

Brexit and Aviation – Challenges and Options

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Two Challenges:

1. Economic Impact on Demand

a) UK GDP may be 2.5-3.5% lower by 2020 compared to no Brexit - will impact on UK travel demand

b) Falling value of Sterling will impact on outgoing and incoming tourism – 2016 46m UK residents fly to Europe and 19m Europeans fly back i.e. two thirds are outgoing

2. Regulatory Impact on Air Transport

Will current rules/regulations continue ?

Complex Regulatory Challenges?

1. Three Liberalisation Packages (1988,1990,1993) plus Reg. 1008/2008 in 2008

All EU airlines have access to all intra-European markets including routes outside their own state, e.g. Norwegian flies LON-Madrid, easyJet Paris-Athens (7th freedom)

» while Ryanair flies Rome-Milan (9th Freedom)

- No control on capacity
- No price controls
- Right of establishment in any other EU state
- Concept of “EU airline”

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Have created a liberalised European aviation area for EU member states

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- “EU airlines”

2. But subject to numerous **Regulations and Directives**

- **Some aviation specific** e.g. on passenger rights , airport charges ,safety....
- **Others not aviation specific** eg. competition rules .state aid, mergers etc

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3. **EU agreements with third countries** e.g. Morocco, Israel , Canada , Jordan or 2007 EU:US “open Skies”

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4. **Intra-EU agreements** e.g EASA , Single European Sky (for Air Navigation), European Investment Bank etc

Complex Regulatory Renegotiations?

- Liberalisation, market access, traffic rights, ownership
- EU Regulations and Directives
- EU aviation agreements with third countries
- Intra-EU bodies

There is no WTO optionSectorial agreement for aviation will be needed.

Four alternative market access models available!

1. Norway Model: Join the European Economic Area (AEA)

- ✓ EU states plus Norway, Iceland and Lichtenstein accept all EU aviation rules
- ✓ Provides access to single European market
- ✓ Norway must apply any new EU legislation – but has no vote
- ✓ Norway accepts the four EU freedoms – of movement of people, of capital, of goods and services
- ✓ Norway makes large payment to EU!!

2. Swiss Model: Sign separate Bilateral Agreement with EU

- ✓ Aviation one of 7 sectorial EU-Swiss agreements (since 2002)
- ✓ Swiss accepted aviation liberalisation packages, and existing Regulations and Directives
- ✓ Not obliged to accept future EU Regulations/Directives
- ✓ But also free movement of people – [rejected in recent referendum???](#)

Norway and Swiss models both require acceptance of

Jurisdiction of European Court of Justice
Free movement of labour

But would be dependent on having an UK-EU trade agreement

But UK Govt has rejected a Norwegian or Swiss style trade agreement

3. ECAA Model: Join European Common Aviation Area

- ✓ EU Commission negotiates with non-EU states
- ✓ Initially grants 3rd and 4th freedom traffic rights into EU states
- ✓ More market access rights granted progressively as states implement EU aviation Regulations e.g. on safety, passenger rights etc.

Several west Balkan states joined while others have looser form of association e.g. Morocco, Israel and Jordan.

UK already meets all requirements – but unlikely to get flying rights between EU states - would be junior partner little influence

4. Revert to Bilateral Model:

Negotiate new Bilaterals with 27+ individual states
or revert to earlier Air Services Agreements with each state

Very time consuming , messy , chaotic

Four Alternative Options for UK Negotiators

1. Follow Norway – Join European Economic Area - **NO**
2. Sign Swiss type bilateral agreement with EU - **NO**
3. Sign bilateral agreement with EU to join Common Aviation Area - **UNATTRACTIVE**
4. Sign new bilateral with each individual EU state or revert to old Bilateral - **NO**

Most likely is new special UK-EU aviation agreement

Crucial issues to resolve :

Ownership and control is KEY

Traffic rights – 3rd/4th , 5th, 7th and 9th

Future EU Directives and Regulations – on state aid,
slots, airport charges etc

EU bilaterals with 3rd countries e.g Morocco, USA, Canada

Safety (EASA membership)

Jurisdiction of ECJ

“EU airlines” must be substantially owned (over 50%) and effectively controlled by **nationals** of a member state

Ryanair , Wizz will not be when UK shares no longer count as EU

EasyJet is already 48 % EU owned

IAG airlines e.g. Aer Lingus or Iberia will not

Norwegian ??

Will corporate restructuring be enough ?

Ideal would be equivalence of UK and EU ownership

Position Paper :

Air France/KLM and Lufthansa Group Airlines

(11 May 2017)

- UK carriers should be granted access to the internal market if there is full “regulatory convergence”
- If no regulatory convergence then new UK-EU agreement to grant unlimited 3rd and 4th freedom rights
- Intra-EU rights should be reserved for EU airlines
- Cabotage rights only for EU carriers
- Uk citizens should be treated as third country i.e. as non-EU
- EASA and Eurocontrol membership of Uk should be retained

UK Government's European Union Withdrawal Bill

As of March 2019 will import into UK law all existing EU Regulations including 140 or so aviation specific regulations

A UK court may **have regard** to decisions of the European Court of Justice if it considers it appropriate to do so

An UK-EU aviation Agreement seems inevitable but will take longer than March 2019 to negotiate

Given the complex issues to be agreed on

Interim decision may be option to continue as at present on basis of “comity and reciprocity”

The 2007 US-EU “Open Skies” Agreement?

- ✓ EU and US airlines can fly between any two points .eg BA “Open Skies”flies Paris-New York and Norwegian flies Gatwick-New York
- ✓ No price or capacity controls
- ✓ But ownership restrictions on both sides.

New UK-US agreement easy and rapid because of policy convergence

W.Walsh “.....one second after Britain leaves the EU there will be an Open Skies treaty with the US”(30 Oct.2017)

UK Transport Secretary Chris Grayling “ **It is inconceivable that planes will stop flying . It is not going to happen “**

Michael O’Leary , CEO Ryanair “**We are very cautious about the amount of capacity we are allocating to the UK over the next 2-3 years...(Aug. 2016)**

“The trouble with today

**is that the future is not what it used to be
“**

Paul Valery : French Poet
1871-1945

