



Brussels, 31.7.2020
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COMMISSION DECISION

of 31.7.2020

on the application of Article 127(7)(b) of the Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community to the cooperation mechanism under Regulation (EU) 2019/452 which grants access to security-related sensitive information

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on European Union,

Having regard to the Treaty on the Functioning of the European Union,

Whereas:

- (1) Pursuant to Article 127(1) of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community¹ (the ‘Withdrawal Agreement’) unless otherwise provided in that Agreement provides that Union law is applicable to and in the United Kingdom during the transition period established by Article 126 of that Agreement.
- (2) Article 127(6) of the Withdrawal Agreement establishes that, during that transition period, any reference to Member States in Union law must be understood as including the United Kingdom.
- (3) However, pursuant to Article 127(7)(b) of the Withdrawal Agreement, where acts of the Union provide for the participation of Member States, nationals of Member States or natural or legal persons residing or established in a Member State in an information exchange, procedure or programme which continues to be implemented or which starts after the end of the transition period, and where such participation would grant access to security-related sensitive information that only Member States, nationals of Member States, or natural or legal persons residing or established in a Member State, are to have knowledge of, in such exceptional circumstances the references to Member States in such Union acts are to be understood as not including the United Kingdom.
- (4) It is therefore appropriate to specify the Union acts and provisions in Union acts which fall within the scope of the derogation provided for in Article 127(7)(b) of the Withdrawal Agreement.
- (5) Pursuant to Articles 6 to 11 of Regulation (EU) 2019/452² a cooperation mechanism between the Commission and the Member States is established to exchange information on foreign direct investments. The purpose of the cooperation mechanism is to allow each Member State to examine whether a foreign direct investment in another Member State is likely to affect its own security or public order and the Commission to examine whether a foreign direct investment is likely to affect security or public order in more than one Member State.

¹ OJ L 29, 31.1.2020, p. 7.

² Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 establishing a framework for the screening of foreign direct investments into the Union (OJ L 79I, 21.3.2019, p. 1.)

- (6) While the cooperation mechanism will apply from 11 October 2020, the preparatory arrangements are undertaken by the Commission and by the Member States since the entry into force of Regulation (EU) 2019/452 on 11 April 2019.
- (7) The cooperation mechanism provides an exchange of security relevant information between designated contact points of the Member States and the Commission, including classified information at “EU secret/EU confidential” level, to allow Member States and the Commission to examine the possible effects of foreign direct investment on security or public order.
- (8) The participation of the United Kingdom in the cooperation mechanism is a participation in an information exchange provided for in Union law, which will continue to be implemented beyond the transition period and which would grant access to security-related sensitive information that only Member States, nationals of Member States, or natural or legal persons residing or established in a Member State, are to have knowledge of. Therefore, this would constitute one of the exceptional cases, in which the references to Member States should be understood as not including the United Kingdom.
- (9) Pursuant to Article 127(7)(b) of the Withdrawal Agreement, the United Kingdom should be excluded from participation in the above-mentioned cooperation mechanism.
- (10) The United Kingdom should be notified of the application of the derogation provided for in Article 127(7)(b) of the Withdrawal Agreement established in this Decision,

HAS DECIDED AS FOLLOWS:

Sole Article

The references to Member States in Articles 6 to 11 of Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 establishing a framework for the screening of foreign direct investments into the Union shall be understood as not including the United Kingdom.

Done at Brussels, 31.7.2020

For the Commission
Phil HOGAN
Member of the Commission