Subject: Internal EU27 preparatory discussions on the framework for the future relationship: "Aviation"

Origin: European Commission, Task Force for the Preparation and Conduct of the Negotiations with the United Kingdom under Article 50 TEU

Remarks: These slides are for presentational and information purposes only and were presented to the Council Working Party (Article 50) on 16 January 2018. The contents are without prejudice to discussions on the framework of the future relationship.

In December 2017, the European Council invited the Council (Art. 50) together with the Union negotiator to continue internal preparatory discussions on the scope of the future EU-UK relationship. The slides support those discussions. They are based on the April European Council guidelines which continue to apply in their entirety.

Published on the TF50 website on 17 January 2018
Internal preparatory discussions on framework for future relationship

Aviation

AD HOC WORKING PARTY ON ARTICLE 50 (Seminar mode)
16/01/2018
Key parameters informing discussion

The UK becomes a third country

- **UK red lines:**
  - Regulatory autonomy
  - End of EUCJ jurisdiction
  - End of freedom of movement of people

- **EU 27 guiding principles:**
  - Autonomy of the Union and its legal order (incl. ECJ role)
  - Integrity of the Single Market
  - No "cherry picking"
  - Level playing field
  - Consistent approach towards third country partners

The UK is leaving the Single Aviation Market

EU-UK aviation relationship to be based on 'classical' agreements
Consequences of becoming a third country in the aviation sector

- UK ceases to be part of fully liberalised EU Aviation Market

- All current EU law-based rights, obligations and benefits cease:
  - No traffic rights (end of market access)
  - Ownership & control rules - 3rd country restrictions kick-in
  - End of mutual recognition of certificates and approvals
  - End of participation in European Aviation Safety Agency

- No WTO fall-back ...
- ...but extensive EU's practice of External Aviation Policy (international agreements with third countries)
# UK withdrawal implications for aviation

<table>
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<tr>
<th>Phases/scenarios</th>
<th>Aspects to consider</th>
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<tr>
<td><strong>TRANSITION</strong></td>
<td>• Market Access</td>
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<td><strong>FUTURE</strong></td>
<td>• Regulatory matters</td>
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<td>based on EU's External Aviation Policy</td>
<td>• Level playing field</td>
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<td><strong>PREPAREDNESS</strong></td>
<td>• Enforcement &amp; Supervision</td>
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<td>• For the UK becoming a third country</td>
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<td>• In case of no deal</td>
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Transition (1/2)

If TRANSITION AGREEMENT WITH UK reached
(EUCO guidelines 15/12/2017 and negotiation Directives)

UK applies all acquis and keeps participating in the Single Market for a limited period

⇒ Status quo would be maintained:

- Traffic rights (full market access, including cabotage) (*i.e. up to 9th air freedom included*)
- UK 'assimilated' to EU Member State from Ownership & Control perspective
- Harmonised standards in safety, security, air traffic management, consumer protection...) and mutual recognition of certificates
- Level playing field secured (e.g. State Aid control)
- Single supervision & enforcement (EASA, ECJ)
Transition (2/2)

• Assimilation of UK to EU Member State but need to specify *precise perimeter*:
  
  o UK no longer part of the EU institutions and bodies
  o UK invitation to EASA meetings only if needed and on an *exceptional* basis

• **External effects** of UK becoming a third country:
  
  o UK remains bound by the obligations stemming from EU agreements (including ATA and BASA)
  o UK should no longer participate in bodies set up by those agreements
Options for the future

**Internal Market**
- Air Transport Acquis
  - Ownership & Control
  - Traffic Rights
  - Safety
  - Security
  - Air Traffic Management
- Enforcement/ECJ
- Competition acquis
- State Aid acquis
- Social Issues acquis

**External relations**
- **'Type 1' (Common Aviation Area)**
  - Up to 9th freedom
  - Application of EU Acquis
  - Alignment with ECJ interpretation of EU acquis
- **'Type 2' (Neighbourhood)**
  - 3rd and 4th freedoms, potential elements of 5th
  - Partial application of EU Acquis
  - Dispute settlement through Joint Committee and Arbitration
- **'Type 3' (Overseas)**
  - Negotiated terms
  - 3rd and 4th freedoms, potential elements of 5th
  - Maintained independence of respective regulatory and enforcement frameworks
## Future relationship (1/2)

### 'Type 3' Air Transport Agreement

<table>
<thead>
<tr>
<th>Partners</th>
<th>Content</th>
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<tr>
<td>EU/USA</td>
<td>• Market access liberalisation coupled with regulatory cooperation/convergence</td>
</tr>
<tr>
<td>EU/Canada</td>
<td>• 3rd and 4th freedoms, potential elements of 5th</td>
</tr>
<tr>
<td><strong>On-going:</strong></td>
<td>• Parties keep their own respective regulatory frameworks</td>
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<tr>
<td>EU/Qatar</td>
<td>• Arbitration if dispute not solved via dispute settlement system within Joint Committee.</td>
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<tr>
<td>EU/ASEAN</td>
<td>• Complemented by additional, domain specific agreements, (e.g. Safety) when appropriate and mutually agreed</td>
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## Future Aviation Safety relationship (2/2)

### Future Aviation Safety relationship

| BASA Bilateral Aviation Safety Agreement | • Between the EU and countries with large aeronautical sectors  
• **Separate safety certification systems**  
• **If reciprocal trust, simplified certification processes** of products from other side (but no mutual recognition)  
• UK to build up its **authority capacity**  
• UK membership of EASA is not possible |
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<td><strong>Working Arrangements</strong></td>
<td>• <strong>Administrative arrangements</strong> between safety authorities (<strong>EASA &amp; UK Civil Aviation Authority</strong>) to facilitate acceptance of EU &amp; UK products</td>
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Future - Summary

- EU-UK Air Transport Agreement (ATA) and Aviation Safety Agreement (BASA) to be negotiated

- Regulatory convergence to fall short of mutual recognition

- Degree of market access to be conditioned on regulatory convergence/alignment

- EU27 interest to shape negotiating position, taking into account the UK's unique 'proximity/market size' mix (incl. level playing field considerations).
Preparedness

- **Preparedness** to end UK's EU membership:
  - Need to raise public/stakeholders' **awareness** of need to anticipate and **adjust** (e.g.: notices)
  - Possible adaptations to EU **law** if needed

+ **additional preparedness** to risk of **no deal**

**Main issues:**
- **No traffic rights** (end of market access)
- **Ownership & control rules** - 3rd country restrictions kick-in
- **End of mutual recognition** of certificates and approvals

→ **If no deal, EU-wide contingency measures** to ensure basic connectivity:
  - Bare-bones EU-UK agreement (traffic rights & safety), and/or
  - (Parallel) EU (UK) unilateral measures
Summary

- UK applies EU acquis and is part of Single Market
- UK bound by obligations stemming from External Aviation agreements
- UK out of EU Institutions and bodies

Transition

Future

- EU-UK ATA and BASA to be negotiated
- Degree of market access to be conditioned on regulatory convergence/alignment
- EU27 interest to shape negotiating position, taking into account UK's unique proximity/market size

Preparedness

- Stakeholders' awareness and adjustment
- Adaptations of EU law if needed
  + if no deal: EU-wide contingency measures to ensure basic connectivity

Stakeholders’ awareness and adjustment
Adaptations of EU law if needed
+ if no deal: EU-wide contingency measures to ensure basic connectivity

Preparedness