

Commission Implementing Regulation (EU) 2018/1101 of 3 August 2018 laying down the criteria for the application of the second paragraph of Article 5 of Council Regulation (EC) No 2271/96 protecting against the effects of the extra-territorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom

#### *Article 4*

#### **Assessment of applications**

When assessing whether a serious damage to the protected interests as referred to in the second paragraph of Article 5 of Regulation (EC) No 2271/96 would arise, the [F<sup>1</sup>Secretary of State] shall consider, inter alia, the following non-cumulative criteria, where appropriate:

- (a) whether the protected interest is likely to be specifically at risk, based on the context, the nature and the origin of a damage to the protected interest;
- (b) the existence of an ongoing administrative or judicial investigation against the applicant from, or a prior settlement agreement with, the F<sup>2</sup>... country which is at the origin of the listed extra-territorial legislation;
- (c) the existence of a substantial connecting link with the F<sup>3</sup>... country which is at the origin of the listed extraterritorial legislation or the subsequent actions; for example the applicant has parent companies or subsidiaries, or participation of natural or legal persons subject to the primary jurisdiction of the F<sup>3</sup>... country which is at the origin of the listed extra-territorial legislation or the subsequent actions;
- (d) whether measures could be reasonably taken by the applicant to avoid or mitigate the damage;
- (e) the adverse effect on the conduct of economic activity, in particular whether the applicant would face significant economic losses, which could for example threaten its viability or pose a serious risk of bankruptcy;
- (f) whether the applicant's activity would be rendered excessively difficult due to a loss of essential inputs or resources, which cannot be reasonably replaced;
- (g) whether the enjoyment of the individual rights of the applicant would be significantly hindered;
- (h) whether there is a threat to safety, security, the protection of human life and health and the protection of the environment;
- (i) whether there is a threat to the [F<sup>4</sup>United Kingdom's] ability to carry out its humanitarian, development and trade policies or the external aspects of its internal policies;
- (j) the security of supply of strategic goods or services within or to the [F<sup>5</sup>United Kingdom] and the impact of any shortage or disruption therein;
- (k) the consequences for the [F<sup>6</sup>financial or economic stability of the United Kingdom or key United Kingdom infrastructure];

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**Changes to legislation:** There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2018/1101, Article 4. (See end of Document for details)

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- (l) the systemic implications of the damage, in particular as regards its spill over effects into other sectors;
- (m) the impact on the employment market of [<sup>F7</sup>the United Kingdom];
- (n) any other relevant factor.

#### Textual Amendments

- F1** Words in Art. 4 substituted (1.1.2021) by The Protecting against the Effects of the Extraterritorial Application of Third Country Legislation (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/1660), regs. 1, **4(5)(a)**
- F2** Word in Art. 4(b) omitted (1.1.2021) by virtue of The Protecting against the Effects of the Extraterritorial Application of Third Country Legislation (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/1660), regs. 1, **4(5)(b)**
- F3** Word in Art. 4(c) omitted (1.1.2021) by virtue of The Protecting against the Effects of the Extraterritorial Application of Third Country Legislation (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/1660), regs. 1, **4(5)(c)**
- F4** Words in Art. 4(i) substituted (1.1.2021) by The Protecting against the Effects of the Extraterritorial Application of Third Country Legislation (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/1660), regs. 1, **4(5)(d)**
- F5** Words in Art. 4(j) substituted (1.1.2021) by The Protecting against the Effects of the Extraterritorial Application of Third Country Legislation (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/1660), regs. 1, **4(5)(e)**
- F6** Words in Art. 4(k) substituted (1.1.2021) by The Protecting against the Effects of the Extraterritorial Application of Third Country Legislation (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/1660), regs. 1, **4(5)(f)**
- F7** Words in Art. 4(m) substituted (1.1.2021) by The Protecting against the Effects of the Extraterritorial Application of Third Country Legislation (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/1660), regs. 1, **4(5)(g)**

**Changes to legislation:**

There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2018/1101, Article 4.