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Rev1

## NOTICE TO STAKEHOLDERS

### WITHDRAWAL OF THE UNITED KINGDOM AND EU RULES ON CONSUMER PROTECTION AND PASSENGER RIGHTS

The United Kingdom submitted on 29 March 2017 the notification of its intention to withdraw from the Union pursuant to Article 50 of the Treaty on European Union. This means that, unless a ratified withdrawal agreement<sup>1</sup> establishes another date, all Union primary and secondary law will cease to apply to the United Kingdom from 30 March 2019, 00:00h (CET) ('the withdrawal date').<sup>2</sup> The United Kingdom will then become a 'third country'.<sup>3</sup>

Preparing for the withdrawal is not just a matter for EU and national authorities but also for private parties.

In view of the considerable uncertainties, in particular concerning the content of a possible withdrawal agreement, stakeholders concerned are reminded of legal repercussions, which need to be considered when the United Kingdom becomes a third country.

Subject to any transitional arrangement that may be contained in a possible withdrawal agreement, as of the withdrawal date, the general EU rules in the field of consumer law (such as the Unfair Commercial Practices Directive<sup>4</sup>, the Consumer Rights Directive<sup>5</sup>, the

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<sup>1</sup> Negotiations are ongoing with the United Kingdom with a view to reaching a withdrawal agreement.

<sup>2</sup> Furthermore, in accordance with Article 50(3) of the Treaty on European Union, the European Council, in agreement with the United Kingdom, may unanimously decide that the Treaties cease to apply at a later date.

<sup>3</sup> A third country is a country not member of the EU.

<sup>4</sup> Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive'), OJ L 149, 11.6.2005, p. 22.

<sup>5</sup> Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council, OJ L 304, 22.11.2011, p. 64.

Unfair Contract Terms Directive<sup>6</sup>, the Consumer Sales and Guarantees Directive<sup>7</sup>, the Package Travel Directive<sup>8</sup> - see sections 1 and 2 below) and the EU passenger rights legislation (see section 3 below) no longer apply to the United Kingdom.<sup>9</sup>

This has in particular the following consequences:

#### **1. PURCHASE BY CONSUMERS IN THE EU OF PRODUCTS OR SERVICES FROM TRADERS ESTABLISHED IN THE UNITED KINGDOM<sup>10</sup>**

On or after the withdrawal date, consumers in the EU might purchase products or services from traders established in the United Kingdom.

According to EU law, where a consumer concludes a contract with a professional in another country who, by any means, directs his commercial activities to the consumer's country of residence, the contract is generally governed by the law of the country where the consumer has his or her habitual residence. It is possible to choose another law but that choice cannot deprive the consumer of the protection afforded by the law of the habitual residence which cannot be derogated from by agreement under that law.<sup>11</sup> On that basis EU courts will continue to apply the EU rules on consumer protection even though the trader is in the United Kingdom. This includes in particular the rules set out in:

- the Unfair Commercial Practices Directive;<sup>12</sup>
- the Consumer Rights Directive;<sup>13</sup>

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<sup>6</sup> Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, OJ L 95, 21.4.1993, p. 29.

<sup>7</sup> Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees, OJ L 171, 7.7.1999, p. 12.

<sup>8</sup> Directive (EU) 2015/2302 of the European Parliament and of the Council of 25 November 2015 on package travel and linked travel arrangements, OJ L 326, 11.12.2015, p. 1.

<sup>9</sup> This notice does not address the specific EU rules on e-commerce, and in particular, the Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce') OJ L 178, 17.7.2000, p. 1.

<sup>10</sup> This notice does not address other practical aspects of cross-border purchase in third countries, such as EU rules related to value added tax, customs, and restrictions of importation.

<sup>11</sup> Article 6(1) of Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I), OJ L 177, 4.7.2008, p. 6. For exceptions to this general rule, see Article 6(2)-(4) of Regulation (EC) No 593/2008.

<sup>12</sup> Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council (Unfair Commercial Practices Directive), OJ L 149, 11.6.2005, p. 22.

<sup>13</sup> Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, OJ L 304, 22.11.2011, p. 64.

- the Unfair Contract Terms Directive;<sup>14</sup>
- the Consumer Sales and Guarantees Directive;<sup>15</sup>
- the Price Indication Directive<sup>16</sup> and
- the Package Travel Directive.<sup>17</sup>

If a EU-27 consumer were to bring an individual legal action<sup>18</sup> before a court of the EU-27 against a trader domiciled in the United Kingdom, the withdrawal has no implications for establishing international jurisdiction where the trader has directed his activities to the Member State of the consumer's domicile<sup>19</sup>; in these cases the EU jurisdictional rules which allow the consumer to sue the trader in the EU-27 Member State where the consumer is domiciled apply, irrespective of whether the trader is domiciled in the EU or in a third country.<sup>20</sup> However, the recognition and enforcement of an EU judgement in the United Kingdom and *vice versa* will be governed, as of the withdrawal date by national rules in the EU-27 and in the United Kingdom.<sup>21</sup>

As of the withdrawal date, EU law ensuring the availability of out-of-court dispute resolution<sup>22</sup> and facilitating access to online dispute resolution<sup>23</sup> no longer applies to

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<sup>14</sup> Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, OJ L 95, 21.4.1993, p. 29.

<sup>15</sup> Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees, OJ L 171, 7.7.1999, p. 12.

<sup>16</sup> Directive 98/6/EC of the European Parliament and of the Council of 16 February 1998 on consumer protection in the indication of prices of products offered to consumers, OJ L 80, 18.3.1998, p. 27.

<sup>17</sup> Directive (EU) 2015/2302 of the European Parliament and of the Council of 25 November 2015 on package travel and linked travel arrangements, OJ L 326, 11.12.2015, p. 1.

<sup>18</sup> While cross-border litigation by consumers is relatively rare, this aspect is addressed here to provide a complete overview.

<sup>19</sup> Consumer contracts covered in Article 17(1)(a)-(c) of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, OJ L 351, 20.12.2012, p. 1.

<sup>20</sup> Article 18(1) of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, OJ L 351, 20.12.2012, p. 1.

<sup>21</sup> For procedures and proceedings pending on the withdrawal date, the EU is trying to agree solutions for some of the situations that might arise. The relevant essential principles of the EU position in the field of judicial cooperation in civil and commercial matters have been published here: [https://ec.europa.eu/commission/publications/position-paper-judicial-cooperation-civil-and-commercial-matters\\_en](https://ec.europa.eu/commission/publications/position-paper-judicial-cooperation-civil-and-commercial-matters_en).

<sup>22</sup> Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes (Directive on consumer ADR), OJ L 165, 18.6.2013, p. 63.

<sup>23</sup> Regulation (EU) No 524/2013 of the European Parliament and of the Council of 21 May 2013 on online dispute resolution for consumer disputes (Regulation on consumer ODR), OJ L 165, 18.6.2013, p. 1.

the United Kingdom and the EU online dispute resolution platform is no longer available in relation to traders established in the United Kingdom.

Concerning public enforcement (e.g. to achieve the cessation of a commercial practice) the Regulation (EC) No 2006/2004 of the European Parliament and of the Council of 27 October 2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws (the Regulation on consumer protection cooperation)<sup>24</sup> no longer applies to the United Kingdom. This means that, as from the withdrawal date, United Kingdom authorities will not be obliged under EU law to cooperate in the case of cross-border claims.

In addition, as of the withdrawal date, EU law giving to certain "qualified entities", designated by EU Member States, legal standing for bringing injunction actions in another Member State no longer applies to the United Kingdom.<sup>25</sup>

## **2. INSOLVENCY PROTECTION OF TRAVELLERS (PACKAGE TRAVEL)**

- According to EU law, package travel organisers established in the EU are obliged to provide securities for the refund and for the traveller's repatriation in case of the organiser's insolvency.<sup>26</sup> Organisers not established in the EU which sell or offer travel packages to consumers in the EU, or which by any means direct such activities to the EU, also must provide such insolvency protection in each of the Member States they are selling to.<sup>27</sup> However, where an organiser established in a third country does not offer travel packages to consumers in the EU and does not direct its selling activities to the EU (passive sales), EU law providing mandatory insolvency protection does not apply. This means that in such cases insolvency protection granted by EU law will not apply to insolvencies of organisers established in the United Kingdom occurring as of the withdrawal date.
- As of the withdrawal date, EU law providing for the mutual recognition of insolvency protection taken out in accordance with the requirements of the home country of an organiser no longer applies with regard to insolvency protection taken out in accordance with requirements applicable in the United Kingdom.<sup>28</sup> This means that, as of the withdrawal date, insolvency protection taken out in the United Kingdom no longer serves to comply with the requirements for insolvency protection of package travel organisers in accordance with Article 17 of Directive (EU) 2015/2302.

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<sup>24</sup> OJ L 364, 9.12.2004, p. 1.

<sup>25</sup> Article 4 of Directive 2009/22/EC of the European Parliament and of the Council of 23 April 2009 on injunctions for the protection of consumers' interests, OJ L 110, 1.5.2009, p. 30.

<sup>26</sup> See first sub-paragraph of Article 17(1) of Directive (EU) 2015/2302.

<sup>27</sup> See second sub-paragraph of Article 17(1) of Directive (EU) 2015/2302.

<sup>28</sup> Article 18(1) of Directive (EU) 2015/2302.

### 3. EU PASSENGER RIGHTS

- Air passengers: As of the withdrawal date, EU law on air passenger rights<sup>29</sup> no longer applies to passengers departing from an airport located in the United Kingdom to an airport situated in the territory of a EU-27 Member State, unless the operating air carrier of the flight concerned is a Union carrier, i.e. has an operating licence granted by an EU-27 Member State. This means that, despite the withdrawal of the United Kingdom from the EU, air passenger rights granted by EU law continue to apply to passengers departing from the United Kingdom to an airport situated in the territory of an EU-27 Member State with a Community carrier. However, air passenger rights granted by EU law do not apply to flights departing as of the withdrawal date from the United Kingdom to the EU-27 with non-Community carriers.

EU law granting specific rights for disabled persons and persons with reduced mobility travelling by air<sup>30</sup> will no longer apply to disabled persons and persons with reduced mobility using commercial passenger air services who, as of the withdrawal date, depart from, transit through, or arrive at an airport in the United Kingdom. However, certain rights, such as assistance by air carriers, continue to apply to air passengers departing from an UK airport to an EU-27 airport if the operating carrier is a Community air carrier.<sup>31</sup>

- Ship passengers: EU law on ship passenger rights<sup>32</sup> continues to apply on and after the withdrawal date to passengers where the port of embarkation is in the EU-27<sup>33</sup> or in the United Kingdom, provided that the port of disembarkation is in the EU-27 and the service is operated by a carrier established within the territory of a Member State or offering passenger transport services to or from a Member State ("Union carrier").<sup>34</sup>
- Bus and coach passengers: EU law on rights of passengers in bus and coach transport<sup>35</sup> continues to apply on and after the withdrawal date to passengers

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<sup>29</sup> Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, OJ L 46, 17.2.2004, p. 1.

<sup>30</sup> Regulation (EC) No 1107/2006 of the European Parliament and of the Council of 5 July 2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air OJ L 204, 26.7.2006, p. 1.

<sup>31</sup> Article 1(3) of Regulation (EC) No 1107/2006.

<sup>32</sup> Regulation (EU) No 1177/2010 of the European Parliament and of the Council of 24 November 2010 concerning the rights of passengers when travelling by sea and inland waterway, OJ L 334, 17.12.2010, p. 1.

<sup>33</sup> Article 2(1)(a) of Regulation (EU) No 1177/2010.

<sup>34</sup> Article 2(1)(b) and 3(e) of Regulation (EU) No 1177/2010. Specific rules apply to cruise passengers, see Article 2(1)(c) of Regulation (EU) No 1177/2010.

<sup>35</sup> Regulation (EU) No 181/2011 of the European Parliament and of the Council of 16 February 2011 concerning the rights of passengers in bus and coach transport, OJ L 55, 28.2.2011, p. 1.

travelling with regular services<sup>36</sup> to or from the United Kingdom where the boarding or the alighting point of the passenger is situated in the EU-27, and the scheduled distance of the service is 250km or more.<sup>37</sup>

- Rail passengers: EU law on rail passengers' rights<sup>38</sup> continues to apply on and after the withdrawal date to rail passenger services in the territory of the Union,<sup>39</sup> provided that the railway undertaking is licensed in accordance with Article 17 of Directive 2012/34/EU of the European Parliament and of the Council of 21 November 2012 establishing a single European railway area.<sup>40</sup>

The websites of the Commission on consumer protection (<https://europa.eu/youreurope/citizens/consumers/>) and passenger rights ([https://europa.eu/youreurope/citizens/travel/passenger-rights/index\\_en.htm](https://europa.eu/youreurope/citizens/travel/passenger-rights/index_en.htm)) provide general information. These pages will be updated with further information, where necessary.

European Commission  
Directorate-General Justice and Consumers  
Directorate-General for Mobility and Transport

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<sup>36</sup> Specific rules apply to passengers travelling with occasional services, see Article 2(3) of Regulation (EU) No 181/2011.

<sup>37</sup> Article 2(1) of Regulation (EU) No 181/2011.

<sup>38</sup> Regulation (EC) No 1371/2007 of the European Parliament and of the Council of 23 October 2007 on rail passengers' rights and obligations OJ L 315, 3.12.2007, p. 14.

<sup>39</sup> Article 2(1) of Regulation (EC) No 1371/2007.

<sup>40</sup> OJ L 343, 14.12.2012, p. 32.