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The UK / EU Trade Deal: Aviation

On 22 December 2020, and ahead of the end of the transition period on 30 December 2020, we published a [note on the consequences of Brexit for the aviation industry](#). At this point, discussions were still ongoing regarding a trade deal between the United Kingdom (UK) and the European Union (EU).

On 24 December 2020, it was announced that the UK and the EU had reached agreement in principle on a Trade and Cooperation Agreement (TCA) setting out their future relationship. This update summarises the key details of the TCA relevant to the aviation industry. It is supplemental in nature to our original note unless otherwise indicated.

Format of the TCA

Aviation is covered in Part 2 of the TCA, with further detail set out in an Annex concerning airworthiness. There is a framework for agreeing further Annexes to the TCA that will facilitate the recognition of UK and EU certificates, approvals and licences. Other potential Annexes that may be agreed between the UK and EU in the future include the monitoring of maintenance organisations, personnel licences and training, operation of aircraft, and air traffic management.

The TCA provides for a Specialised Committee on Air Transport to be established to address aviation matters. This committee will assist the Partnership Council, the main governing body of the TCA and a forum for discussion between the UK and the EU.

Whilst the UK and EU undertake the formal ratification process in respect of the TCA, the TCA started applying on a provisional basis from 23:00 GMT on 31 December 2020.

Licensing and air services

Traffic rights

Prior to the agreement of the TCA, it was not clear the basis on which flights between the UK and the EU could continue.

The TCA grants UK and EU carriers first to fourth freedom rights, thereby allowing them to operate routes between the UK and EU Member States, to overfly the UK/EU Member States and make technical stops where required.

The TCA also provides that the UK and EU Member States may enter into bilateral arrangements concerning scheduled and non-scheduled all cargo fifth freedom services – here, the right for a UK airline to fly between an EU Member State and a third country where that flight either originated or will terminate in the UK.

Cabotage rights are not granted by the TCA, meaning that UK airlines will not be able to operate intra-EU routes, and EU airlines cannot operate domestic UK routes. This vindicates the decision by some airlines to set up UK or EU subsidiaries to continue these services.

The granting of traffic rights by the TCA as described above enables UK airlines to enter into codesharing agreements with EU airlines, and vice-versa, or with third country airlines provided that the operating airline has the necessary traffic rights.

Airline ownership and control

The TCA has also clarified the issue of airline ownership and control by providing that:

1. UK airlines that were majority owned and effectively controlled by UK and/or EU/EEA¹ /EFTA² nationals as at 31 December 2020 may continue to operate services between the UK and the EU by accessing the traffic rights granted by the TCA.

¹ European Economic Area.

² European Free Trade Association.

2. Any new UK airline established after 31 December 2020 would need to be majority owned and effectively controlled by UK nationals to access the traffic rights granted by the TCA.
3. EU airlines will need to comply with EU law – currently set out in Regulation (EC) 1008/2008 – and ensure that they are majority owned and effectively controlled by EU/EEA/EFTA nationals to access the traffic rights granted by the TCA.

There is also a possibility of further liberalisation of the ownership and control of UK/EU air carriers in the future. The TCA provides that the Specialised Committee on Air Transport will examine options for the reciprocal liberalisation of the ownership and control of UK/EU air carriers within 12 months of entry into force of the TCA, and thereafter within 12 months of receipt of a request to do so from either the UK or the EU.

Wet leasing

The TCA provides for greater operational flexibility for UK and EU airlines than envisaged where the UK was considered to be a third country for the purposes of Regulation (EC) 1008/2008.

Under the TCA, and subject to the relevant regulatory requirements, UK airlines may wet lease from UK and/or EU airlines without restriction to operate routes between the UK and the EU as covered by the TCA.

Where EU airlines wish to wet lease from UK airlines, they must comply with the relevant regulatory requirements and satisfy the relevant regulator that the wet leasing from a UK airline is justified on the basis of exceptional needs, seasonal capacity needs or operational difficulties.

Cooperation between the UK and the EU in aviation matters

Aviation safety

The TCA sets out a framework for future cooperation between the UK and EU on aviation safety. As referred to above, an airworthiness Annex has been agreed and there is also a process for agreeing further Annexes that will facilitate recognition of UK and EU certificates, approvals and licences.

The airworthiness Annex provides for mutual recognition of the UK and EU's aeronautical products and designs, as issued by the UK Civil Aviation Authority (CAA) and the European Union Aviation

Safety Agency (EASA) for use in the EU. The TCA does not change the fact that the UK has left the membership of EASA, resulting in the CAA having an increased role post-Brexit in design and certification. The airworthiness Annex foresees the possibility of the EU extending its scope of automatic recognition of UK products and designs once it gains confidence in the UK's capability for overseeing design certification.

Other areas

The TCA reflects the desire of the UK and the EU to cooperate in the future in areas such as consumer protection, aviation security and air traffic management (ATM).

For consumer protection, the effect is that it is likely the UK will follow the EU's approach on aspects such as passenger rights relating to denied boarding, flight cancellations and delays (see Regulation (EC) 261/2004).

The future cooperation on the development of aviation security measures includes the recognition of certain security requirements, to assist with minimising the administrative burden for regulators and operators.

A high-level arrangement to cooperate on ATM issues will ensure flight efficiency and interoperability between UK and EU airspace. UK industry will also be able to participate in research projects such as the Single European Sky ATM Research (SESAR) project.

Conclusion

The TCA provides much-awaited confirmation as to traffic rights for both UK and EU carriers. It also sets out a more liberal view of airline ownership and control in a post-Brexit world, with the potential for further liberalisation in this area in the future, plus greater operational flexibility for UK airlines with respect to wet leasing. The CAA's increased role in aviation safety, including in design and certification, following the UK's departure from EASA membership is confirmed, along with details of the future cooperation between the UK and the EU in areas such as consumer protection, aviation security and ATM. Such detail is extremely helpful for businesses operating within the UK aviation industry post-Brexit.

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