



## ALERTS

### Brexit Impact On U.S. Registered Aircraft

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#### Highlights

Operators of U.S. registered aircraft that regularly fly to the European Union and/or the United Kingdom are impacted by Brexit

Operators that use temporary admission (TA) should be able to continue to do so with separate protocols for TA into the UK versus into the EU

Operators that have permanently imported their aircraft into the EU will need either a TA into the UK or permanent admission into the UK for unique operating scenarios

Aircraft operators may be affected by the United Kingdom's (UK) withdrawal from the European Union (EU), also known as Brexit. Specifically, operators of U.S. registered aircraft must now work with the post-Brexit requirements as they apply to flights to and within the EU and, separately, flights to and within the UK.

Operators that have permanently imported their aircraft into the EU (such as through the Netherlands) should continue to have free circulation within the EU without further action. The permanent EU import no longer works in the UK.

## RELATED PEOPLE



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## RELATED PRACTICE AREAS

Aviation and Unmanned Aerial Vehicles

Operators using temporary admission (TA), with attendant limitation, should still be able to do so for EU operations and with a separate TA protocol for UK operations.

It is important to note that the UK TA regulations mirror the EU TA regulations.

To be granted temporary admission to the EU or UK, the following conditions must be met:

- **Means of transport for private use** must be registered in a territory other than that of TA, in the name of a person established or resident in a territory other than that of TA, and be imported and used by persons resident in such a territory. For U.S. registered aircraft, this requirement should not be a factor. Exceptions would be if the aircraft is under a U.S. trust and the user or beneficiary of the trust is an EU citizen (or company); if TA is in the EU, or with a UK citizen or company; or if TA is in the UK.
- Means of transport for private use may be used by third persons, but only to the extent such third persons are duly authorized by the persons granted TA. Each party may permit the use by a person resident in its territory, in particular, where the means of transport is used on behalf and on the instructions of the person granted TA. Where a third person who is resident in the territory where the operator is claiming TA, the non-EU owner must be on board the aircraft or in the EU at the time of use by third party.
- Means of transport for private use may remain in the territory of TA for a period of continuous operation of six months in every 12-month period. TA is claimed on arrival, and discharged on departure – the maximum period of continuous operation within the territory where claiming TA is six months; it is not a rolling period of time where you claim TA and can leave and return still under the same TA.

It is important to document that each flight into, out of, or within the EU or UK properly qualifies as a private or corporate non-revenue flight.

Accordingly, each flight has to meet the following requirements:

- Be a business flight with a client operator principal on board. A client operator business flight can include the transport of customers and/or guests on a complementary basis so long as no passenger directly or indirectly pays the client operator for being transported on the flight.
- The definition of a “principal on board” is a bit of a gray area. The actual EU regulations only require that a principal officer of the client operator of the aircraft be physically in the EU. However, depending upon the number of planned flights, it is possible that if the aircraft was ramp-checked at a location and the principal was not on board, there could be a problem quickly proving that the principal is actually physically in the EU. This could cause delays and disruptions to the planned flight schedule itinerary. It is

anticipated that the UK will have comparable requirements for the definition of “principal on board.”

- The “principal” must be a principal of client operator and not of its EU or UK subsidiary.
- Also, no charge can be made to any affiliate for any transportation on the aircraft, as this would cause the EU (and likely the UK) to consider the flight as a public charter flight.

Although not technically required in some circumstances, it is a best practice the TA into either the EU or UK be documented. Once an aircraft arrives in the EU, it is automatically granted TA and eligible for conditional leave from value-added tax and customs duties, so long as it meets the requirements for TA.

Since the aircraft will be circulating inside the EU or UK, it is possible that if the aircraft is ramp checked, the local official will request information on the aircraft's itinerary. In order to avoid any confusion on when the aircraft first arrived in the EU or UK, having the arrival documented is recommended.

To obtain more information, please contact the Barnes & Thornburg attorney with whom you work, or Todd A. Dixon at 616-742-3959 or [todd.dixon@btlaw.com](mailto:todd.dixon@btlaw.com) or Clifford G. Maine at 616-742-3944 or [clifford.maine@btlaw.com](mailto:clifford.maine@btlaw.com).

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