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From: General Secretariat of the Council
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Subject: Proposal for a Regulation of the European Parliament and of the Council 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

- Outcome of the European Parliament's first reading,
(Strasbourg, 11 to 14 March 2019)

I. INTRODUCTION

In accordance with the provisions of Article 294 of the TFEU and the joint declaration on practical arrangements for the codecision procedure ¹, a number of informal contacts have taken place between the Council, the European Parliament and the Commission with a view to reaching an agreement on this dossier at first reading, thereby avoiding the need for second reading and conciliation.

¹ OJ C 145, 30.6.2007, p.5

In this context, the rapporteur, Pavel TELIČKA (ALDE, CZ), presented one compromise amendment (amendment 18) to the proposal for a Regulation on behalf of the Committee on Transport and Tourism. This amendment had been agreed during the informal contacts referred to above. No other amendments were tabled.

II. VOTE

When it voted on 13 March 2019, the plenary adopted this compromise amendment (amendment 18) to the proposal for a Regulation. The Commission's proposal as thus amended constitutes the Parliament's first-reading position which is contained in its legislative resolution as set out in the Annex hereto².

The Parliament's position reflects what had been previously agreed between the institutions. The Council should therefore be in a position to approve the Parliament's position.

The act would then be adopted in the wording which corresponds to the Parliament's position.

² The version of the Parliament's position in the legislative resolution has been marked up to indicate the changes made by the amendments to the Commission's proposal. Additions to the Commission's text are highlighted in ***bold and italics***. The symbol "■" indicates deleted text.

Common rules ensuring basic air connectivity with regard to the withdrawal of the United Kingdom from the Union *I**

European Parliament legislative resolution of 13 March 2019 on the proposal for a regulation of the European Parliament and of the Council 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 (COM(2018)0893 – C8-0510/2018 – 2018/0433(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2018)0893),
- having regard to Article 294(2) and Article 100(2) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C8-0510/2018),
- having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
- having regard to the opinion of the European Economic and Social Committee of 20 February 2019³,
- after consulting the Committee of Regions,
- having regard to the provisional agreement approved by the committee responsible under Rule 69f(4) of its Rules of Procedure and the undertaking given by the Council representative by letter of 27 February 2019 to approve Parliament's position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,
- having regard to Rule 59 of its Rules of Procedure,
- having regard to the report of the Committee on Transport and Tourism (A8-0062/2019),

³ Not yet published in the Official Journal.

1. Adopts its position at first reading hereinafter set out;
2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Position of the European Parliament adopted at first reading on 13 March 2019 with a view to the adoption of Regulation (EU) 2019/... of the European Parliament and of the Council on common rules ensuring basic air connectivity with regard to the withdrawal of the United Kingdom 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 Committee⁴,

After consulting the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure⁵,

⁴ Opinion of 20 February 2019 (not yet published in the Official Journal).

⁵ Position of the European Parliament of 13 March 2019.

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 Council⁶ 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.

⁶ Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community (OJ L 293, 31.10.2008, p. 3).

- (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 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 the 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 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 decision of 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 occurring 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 assure 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 Council⁷. ***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.***

⁷ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

- (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.*
- (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 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;
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;
7. "subsidy" means any financial contribution granted to an air carrier or an airport by the government or any other public body at any level, conferring a benefit, and including:
- (a) the direct transfer of funds, such as grants, loans or equity infusion, the potential direct transfer of funds, the assumption of liabilities, such as loan guarantees, capital injections, ownership, protection against bankruptcy or insurance;
 - (b) the foregoing or non-collection of revenue that is otherwise due;

- (c) the provision of goods or services other than general infrastructure, or the purchase of goods or services; or
- (d) the making of payments to a funding mechanism or entrustment or direction to a private body to carry out one or more of the functions mentioned under (a), (b) and (c) which would normally be vested in the government or other public body and the practice in no real sense differs from practices normally followed by governments;

No benefit is deemed to be conferred by a financial contribution carried out by a government or other public body if a private market operator solely driven by profitability prospects, in the same situation as the public body in question, would have carried out the same financial contribution;

8. “independent competition authority” means an authority which is in charge of the application and enforcement of competition law, as well as the control of subsidies, and fulfils all of the following conditions:
- (a) the authority is operationally independent and is appropriately equipped with the resources necessary to carry out its tasks;

- (b) in performing its duties and exercising its powers, the authority has the necessary guarantees of independence from political or other external influence and acts impartially; and
 - (c) the decisions of the authority are subject to judicial review;
- 9. "discrimination" means differentiation of any kind without objective justification in respect of the supply of goods or services, including public services, employed for the operation of air transport services, or in respect of their treatment by public authorities relevant to such services;
- 10. "scheduled air transport service" means a series of flights possessing all the following characteristics:
 - (a) on each flight seats and/or capacity to transport cargo and/or mail are available for individual purchase by the public (either directly from the air carrier or from its authorised agents);

- (b) it is operated so as to serve traffic between the same two or more airports, either:
 - (i) according to a published timetable, or
 - (ii) with flights so regular or frequent that they constitute a recognisably systematic series;

11. "non-scheduled air transport service" means a commercial air transport service performed other than as a scheduled air service;

12. "territory of the Union" means the land territory, internal waters and territorial sea of the Member States to which the Treaty on European Union and the Treaty on the Functioning of the European Union apply and under the conditions laid down in those Treaties, and the air space above them;

13. "territory of the United Kingdom" means the land territory, internal waters and territorial sea of the United Kingdom and the air space above them;

14. "Chicago Convention" means the Convention on International Civil Aviation, signed in Chicago on 7 December 1944.

Article 4
Traffic rights

1. UK air carriers may, under the conditions laid down in this Regulation:
 - (a) fly across the territory of the Union without landing;
 - (b) make stops in the territory of the Union for non-traffic purposes, within the meaning of the Chicago Convention;
 - (c) perform scheduled and non-scheduled international air transport services for passengers, combination of passengers and cargo and all-cargo services between any pair of points of which one is situated in the territory of the United Kingdom and the other one is situated in the territory of the Union;
 - (d) *for a maximum of five months from the first day of application set out in the first subparagraph of Article 16(2), perform scheduled and non-scheduled international air transport services for all-cargo services between any pair of points of which one is situated in the territory of the Union and the other is situated in the territory of a third country, as part of a service with origin or destination in the territory of the United Kingdom. The total seasonal capacity to be provided by UK air carriers for those services shall not exceed the total number of frequencies operated by those carriers for those services during the IATA winter and summer seasons of the year 2018, respectively, pro rata temporis;*

(e) for a maximum of seven months from the first day of application set out in the first subparagraph of Article 16(2), continue to provide scheduled air services on routes subject to public service obligations where the right to operate has been granted in accordance with Articles 16 and 17 of Regulation (EC) No 1008/2008 before the date of application of this Regulation and subject to the compliance with the conditions for those services set out in Regulation (EC) No 1008/2008.

2. The Member States shall use the period referred to in point (e) of paragraph 1 to take any measures required in order to ensure that the public services considered necessary continue after the expiry of that period, in accordance with Articles 16 and 17 of Regulation (EC) No 1008/2008.

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3. The Member States shall neither negotiate nor enter into any bilateral agreements or arrangements with the United Kingdom on matters falling within the scope of this Regulation *with respect to the period during which this Regulation applies. With respect to that period, they* shall not otherwise grant UK air carriers, in connection with air transport, any rights other than those granted by this Regulation.

Article 5

Cooperative marketing arrangements

1. *Air transport services in accordance with Article 4 of this Regulation may be provided under cooperative marketing arrangements, such as blocked-space or code-sharing arrangements, as follows:*
- (a) *the UK air carrier may act as the marketing carrier, with any operating carrier that is a Union air carrier or a UK air carrier, or with any operating carrier of a third country which, under Union law or, as applicable, under the law of the Member State or Member States concerned, enjoys the necessary traffic rights as well as the right for its carriers to exercise those rights by means of the arrangement in question.*

(b) the UK air carrier may act as the operating carrier, with any marketing carrier which is a Union air carrier or a UK air carrier, or with any marketing carrier of a third country which, under Union law or, as applicable, under the law of the Member State or Member States concerned, enjoys the necessary route rights as well as the right for its carriers to exercise those rights by means of the arrangement in question.

- 2. In no case shall recourse to cooperative marketing arrangements, whether as an operating carrier or as a marketing carrier, result in a UK air carrier exercising rights other than those provided for in Article 4(1).*
- 3. In no case shall the rights granted to UK air carriers under paragraph 1 be construed as conferring on air carriers of a third country any rights other than those that they enjoy under Union law or under the law of the Member State or Member States concerned.*
- 4. The Member States concerned shall require the arrangements referred to in paragraph 1 to be approved by their competent authorities for the purpose of verifying compliance with the conditions set out in this Article and with the applicable requirements in Union and national law, in particular as regards safety and security.*

Article 6
Aircraft leasing

1. *In exercising the rights provided for in Article 4(1), a UK air carrier may provide air transport services with its own aircraft and in all the following cases:*
 - (a) *using aircraft leased without crew from any lessor;*
 - (b) *using aircraft leased with crew from any other UK air carrier;*
 - (c) *using aircraft leased with crew from air carriers of any country other than the United Kingdom, provided that the leasing is justified on the basis of exceptional needs, seasonal capacity needs or operational difficulties of the lessee and the leasing does not exceed the duration which is strictly necessary to fulfil those needs or overcome those difficulties.*

2. *The Member States concerned shall require the arrangements referred to in paragraph 1 to be approved by their competent authorities for the purpose of verifying compliance with the conditions set out therein and with the applicable requirements in Union and national law, in particular as regards safety and security.*

Article 7

Treatment of operating licences in view of ownership and control requirements

- 1. By way of derogation from Article 8 of Regulation (EC) No 1008/2008, where an air carrier holding an operating licence issued by a Member State other than the United Kingdom ceases to comply with the requirements set out in point (f) of Article 4 of that Regulation ('ownership and control requirements') due to the withdrawal of the United Kingdom from the Union, failure to comply with those requirements shall not affect the validity of the operating licence until the end of a period of six months from the first day of application set out in the first subparagraph of Article 16(2) of this Regulation, provided that the conditions set out in paragraphs 2 to 5 of this Article are fulfilled.*
- 2. Within two weeks from the entry into force of this Regulation, the air carrier shall present a plan for remedial action to the competent licensing authority. That plan shall set out, in a complete and precise manner, the measures intended to achieve full compliance with the ownership and control requirements at the latest on the first day following the period referred to in paragraph 1 of this Article. Where the air carrier has not presented a plan within the time limit, the competent licensing authority shall, after having given the air carrier concerned the opportunity to make its views known, revoke the operating licence immediately, but at the earliest from the date referred to in the first subparagraph of Article 16(2), and inform the Commission thereof. Such revocation shall be effective two weeks after the decision of the licensing authority, but at the earliest from the date referred to in Article 16(2). The competent licensing authority shall notify its decision to the air carrier and inform the Commission.*

3. *Where the air carrier concerned has presented a plan for remedial action within the time limit referred to in paragraph 2, the competent licensing authority shall, within two months from the reception of the plan, assess whether the measures set out therein would result in full compliance with the ownership and control requirements at the latest on the first day following the period referred to in paragraph 1, and whether it appears likely that the air carrier will complete the measures by that date. The competent licensing authority shall inform the air carrier and the Commission of its assessment.*

4. *Where the competent licensing authority, after having given the air carrier concerned the opportunity to make its views known, finds that the measures set out in the plan would not result in full compliance with the ownership and control requirements at the latest on the first day following the period referred to in paragraph 1, or where it appears unlikely that the air carrier concerned will complete the measures by that date, it may immediately revoke the operating licence. Such revocation shall be effective two weeks after the decision of the licensing authority. The competent licensing authority shall notify its decision to the air carrier and inform the Commission.*

5. *Where the competent licensing authority finds that the measures set out in the plan would result in full compliance with the ownership and control requirements at the latest on the first day following the period referred to in paragraph 1, and where it appears likely for the air carrier to complete those measures by that date, it shall closely and continuously monitor the implementation of the plan and regularly inform the Commission of its findings.*

6. *By the end of the period referred to in paragraph 1, the competent licensing authority shall decide if the air carrier fully complies with the ownership and control requirements. If the competent licensing authority, after having given the air carrier concerned the opportunity to make its views known, decides that the air carrier does not fully comply with the ownership and control requirements, it shall revoke the operating licence as from the first day following the period referred to in paragraph 1.*

7. *Where, after having given the competent licensing authority and the air carrier concerned the opportunity to make their views known, the Commission finds that the competent licensing authority has failed to revoke the relevant operating licence, where such revocation is required under paragraph 2 or paragraph 6 of this Article, the Commission shall, in accordance with the second subparagraph of Article 15(3) of Regulation (EC) No 1008/2008, request the competent licensing authority to revoke the operating licence. The third and fourth subparagraphs of Article 15(3) of that Regulation shall apply.*
8. *This Article is without prejudice to the application of any other provision set out in Regulation (EC) No 1008/2008.*

Article 8

Equivalence of rights

1. The Commission shall monitor the rights granted by the United Kingdom to Union air carriers and the conditions for their exercise.

2. Where the Commission determines that the rights granted by the United Kingdom to Union air carriers are not, *de jure* or *de facto*, equivalent to those granted to UK air carriers under this Regulation, or that those rights are not equally available to all Union carriers, ***the Commission shall, without delay and*** in order to restore equivalence, adopt implementing acts ■ to:

- (a) ***establish limits to the allowable capacity for scheduled air transport services*** available to UK air carriers ■ and require the Member States to adapt the operating authorisations of UK air carriers, both existing and newly granted, accordingly;
- (b) require the Member States to refuse, suspend or revoke the said operating authorisations; or
- (c) impose ***financial duties or operational restrictions***.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 15(2). They shall be adopted in accordance with the urgency procedure referred to in Article 15(3) where, in duly justified cases of serious lack of equivalence for the purposes of paragraph 2, imperative grounds of urgency so require.

Article 9
Fair competition

1. The Commission shall monitor the conditions under which Union air carriers and Union airports compete with UK air carriers and United Kingdom airports for the provision of air transport services covered by this Regulation.
2. Where it determines that, as a result of any of the situations referred to in paragraph 3 of this Article, those conditions are appreciably less favourable than those enjoyed by UK air carriers, the Commission ***shall, without delay and*** in order to remedy that situation, adopt implementing acts to:
 - (a) ***establish limits to the allowable capacity for scheduled air transport services available*** to UK air carriers and require the Member States to adapt the operating authorisations of UK air carriers, both existing and newly granted, accordingly;
 - (b) require the Member States to refuse, suspend or revoke the said operating authorisations for some or all UK air carriers; or

- (c) impose *financial duties or operational restrictions*.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 15(2). They shall be adopted in accordance with the urgency procedure referred to in Article 15(3) where, in duly justified cases of threat to the economic viability of one or more operations of Union air carriers, imperative grounds of urgency so require.

3. *The implementing acts referred to in paragraph 2 shall, subject to the conditions specified in that paragraph, be adopted to remedy the following situations:*

- (a) the granting of subsidies by the United Kingdom;
- (b) failure, by the United Kingdom to have in place or to effectively apply competition law;
- (c) failure by the United Kingdom to establish or maintain an independent competition authority;

- (d) the application by the United Kingdom of standards in the protection of workers, safety, security, the environment, *or passenger rights*, which are inferior to those laid down in Union law or, in the absence of relevant provisions in Union law, inferior to those applied by all Member States or, in any event, inferior to relevant international standards;
 - (e) any form of discrimination against Union air carriers.
4. For the purposes of paragraph 1, the Commission may request information from the competent authorities of the United Kingdom, UK air carriers or United Kingdom airports. Where the competent authorities of the United Kingdom, the UK air carrier or United Kingdom airport do not provide the information requested within the reasonable period prescribed by the Commission, or provide incomplete information, the Commission may proceed in accordance with paragraph 2.
5. ***Regulation (EC) No 868/2004 of the European Parliament and of the Council⁸ shall not apply to matters falling within the scope of this Regulation.***

⁸ ***Regulation (EC) No 868/2004 of the European Parliament and of the Council of 21 April 2004 concerning protection against subsidisation and unfair pricing practices causing injury to Community air carriers in the supply of air services from countries not members of the European Community (OJ L 162, 30.04.2004, p. 1).***

Article 10
Operating authorisation

1. Without prejudice to Union and national law in the area of aviation safety, in order to exercise the rights granted to them under Article 3, UK air carriers shall be required to obtain an operating authorisation from each Member State in which they wish to operate⁴.
2. On receipt of an application for an operating authorisation from a UK air carrier, the Member State concerned shall grant the appropriate operating authorisation without undue delay, provided that:
 - (a) the applicant UK air carrier holds a valid operating licence in accordance with the legislation of the United Kingdom; and
 - (b) effective regulatory control over the applicant UK air carrier is exercised and maintained by the United Kingdom, the competent authority is clearly identified and the UK air carrier holds an air operator certificate delivered by the said authority.

3. Without prejudice to the need to allow for sufficient time for the carrying out of necessary assessments, UK air carriers are entitled to submit their applications for operating authorisations as from the day this Regulation enters into force. The Member States shall have the power to approve those applications as from that day, provided that the conditions for such approval are met. However, any authorisations thus granted shall take effect no earlier than ■ the first day of application *set out* in *the first subparagraph of* Article 16(2).

Article 11

Operational plans, programmes and schedules

1. UK air carriers shall submit the operational plans, programmes and schedules for air services to the competent authorities of each Member State concerned, for their approval. Any such submission shall be made at least 30 days prior to the start of the operations.
2. Subject to Article 10, the operational plans, programmes and schedules for the IATA season that is in progress on the first day of application of this Regulation set out in the first subparagraph of Article 16(2) and those for the first season thereafter may be submitted and approved before that date.

3. ***This Regulation shall not prevent Member States from issuing authorisations for the operation of scheduled air services by Union carriers in the exercise of rights granted to them by the United Kingdom. In respect of those authorisations, Member States shall not discriminate between Union carriers.***

Article 12

Refusal, revocation, suspension and limitation of authorisation

1. Member States shall refuse, or as the case may be, revoke or suspend the operating authorisation of a UK air carrier where:
 - (a) the air carrier does not qualify as a UK air carrier under this Regulation; or
 - (b) the conditions laid down in Article 10(2) are not complied with.
2. The Member States shall refuse, revoke, suspend, limit or impose conditions on the operating authorisation of a UK air carrier, or limit or impose conditions on its operations in any of the following circumstances:
 - (a) the applicable safety and security requirements are not complied with;

- (b) the applicable requirements relating to the admission to, the operation within, or the departure from the territory of the Member State concerned of aircraft engaged in air transport are not complied with;
 - (c) the applicable requirements relating to the admission to, operation within, or departure from the territory of the Member State concerned of passengers, crew, baggage, cargo, and/or mail on aircraft (including regulations relating to entry, clearance, immigration, passports, customs and quarantine, or in the case of mail, postal regulations) are not complied with.
3. The Member States shall refuse, revoke, suspend, limit or impose conditions on the operating authorisations of UK air carriers, or limit or impose conditions on their operations, where they are required to do so by the Commission in accordance with Articles 8 or 9.
4. The Member States shall inform the Commission and the other Member States of any decisions to refuse or revoke the operating authorisation of a UK air carrier pursuant to paragraphs 1 and 2, *without undue delay*.

Article 13
Certificates and licences

Certificates of airworthiness, certificates of competency and licences issued or rendered valid by the United Kingdom and still in force shall be recognised as valid by the Member States for the purpose of the operation of air transport services by UK air carriers under this Regulation, provided that such certificates or licences were issued or rendered valid pursuant to, and in conformity with, as a minimum, the relevant international standards established under the Chicago Convention.

Article 14
Consultation and cooperation

1. The Member States' competent authorities shall consult and cooperate with the competent authorities of the United Kingdom as necessary in order to ensure the implementation of this Regulation.
2. Member States shall, upon request, provide the Commission without undue delay with any information obtained pursuant to paragraph 1 of this Article or any other information relevant for the implementation of Articles 8 and 9.

Article 15
Committee

1. The Commission shall be assisted by the *Committee established by Regulation (EC) No 1008/2008*. That committee *shall be a committee within the meaning* of Regulation (EU) 182/2011.
2. *Where reference is made to this paragraph, Article 5 of Regulation (EU) 182/2011 shall apply.*
3. *Where reference is made to this paragraph, Article 8 of Regulation (EU) 182/2011, in conjunction with Article 5 thereof, shall apply.*

Article 16
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 Union law ceases to apply to the United Kingdom pursuant to Article 50(3) of the Treaty on European Union.

However, Articles 7, 10(3) and 11(2) shall apply from the 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 subparagraph of paragraph 2.
4. This Regulation shall cease to apply on the earlier of the following two dates:
 - (a) the date on which *a comprehensive* agreement governing the provision of air transport *with the United Kingdom, to which the Union is a party*, enters into force, or, as the case may be, is provisionally applied; or
 - (b) 30 March 2020.

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

Done at ...,

For the European Parliament

For the Council

The President

The President
