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COM(2018) 894 final

2018/0434 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on certain aspects of aviation safety with regard to the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the Union

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

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, if the Withdrawal Agreement¹ is not ratified, the Unions' primary and secondary law will cease to apply to the United Kingdom from 30 March 2019 ('the withdrawal date'). The United Kingdom will then become a third country.

The withdrawal of the United Kingdom from the Union without an agreement affects in particular the validity of certificates and licenses originating from the United Kingdom issued under Regulation (EU) 2018/1139² and the implementing and delegated acts adopted by virtue of that Regulation or of Regulation (EC) No 216/2008³.

The Commission Communication on 'Preparing for the withdrawal of the United Kingdom from the European Union on 30 March 2019: a Contingency Action Plan'⁴ has set out the contingency measures it plans to take for the case that no withdrawal agreement will enter into force on the withdrawal date. In this Communication, the Commission has underlined that will not remedy the lack of preparedness measures by stakeholders, or delays in their implementation.

In the area of aviation safety, in most cases the effect of the withdrawal of the United Kingdom from the European Union on certificates and approvals can be remedied by stakeholders through various measures, including a "switch" to a civil aviation authority of the EU27, or the application, already now, for a third-country certificate issued by the European Aviation Safety Agency ("the Agency") with effect of the withdrawal date ("early application").

However, unlike in other areas of Union law, there are some instances where it is not possible for natural and legal persons to mitigate disruptions in the EU-27. Therefore the abovementioned Commission Communication announced that the Commission would propose measures ensuring continued validity of certificates for certain aeronautical products, parts, appliances and companies.

Regarding certain aeronautical products ("type certificates") and companies ("organisation approvals"), the United Kingdom resumes, for its jurisdiction as of the withdrawal date, the role of "State of design" under the Convention on International Civil Aviation. The United Kingdom, can only issue certificates in this new role if it complies with requirements set

¹ https://ec.europa.eu/commission/sites/beta-political/files/draft_withdrawal_agreement_0.pdf.

² 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, OJ L 212, 22.8.2018, p. 1.

³ Regulation (EU) 216/2008 of the European Parliament and of the Council of 20 February 2008 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency, and repealing Council Directive 91/670/EEC, Regulation (EC) No 1592/2002 and Directive 2004/36/EC. OJ L 79, 19.3.2008, p. 1.

⁴ COM(2018)880 final, 13.11.2018.

under the Convention. Those responsibilities are currently fulfilled by the European Aviation Safety Authority to which the United Kingdom participates by virtue of EU membership.

It is therefore necessary to ensure a controlled change mechanism, allowing the operators concerned and the Agency sufficient time so that the necessary certificates can be issued under Article 68 of Regulation (EU) 2018/1139, having regard to the status of the United Kingdom as a third country.

Such extended validity should be limited in time to what is strictly necessary to cater for the United Kingdom's departure from the EU Aviation safety system.

Moreover, unlike in most other areas of Union law on goods, the invalidity of certificates impacts not the placing on the market but the actual use of aviation products, parts and appliances in the EU, when for example installing parts and appliances on an EU27 aircraft. Indeed, as regards products, parts and appliances, the aviation framework is regulated differently from many other areas of the Union *acquis* where the concept of placing on market is central. In the aviation safety framework the regulation determines directly whether a part, product or appliance can be used, regardless of whether it has been placed on the market. The EU aviation safety system allows oversight of such products, parts and appliances to be carried out reliably and unequivocally. Thus, it is considered beneficial to use the existing framework also as a basis for the proposed regulation to ensure compliance with aviation safety principles.

This concerns only a very limited number of certificates, i.e.

- Certificates issued by manufacturers (“production organisations”) before the withdrawal date certifying compliance of newly manufactured products (other than aircraft), parts and appliances thus allowing the continued use in and on aircraft (Point 21.A.163(c) of Annex I to Regulation 748/2012)
- Certificates issued by maintenance companies (“maintenance organisations”) before the withdrawal date certifying compliance of products (incl. aircraft), parts and appliances which have undergone maintenance by them (Point 145.A.75(e) of Annex II to Regulation 1321/2014)
- *Idem* for aircraft other than complex motor powered aircraft (Point M.A.615(d) of Annex I to Regulation 1321/2014)
- *Idem* for parts and appliances installed aircraft other than complex motor powered aircraft (Point M.A.615(d) of Annex I to Regulation 1321/2014)
- Certificates issued by maintenance companies (“maintenance organisations”) before the withdrawal date certifying the completion of airworthiness review for light aircraft in the so-called European Light Aircraft 1 category (“ELA 1”, for example certain sailplanes or light powered aircraft) (Point 145.A.75(f) of Annex II to Regulation 1321/2014)
- Certificates issued by companies overseeing the compliance of an aircraft (“continuing airworthiness management organisations”) before the withdrawal date certifying the “airworthiness” of an aircraft (Points M.A.711(a).4 and M.A.711(b).1 of Annex I to Regulation 1321/2014)

Finally, the content and exams of certain trainings addressed under the proposal are regulated in a detailed manner under Union law and consist of standardised modules, which should

normally be completed in one Member State, before a transfer to another Member State jurisdiction is possible.

The provisions proposed will not lower the requirements regarding the safety or environmental performance of aviation in the Union. The proposal will allow EU-27 manufacturers to continue producing their products and operators to continue operating such products, in compliance with applicable Union legal requirements. To the contrary, an interruption in these activities would cause significant social and economic problems. In ensuring organisations' compliance with EU law, the proposal will also ensure the protection of consumers and citizens.

The European Council (Article 50) reiterated its call, on 13 December 2018, for work on preparedness at all levels for the consequences of the United Kingdom's withdrawal to be intensified, taking into account all possible outcomes. This act is part of a package of measures which the Commission is adopting in response to this call.

- **Consistency with existing policy provisions in the policy area**

This proposed Regulation is intended as a *lex specialis* that would address some of the consequences ensuing from the fact that Regulation (EU) No 2018/1139 and the implementing and delegated acts adopted thereunder as well as under Regulation (EU) No 216/2008 rules will no longer apply to the United Kingdom, applying only to the extent necessary to ensure the controlled shift to an EU-27 aviation market. The proposed terms are limited to what is necessary in this respect, so as to avoid disproportionate disruptions. They are also intended to apply only for a limited period of time. The general provisions of those acts will otherwise continue to apply. This proposal is thus fully consistent with the existing legislation and notably with Regulation (EU) No 2018/1139.

- **Consistency with other Union policies**

The proposal concerns aviation safety and complements Union Regulation (EC) 2018/1139 to deal specifically with the situation of the United Kingdom withdrawing from the Union without a withdrawal agreement.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The legal basis is Article 100(2) of the Treaty on the Functioning of the European Union (TFEU).

- **Subsidiarity (for non-exclusive competence)**

As the proposal complements existing Union law, with provisions facilitating their orderly application following the withdrawal of the United Kingdom from the Union, its objective can only be achieved through an act at the level of the Union.

- **Proportionality**

The proposed Regulation is considered proportionate as it is capable of avoiding disproportionate disruptions through providing for a limited and necessary legal change, which covers the need for a controlled shift to an EU-27 aviation market. It does not go beyond what is necessary to achieve this objective and it refrains from any broader changes or any permanent measures.

- **Choice of the instrument**

This proposal contains a limited set of provisions to address a very specific and one-off situation. Therefore, it is considered preferable not to modify Regulation (EU) 2018/1139 and/or the implementing and delegated acts adopted thereunder as well as under Regulation (EC) No 216/2008, but to put in place a stand-alone act for a limited period of time. The normal provisions concerning the affected certificates and licenses are covered both by Regulation (EU) 2018/1139 and by its implementing rules. Taking both this and the urgency of the matter, into consideration a regulation of the European Parliament and Council appears to be the only adequate form of legal act.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Ex-post evaluations/fitness checks of existing legislation**

Not applicable due to the exceptional and one-off nature of the event necessitating this proposal.

- **Stakeholder consultations**

The specific circumstances surrounding the negotiations for the withdrawal of the United Kingdom from the Union and the continuously evolving situation posed major limitations on the possibility to consult publicly on the proposal. However, the challenges arising from the United Kingdom's withdrawal from the EU and possible solutions have been raised by various aviation stakeholders and Member States representatives.

A common theme in the views presented by the various stakeholders was that there is a need for regulatory intervention in specific areas where stakeholders are not able to take their own contingency measures in order to mitigate the harmful impact of the possible absence of a withdrawal agreement. In particular, companies manufacturing, maintaining or operating aircraft stressed the fact that their operations in the EU-27 could be halted if the United Kingdom leaves the Union without any arrangement in place. The main problem appears to be indeed a likely time gap between a withdrawal taking place without any agreement and the normalisation of the situation under Union law by either granting third-country certificates to the UK companies or relocating production to EU-27 jurisdictions. During this time gap almost all certificates would become invalid. Many stakeholders highlighted the fact that there are globally only a limited number of manufacturers for many of the components used in aircraft (e.g. tyres or engines for large airline-type aircraft). The just-on-time nature of modern operations and manufacturing means that it will be impossible to continue operations if the safety certificates concerned become invalid.

- **Collection and use of expertise**

In addition to in-house legal and technical analysis, this information has been further analysed and verified with the technical experts of the European Union Aviation Safety Agency (EASA) to ensure the proposed measure achieves its intended purpose, but is at the same time limited to what is strictly necessary.

- **Impact assessment**

An impact assessment is not needed, due to the exceptional nature of the situation and limited needs of the period during which the change of status of the United Kingdom is implemented. There are no materially different policy options available except for the one proposed.

- **Fundamental rights**

The proposal has no impact on the application or protection of fundamental rights.

4. BUDGETARY IMPLICATIONS

Not applicable.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

Not applicable due to the short-term nature of the proposed measure.

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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 Committee⁵,

Having regard to the opinion of the Committee of Regions⁶

Acting in accordance with the ordinary legislative procedure,

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, that is to say from 30 March 2019, unless the European Council, in agreement with the United Kingdom, unanimously decides to extend that period.
- (2) The principal objective of Regulation (EU) 2018/1139 of the European Parliament and the Council⁷ is to establish and maintain a high uniform level of aviation safety in the Union. For that purpose, a system of certificates has been established for various aviation activities, in order to achieve the required safety levels and to enable the necessary verifications and the mutual acceptance of certificates issued.
- (3) In the area of aviation safety, the impact of the withdrawal of the United Kingdom from the Union on certificates and approvals can be remedied by many stakeholders through various measures. Those measure include transfer to a civil aviation authority of the 27 Member States, or applying before the withdrawal date for a certificate issued by the European Union Aviation Safety Agency ("the Agency"), taking effect

⁵ OJ C [...], [...], p. [...].

⁶ OJ C [...], [...], p. [...].

⁷ 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, (OJ L 212, 22.8.2018), p. 1.

on that date only and hence conditioned on the United Kingdom having become a third country.

- (4) However, unlike in other areas of Union law, there are some specific instances where it is not possible to obtain a certificate from another Member State or the Agency since, as of the withdrawal date, the United Kingdom resumes, for its jurisdiction, the role as "State of design" under the Convention on International Civil Aviation. The United Kingdom, in turn, can issue certificates in that new role, only once it has assumed that role, that is to say, once Union law ceases to apply to the United Kingdom following its withdrawal from the Union.
- (5) It is therefore necessary, to set up a temporary mechanism, to extend the validity of certain aviation safety certificates, in order to allow the operators concerned and the Agency sufficient time to issue the necessary certificates under Article 68 of Regulation (EU) 2018/1139, taking account of the United Kingdom's status as a third country.
- (6) The duration of such extension of the validity of certificates should be limited to what is strictly necessary in order to deal with the United Kingdom's departure from the Union aviation safety system.
- (7) In order to allow for additional time, where necessary, for the certificates under Article 68 of Regulation (EU) 1139/2018 to be issued to the operators concerned, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission, to further extend the period of validity of the certificates referred to in Section I of the Annex to this Regulation. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.
- (8) Moreover, unlike in most other areas of Union law regarding goods, the invalidity of certificates has an impact not on the placing on the market but on the actual use of aviation products, parts and appliances in the Union, for example when installing parts and appliances on an Union aircraft operating in the Union. Such use of aviation products in the Union should not be impacted by the withdrawal of the United Kingdom.
- (9) In the Union aviation safety system training of pilots and mechanics is tightly regulated and training modules are harmonised. Persons taking part in a training module in one State cannot always change to another Member State. That particular situation should be taken into account in the Union contingency measures.
- (10) The provisions of this Regulation should enter into force as a matter of urgency and apply, in principle, as from the day following that on which the Treaties cease to apply to and in 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

Subject matter and scope

1. This Regulation lays down specific provisions, in view of the withdrawal of the United Kingdom of Great Britain and Northern Ireland ('the United Kingdom') from the European Union, for certain aviation safety certificates issued under Regulation (EC) No 216/2008 of the European Parliament and of the Council⁸ or Regulation (EU) 2018/1139 to natural and legal persons having their principal place of business in the United Kingdom and for certain situations regarding aviation training.
2. This Regulation shall apply to the certificates listed in the Annex to this Regulation, which are valid on the day preceding the date of application of this Regulation and which have been issued by any of the following:
 - (a) the European Union Aviation Safety Agency ("the Agency"), to natural or legal persons having their principal place of business in the United Kingdom as set out in Section 1 of the Annex;
 - (b) natural or legal persons certified by the competent authorities of the United Kingdom as set out in Section 2 of the Annex.
3. In addition to the certificates listed in paragraph 2, this Regulation shall apply to the theoretical training modules referred to in Article 5.

Article 2

Definitions

For the purposes of this Regulation, the corresponding definitions of Regulation (EU) No 2018/1139 and the delegated and implementing acts adopted by virtue of it and of Regulation (EU) No 216/2008 shall apply.

Article 3

Certificates referred to in Article 1(2)(a)

The certificates referred to in Article 1(2)(a) shall remain valid, for 9 months from the date of application of this Regulation.

Where additional time is necessary for the certificates under Article 68 of Regulation (EU) 1139/2018 to be issued to the operators concerned, the Commission may extend the period of validity referred to in the first paragraph of this Article by means of delegated acts.

Before adopting a delegated act, the Commission shall consult experts designated by each Member State in line with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016.

⁸ Regulation (EU) 216/2008 of the European Parliament and of the Council of 20 February 2008 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency, and repealing Council Directive 91/670/EEC, Regulation (EC) No 1592/2002 and Directive 2004/36/EC. OJ L 79, 19.3.2008, p. 1.

As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

Article 4

Certificates referred to in Article 1(2)(b)

The certificates referred to in Article 1(2)(b), concerning the use of products, parts and appliances shall remain valid, in order to allow for their continued use in or as aircraft.

Article 5

Carryover of theoretical training modules

By way of derogation from Commission Regulation (EU) No 1178/2011⁹ and Commission Regulation (EU) No 1321/2014¹⁰, the competent authorities of the Member States or the Agency, as the case may be, shall take account of the examinations taken in training organisations subject to oversight by the competent authority of the United Kingdom prior to the date of application referred to in the second sub-paragraph of Article 10(2) of this Regulation, as if they had been taken with a training organisation subject to the oversight of the competent authority of a Member State.

Article 6

Rules and obligations regarding certificates governed by Articles 3 and 4

1. Certificates governed by Articles 3 or 4 of this Regulation are subject to the rules applicable to them in accordance with Regulation (EU) 2018/1139 and the implementing and delegated acts adopted by virtue of it or of Regulation (EC) No 216/2008. The Agency shall have the powers established in Regulation (EU) 2018/1139 and in the implementing and delegated acts adopted by virtue of it and of Regulation (EC) 216/2008 with regard to entities having their principal place of business in a third country.
2. At the request of the Agency, the holders of the certificates referred to in Articles 3 and 4, shall deliver copies of all audit reports, findings and corrective action plans relevant to the certificate, which have been issued during the three years previous to the request. Where such documents have not been delivered within the time limits stipulated by the Agency in its request, the Agency may withdraw the benefit acquired pursuant to Articles 3 or 4, as the case may be.
3. Holders of certificates referred to in Articles 3 or 4 of this Regulation shall inform without delay the Agency of any actions by the authorities of the United Kingdom, which may conflict with their obligations under this Regulation or Regulation (EU) 2018/1139.

⁹ Commission Regulation (EU) No 1178/2011 of 3 November 2011 laying down technical requirements and administrative procedures related to civil aviation aircrew pursuant to Regulation (EC) No 216/2008 of the European Parliament and of the Council. OJ L 311, 25.11.2011, p. 1

¹⁰ Commission Regulation (EU) No 1321/2014 of 26 November 2014 on the continuing airworthiness of aircraft and aeronautical products, parts and appliances, and on the approval of organisations and personnel involved in these tasks. OJ L 362, 17.12.2014, p. 1

Article 7

Competent authority

For the purposes of this Regulation and for oversight of the holders of certificates referred to in Article 1(2) of this Regulation, the Agency shall act as the competent authority provided for third country entities under Regulation (EU) 2018/1139 and the implementing and delegated acts adopted by virtue of it, or under Regulation (EC) No 216/2008.

Article 8

Application of Commission Regulation (EU) No 319/2012

Commission Regulation (EU) No 319/2014¹¹ on the fees and charges levied by the European Aviation Safety Agency shall apply to legal and natural persons holding certificates referred to in Article 1(2) of this Regulation under the same conditions as to holders of corresponding certificates issued to third country legal or natural persons.

Article 9

Acceptable means of compliance and guidance material

The Agency may issue acceptable means of compliance and guidance material for the application of this Regulation, in accordance with Article 76(3) of Regulation (EU) 2018/1139.

Article 10

Entry into force and application

1. This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.
2. It shall apply from the day following that on which the Treaties cease to apply to and in the United Kingdom pursuant to Article 50(3) of the Treaty on European Union.

However, Article 5 shall apply from the date of entry into force of this Regulation.

3. This Regulation shall not apply if a withdrawal agreement concluded with the United Kingdom in accordance with Article 50(2) of the Treaty on European Union has entered into force by the date referred to in the first paragraph of paragraph 2.

¹¹ Commission Regulation (EU) No 319/2014 of 27 March 2014 on the fees and charges levied by the European Aviation Safety Agency, and repealing Regulation (EC) No 593/2007. OJ L95, 28.3.2014, p.58

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President



Brussels, 19.12.2018
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ANNEX

ANNEX

to the

**Proposal for a Regulation of the European Parliament and of the Council
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ANNEX

List of natural or legal persons referred to in Article 1.

Section 1: Certificates issued by European Aviation Safety Agency ("Agency"), to natural or legal persons with their principal place of business in the United Kingdom and for aircraft, referred to in

- 1.1. Regulation (EU) No 748/2012, Part 21, Subpart B. (Type certificates and restricted type certificates)
- 1.2. Regulation (EU) No 748/2012, Part 21, Subpart D (Approval of changes to type certificates and restricted type certificates)
- 1.3. Regulation (EU) No 748/2012, Part 21, Subpart E (Supplemental type certificates)
- 1.4. Regulation (EU) No 748/2012, Part 21, Subpart M (Approval in respect of repairs)
- 1.5. Regulation (EU) No 748/2012, Part 21, Subpart O (European Technical Standard Order authorisations)
- 1.6. Regulation (EU) No 748/2012, Part 21, Subpart J (Design organisation approvals)

Section 2: Certificates issued by legal or natural persons certified by the competent authorities of the United Kingdom, to natural or legal persons and for aircraft, referred to in

- 2.1. Regulation (EU) No 748/2012, Subpart G, Point 21.A.163(c) (Authorised Release Certificates for products, parts and appliances)
- 2.2. Regulation (EU) No 1321/2014, Part-145, Point 145.A.75(e) (Certificates of release to service in respect of completion of maintenance)
- 2.3. Regulation (EU) No 1321/2014, Part-145, Point 145.A.75(f) (Airworthiness review certificates for ELA 1 aircraft)
- 2.4. Regulation (EU) No 1321/2014, Part M, Subpart F, point M.A.615(d) (Certificates of release to service on completion of maintenance)
- 2.5. Regulation (EU) No 1321/2014, Part M, Subpart F, point M.A.615(e) (Airworthiness review certificates for ELA 1 aircraft)
- 2.6. Regulation (EU) No 1321/2014, Part M, Subpart G point M.A.711(a)(4) or (b)(1) (Airworthiness review certificates and extensions thereof).