



BREXIT



ERA's summary and advice
to members on Brexit

BACKGROUND

We are now 20 months post referendum, and 11 months after the triggering of Article 50, with no visible developments for the aviation industry across the European region. The purpose of this ERA Brexit brochure is to highlight the likely impact of Brexit for ERA member airlines, collate the sparse information that is available and use both to identify possible impact mitigation strategies.

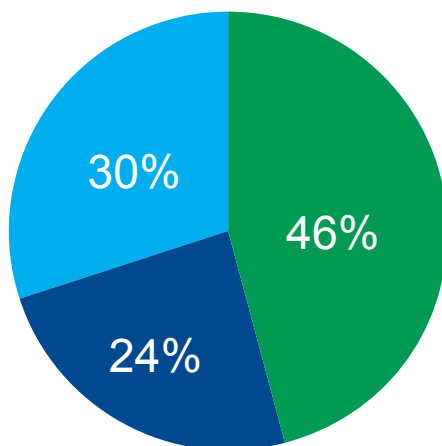
UK-licensed carriers currently operate all the freedoms afforded by Community carrier status. These include the four freedoms of the EU *acquis communautaire* – free movement of goods, people, services and capital (*acquis*, chapters 1–4) – along with the freedoms afforded under EU liberalisation and Regulation EU1008/2008, with the inclusion of market access,

pricing, capacity and code sharing respectively. This will no longer apply post Brexit. As third-country operators, UK carriers will forfeit those rights. EU Community carriers will also lose the freedoms to automatically operate in and around the UK.

Individual air service agreements (ASAs) between member states that were in existence pre-2008 were repealed by the extension of the Single Market to air transport services under the Treaty of Lisbon. Their provisions were recast under the EU1008/2008 Regulation, which also supersedes any previous member state bilaterals with third countries, and though EU1008/2008 will no longer apply to UK carriers, it will continue to apply to the remaining EU 27.

NO AGREEMENT: THE IMPACT ON ERA MEMBER AIRLINES

Every ERA member airline will be affected, as shown below.



- Directly affected
- Indirectly affected
- Combined cargo, charter & ACMI ops

Directly affected

This category applies to members with cross-border operations, totalling to 46 per cent of ERA member airlines.

Indirectly affected

24 per cent of ERA members feeding regional traffic into a hub or a national airport, connecting those passengers (or cargo) on cross-border carriers. If Community carriers are denied access to the UK market, demand on the regional carriers will decline, eventually causing European connectivity to suffer. This is in direct conflict with the EU's Aviation Strategy.

Combined cargo, charter & ACMI ops

30 per cent of ERA members providing cargo, charter and ACMI services will be affected as a result of 'cross-border' services. Those affected are both UK-based and EU-based carriers. The complications for cargo operations arise with future customs processes and whether that framework will support operators' financial objectives.

A question for ACMI operations is the legality of Community carrier wet leasing from third-country operators. The European Union's rules on government procurement have customarily been relatively non-discriminatory to an extent. Although there is preference that Community carriers wet lease from within the European Common Aviation Area (ECAA), if this is not possible in terms of finding a best fit for purpose Community carrier, then looking outside the EU is permitted. The matter is further detailed in the EU1008/2008 proposed amendment of 26/01/2018.

“Given the planning timescales to which this international business must work, there needs to be more clarity of policy, its achievability and legal certainty much sooner than seems currently to be the case.”

**Graham Baguley, Director of Operations,
Titan Airways, Brexit Briefing September 2017**



GENERAL DATA PROTECTION REGULATION (GDPR) IN AVIATION POST BREXIT

Although this is one of the least controversial areas for Brexit discussions, issues are expected ahead for aviation. It is suggested that a disruption in data flows such as Passenger Name Records (PNR) and Advance Passenger Information (API) could have a serious financial impact on airlines. A further issue for consideration is the UK personal information requirements to obtain a visa. The information requested may be lawful under the UK Investigatory Powers Act; however, it is viewed by the Court of Justice of the European Union (CJEU) as excessive and potentially in violation of EU citizens' fundamental rights. Should members of the EU travelling public agree with this assessment, it would be fair to expect a drop in UK-bound load factor.

EUROPEAN AVIATION SAFETY AGENCY (EASA)

There are over 140 pieces of EU legislation relating to aviation currently implemented in the UK related to initiatives such as the Single European Sky Air Traffic Management Research (SESAR), Single European Sky (SES) and EASA.

The EU has highlighted in its 'Internal preparatory discussions on the framework for aviation' (16/01/2018) UK exclusion from EASA post Brexit. However, no membership of EASA means no mutual recognition of safety standards within aviation and aerospace manufacturing. This would lead to increased certification costs for airlines and manufacturers both sides of the channel and be counter-productive.

AVAILABLE OPTIONS

1. European Economic Area (EEA):

- The UK could join the European Economic Area (EEA) seeing continued traffic rights, freedoms and internal market access. However, to join the EEA, the UK must accept EU air transport policy, decisions of the CJEU and free movement of people, highlighted by the UK as 'red lines'. The agreement Switzerland has come under the membership of the EEA.

2. EU/UK to an EU/US agreement (2007/2010):

- Freedoms 1–6
- 7th freedom can be agreed upon under special conditions
- No cabotage rights.

3. ECAA membership:

- In the interest of European regional aviation, ECAA membership, consisting of EU and non-EU members, would be the most straightforward arrangement for the UK. The non-EU member countries are members of the EASA board but do not have voting rights, and this is something the UK would also have to accept.

SELF-ANALYSIS PREPARATION

In the interest of due diligence, operators need to consider the following:

- What percentage of my network is intra-European?
- What is the geographic split of my customer base?
- What do I need to change now to be prepared regarding passenger and network differentials post Brexit and to remain as close to cost and revenue neutral as possible?
- How well is my operational structure understood by the decision makers?
- Do I need to re-evaluate any deals currently under discussion?
- What is my lobbying position concerning the aviation industry in terms of Brexit?
- Am I utilising my contacts within the government to voice any concerns?
- What is the nationality and residency status of my employees?
- If cross-border employment becomes an issue, what skills shortage am I likely to face?

CONCLUSION

Brexit is a European issue. A contingency planning checklist is vital to the survival of a business operating at EU and UK cross-border level and a framework must be in place to support the operation that is specific to that network design. The solutions for ERA member airlines are not 'one-size-fits-all'.

A broad objective for the industry must be to protect the established pillars of European aviation.

It is paramount that aviation integrity remains intact, irrespective of the political tactics of decision makers. The European region is one of democracy where the views of the people are respected and implemented by their representative governments and the European aviation industry must not suffer the brunt of political inadequacies.

ERA'S FUTURE ACTIONS AND ACTIVITIES

Brexit is one of the top three priorities for ERA members according to a recent survey, and one of ERA's biggest priorities. We will be supporting our members by providing timely updates and organising specific seminars and working sessions for our members to discuss the potential risks as well as helping them identify opportunities and develop contingency plans. We will continue to lobby the UK and EU authorities on our members' behalf to ensure they fully consider the broader implications of Brexit for the aviation industry, the European businesses and people and the European economy.



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