

Brexit scenarios for business aviation

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For EBAA



Foreword

by Brandon Mitchener, CEO, EBAA

On the 23 June 2016, the UK voted to leave the European Union. This decision will result in a new relationship between the twenty-seven remaining members of the European Union and the United Kingdom.

On the road to that new relationship numerous challenges must be overcome and agreed upon. This report aims to place the challenges of the Business Aviation sector firmly at the heart of discussions between the EU and the UK. It presents the current relationship between the EU and the UK before presenting six scenarios for a future one. It maps out the key topics of interest for the business aviation industry - traffic rights, ownership and control, Value Added Tax (VAT) / Customs duty and the future relationship with the European Aviation Safety Agency (EASA) – analysing how these topics would fare under a future scenario.

Following the publication of the Joint Report of the EU and UK Brexit negotiations on 8 December 2017, and the approval of the European Council to move to phase two of negotiations, negotiators must now agree a framework

for a future relationship. It is our hope and aspiration that this phase places the views and concerns of business aviation at its core.

Business aviation contributes a total of 192,000 jobs to the European economy directly, with an additional 182,000 estimated to be generated indirectly. The sector generates EUR 42bn in Output, EUR 15bn in Gross Value Add, benefiting a number of economies across the EU. Germany, the UK, Italy and France are key locations where business aircraft operate, and it is paramount that this business activity continues uninterrupted after Brexit.

The EBAA looks forward to working with negotiators in both Brussels and London to ensure the specific expectations of the business aviation sector are appreciated, and that any future agreement is mindful of the very direct consequences that could arise for our sector and the European businesses and citizens we serve.

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Section 1

Executive summary

Following the Joint Report of the EU and UK Brexit negotiators on 8 December 2017, the aviation industry might be forgiven for issuing a collective sigh of relief that, nearly nine months after the triggering of Article 50, discussions will finally move on to the future trading relationship between the EU and the UK.

However, there is of course a huge amount of work to be done, and three dangers for the business aviation sector. The first is that, on the basis of the EU's negotiating stance that "nothing is agreed until everything is agreed" the future relationship in respect of aviation will not be subject to any form of bespoke standalone arrangement but will need to be part of an overarching free trade agreement. The second is that negotiators may come to a deal relating to the airline industry without consideration of the needs of the business aviation sector, which are not necessarily the same. Regulation of the business aviation market has traditionally followed in the slipstream of the wider aviation industry, and there is now an opportunity to raise specifically the requirements of this unique sector.

The third danger is that liberalisation of the air transport sector in the EU, which by general consensus, and ironically, is one of the EU's finest achievements and has been of considerable benefit, may be partially or even wholly rolled back.

The purpose of this report is to examine what a future regulatory environment between the EU and the UK in relation to the business aviation market may look like, in order to arm EU and UK negotiators with the background information they may require. On the basis that negotiating strategy must be informed by (to use military parlance) selection and maintenance of the aim, this report focuses on six possible "Brexit

models" for aviation, which are:

1. Maintenance of the status quo.
2. The UK joins the European Economic Area (EEA).
3. Negotiation of UK-EU bilateral aviation agreement (Swiss model).
4. The UK joins the European Common Aviation Area (ECAA).
5. No "aviation deal": reversion to previously agreed bilateral air services agreements (ASAs).
6. Negotiation of a new ASAs with EU and / or individual Member States.

This report analyses the impact of each of these models in four main areas in particular:

1. Traffic rights / market access.
2. Ownership and control.
3. VAT / Customs duties.
4. European Aviation Safety Agency (EASA).

The wider impact of EU membership is not of course limited to European markets, as the EU has negotiated various multilateral Air Transport Agreements with third countries on behalf of the UK. Upon leaving the EU, the UK will automatically cease to be party to those multilateral agreements and will have to negotiate new arrangements with those third countries. This "external dimension" is

also discussed extensively in this report.

By way of brief summary we note some of the points and conclusions reached in this report in respect of these four areas:

Traffic rights

- Operating licence holders enjoy unfettered access to intra-EU routes
- This includes 7th freedom (e.g. UK operator: Amsterdam-Lyon) and 9th freedom (e.g. UK operator: Milan-Rome) routes
- Only models 1 (status quo) and 2 (EEA) would preserve the existing regime
- Model 3 (Swiss model) – does not include 8th and 9th freedoms ("cabotage")
- Model 4 (ECAA) – 3rd and 4th freedoms available immediately, intra-EU 5th freedom available at Stage 2, and full market access only at Stage 3
- Models 5 (revert to previous ASAs) and 6 (negotiate new ASAs) – likely up to 5th freedom only

The following should also be noted:

- 1956 Paris Agreement: this covers non-scheduled routes but only for 24 Contracting Parties (including the UK) and certain restrictions apply
- Private flights largely unaffected

Ownership and control

EU liberalisation in air transport created the concept of the “Community air carrier”, which is relevant to EU business aircraft operators providing commercial air transport services i.e. chartering aircraft. Reg 1008 / 2008 requires a Community air carrier to be majority owned and effectively controlled by EU nationals.

The risk of Brexit is:

	Majority UK owned and controlled	Majority EU owned and controlled
UK operators	Risk of losing “Community air carrier” status vis-à-vis the EU.	Continuing status in the UK will depend on future UK rules.
EU operators	Risk of losing “Community air carrier” status in the EU.	Ability to fly to and within the UK will depend on future UK rules.

Only models 1 (*Status quo*), 2 (EEA), 3 (Switzerland) and 4 (ECAA – *final stage only*) apply common EU ownership and control rules.

VAT / Customs duties

Current UK Government policy is that the UK will be leaving the EU Customs Union, and will likely therefore need to establish its own standalone customs zone, aligned in some way with the EU zone. Absent an agreement, post-Brexit importation of a business aircraft through the UK will not automatically provide “free circulation” in the rest of the EU (and vice versa).

EASA

EASA is an agency of the EU under Basic Regulation 216 / 2008. There is no appetite for the UK not being in the EASA regime – it would be expensive and time-consuming to build up an alternative infrastructure, with considerable risk of divergence. Norway, Iceland, Lichtenstein and Switzerland have been granted participation under Article 66 of the Basic Regulation and are members of the Management Board without voting rights, and EASA allows for numerous “Working Relationships” (e.g. Turkey.) It is likely that the UK would follow one of these models, but would thereby lose influence over the legislative process. A specific issue for non-commercial business aircraft operations is whether or not Reg 965 / 2012 Part-NCC will continue to apply to the UK post-Brexit.

“Hard Brexit” scenario

The risks of a “no deal” (or “cliff edge”) scenario are:

- WTO rules do not provide a fall-back position for aviation.
- UK operators would lose “Community air carrier” status and therefore intra-EU traffic rights (including 7th and 9th freedoms).
- EU operators with significant UK shareholdings may fail Reg 1008 / 2008 ownership and control test.
- If the UK re-introduces a UK O&C requirement, UK operators with large EU shareholding could be at risk.
- EU aviation legislation would no longer apply to the UK (unless specifically re-enacted).
- The UK may cease to be a member of EASA.
- The UK will cease to benefit from third country aviation agreements concluded by the EU (e.g. US Open Skies Agreement).

Summary tables

The tables in Annex 9 summarise the conclusions of this report.