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REV2 – replaces the notice (REV1)
dated 27 February 2018

NOTICE TO STAKEHOLDERS

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

Since 1 February 2020, the United Kingdom has withdrawn from the European Union and has become a “third country”.¹ The Withdrawal Agreement² provides for a transition period ending on 31 December 2020.³ Until that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

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

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

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

² Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, OJ L 29, 31.1.2020, p. 7 (“Withdrawal Agreement”).

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

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

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

1. PURCHASE BY CONSUMERS IN THE EU OF PRODUCTS OR SERVICES FROM TRADERS ESTABLISHED IN THE UNITED KINGDOM^{6 7}

According to EU law, where a consumer concludes a contract with a professional in another country who, by any means, directs his commercial activities to the consumer's country of residence, the contract is generally governed by the law of the country where the consumer has his or her habitual residence. It is possible to choose another law but that choice cannot deprive the consumer of the protection afforded by the law of the habitual residence which cannot be derogated from by agreement under that law.⁸ On that basis courts of the EU Member States⁹ will continue to apply the EU rules on consumer protection even though the trader is in the United Kingdom. This includes in particular the rules set out in:

- the Unfair Commercial Practices Directive;¹⁰
- the Consumer Rights Directive;¹¹
- the Unfair Contract Terms Directive;¹²
- the Consumer Sales and Guarantees Directive;¹³
- the Price Indication Directive¹⁴ and

⁶ This notice does not address other practical aspects of cross-border purchase in third countries, such as EU rules related to value added tax, customs, and restrictions of importation.

⁷ For a more detailed description on the effect of the withdrawal of the United Kingdom, as well as the relevant rules in the Withdrawal Agreement, please refer to the “*Notice to stakeholders – withdrawal of the United Kingdom and EU rules in the field of civil justice and private international law*”.

⁸ Article 6(1) and (2) of Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I), OJ L 177, 4.7.2008, p. 6. For exceptions to this general rule, see Article 6(3)-(4) of Regulation (EC) No 593/2008.

⁹ Regarding UK courts, Article 66(a) of the Withdrawal Agreement provides that the EU rules on conflict of laws in contractual obligations (Regulation (EC) No 593/2008) continue to apply in the United Kingdom in respect of contracts concluded before the end of the transition period.

¹⁰ Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council (Unfair Commercial Practices Directive), OJ L 149, 11.6.2005, p. 22.

¹¹ Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, OJ L 304, 22.11.2011, p. 64.

¹² Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, OJ L 95, 21.4.1993, p. 29.

¹³ Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees, OJ L 171, 7.7.1999, p. 12.

¹⁴ Directive 98/6/EC of the European Parliament and of the Council of 16 February 1998 on consumer protection in the indication of prices of products offered to consumers, OJ L 80, 18.3.1998, p. 27.

- the Package Travel Directive.¹⁵

If, after the end of the transition period,¹⁶ an EU consumer were to bring an individual legal action before a court of an EU Member State against a trader domiciled in the United Kingdom, the withdrawal has no implications for establishing international jurisdiction of that court for disputes arising from consumer contracts covered by Article 17(1)(a)-(c) of Regulation (EU) No 1215/2012¹⁷ where the trader has directed his activities to the Member State of the consumer's domicile; in these cases the EU jurisdictional rules which allow the consumer to sue the trader in the EU Member State where the consumer is domiciled apply, irrespective of whether the trader is domiciled in the EU or in a third country.¹⁸ However, for litigation procedures that started after the end of the transition period the recognition and enforcement of an judgement rendered by a court of an EU Member State in the United Kingdom and *vice versa* will be governed by national rules in the United Kingdom or in the Member State concerned. After the end of the transition period, EU law ensuring the availability of out-of-court dispute resolution¹⁹ and facilitating access to online dispute resolution²⁰ no longer applies to the United Kingdom and the EU online dispute resolution platform is no longer available in relation to traders established in the United Kingdom.

Concerning public enforcement (e.g. to achieve the cessation of a commercial practice) the Regulation (EU) No 2017/2394²¹ no longer applies to the United Kingdom after the end of the transition period. This means that, after the end of the transition period, United Kingdom authorities will not be obliged under EU law to cooperate in the case of cross-border claims.

¹⁵ Directive (EU) 2015/2302 of the European Parliament and of the Council of 25 November 2015 on package travel and linked travel arrangements, OJ L 326, 11.12.2015, p. 1.

¹⁶ If the action is brought before the end of the transitional period, jurisdiction and recognition and enforcement is governed by Regulation 1215/2012 (Article 67 of the Withdrawal Agreement). This applies even if the judgment is to be enforced after that date.

¹⁷ Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, OJ L 351, 20.12.2012, p. 1.

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

¹⁹ Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes (Directive on consumer ADR), OJ L 165, 18.6.2013, p. 63.

²⁰ Regulation (EU) No 524/2013 of the European Parliament and of the Council of 21 May 2013 on online dispute resolution for consumer disputes (Regulation on consumer ODR), OJ L 165, 18.6.2013, p. 1.

²¹ Regulation (EU) 2017/2394 of the European Parliament and of the Council of 12 December 2017 on cooperation between national authorities responsible for the enforcement of consumer protection laws, OJ L 345, 27.12.2017, p. 1.

In addition, after the end of the transition period, EU law giving to certain "qualified entities", designated by EU Member States, legal standing for bringing injunction actions in another Member State no longer applies to the United Kingdom.²²

2. INSOLVENCY PROTECTION OF TRAVELLERS (PACKAGE TRAVEL)

According to EU law, package travel organisers established in the EU are obliged to provide securities for the refund and for the traveller's repatriation in case of the organiser's insolvency.²³ Organisers not established in the EU which sell or offer travel packages to consumers in the EU, or which by any means direct such activities to the EU, also must provide such insolvency protection in each of the Member States they are selling to.²⁴ However, where an organiser established in a third country does not offer travel packages to consumers in the EU and does not direct its selling activities to the EU (passive sales), EU law providing mandatory insolvency protection does not apply.

This means that in cases where the UK-based organiser does not offer travel packages to the EU and does not direct the selling activity to the EU, the insolvency protection granted by EU law will not apply to insolvencies of organisers established in the United Kingdom occurring after the end of the transition period.

After the end of the transition period, EU law providing for the mutual recognition of insolvency protection taken out in accordance with the requirements of the home country of an organiser no longer applies with regard to insolvency protection taken out in accordance with requirements applicable in the United Kingdom.²⁵ This means that, after the end of the transition period, insolvency protection taken out in the United Kingdom no longer serves to comply with the requirements for insolvency protection of package travel organisers in accordance with Article 17 of Directive (EU) 2015/2302.

3. EU PASSENGER RIGHTS

- Air passengers: After the end of the transition period, EU law on air passenger rights²⁶ no longer applies to passengers departing from an airport located in the United Kingdom to an airport situated in the territory of a EU Member State, unless the operating air carrier of the flight concerned is a Union carrier, i.e. has an operating licence granted by an EU Member State. This means that, despite the

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

²³ See first sub-paragraph of Article 17(1) of Directive (EU) 2015/2302.

²⁴ See second sub-paragraph of Article 17(1) of Directive (EU) 2015/2302.

²⁵ Article 18(1) of Directive (EU) 2015/2302.

²⁶ Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, OJ L 46, 17.2.2004, p. 1.

withdrawal of the United Kingdom from the EU, air passenger rights granted by EU law continue to apply to passengers departing from the United Kingdom to an airport situated in the territory of an EU Member State with a Community carrier. However, air passenger rights granted by EU law do not apply to flights departing after the end of the transition period from the United Kingdom to the EU with non-Community carriers.

EU law granting specific rights for disabled persons and persons with reduced mobility travelling by air²⁷ will no longer apply to disabled persons and persons with reduced mobility using commercial passenger air services who, after the end of the transition period, depart from, transit through, or arrive at an airport in the United Kingdom. However, certain rights, such as assistance by air carriers, continue to apply to air passengers departing from an UK airport to an EU airport if the operating carrier is a Community air carrier.²⁸

- Ship passengers: EU law on ship passenger rights²⁹ continues to apply on and after the end of the transition period to passengers where the port of embarkation is in the EU³⁰ or in the United Kingdom, provided that the port of disembarkation is in the EU and the service is operated by a carrier established within the territory of a Member State or offering passenger transport services to or from a Member State ("Union carrier").³¹
- Bus and coach passengers: EU law on rights of passengers in bus and coach transport³² continues to apply on and after the end of the transition period to passengers travelling with regular services³³ to or from the United Kingdom where the boarding or the alighting point of the passenger is situated in the EU, and the scheduled distance of the service is 250km or more.³⁴

²⁷ Regulation (EC) No 1107/2006 of the European Parliament and of the Council of 5 July 2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air OJ L 204, 26.7.2006, p. 1.

²⁸ Article 1(3) of Regulation (EC) No 1107/2006.

²⁹ Regulation (EU) No 1177/2010 of the European Parliament and of the Council of 24 November 2010 concerning the rights of passengers when travelling by sea and inland waterway, OJ L 334, 17.12.2010, p. 1.

³⁰ Article 2(1)(a) of Regulation (EU) No 1177/2010.

³¹ Article 2(1)(b) and 3(e) of Regulation (EU) No 1177/2010. Specific rules apply to cruise passengers, see Article 2(1)(c) of Regulation (EU) No 1177/2010.

³² Regulation (EU) No 181/2011 of the European Parliament and of the Council of 16 February 2011 concerning the rights of passengers in bus and coach transport, OJ L 55, 28.2.2011, p. 1.

³³ Specific rules apply to passengers travelling with occasional services, see Article 2(3) of Regulation (EU) No 181/2011.

³⁴ Article 2(1) of Regulation (EU) No 181/2011.

- Rail passengers: EU law on rail passengers' rights³⁵ continues to apply on and after the end of the transition period to rail passenger services in the territory of the Union,³⁶ provided that the railway undertaking is licensed in accordance with Article 17 of Directive 2012/34/EU of the European Parliament and of the Council of 21 November 2012 establishing a single European railway area.³⁷

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

European Commission
Directorate-General Justice and Consumers
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³⁵ Regulation (EC) No 1371/2007 of the European Parliament and of the Council of 23 October 2007 on rail passengers' rights and obligations OJ L 315, 3.12.2007, p. 14.

³⁶ Article 2(1) of Regulation (EC) No 1371/2007.

³⁷ OJ L 343, 14.12.2012, p. 32.