

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

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

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 2271/96 of 22 November 1996 protecting against the effects of the extra-territorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom⁽¹⁾, and in particular the second paragraph of Article 5 thereof,

Whereas:

- (1) Regulation (EC) No 2271/96 provides protection against and counteracts the unlawful effects of the extra-territorial application of some listed laws, including regulations and other legislative instruments adopted by third countries, and of actions based thereon or resulting therefrom, where such application affects the interests of natural and legal persons referred to in Article 11 of that Regulation engaging in international trade and/or the movement of capital and related commercial activities between the Union and third countries.
- (2) Regulation (EC) No 2271/96 acknowledges that by their extra-territorial application, such laws, including regulations and other legislative instruments, violate international law.
- (3) Pursuant to the first paragraph of Article 5 of Regulation (EC) No 2271/96, persons referred to in Article 11 of that Regulation shall not comply whether directly or through a subsidiary or other intermediary person, actively or by deliberate omission, with any requirement or prohibition, including requests of foreign courts, based on or resulting from such laws or from actions based thereon or resulting therefrom.
- (4) However, the second paragraph of Article 5 of Regulation (EC) No 2271/96 allows persons referred to in Article 11 of that Regulation to request from the Commission an authorisation to fully or partially comply with such requirement or prohibition to the extent that non-compliance would seriously damage their interests or those of the Union.

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

- (5) In order to provide legal certainty as well as to ensure the effective implementation of Regulation (EC) No 2271/96 while taking into account, in specific and duly justified circumstances, the risk of serious damages to the interests of the natural and legal persons referred to in Article 11 of that Regulation, it is necessary to lay down the criteria for the application of the second paragraph of Article 5 of Regulation (EC) No 2271/96.
- (6) In view of the role of the Commission overseeing the uniform implementation of EU law including Regulation (EC) No 2271/96, the Commission will follow closely the application of the present Regulation and adopt any necessary adaptation based on its assessment of the implementation thereof.
- (7) The main steps of the procedure following the submission to the Commission of an application for an authorisation to fully or partially comply with such requirement or prohibition should also be laid down.
- (8) Any processing of personal data of natural persons under this Regulation should respect Regulation (EU) 2016/679 of the European Parliament and of the Council⁽²⁾ and Regulation (EC) No 45/2001 of the European Parliament and of the Council⁽³⁾.
- (9) Applications pursuant to this Regulation should concern actions or omissions based on or resulting directly or indirectly from the application of the laws specified in the Annex to Regulation (EC) No 2271/96 or actions based thereon or resulting therefrom.
- (10) The handling of an application shall be carried out as soon as possible.
- (11) The measures provided for in this Regulation are in accordance with the opinion of the Committee on Extra-territorial Legislation and have been adopted pursuant to Regulation (EU) No 182/2011 of the European Parliament and of the Council⁽⁴⁾,

HAS ADOPTED THIS REGULATION:

Modifications etc. (not altering text)

- C1** Regulation modified (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, 5

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- (1) [OJ L 309, 29.11.1996, p. 1.](#)
- (2) Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) ([OJ L 119, 4.5.2016, p. 1.](#))
- (3) Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data ([OJ L 8, 12.1.2001, p. 1.](#))
- (4) Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers ([OJ L 55, 28.2.2011, p. 13.](#))

Changes to legislation:

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