

“No Deal” Fear-checker

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“Planes won’t fly”

The claim

As the Chancellor Philip Hammond [acknowledged](#) last year, “it is theoretically conceivable that in a no-deal scenario there will be no air traffic moving between the UK and the European Union on 29 March 2019”. It is also possible that UK airlines will be unable to fly to or from destinations outside the EU, including the US, where UK rights depend on deals negotiated by the EU, and that even foreign planes would be unable to fly to the EU if they use British-made parts.

The problem

[WTO rules](#) do not cover the most important aspect of aviation, namely air traffic rights. Instead, countries negotiate separate ‘[air services agreements](#)’, or ‘air transport agreements’. These cover some or all of the nine so-called ‘[freedoms of the air](#)’, which range from flying over another country without landing (the first freedom), all the way to operating internal flights within a foreign country (the ninth freedom).

In the case of the UK and EU, these rights currently only exist under the framework of the EU’s Single Aviation Market. These rights have been extended to a number of non-EU countries who are also members of the European Common Aviation Area ([ECAA](#)). But if the UK does leave the EU without any alternative arrangements, it would drop out of the ECAA too.

This means the UK would no longer meet EU rules in the field of [air transport](#). In particular:

- ➔ Most UK airlines would lose their EU operating licences, either on the basis that they no longer have their principal place of business within the EU, or they are no longer majority-owned and controlled by nationals of EU member states;
- ➔ even where they have operating licences granted by the UK’s Civil Aviation Authority (CAA), these would no longer be recognised as valid by the EU;
- ➔ UK airlines would also lose their air traffic rights under agreements made by the EU with third countries, such as Switzerland, the US and Canada.

What’s more, the UK would no longer be part of the European Aviation Safety Agency ([EASA](#)) or meet the EU rules on [aviation safety](#). This means that certificates issued by the EASA to persons or organisations in the UK would no longer be valid and the EU would no longer recognise certificates issued by the ‘competent authorities’ of the UK. Airlines would have to apply for new authorisations from the EASA, covering everything from certificates of airworthiness for British-made parts, to pilot licences and accreditation of cabin crew.

In summary, if there are no alternative arrangements in place, it would be as bad as the worst fears suggest: planes would not be allowed to fly. So what can be done to avert this?

The potential solutions

One idea to dismiss quickly is that the UK could simply fall back on air transport agreements made before the EU took over. These old agreements would typically provide far fewer rights than the current ones, even if they did still have any legal force. Fortunately, there are two more credible solutions.

The potential solutions (continued)

The off-the-shelf option would be for the UK to retain access to the EU's Single Aviation Market on current terms, by immediately rejoining the ECAA as an independent member state, and remaining part of the EASA. This should be relatively straightforward. The ECAA agreement already includes countries such as Norway and Iceland, as well as a number in the Balkans, and the UK would of course already be fully compliant with the rules of both the ECAA and EASA at the time of the departure from the EU. This option should also make it easier to roll over air services agreements that the EU has with third countries such as the US – as long as they agree to do so.

This option would face the same objections as those facing any Norway-style arrangement: the UK would have to continue to accept EU rules (in this case, those covering aviation), remain subject to the jurisdiction of the ECJ in applying these rules, and continue to contribute to the budgets of the relevant EU organisations. This would require some fudging, at least, of the government's 'red lines', although this may be acceptable in a limited number of relatively technical and uncontroversial areas (especially if the alternative is that planes are grounded).

The other solution would be to negotiate a bespoke arrangement, effectively a new free trade agreement (FTA) for aviation only. The pros and cons here are similar to those applying to a Canada-style FTA in other areas: this option would allow the UK more flexibility to set its own regulations governing aviation and to negotiate better terms for air service agreements with third countries, but could mean reduced access to the EU market. It would also take longer to agree and this may not be easy in a 'no deal' scenario, especially if the EU took the hard line that it will not even start to negotiate until the UK actually becomes a third country. **Whichever solution is chosen, though, there are three reasons for optimism.**

First, the UK is a world leader in aviation, which means it has plenty of leverage. The [UK market](#) itself is the largest in the EU, and the third largest globally, after only the US and China. Indeed, the CAA already provides much of the technical expertise required to run the EASA. It should therefore be relatively easy to get other countries to recognise its competency. Indeed, the CAA is already well advanced in its [planning](#) for Brexit, including the possibility of 'no deal', when the UK would continue to recognise approvals by the EASA with the (entirely reasonable) expectation that the EU would reciprocate.

Second, the mutual interests are strong. Grounding UK airlines would be hugely damaging for the EU economy, particularly in areas like tourism. And, of course, foreign airlines presumably want to continue to fly to and from the UK as well. Since these agreements are reciprocal, it is unlikely that other countries would deny the UK the most important rights when they would then almost certainly lose them too.

Third, even if this is left to the last moment, there are several quick fixes. In particular, the UK and EU (or a third country like the US) could agree at least a temporary extension of the current arrangements by something as simple as a memorandum of understanding. The key question for the EU is whether the necessity of keeping planes flying outweighs any threats to the integrity of the single market or the risks of giving the UK special treatment - the answer must surely be 'yes'.

In the meantime, airlines could minimise uncertainty ahead of March 2019 by including 'Brexit clauses' to reassure customers that their money will be refunded in the unlikely event that planes are grounded. It is worth remembering that some airlines were arguing that this problem had to be resolved as early as March this year, because they sell tickets up to 12 months in advance. That deadline has already been and gone and yet business has continued as usual.

Conclusion

The fear that 'planes won't fly' is a good example of a scenario that is conceivable but still very unlikely to happen. As the Chancellor himself went on to say when talking of the theoretical risk that air traffic will cease: "I don't think anybody seriously believes that that is where we will get to." Nonetheless, the UK government, and others, will need to ensure that new arrangements are in place for March 2019, because there is no fall back under WTO rules.