



Brussels, 5 September 2019
(OR. en)

11940/19

Interinstitutional File:
2019/0179(COD)

TRANS 423
AVIATION 180
PREP-BXT 147
CODEC 1359

PROPOSAL

From: Secretary-General of the European Commission,
signed by Mr Jordi AYET PUIGARNAU, Director

date of receipt: 5 September 2019

To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of
the European Union

No. Cion doc.: COM(2019) 396 final

Subject: Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND
OF THE COUNCIL amending Regulation (EU) 2019/501 and Regulation
(EU) 2019/502 as regards their periods of application

Delegations will find attached document COM(2019) 396 final.

Encl.: COM(2019) 396 final



Brussels, 4.9.2019
COM(2019) 396 final

2019/0179 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
amending Regulation (EU) 2019/501 and Regulation (EU) 2019/502 as regards their
periods of application

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

- **Reasons for and objectives of the proposal**

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. This means that, if the Withdrawal Agreement¹ is not ratified, the Union's primary and secondary law would cease to apply to the United Kingdom from the withdrawal date. The United Kingdom would then become a third country.

The withdrawal of the United Kingdom from the Union without an agreement would affect the continued provision of road and air transport services between the Union and the United Kingdom, which would no longer have a basis in Union law upon withdrawal. This would lead to the breakdown in connectivity and severe disruptions as regards road and air transport between the Union and the United Kingdom.

In the Commission Communication of 13 November 2018 on 'Preparing for the withdrawal of the United Kingdom from the European Union on 30 March 2019: a Contingency Action Plan'² the Commission set the principles underlying the contingency measures, including that they shall be strictly limited in time.

On 13 December 2018, the European Council (Article 50) reiterated its call 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.

Consequently, the European Commission adopted on 19 December 2018 proposals for a number of contingency measures to ensure basic connectivity between the Union and the United Kingdom, including proposals for regulations ensuring basic road connectivity³ and basic air connectivity⁴. In view of the United Kingdom's withdrawal on 30 March 2019, the European Parliament and the Council adopted on 25 March 2019, Regulation (EU) 2019/501 ensuring basic road connectivity⁵ (hereafter 'Regulation (EU) 2019/501') and Regulation (EU) 2019/502 ensuring basic air connectivity⁶ (hereafter 'Regulation (EU) 2019/502').

In line with the principles underlying the contingency measures, both regulations are limited in scope and are intended to apply for limited periods of time. In view of the initial date of withdrawal, Regulation (EU) 2019/501 applies until 31 December 2019, also in view of possible arrangements for basic connectivity to be made in the multilateral quota system of the European Conference of Ministers of Transport (ECMT). Taking into account the seasonal

¹ 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, C 144I, 25.4.2019, p. 1.

² COM(2018)880 final, 13.11.2018.

³ COM(2018)895 final, 19.12.2018.

⁴ COM(2018)893 final, 19.12.2018.

⁵ Regulation (EU) 2019/501 of the European Parliament and of the Council of 25 March 2019 on common rules ensuring basic road freight and road passenger connectivity with regard to the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the Union, OJ L 85I, 27.3.2019, p. 39.

⁶ Regulation (EU) 2019/502 of the European Parliament and of the Council of 25 March 2019 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, OJ L 85I, 27.3.2019, p. 49.

specificities of the aviation sector and to facilitate the provision of air transport services, the period of application of Regulation (EU) 2019/502 was aligned to the expiry of the IATA winter season 2019/20.

Regulation (EU) 2019/501 and Regulation (EU) 2019/502 had been adopted shortly after a first short extension of the time period referred to in Article 50(3) TEU, until 12 April 2019. Following the adoption of these acts, based on a request of the United Kingdom, the European Council (Article 50) agreed on 11 April 2019⁷ to further extend the period provided for in Article 50(3) TEU until 31 October 2019.

Unless the United Kingdom ratifies the Withdrawal Agreement by 31 October 2019 or requests a third extension, to which the European Council (Article 50) agrees by unanimity, the period under Article 50(3) TEU will end then. The United Kingdom will then be a third country as of 1 November 2019 without an agreement ensuring an orderly withdrawal.

In the Commission Communication of 12 June 2019 on the ‘State of play of preparations of contingency measures for the withdrawal of the United Kingdom from the European Union’⁸, the Commission concluded that all EU-level preparedness and contingency measures are still fit for purpose. However, it is evident that the extension of the Article 50(3) TEU period by seven months until 31 October 2019 impacts certain already adopted contingency measures. This in particular affects contingency measures, such as Regulations (EU) 2019/501 and (EU) 2019/502, with a fixed date on which they cease to be applicable. In the Communication of 12 June 2019, the Commission already committed to consider whether these acts need a technical adjustment to take into account the new timeline of the United Kingdom’s withdrawal.

In particular in the case of Regulation (EU) 2019/501, if the original date of application until 31 December 2019 is maintained, in case the United Kingdom withdraws from the Union without an agreement on 1 November 2019, this would limit the period of application of the regulation to just two months, which would fail to achieve its intended purpose, insofar as it is linked to its period of application.

Similarly, Regulation (EU) 2019/502 would be applicable for less than half of the initially intended period of application if it would cease to apply on 30 March 2020, as is currently the case. This would significantly limit the period during which UK carriers would be able to operate flights into the Union.

It is necessary to ensure that the already adopted contingency regulations fully achieve their objectives as initially defined, insofar as linked to their period of application, despite the postponement of the date for the United Kingdom’s withdrawal. As a result, this proposal aims at extending the period of validity of Regulations (EU) 2019/501 and (EU) 2019/502 by seven months, corresponding to the length of the extension of the Article 50(3) TEU period. This extension is in line with the principles underlying contingency measures, in particular the principle that contingency measures should be strictly limited in time.

Consequently, it is proposed that Regulation (EU) 2019/501 ceases to apply on 31 July 2020, rather than on 31 December 2019. Furthermore, to ensure that the option provided under Article 2(3)(d) of Regulation (EU) 2019/501 is available for a meaningful period, in the order of magnitude initially intended, the period during which road passenger cabotage services can be performed in the border region of Ireland should be defined as six months starting from the

⁷ European Council Decision (EU) 2019/584, OJ L 101, 11.4.2019, p. 1.

⁸ COM(2019)276 final, 12.6.2019.

date of application of that Regulation. This rule should replace the current reference to the end date of 30 September 2019. The period for the Commission to exercise delegated powers referred to in Article 11(1) of the Regulation should be adjusted to the new date on which that Regulation ceases to apply. The periods set out in Article 2(2)(b) of the Regulation should remain unchanged.

As regards Regulation (EU) 2019/502 and in accordance with the terms of this proposal, the Regulation would cease to apply at the latest on 24 October 2020, which is the last date of the IATA summer season for 2020. It would thereby maintain its initially envisaged period of application of twelve months.

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

This proposal is a limited amendment of certain provisions related to the period of application of two existing regulations which represent *lex specialis* and address some of the consequences ensuing from the fact that Union law will no longer apply to the United Kingdom. The substantial provisions of the amended acts remain unaffected and will continue to apply. This proposal is thus fully consistent with the existing legislation.

- **Consistency with other Union policies**

The proposal is part of and fully aligned with the Union's contingency measures for the withdrawal of the United Kingdom from the Union without a withdrawal agreement.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

Considering that the legal basis for the two Regulations to be amended are Articles 91(1) and 100(2) of the Treaty on the Functioning of the European Union (TFEU), respectively, the same should be used for this amending Regulation.

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

As the proposal amends the provisions of existing Union law, its objective can only be achieved through an act at the level of the Union.

- **Proportionality**

The proposed regulation is considered proportionate as it does not go beyond what is necessary to address the impact of the extension of the Article 50(3) TEU period for the United Kingdom's withdrawal from the Union on the existing contingency regulations on road and air connectivity. It refrains from any broader changes that are not related to the extension of the period established in Article 50(3) TEU.

- **Choice of the instrument**

As the proposal is aimed at the amendment of two existing regulations, the instrument chosen is also a regulation. Given the limited number of changes proposed, it is not necessary to recast the two regulations.

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

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

Not applicable due to the limited scope of the proposed regulation and the exceptional and one-off nature of the event necessitating this proposal, shortly after the adoption of the two acts concerned.

- **Stakeholder consultations**

Not applicable due to the limited scope of the proposed regulation and the exceptional and one-off nature of the event necessitating this proposal. As explained above, the proposal is merely aimed at transposing the approach that underlies the two acts concerned, in respect of various time periods, to the new situation materialising after the extension of the time period established in Article 50(3) TEU.

- **Collection and use of expertise**

This proposal has been subject to in-house legal and technical analysis 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 the limited scope of the proposal. As explained above, the proposal is merely aimed at transposing the approach that underlies the two acts concerned, in respect of various time periods, to the new situation materialising after the extension of the time period established in Article 50(3) TEU.

- **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 limited scope and the short-term nature of the proposed measure.

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
amending Regulation (EU) 2019/501 and Regulation (EU) 2019/502 as regards their
periods of application

(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 Articles 91(1) and 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 Committee¹,

Having regard to the opinion of the Committee of Regions²,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) On 29 March 2017, the United Kingdom of Great Britain and Northern Ireland (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, unless the European Council, in agreement with the United Kingdom, unanimously decides to extend that period.
- (2) In order to prepare for the possibility that the United Kingdom could withdraw from the Union without an agreement on 30 March 2019, Regulation (EU) 2019/501 of the European Parliament and of the Council³ and Regulation (EU) 2019/502 of the

¹ OJ C [...], [...], p. [...].

² OJ C [...], [...], p. [...].

³ Regulation (EU) 2019/501 of the European Parliament and of the Council of 25 March 2019 on common rules ensuring basic road freight and road passenger connectivity with regard to the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the Union, OJ L 85I, 27.3.2019, p. 39.

European Parliament and of the Council⁴ were adopted on 25 March 2019 to ensure basic road freight and road passenger and basic air connectivity between the Union and the United Kingdom.

- (3) Those acts have been adopted shortly after a first short extension of the time period referred to in Article 50(3) TEU, until 12 April 2019. On a request of the United Kingdom, the European Council agreed on 11 April 2019⁵ to further extend that period, until 31 October 2019. Unless the United Kingdom ratifies the Withdrawal Agreement⁶ by 31 October 2019 or requests a third extension, to which the European Council must agree by unanimity, the period under Article 50(3) TEU will end on 31 October 2019. The United Kingdom will then become a third country as of 1 November 2019.
- (4) Regulation (EU) 2019/501 and Regulation (EU) 2019/502 cease to apply on 31 December 2019 and 30 March 2020, respectively. In order to address the impact of the new timeline for the United Kingdom's withdrawal from the Union, following the further extension of the Article 50(3) TEU period by seven months, the period of application of those Regulations should be extended, taking into account the core principles underlying contingency measures and their originally intended periods of application.
- (5) Given the extension by seven-months of the period referred to in Article 50(3) TEU, the period of application of Regulation (EU) 2019/501 should be extended by seven months until 31 July 2020. This should maintain the initially intended period of application of nine months and ensure that, in respect of its period of application, its objective of temporarily maintaining road connectivity on the withdrawal of the United Kingdom is attained.
- (6) It is necessary to ensure that passengers can be picked up and set down in the border region of Ireland in the course of international regular and special regular passenger transport services between Ireland and Northern Ireland for the same period of six months as initially intended. Therefore, the reference to the end date referred to in point (d) of Article 2(3) of Regulation (EU) 2019/501, should be replaced by a reference to a period of six months from the date of application of that Regulation.
- (7) In order to ensure continuity in the picking up and setting down of passengers in the border region of Ireland in the course of international regular and special regular passenger transport services between Ireland and Northern Ireland, the validity of authorisations for United Kingdom coach and bus service operators referred to in Article 4(3) of Regulation (EU) 2019/501 should also be adjusted to the new date on which that Regulation ceases to apply.
- (8) The period for the Commission to exercise the delegated powers referred to in Article 11(1) of Regulation (EU) 2019/501 should be adjusted to the new date on which that Regulation ceases to apply.

⁴ Regulation (EU) 2019/502 of the European Parliament and of the Council of 25 March 2019 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, OJ L 85I, 27.3.2019, p. 49.

⁵ European Council Decision (EU) 2019/584, OJ L 101, 11.4.2019, p. 1.

⁶ 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, C 144I, 25.4.2019, p. 1.

- (9) Given the extension by seven months of the period referred to in Article 50(3) TEU and in the absence of any adaptations, Regulation (EU) 2019/502 would be applicable for less than half of the initially intended period if it ceased to apply on 30 March 2020. That would significantly limit the period during which United Kingdom carriers would be able to operate flights into the Union. Consequently, in order to reflect the initial envisaged period of application, the period of application of Regulation (EU) 2019/502 should be extended by an additional seven months. In order to coincide with the last day of the IATA summer season of 2020, Regulation (EU) 2019/502 should cease to apply at the latest on 24 October 2020.
- (10) Taking into account the uncertainty concerning the date of application of Regulation (EU) 2019/501 and Regulation (EU) 2019/502 and in order to ensure that the provisions of this Regulation apply in a timely manner under all circumstances, this Regulation should enter into force as a matter of urgency,

HAVE ADOPTED THIS REGULATION:

Article 1

Amendments to Regulation (EU) 2019/501

Regulation (EU) 2019/501 is amended as follows:

- (1) in Article 2, point (3)(d) is replaced by the following:

"(d) the picking up and setting down of passengers in the border region of Ireland in the course of international regular and special regular services between Ireland and Northern Ireland, for a period of six months starting on the date of application of this Regulation as set out in the second subparagraph of Article 12;"

- (2) in Article 4, paragraph 3 is replaced by the following:

"3. The authorisations that remain valid under paragraph 2 of this Article may continue to be used for the purposes specified in paragraph 1 of this Article if they have been renewed under the same terms and conditions, or altered in terms of stops, fares or schedule, and subject to the rules and procedures of Articles 6 to 11 of Regulation (EC) No 1073/2009 for a period of validity not extending beyond 31 July 2020.";

- (3) in Article 11, paragraph 1 is replaced by the following:

"1. The power to adopt delegated acts referred to in Articles 7(2) and 8(2) shall be conferred on the Commission until 31 July 2020.";

- (4) in Article 12, the fourth paragraph is replaced by the following:

"This Regulation shall cease to apply on 31 July 2020."

Article 2

Amendment to Regulation (EU) 2019/502

In Article 16(4) of Regulation (EU) 2019/502, point (b) is replaced by the following:

"(b) 24 October 2020."

Article 3

Entry into force

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

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