



Aviation

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Traffic rights are one of the biggest issues facing the aviation industry post-Brexit, potentially impacting airlines, airports and other industry participants both in the UK and also overseas. The EU is a liberalised aviation market, meaning that any airline owned and controlled by nationals of EU member states is free to operate anywhere within the EU without restrictions on capacity, frequency or pricing. Additionally, EU carriers are able to take advantage of the traffic rights contained in the many air service agreements that the EU has negotiated on behalf of all member states with non-EU countries.

Once the UK leaves the EU (following any agreed transition period), the UK will need to have in place other ways of obtaining European and overseas traffic rights for UK owned and controlled airlines.

For EU traffic rights, the UK has two main options. One option would be for the UK to continue its membership of the European Common Aviation Area ('ECAA'), which extends the liberalised aviation market across EU member states and beyond to other European countries, such as Norway. However, this option would require the UK to continue to accept substantially all EU aviation law.

The alternative option would be for the UK to negotiate a bilateral aviation agreement with the EU, as Switzerland has done.

On 25 March 2019 the European Parliament and Council passed a [regulation](#) to ensure

basic air connectivity between the UK and EU for a transitional period in the event that the UK leaves the EU without an agreement. This is the Basic Air Connectivity Regulation ('BACR'). These arrangements, which are due to apply until 30 March 2020 unless a comprehensive air transport agreement is brought into application before then, are intended to minimise disruption and provide time for future air services arrangements to be negotiated with the EU.

For traffic rights to non-EU markets where the UK currently benefits from traffic rights negotiated by the EU on behalf of all member states, the UK has so far focused its efforts on negotiating its own bilateral air service agreements with non-EU countries. The UK and the US have concluded a new "open skies" air services arrangement which will replace the existing EU aviation agreement with the US for the UK after Brexit and will ensure that planes

**The section is part of our
Brexit Legal Guide.**

No Deal

- If the [Withdrawal Agreement](#) endorsed by the EU Council on 25 November 2018 or the [Political Declaration](#), or some version of both, are not approved by 31 October 2019 and there is no change to the exit date, the UK will cease to be a member state on that date without any transitional period
- A number of pieces of EU legislation and UK government and CAA guidance on flying rights, nationality restrictions, aviation safety and security will then apply, which include:
 - [EU Basic Air Connectivity Regulation](#) (Mar 2019)
 - UK government guidance, [Air services from the EU to the UK in the event of 'no deal'](#) (Mar 2019)
 - EU Commission's notice, [Withdrawal of the United Kingdom and EU aviation safety rules](#) (updated Jan 2019)
 - [EU Aviation Safety Regulation](#)

flying from the UK will have the same access to the US as they currently do. The UK has also concluded other bilateral arrangements with countries around the world such as Albania, Canada, Georgia, Iceland, Israel, Jordan, Kosovo, Moldova, Montenegro, Morocco, North Macedonia, Norway and Switzerland; discussions with several other countries are ongoing.

The Withdrawal Agreement and Political Declaration

At present, it is not clear whether Brexit will take place on the basis of “no deal” with the EU, or whether there is still scope for it to take place on the terms of the Withdrawal Agreement which was agreed between the EU and UK in November 2018 - or indeed on any other agreed terms. Similarly, the status of the Political Declaration agreed between the UK and EU in November 2018 remains unclear. We consider the position below in so far as those documents may still be adopted.

The [Withdrawal Agreement](#) reached in November 2018 provides for a transition period during which the status quo continues and the UK remains subject to EU legislation and will have the same level of access to the EU market. Under Article 129 of the Withdrawal Agreement the UK will, during the transition period, also be bound by obligations resulting from international agreements concluded by the EU, and a footnote to Article 129 provides that the EU will notify the third country parties to these agreements that, during the transition period, the UK is to be treated as a member state for the purposes of these agreements. It will be up to those third countries as to whether or not they continue to apply the benefits of their agreements with the EU to the UK, as the Withdrawal Agreement cannot create binding obligations on third countries.

The non-binding [Political Declaration](#) (which accompanies the Withdrawal Agreement) sets out the parties' intention to negotiate a Comprehensive Air Transport Agreement ('**CATA**') covering market access, investment, aviation safety and security, air traffic management and provisions to ensure open and fair competition. It also provides for both parties to make further arrangements to enable cooperation between the European Union Aviation Safety Agency ('**EASA**') and the UK's Civil Aviation Authority ('**CAA**'). The Political Declaration is very high level and there is little detail on key issues such as the extent of market access to be granted under the CATA and EU ownership and control rules for airlines.

1. No-deal Brexit

Both the EU and the UK have adopted no-deal Brexit notices, and the EU has also passed the BACR with the aim of limiting the most severe consequences of a no-deal Brexit in the short term.

1.1 Flying to and from the UK

As part of its Contingency Action Plan, the EU Commission proposed a unilateral legislative measure to ensure temporary basic air connectivity between the EU and UK. This culminated in the BACR, which grants first, second, third and fourth freedom traffic rights to UK carriers until 30 March 2020 - so that they can continue to overfly, make technical stops in the EU, and serve direct routes between the UK and EU. For a period of five months post-Brexit (if Brexit occurs at the end of October 2019), UK carriers are also granted fifth freedom traffic rights to operate all-cargo services on direct routes between the EU and third (non-EU) countries as part of a service originating or ending in the UK, with the number of services capped at 2018 levels. These rights are granted to UK carriers on the condition that the UK confers equivalent rights on EU carriers and also ensures conditions of fair competition.

On 7 March, based on an earlier European Commission draft of the BACR (issued in December 2018), the Department of Transport and the CAA published the UK's position for the period during which the BACR applies. The UK stated that it intends to go further than merely reciprocating the third and fourth freedom rights on a symmetrical basis, and will allow EU carriers to operate from any point in the EU (ie not just the member state in which the carrier is licensed) to the UK. EU carriers will be granted reciprocal first, second and fifth freedom rights.

In a no-deal scenario, however, EU-licensed airlines would no longer be able to operate wholly within the UK (eg from Heathrow to Edinburgh) and UK-licensed airlines would lose the ability to operate intra-EU services.

As regards nationality restrictions as a condition for eligibility to operate services between the EU and UK, the UK states that it intends to take a more liberal approach while the BACR applies, ie EU carriers would not be required to be majority owned and effectively controlled by nationals of their own member state. Instead, EU carriers will only need to satisfy the CAA that they are majority owned and effectively controlled by nationals of EU member states, nationals of other EEA countries and/or UK nationals.

(Mar 2019)

- UK government guidance, [Prepare to work and operate in the European aviation sector after Brexit](#) (Jan 2019)
- UK government guidance on [aviation security in the event of a no deal Brexit](#) (Feb 2019)
- UK CAA guidance, [Brexit No Deal & Aviation Safety](#) (Aug 2019)

Deal/transitional period

- If approved by the UK Parliament, the Withdrawal Agreement, or some version of it, will set out arrangements for the UK's withdrawal from the EU - when the UK will cease to be a member state
- A transition period will follow the date of the UK's EU exit up till at least the end of 2020, possibly the end of 2021 or 2022
- During transition, EU law will continue to apply in and to the UK and the UK will continue to trade as part of the Single Market
- The Withdrawal Agreement will be accompanied by the Political Declaration on the future relationship between the UK and the EU. This will comment on the future trading relationship between the EU and the UK
- Whether or not the Withdrawal Agreement or the Political Declaration, or some version of both, are approved by 31 October 2019, the UK will cease to be an EU member state on that date, unless the date for the UK to leave the EU is extended again by agreement between the UK and the EU27 or the Article 50 notice is withdrawn. If there is an approved deal and the UK enters transition, as explained above, the legal position during transition will be very similar for businesses as if the UK were still an EU member state

The BACR gives EU licensed airlines which will cease to comply with EU majority ownership and control rules as a result of Brexit (eg due to significant investment from or ownership by UK nationals) a grace period to re-establish EU majority ownership and effective control, if they have submitted satisfactory plans for re-establishing compliance to their national civil aviation authority. In these circumstances, the airline's operating licence will remain valid if compliance with the EU ownership and control rules is re-established by 30 March 2020.

September stop-press: the EU Commission has now announced a proposal to extend the application of the Basic Air Connectivity Regulation until 24 October 2020. It has also stated that, under this proposal, airlines which will fall out of compliance with EU ownership and control rules as a result of Brexit and which have already submitted suitable plans for re-establishing compliance would have until 30 April 2020 to implement those plans. The proposal will need to be approved by the European Parliament and Council.

1.2 Aviation safety

On 14 January 2019 the UK Government published revised guidance concerning aviation safety in the event of a no-deal Brexit. This guidance states that many of the functions currently performed by the EASA in relation to aviation safety approvals and certifications will be conferred on the CAA. It also explains that in many cases aerospace businesses, airlines and aviation personnel may need to take action to ensure they continue to hold appropriate safety certificates, licences or other documentation.

Following a no-deal Brexit, the automatic mutual recognition of aviation safety certificates provided under the EASA system will cease to apply to the UK. However, the CAA has explained in guidance issued in August 2019 on aviation safety in a no-deal scenario that it will continue to recognise EASA certificates, approvals and licences for use in the aviation system and on UK-registered aircraft for at least a period of two years following Brexit. At the end of two years (or sooner if the certificate expires during the intervening period), new certificates issued by the CAA under UK legislation would be required.

The EU Commission's notice on Withdrawal of the United Kingdom and EU aviation safety rules, updated on 18 January 2019, indicates that it will take a different approach and that certificates previously issued, before exit day,

by the CAA, UK companies approved by the CAA, or EASA to UK persons and businesses, will no longer be automatically accepted in the EASA system as of the withdrawal. In the EU Commission's view, the effect of a no-deal Brexit on certificates and approvals can adequately be remedied by stakeholders switching to a regulator of another EASA member state, or by applying for a third-country certificate issued by the EASA.

Nevertheless, in order to mitigate disruption, a regulation on aviation safety passed by the European Council and Parliament in March will temporarily (for 9 months) extend certain certificates (in particular "type certificates") that can only be issued by the EASA on the basis of certificates issued by the UK once it is a third country. The regulation also ensures that parts and appliances for which a certificate of conformity was issued by a UK company approved by the CAA before the withdrawal date can still be used in and on aircraft in certain circumstances.

The CAA and UK Government have also worked with the USA, Canada, Brazil and Japan to ensure that replacement bilateral aviation safety agreements would be in place post-Brexit.

1.3 Aviation security

The UK Government published revised guidance on aviation security in the event of a no-deal Brexit on 14 February 2019, which explains that EU aviation security standards and procedures will be retained under the EU Withdrawal Act. The UK Government will not impose any additional screening checks for EU passengers or cargo arriving into the UK. The EU Commission has confirmed, as part of its Contingency Action Plan, that it will take action to ensure that passengers and cargo from the UK transiting in the EU will continue to be exempted from a second security screening, by applying the so-called "one stop security" system. Following a no-deal Brexit the UK will no longer be part of the EU's "ACC3" security designation scheme for cargo arriving from the rest of the world. However, the UK Government will be setting up its own security designation that will mirror the EU's scheme to ensure that additional obstacles are not created for international trade.

2. Measures taken by individual airlines

A number of airlines have chosen to take contingency measures in response to the many uncertainties that may result from Brexit. easyJet, for example, has established a new airline, easyJet Europe, headquartered in Vienna, which will enable easyJet to continue

to operate within the EU post-Brexit under existing EU traffic rights. Meanwhile, Ryanair was granted an air operator's certificate by the CAA earlier this year to enable it to continue operating in the UK.

"Airlines will need to keep a close eye on the status of traffic rights agreements between the UK and third countries to check whether their planned operations continue to be permitted by these agreements post-Brexit. In the event of a no-deal Brexit, they will also need to consider whether their planned operations involving EU and UK destinations in the coming months are permitted by the contingency arrangements and guidance published by the EU and UK for the transitional period post-Brexit".

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