recognised as applying security standards equivalent to the common basic standards on civil aviation security, OJ L 73, 15.3.2019, p. 98.

⁹ Point 3.1 of the Annex to Regulation (EC) 300/2008, Point 3.1.1 of the Annex to Commission Implementing Decision C(2015) 8005.

¹⁰ Points 4.1.1, 4.1.2(b), 4.1.3(d) of the Annex to Regulation (EC) 300/2008, point 4.0.2 of the Annex to Commission Implementing Regulation (EU) 2015/1998.

¹¹ Points 5.1.1, 5.1.2(b), 5.1.3(d) of the Annex to Regulation (EC) 300/2008, point 5.0.2 of the Annex to Commission Implementing Regulation (EU) 2015/1998.

¹² Regulation (EU) 2019/413.

1.2. Cargo and mail, supplies

1.2.1. ACC3 designation of air carriers and RA3 and KC3 designation of entities and operators part of the supply chain of an ACC3

In accordance with Chapter 6.8.1 of the Annex to Regulation (EU) 2015/1998, air carriers - no matter if established in the EU, in the United Kingdom, or in another third country - that transport air cargo and mail from an airport located in a third country into the EU have to be designated by the appropriate authority of an EU Member State as "Air Cargo or Mail Carrier operating into the European Union from a Third Country Airport" (ACC3) and ensure implementation of certain security measures.

This is not required if the third country is listed in Attachments 6-Fi or 6-Fii of the Annex to Regulation (EU) 2015/1998.

The United Kingdom has been listed in attachments 6-Fi of the Annex to Regulation (EU) 2015/1998.¹³

Consequently, at the end of the transition period, the ACC3 designation will not be required for the carriage of cargo or mail on flights originating from the United Kingdom and the ground operators feeding the supply chain of air carriers flying cargo and mail from the United Kingdom into the EU are not required to be designated as "Third Country Regulated Agent" (RA3) and/or "Third Country Known Consignor" (KC3) nor be subject to the EU aviation security validation process.

1.2.2. Approvals of EU Aviation Security Validators

In accordance with Chapter 11.6 of the Annex to Regulation (EU) No 2015/1998 (point 11.6.4.2), natural and legal persons approved as EU aviation security validators by an EU Member State shall be recognised in all EU Member States.

Aviation security validators approved by the United Kingdom are no longer recognized in the EU as of the end of the transition period.

The EU aviation security validations performed before the end of the transition period, including the EU validation reports issued before that date remain valid for the purpose of the designation of air carriers, operators and entities they have validated.

1.2.3. Approval of Regulated Agents and Known Consignors in the EU

In accordance with Chapters 6.3 and 6.4 of the Annex to Regulation (EU) No 2015/1998, EU-based entities approved as Regulated Agents or Known Consignors by an EU Member State shall be recognised in all EU Member States.

¹³ Regulation (EU) 2019/413.

Regulated Agents and Known Consignors approved by the appropriate authority of the United Kingdom are no longer recognized in the EU as of the end of the transition period. They will no longer be part of the EU secure supply chain.

1.2.4. Recognition of ACC3/KC3/RA3 designations by the United Kingdom

According to points 6.8.1.5, and 6.8.4.7 of the Annex to Commission Implementing Regulation (EU) 2015/1998, ACC3/KC3/RA3 designations by the appropriate authority of an EU Member State shall be recognised in all EU Member States.

ACC3/KC3/RA3 designations granted by the appropriate authority of the United Kingdom will not be recognised by EU Member States as of the end of the transition period. As a result, all carriers and cargo operators in third countries that have been designated by the authority of the United Kingdom will be required to hold, as of the end of the transition period, the ACC3/KC3/RA3 status accorded by the appropriate authority of an EU Member State.

Responsible Commission services are going to support Member State administrations in the process of reattributing the responsibility for the designation of air carriers, third country regulated agents and third country known consignors, currently designated by the United Kingdom by facilitating the administrative transition.

1.2.5. Regulated suppliers

In accordance with Chapter 8.1.3 of the Annex to Regulation (EU) 2015/1998, regulated suppliers (some airport suppliers as well as in-flight suppliers) have to be approved by the appropriate authority. According to Chapter 8.1.3.5 of Regulation (EU) 2015/1998, the approval of a regulated supplier by an EU Member State shall be recognised in all EU Member States.

Approvals by the appropriate authority of the United Kingdom will no longer be recognised by an EU Member State as of the end of the transition period.

2. MARITIME SECURITY

Regulation (EC) No 725/2004 on enhancing ship and port facility security¹⁴ and Directive 2005/65/EC on enhancing port security¹⁵ set out the EU rules on maritime security.

¹⁴ Regulation (EC) No 725/2004 of the European Parliament and of the Council of 31 March 2004 on enhancing ship and port facility security, OJ L 129, 29.4.2004, p. 6.

- Article 6 of Regulation (EC) No 725/2004 requires the competent authority for maritime security of the Member State to request ships announcing their intention to enter a port to provide certain security information. According to Article 7(1),(2) of Regulation (EC) No 725/2004, Member States can request each other, for international scheduled services operated between them, to exempt these services from providing this mandatory security information. As of the end of the transition period, this possibility, as provided by Regulation (EC) No 725/2004, no longer exists for the United Kingdom. This means that, as of the end of the transition period, all scheduled services falling within the scope of Article 6 of Regulation (EC) No 725/2004, such as ferry links between the United Kingdom and EU Member States, will be subjected to the mandatory provision of security information set out therein.
- According to Article 16(2) of Directive 2005/65/EC, the personnel carrying out security inspections or handling confidential information (including the personnel of recognised security organisations, see Article 11 of Directive 2005/65/EC) requires a security vetting of the Member State of which the person concerned is a national. This means that United Kingdom personnel (thus holding a security clearance from the United Kingdom) can no longer carry out the security inspections referred to in this Directive. The same applies for inspections under Regulation (EC) No 725/2004 (for International Ship and Port Facility Security (ISPS) compliance), pursuant to Article 12 thereof.

The websites of the Commission on aviation security (https://ec.europa.eu/transport/modes/air/security_en), and maritime security (https://ec.europa.eu/transport/modes/maritime/security_en) provide for general information concerning the rules for transport security in the EU. These pages will be updated with further information, where necessary.

European Commission
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¹⁵ Directive 2005/65/EC of the European Parliament and of the Council of 26 October 2005 on enhancing port security, OJ L 310, 25.11.2005, p. 28.