



# A RESET: THE UK – EU AVIATION RELATIONSHIP POST BREXIT

FEBRUARY 2021

1. The Trade and Cooperation Agreement with the European Union and the European Atomic Energy Community (the 'Agreement'), which will now govern the UK's relationship with the EU, heralds significant changes for aviation. The UK is no longer part of the EU single aviation market (the EU Common Aviation Area) and its aviation law will no longer derive, in large part, from EU law. However, at least in the near future, many aspects of the UK and EU aviation relationship will be preserved. The key features of the Agreement include the preservation of connectivity between the UK and the EU, albeit on more restrictive terms than previously, and the specification of important detail on airworthiness. The Agreement makes provision for future agreement concerning recognition of UK and EU certificates and approvals and for the establishment of a Specialised Committee to address aviation issues. Below, we set out the implications of the Agreement for aviation (addressed at Part 2, Heading 2 of the Agreement).

## Connectivity

2. Route schedule (Art Airtrn 2): Subject to the traffic rights (below), the EU will grant UK air carriers the right to operate on routes from points in the territory of UK, via intermediate points, to points in the territory of the EU. The UK will grant EU air carriers the reciprocal right. This means that UK air carriers can continue to operate their existing services between the UK and the EU (and within the UK) but they cannot operate services on routes within the EU.

3. Traffic rights (Art Airtrn 3): Each party shall grant the other party the right for their respective air carriers: (1) to fly across its territory without landing and to stop in its territory for non-traffic purposes;

## AUTHORS



**Akhil Shah QC**

Call Date: 1990

Silk Date: 2010



**Alexandra Whelan**

Call Date: 2016

and (2) to make stops in the other party's territory to provide scheduled and non-scheduled air transport services between any points in its own territory and any points in the other party's territory. In addition, individual EU Member States and the UK can enter into bilateral arrangements to grant each other's air carriers the right to make stops in their own territory to provide scheduled and non-scheduled all-cargo air transport services operating between points situated in their respective territories and points situated in a third country, as part of a service with origin or destination in the their own territory.

4. Each party is prohibited from unilaterally limiting the volume of traffic, capacity, frequency, regularity, routing, origin or destination of the air transport services operated in accordance with these rights, except in specified circumstances which include customs, technical, operational, air traffic management, safety, environmental or health protection reasons (in a non-discriminatory manner).

5. Code sharing (Art Airtrn 4): The Agreement provides for the continuation of code sharing and blocked-space arrangements between UK and EU air carriers provided that certain conditions are met, and provided those arrangements do not result in air carriers exercising traffic rights other than as permitted under Art Airtrn 3.

### **Licensing approvals**

6. Operating authorisations (Art Airtrn 6): EU and UK air carriers are entitled to receive operating authorisations and technical permissions provided that they met specified conditions pertaining to ownership of the airline (a UK airline will require majority ownership by UK nationals and an EU airline will require majority ownership by nationals of Member States or member states of the EEA or Switzerland) , place of business, operator certificates, compliance with aviation safety and security provisions, and compliance with

any other applicable conditions. The Agreement also provides for the transition of operation authorisations and permissions held by UK air carriers when the transition period ended. The Agreement also makes provision for the refusal, revocation, suspension or limitation of operating authorisations (Art Airtrn 8).

7. Non-discrimination (Art Airtrn 11): Each party agrees to eliminate all forms of discrimination within their respective jurisdictions which would adversely affect the fair and equal opportunity of the air carriers of the other party to complete in the exercise of the rights accorded.

### **Operations**

8. Commercial operations (Art Airtrn 13): Each party grants the other party specified rights to facilitate the continuation of air carriers' commercial operations in each other's territories. These include rights relating to air carriers' offices and facilities, ground-handling, expenses and transfer of funds and earnings, intermodal transport, and the continuation of leasing arrangements. Specific provision is made permitting wet leasing: air carriers of the UK are able to wet lease aircraft with crew from other air carriers of the UK or Member States, whilst EU air carriers can wet lease aircraft with UK crew if justified to the regulator of the Member State on the grounds of exceptional needs, seasonal capacity needs, or operational difficulties.

### **Aviation Safety**

9. Close cooperation in aviation safety is encouraged (Art Airtrn 18). Provision is made for the recognition of certificates of airworthiness, certificates of competency and licences issued or rendered valid by the UK or the EU, provided that these certificates and licences comply with

certain minimum international standards. The Airworthiness Annex (Annex AVSAF-1) makes further provision for mutual recognition of airworthiness certification for aeronautical designs and products.

10. The Agreement does not grant the UK any membership or association with the European Union Aviation Safety Agency. This means that in the UK, the CAA will determine all regulatory measures applicable to aviation and then those measures will need to be recognised by the EU (and *vice versa* for EU regulatory measures in the UK).

### **Air Carrier Liability and Consumer Protection**

11. Air carrier liability to passengers (Art Airtrns 21 and 22): The parties confirm that the Montreal Convention 1999 (which governs the liability of air carriers in relation to international carriage by air) continues to apply. The parties also agree to ensure that effective and non-discriminatory measures are taken to protect the interests of consumers in air transport, including by providing, where applicable, compensation in the case of denied boarding, and cancellation or delays. In addition, as part of the enactment into domestic law of various provisions of EU law, the UK has enacted (with modifications) EU Regulation 261/2004 (on denied boarding, cancellation and long delay), EU Regulation (EC) No. 1107/2006 (on rights of disabled persons and persons with reduced mobility when travelling by air), and the related European Court of Justice case law.

This means that consumers will continue to have rights under these laws in respect of air carriage between the UK and EU.

### **Cooperation**

12. In addition to aviation safety, the EU and the UK (and where relevant, their respective authorities) agree to cooperate in the fields of: (i) aviation security (Art Airtrn 19), and (ii) air traffic management (Art Airtrn 20).

### **Conclusion**

13. The Agreement provides continuity to the aviation industry and some certainty of regarding connectivity, regulatory approvals, carrier liability and consumer protection. It also creates a framework for future cooperation in aviation safety now that the UK is outside EASA membership.

---

## **Get in touch**

For more information, or to discuss a new enquiry, please contact our [clerking team](#).