

# The future of open skies post-Brexit

**Given by Andrew Haines, Chief Executive of the CAA**

## **Introduction**

Thank you very much for inviting me to speak here today.

I have the unenviable task of trying to answer what a post-Brexit world might look like.

In the UK at least, since the referendum result in June, only Trump has trumped Brexit in leading the news agenda day after day after day. Whether it's the impact on European economies, the debate on how Article 50 will be invoked, the contagion effect, or speculation on exactly what kind of relationship the UK will have with the EU.

Everyone has a view on Brexit. The UK government has been clear that it will not provide a running commentary and it is also pretty obvious that there is no unanimity thus far either amongst European states and institutions or within UK political circles on the best tactics to deploy.

But, we know a lot is at stake – you hardly need me to tell you that aviation is international by its nature and the UK has traditionally been at the forefront of what is a truly global industry.

We also know that the UK Government understands the important role of aviation - highlighting the sector as “crucial” to the UK economy and saying it wants to work with industry to ensure the sector remains “prosperous and open for business” post-Brexit.

A number of fundamental questions about the future remain though:

- Will UK airlines still enjoy the same access rights they currently have?
- Will the UK still be an active member of EASA?
- Will passengers and local communities still get the same protection they have now?

I suspect that for emphatic answers to these questions, we will have to wait for the outcome of what may be long and protracted negotiations.

As the regulator, it will not be the CAA that decides the outcome of those negotiations or set the terms for what the future looks like, but we are engaging and influencing, so the interests of consumers are considered as part of the decision-making process.

We take an approach that focuses on the outcomes we believe are key.

So, we've developed 4 key principles that we think should be applied when considering the future of aviation regulation post-Brexit.

### **Principle one:**

#### **The UK must continue to punch above its weight in the aviation sector**

There is no doubt that the UK is a major player in international aviation.

- 1) London remains the world's best connected attractive destination.
- 2) The UK has the second largest aerospace sector in the world, generating a turnover of £65bn a year and supplying markets across the world.
- 3) We have the world's third best developed aviation network behind the USA and China.

The Government recently confirmed Heathrow as its preferred location for a new runway. We are of course some way off that runway being available for use and there are hurdles ahead. We have a key role to play as the economic regulator of Heathrow and I'd be happy to say more on that at some other time.

But the successful delivery of the new runway will enhance the UK's standing in the global market bringing much-needed additional capacity to the UK – helping address

the risk of growing disruption and higher fares. It will open up the potential for new routes for industry - providing greater choice for consumers.

Other airports, in London and beyond continue to see substantial growth and also continue to establish new routes to emerging markets.

It's therefore essential that whatever the outcome of the Government's negotiations, UK aviation can continue to thrive and the sector can punch its weight and that is one reason why the government has committed to developing a new Aviation Strategy during 2017.

### **Principle two:**

#### **The UK must be able to continue to influence beyond its borders to ensure the safety and security of UK citizens**

Responsibility for the safety and security of UK citizens cannot end at the UK's borders.

- 83% of UK consumers are travelling to overseas destinations.
- Nearly half of all flights in UK airspace are by overseas registered airlines.

So to protect our consumers and citizens we should be interested in what happens beyond our borders and influential in impact.

Take security for example: although the UK can already apply more stringent measures to EU security regulations, if the European baseline for security standards fell for any reason, this would affect millions of UK consumers travelling from overseas airports. At the risk of sounding arrogant the UK has some of the best intelligence services in the World and we have built world class aviation security systems.

Let's just imagine the UK was to withdraw from EASA altogether and adopt our own framework – *although I'm yet to meet anyone of substance that supports that approach*. It is of course theoretically possible and let's just suppose we established the best aviation safety regimes in the world, It would mean a major increase in UK regulatory regime, potentially represent a major barrier to track increased costs and yet we would also risk becoming a backwater in terms of wider impact.

In my view, there would need to be a very strong case for the UK to step away from the EASA system entirely. We know that EASA would miss us – the UK is heavily engaged with EASA and we know Patrick Ky, the Executive Director at EASA, sees us as one of his most valued partners.

One of my very first conversations on the morning after the referendum was with Patrick Ky...

So the vast majority of UK consumers will interact with a key part of aviation that is regulated outside of the UK – each and every time they fly.

It is said that the UK and France provide  $\frac{2}{3}$  of all the rule making input on European Safety Regulation and together we undertake close to 90% of EASA's outsourced activities.

Of course we have other avenues to influence aviation safety – we can continue to play a very active role in ICAO – indeed strengthening but it is not a substitute for European engagement.

There are other models for non EU states participating in EASA but these relate to relatively small states who have had to accept full free movement and yet still accept restrictions on influence and voting rights. Now, voting is not everything but it would be naïve not to recognise that there are issues where safety and politics overlap.

Can the UK use its aviation leverage to negotiate a better deal than this? One would hope so, but who knows.

We could of course chose to be followers rather than shapers, not fully part of the EASA system but essentially replicating it and adopting subsequent changes where they align with national interest. This has some attractions but if it comes at the expense of real international influence then it would be at odds with the fundamental principle.

**Principle three:****There should be fewer barriers to competition, not more**

As you know, the creation of the European Common Aviation Area and the liberalisation of air carrier licensing, market access and fares fundamentally changed the aviation industry.

UK consumers have gained massively from this.

The number of destinations served by UK airports has doubled since 2000, with consumers outside of the South East being the main beneficiaries.

This increased choice for consumers has led to reduced fares – average leisure fares from the UK to European destinations are around a third lower than in 1993. For business fares the impact has been even greater.

It's a model that other regions across the world, such as South East Asia, are trying to emulate. Indeed where the EU has been least successful in introducing competition and liberalisation, such as in the provision of air traffic services – it has arguably delivered least for consumers in terms of efficiency, capacity and technological innovation.

So one of the Government's tasks will be considering how airlines now operate within the EU, their ownership structures and their networks, to ensure there is a competitive market that continues to work for consumers.

**Access**

This includes ensuring UK airlines, airports and manufacturers should have at least as good access to markets, labour and capital as they have today.

Wide and liberal air traffic right agreements are fundamental to this outcome and are a core tenet of the existing European regulatory framework.

At the moment, EU majority owned and controlled airlines have the right to establish themselves in any EU Member State and operate freely within the borders of the EU.

If the UK is no longer a member of the EU, then these rights can't be assumed to continue – especially the rights to operate domestic routes within a third country, and

the rights to fly between two third countries. A major part of some airlines' business models.

Preserving the status quo may not be possible, but what should we be considering?

On a sliding scale of liberalisation this would run from:

- Staying in the European Common Aviation Area (i.e. UK airline treated as if part of the EU, with full access – in many ways highly desirable for both sides in this negotiation). But Aviation is likely to be caught in the crossfire- so on what conditions would this be possible and will they be potentially acceptable?
- A UK “Open Skies” deal with Europe? (i.e. UK treated as a third country, like the USA)
- Negotiating a single bilateral agreement with the EU as a whole if Member States give the EU a mandate to negotiate on their behalf. Or the UK could still negotiate bilateral agreements with individual member states; for instance, if member states wish to or find the EU-led process too slow. (Any state that wanted to go down that route would have to notify the EU and negotiate in a way that is compatible with EU law, but this is a possible scenario.)
- Enhanced ‘UK open skies deal’ – what are the prospects of the UK securing better deals because of its inherent strengths than pan European deals have secured.

There are clearly significant implications for airlines such as easyJet who have been open about their evaluation of options. My suspicion is that there will be no shortage of countries that will be willing to welcome new European AOC and the profound regional economic benefits that have emerged from aviation liberalisation in Europe mean that talk of significant retrenchment is very much overstated and Brexit offers potential opportunities in other areas.

#### What about Ownership rules?

Airlines are the most international of companies yet are subject to some of the most antiquated rules on ownership and control. Change of this could bring much needed consolidation to the sector.

In a post Brexit environment, relaxing the ownership arrangements UK registered airlines currently have to comply could present an opportunity to attract new equity from non-EU investors, which could potentially improve choice and competitiveness for consumers. Leaving aside how Europe responds on its treatment of UK ownership.

### EU slot rules

You will find few wild enthusiasts of the current EU slots regime. A new slot regime offers a number of potential opportunities. The EU slot rules, which require 50% of new slots to be allocated to new competitors at a particular airport, didn't foresee major new capacity being built (e.g. new runways) at a highly-congested airport like Heathrow and the financing challenge of restricting such a large proportion of capacity to new entrants. And the nature of these regulations act in some ways as a barrier to strong competition to big incumbent encouraging a distribution of access across many players who many not have the scale or appetite to present real competition to the big home carriers.

If the UK were able to establish a UK based slot regime that would permit auctioning of new slots by either the airport operator or the Government, this could offer new solutions to the challenge of financing new airport development.

This could even boost regional connectivity too – with the potential for slots to be bought by regions and safeguarded for regional services.

Could we address the “use-it-or-lose-it” rules or sanctions for misuse of a slot? Something the European Commission has wanted to do, but has so far been unable to.

And could we bring greater legal certainty to the trading of slots on the secondary market?

### **Principle four:**

**Our final principle is about the protections established by the EU that UK citizens benefit from.**

We are clear that both consumers and the communities affected by aviation should continue to enjoy equivalent levels of protection as they currently do.

## Consumers

There is a wide range of protection in place for consumers and the EU has driven this forward in recent years – helping to make sure consumers receive fair treatment when travelling in the EU and can access redress when things go wrong.

EC261 – the regulation that means passengers are legally entitled to assistance and compensation for serious disruption has been controversial with airlines – many of whom believe the redress passengers can get is often disproportionate to the detriment they've suffered.

But the principle – that passengers are looked after when their flight is delayed or cancelled and they can get redress when that disruption is the airline's fault – is something we believe should be retained.

This is also the case for other consumer-focused regulations – such as passengers with mobility needs.

## Environment

The EU has also established measures to help tackle aviation's environmental impact – such as the environmental noise regulations and air quality standards - helping to protect the communities affected by aviation.

But there are other measures already in UK law, and the Government has already spoken of protections it wants to see in place as conditions of developing the new runway at Heathrow – such as restrictions on night flying and a much improved compensation package for local communities.

The UK will remain active in ensuring Aviation meets the emissions obligations that come from the Global Market Based Measure. So we believe, assuming that the UK exiting the EU is an opportunity to relax consumer and environmental protection measures would be wrong from both a tactical and strategic perspective.

## Conclusion

- Aviation is a critical sector for the UK in negotiating a good Brexit
- But it is also one where EU interests ought not to be fundamentally misaligned with those of the UK



- How this will play out for certain, we cannot possibly know. This is essentially a political negotiation
- But we believe that holding fast to these four principles:
  - 1) Punching our weight
  - 2) Influencing beyond our borders
  - 3) Facilitating greater competition
  - 4) Guaranteeing protection for consumers and communitiescan serve as important anchors in potentially stormy seas ahead.

Thank you for your time today.