



Brussels, 2.10.2020
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COMMISSION DECISION

of 2.10.2020

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 certain information exchanges, procedures and programmes which grant 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,

Having regard to the Treaty establishing the European Atomic Energy Community,

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, Union law is applicable to and in the United Kingdom during the transition period established by Article 126 of that Agreement, which may be extended in accordance with Article 132 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 is to be understood as including the United Kingdom.
- (3) Pursuant to Articles 127, 137 and 138 of the Withdrawal Agreement, and without prejudice to any derogations to the rules laid down therein, all Union programmes or activities committed under the Multiannual Financial Framework 2014-2020 or previous financial perspectives are to be implemented with regard to the United Kingdom until their closure on the basis of the applicable Union law.
- (4) 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.
- (5) 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.

¹ OJ L 29, 31.1.2020, p. 7.

- (6) Pursuant to Article 3 of Decision No 541/2014/EU of the European Parliament and of the Council², the general objective of the Space Surveillance and Tracking (SST) Support Framework established by that Decision is to contribute to ensuring the long-term availability of European and national space infrastructure, facilities and services which are essential for the safety and security of the economies, societies and citizens in Europe. Article 7 of Decision No 541/2014/EU sets out the criteria for the Member States' participation in SST. The participation in the SST consortium grants access to security-related sensitive information that should not be shared with third countries.
- (7) Pursuant to Article 15 of Regulation (EU) 2018/1092 of the European Parliament and of the Council³ and Commission Implementing Decision C(2019)2205⁴, the Commission has published a call for proposals related to Space Situational Awareness which should take into consideration the level of participation in the EU SST consortium and supplement the civilian objectives of EU SST. Participation in the SST consortium grants access to security-related sensitive information that should not be shared with third countries, in particular, information related to access to new research in the field of Space Surveillance and Tracking, new upgrades of the assets and dual use assets which are essential for Union's and Member States strategic autonomy and technological leadership. Therefore, the references to legal persons or undertakings established in a Member State of the European Union are to be understood as not including legal persons or undertakings established in the United Kingdom for what concerns participation in a call under the European Defence Industrial Development Programme on the topics related to Space Situational Awareness.
- (8) For what concerns SST services, as defined in Article 5 of Decision No 541/2014/EU, provision of such services does not grant to users access to security-related sensitive information that should not be shared with third countries. Therefore, the United Kingdom may continue benefiting from those services.
- (9) Regulation (EU) No 1285/2013 of the European Parliament and of the Council⁵ recognises that European Global Navigation Satellite Systems (GNSS) are sensitive infrastructures that could be susceptible to malicious use, which in turn could affect the security of the Union, its Member States and its citizens. Security requirements are taken into account in the design, development, deployment and exploitation of the infrastructures established under the Galileo and the European Geostationary Navigation Overlay Service (EGNOS) programmes.
- (10) In particular, Article 2(4)(d) of the Regulation No 1285/2013 recognises that the specific objective of the Galileo programme is to offer a public regulated service (PRS) which uses strong, encrypted signals and is restricted to government-authorised users, for sensitive applications which require a high level of service continuity, free of charge for the Member States, the Council, the Commission, EEAS and, where appropriate, duly authorised Union agencies. Article 16 of the Regulation No

² Decision No 541/2014/EU of the European Parliament and of the Council of 16 April 2014 establishing a Framework for Space Surveillance and Tracking Support (OJ L 158, 27.5.2014, p. 227).

³ Regulation (EU) 2018/1092 of the European Parliament and of the Council of 18 July 2018 establishing the European Defence Industrial Development Programme aiming at supporting the competitiveness and innovation capacity of the Union's defence industry (OJ L 200, 7.8.2018, p. 30).

⁴ Commission Implementing Decision C(2019) 2205 final of 19.3.2019 on the financing of the European Defence Industrial Development Programme and the adoption of the work programme for the years 2019 and 2020: <https://ec.europa.eu/docsroom/documents/34515>

⁵ Regulation (EU) No 1285/2013 of the European Parliament and of the Council of 11 December 2013 on the implementation and exploitation of European satellite navigation systems and repealing Council Regulation (EC) No 876/2002 and Regulation (EC) No 683/2008 of the European Parliament and of the Council (OJ L 347, 20.12.2013, p. 1).

1285/2013 establishes that, whenever the security of the Union or its Member States may be affected by the operation of the systems, the procedures set out in Joint Action 2004/552/CFSP are to apply.

- (11) Furthermore, Decision 1104/2011/EU of the European Parliament and the Council⁶ recognises in its recital 5 that the use and management of the PRS is a joint responsibility of Member States in order to protect the security of the Union and their own security. Pursuant to Article 3 of Decision 1104/2011/EU, only Member States, the Council, the Commission and the European External Action Service have the right to unlimited and uninterrupted access to the PRS worldwide. Third countries may become PRS participants, subject to the strict conditions established in Decision 1104/2011/EU. Therefore, the references to Member States in Decision 1104/2011/EU should be understood as not including the United Kingdom.
- (12) Council Decision 2014/496/CFSP⁷ recognises in its recital 1 that, in view of its strategic dimension, regional and global coverage and multiple usage, the European Global Navigation Satellite System constitutes sensitive infrastructure, the deployment and usage of which are susceptible to affect the security of the European Union and its Member States. Any information and expertise concerning the threats specifically dealt with by Council Decision 2014/496 should not be shared with third countries, unless there is a specific administrative arrangement concerning cooperation in the context of that Decision and a prior international agreement with a third country. Therefore, the references to Member States in Council Decision 2014/496/CFSP should be understood as not including the United Kingdom.
- (13) Pursuant to Article 11 of Regulation (EU) No 912/2010 of the European Parliament and of the Council⁸, the Security Accreditation Board is to take security accreditation decisions and be composed of one representative per Member State, one representative from the Commission and one from the High Representative of the Union for Foreign Affairs and Security Policy. Security-related sensitive information whose disclosure could allow identification of a security risk in the context of the risk assessments performed by the Security Accreditation Board under Regulation (EU) No 912/2010 is not to be shared with third countries unless there is a specific agreement with a third country allowing specific information exchanges. Therefore, the references to Member States in Regulation (EU) No 512/2014 should be understood as not including the United Kingdom for what concerns the composition, tasks and actions taken by the Security Accreditation Board.
- (14) The references to Member States in the space-related part of work programmes of the Horizon 2020 programme established by Regulation (EU) No 1291/2013 of the European Parliament and of the Council⁹ should be understood as not including the United Kingdom since activities related to the development of European critical space

⁶ Decision 1104/2011/EU of the European Parliament and the Council of 25 October 2011 on the rules for access to the public regulated service provided by the global navigation satellite system established under the Galileo programme (OJ L 287, 4.11.2011, p. 1–8)

⁷ Council Decision 2014/496/CFSP of 22 July 2014 on aspects of the deployment, operation and use of the European Global Navigation Satellite System affecting the security of the European Union

⁸ Regulation (EU) No 912/2010 of the European Parliament and of the Council of 22 September 2010 setting up the European GNSS Agency, repealing Council Regulation (EC) No 1321/2004 on the establishment of structures for the management of the European satellite radio navigation programmes and amending Regulation (EC) No 683/2008 of the European Parliament and of the Council (OJ L 276, 20.10.2010, p. 11).

⁹ Regulation (EU) No 1291/2013 of the European Parliament and of the Council of 11 December 2013 establishing Horizon 2020 - the Framework Programme for Research and Innovation (2014-2020) and repealing Decision No 1982/2006/EC (OJ L 347, 20.12.2013, p. 104).

infrastructure and performance of studies on new generations of the EU GNSS under that part of Horizon 2020 programme gives access to security-related sensitive information that should not be shared with third countries.

- (15) Consequently, the United Kingdom, the United Kingdom nationals and natural or legal persons residing or established in the United Kingdom should be excluded from participation in the above-mentioned information exchanges, procedures and programmes 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. This may imply, as the case may be, the exclusion from calls or other award procedures, or the termination of ongoing legal commitments.
- (16) The present Decision concerns the acts of the Union, it is without prejudice to the possibility to exclude or limit the participation of United Kingdom nationals or of natural or legal persons residing or established in the United Kingdom in an information exchange, procedure or programme on case-by-case basis in individual calls or contracts. The exclusion or limitation may continue to be applied during the transition period, where the participation of natural or legal persons established or residing in the United Kingdom would grant access to security-related sensitive information, in particular information on Galileo second generation, Galileo Initial Operational Capability and Full Operational Capability and EGNOS evolution and core technology, to such persons or the United Kingdom itself.
- (17) This Decision does not preclude the possibility to authorise United Kingdom entities to participate at subcontractor level in the parts of the call for tender that are not security sensitive and to grant waivers at subcontractor level for the security sensitive parts of the call for tender, in duly justified circumstances and in accordance with the participating conditions of tender
- (18) 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 the acts, or provisions of acts, listed in the Annex shall be understood as not including the United Kingdom.

Done at Brussels, 2.10.2020

For the Commission
Thierry BRETON
Member of the Commission