



Brexit and aviation

What is the best scenario for the environment?

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Executive Summary

Since the creation of the European Single Aviation Market, the UK and its airlines have greatly benefited for decades from full access to the European market. This access will cease to exist on 29 March 2019 in the absence of an agreement. Given the current state of Brexit negotiations, the possibility of not reaching a future deal on the aviation relationship would greatly harm the industry, consumers and, particularly, the environment.

While the UK has expressed its desire to retain full access to the European Single Aviation Market for its airlines after Brexit, it has failed to define how it wants to attain this. As with other areas of the EU single market, full access is conditional upon accepting the whole body of EU law and recognising Court of Justice of the European Union (CJEU) oversight. In order to avoid environmental dumping and ensure fair competition, the UK must abide by all current and future regulations on safety and security, state aid and climate protection.

With the aim to ensure complete environmental protection in the aviation sector after Brexit, this report proposes four key recommendations if the UK wishes to retain the same level of access to the European aviation market which it currently enjoys:

1. Upon Brexit the UK must re-join the European Common Aviation Area (ECAA). This will allow British airlines to continue enjoying all freedoms of the air. Also, current and future legislation on the environment, market access, State aid control, safety and consumer rights will be extended to the UK.
2. The UK must remain in the EU aviation Emissions Trading System (ETS). This would ensure a smooth transition and continuity on tackling climate change.
3. EU State aid rules must continue to apply to the UK. This would prevent the UK from having free leeway to invest in airport infrastructure and operators to the detriment of the environment.
4. The UK must become a non-voting, fee paying member of the European Aviation Safety Agency (EASA), as this would guarantee adherence to aviation safety standards and mutual recognition.

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1. Introduction

The creation of the Single Aviation Market has been one of the most high profile examples of the European liberalisation and integration in recent decades. The UK has been influential in shaping this development and its airlines, particularly British Airways and Easyjet, have benefitted from full access to the European market. **With the UK's decision to leave the EU, this access will cease legally on 29 March 2019.** Given the state of the negotiations, a hard Brexit will mean that UK planes cannot land within the EU and vice versa, passengers are stranded, cargo cannot be transported. The potential consequences for the industry, businesses and passengers would be disastrous if no agreement on the future relationship in aviation can be found before that date.

The UK's stated objective after Brexit is to retain full access to the European Single Aviation Market for its airlines.¹ At the same time, the UK government could push for greater liberalisation of its market and state involvement, e.g. through State aid to attract aviation traffic at the detriment of the environment. In fact, the UK government has already published a pro-growth strategy for UK airports without any environmental constraints.² This is especially concerning as Heathrow is a major European airport. Competitive advantages it could get from not applying, for example, State aid rules or the Emission Trading System (ETS) **must be avoided. As with other areas of the single market, the UK's continued access to the EU Single Aviation Market will be conditional upon it accepting the entire body of EU law (*acquis communautaire*).** In order to avoid environmental dumping and ensure fair competition, if it wishes full access to the EU single aviation market, the UK must abide by all current and future regulations, for example, on safety and security, State aid and climate protection.

The following briefing sets out T&E's suggestions as regards environmental protection to the various options open to the future UK/EU aviation relationship. The ultimate ambition of any agreement between the EU and UK should depend in all areas on the role and jurisdiction of the Court of Justice of the European Union (CJEU). Section 2 will look at the future relationship between the EU and UK on aviation. Section 3 addresses the issue of tackling climate change through the ETS. Section 4 lays down solutions **for the UK's future compliance with State aid rules. Finally, section 5 examines the UK's regulatory relationship with the European Aviation Safety Agency (EASA) as well as its international collaboration with the International Civil Aviation Organization (ICAO).**

2. What kind of future relationship?

2.1. Joining the European Common Aviation Area (ECAA)

Currently the UK has access to one of the world's most liberalised aviation markets - the ECAA³ - through its membership of the EU. Operating under the ECAA allows airlines to enjoy all nine freedoms of the air.⁴ Much of ECAA's safety and security regulations are overseen by the European Aviation Safety Agency (EASA).⁵ Its rights and obligations are enforced by the Court of Justice of the European Union (CJEU).⁶ The agreement regulating the ECAA is comprehensive and covers market access, safety, security, air traffic management, the environment, social issues, consumer rights, State aid and the economic regulation of airports.⁷ The EU standards included in that agreement are extended to non-EU parties to the ECAA agreement. The UK can re-join as a non-EU member state⁸ if it (1) accepts EU aviation laws and (2) establishes a framework of close economic cooperation with the EU, which could take the form of an Association Agreement (Art 32 ECAA Agreement).⁹ The UK joining ECAA is thus the best option for the future EU-UK aviation relationship (Table 1) not only for the environment, but for safety, business and consumers. Current and future European aviation standards - including environmental - continue to apply and are not undermined through Brexit.

2.2. Negotiating an Air Services Agreement (ASA)

Another option is negotiating an ASA between the UK and the EU. The ambition of this agreement depends on the UK position regarding the CJEU's jurisdiction. **There are two possibilities. First, a comprehensive agreement** akin to the EU-Switzerland Agreement on Air Transport¹⁰, which would require CJEU oversight. However, should any form of CJEU involvement be impossible for the UK to accept, UK market access into the EU would as a result be limited. This leaves the second possibility. A less ambitious ASA with restricted freedoms of the air, such as the EU-US Open Skies or EU-Morocco agreements (Table 1).¹¹ The problem with these ASAs is that regulatory convergence clauses such as environmental protection provisions e.g. noise and emissions are rather superficial as well as difficult to implement and enforce.¹² European standards are thus not as easily expanded to new EU partners.¹³ The EU must therefore include in any ASA provisions making access to the aviation market conditional upon application of all existing and future EU environmental legislation.

Moreover, fuel tax exemptions clauses, must not be included in any agreement with the UK as they are contrary to European climate objectives.¹⁴ If a fuel tax exemption was part of a future agreement, this would undermine the Energy Taxation Directive. This Directive allows Member States to tax fuel bilaterally amongst each other. The EU must insist on the unqualified right to tax fuel on EU flights, including flights within the EU operated by UK carriers, in any future deal with the UK. Any future agreement should also not prohibit the taxing of fuel on flights between the UK and EU.¹⁵ Finally, a fair competition clause must be included to avoid governments giving support to airlines (e.g. State aid) and create a competitive advantage for UK airlines.¹⁶

Table 1:

Options for a future EU-UK relationship in aviation

✈️ Yes/included 🛫 Restricted/conditioned ✖️ Excluded

	Option 1: ECAA	Option 2: Comprehensive ASA (Switzerland model)	Option 3: Comprehensive Agreement (Morocco model)	Option 4: Limited ASA (Open Skies)
Freemovements of the Air	1. Flying over a foreign country without landing	✈️	✈️	✈️
	2. Refuel or carry out maintenance in a foreign country without embarking or disembarking passengers or cargo	✈️	✈️	✈️
	3. Fly from the home country and land in a foreign country	✈️	✈️	✈️
	4. Fly from a foreign country and land in the home country	✈️	✈️	✈️
	5. Fly from the home country to a foreign country, stopping in another foreign country on the way	✈️	✈️	🛫
	6. Fly from a foreign country to another foreign country, stopping in the home country on the way	✈️	✈️	✈️
	7. Fly from a foreign country to another foreign country, without stopping in the home country	✈️	✈️	✖️
	8. Fly from the home country to a foreign country, then on to another destination within the same foreign country	✈️	✈️	✖️
	9. Fly internally within a foreign country	✈️	✖️	✖️
Requirements	Negotiations	✈️	✈️	✈️
	Acceptance of EU laws	✈️	✈️	✖️
	Unanimity	✈️	✈️	✈️
CJEU oversight	✈️	✈️	✖️	✖️
Issues covered	Market access	✈️	✈️	🛫
	Air traffic management	✈️	✈️	✖️
	Aviation safety	✈️	✈️	✈️
	Environment	✈️	✈️	✈️
	Social aspects	✈️	✈️	🛫
	Consumer	✈️	✈️	🛫
	Economic regulation of airports	✈️	✈️	✖️
	State aid	✈️	✈️	🛫

Case Study: EU- US Open Skies: What happens to the UK?

This agreement allows any EU airline to fly to the US and vice versa. Once the UK leaves the EU, without an agreement, its airlines lose all legal rights to fly to the US and vice versa. If the UK joins ECAA, it can join the Open Skies agreement as did Iceland and Norway. The case of Norwegian Airlines shows though that moving from agreement to getting actual permission to land on US territory can drag on for years. Should the UK not want to join ECAA, it has to negotiate a separate bilateral deal with the US. This will not only be time consuming, but could also mean a more restricted access than ECAA membership would offer.

3. Tackling climate change through the Emission Trading System (ETS)

3.1. Remaining in the ETS

The EU ETS is an essential tool to tackle climate change **that covers almost half of Europe's emissions in a carbon pricing mechanism.** Were the UK to quit this scheme when leaving the EU, its major emitters including airlines would no longer be required to purchase allowances. Though the allowance price is currently low, around €7, the price is expected to increase due to recently agreed reforms. An exemption from this purchasing requirement would amount to a distortion of competition.

The ideal scenario is for the UK to remain in the EU ETS like EFTA (European Free Trade Association) **member Norway, though EFTA members cannot influence the ETS' future design and management.** Remaining within the ETS would allow for a smooth post- Brexit transition. More importantly it would also mean that the EU and the UK would still be on the right trajectory for meeting the decarbonisation targets agreed in the Paris Climate Accord.

3.2. Concluding a linking agreement

Alternatively, the UK could establish its own national emissions trading system and link it to the EU's through a linking agreement¹⁷, similarly to what Switzerland has done. However this linking agreement would need to be negotiated prior to the UK departure from EU ETS, with the beginning of the EU ETS 4th trading period in 2021 perhaps being the appropriate moment.

Linking two systems involves potentially long negotiations to reach an agreement and raises concerns regarding environmental integrity.¹⁸ This negotiating period would create an unnecessary gap detrimental to the environment, thereby possibly undermining the Paris Agreement.

3.3. Options for a hard Brexit

In the case of a hard Brexit, there are two legal options which the EU can rely on to minimise the negative impact. The EU has already adopted safeguard measures¹⁹ for the event the UK leaves the EU ETS. An amendment of the EU ETS Registry Regulation was recently presented by the Commission and agreed by the Council and the Parliament.²⁰ **It aims at ensuring the 'environmental integrity of the EU ETS' by marking and restricting the use of allowances issued by the UK as of 1 January 2018.**²¹ This would prevent British companies from abruptly selling these allowances and consequently further contribute to an oversupply of the market, leading to a fall in the EU allowance price.²²

Secondly, the EU could unilaterally retain flights to and from the UK in its ETS, similar to how it addressed flights to and from Switzerland prior to concluding the recent linking agreement. In the Swiss case, this policy option was endorsed by the CJEU. UK operators flying to and from the EU would be required to report to one of the remaining EU Member States. Under this scenario, the UK would lose revenue which it would gain from the auctioning of allowances.²³

3.4. Relying on international instruments

The final option is that the UK may only be subject to CORSIA - a global market based measure established by International Civil Aviation Organization (ICAO) to tackle a portion of aviation emissions. This is the **least desirable option given that CORSIA's ambition of stabilising emissions is far inferior to that of the ETS. In addition, CORSIA would not cover the UK's domestic emissions, which would therefore be exempted from carbon pricing.**²⁴

Case Study: Losing out on new projects and jobs

While the UK is signatory to the WTO Agreement on Trade in Civil Aircraft (TCA), which eliminates all tariffs **on airplanes and its components, the UK's supply chain is heavily integrated.** Airplane parts are currently moved across borders quickly and without custom checks. After Brexit, customs checks between the EU/UK would mean additional costs and burdens for UK manufacturers. Moreover, and depending on **whether or not the UK joins EASA and accepts the CJEU's jurisdiction, airplanes and parts are not mutually recognised anymore.** They would need to be approved twice - in the UK and the EU. Access to raw materials used in airplanes would also become more costly as these do have tariffs, which would re-apply in the absence of a trade deal.

Without any agreement, Airbus UK, a wing manufacturer, would incur additional costs in moving goods and people across the border. Airbus, employs over 15,000 people in the UK, has already outlined a possible relocation from the UK to another base in Germany, France or **Spain.** **Airbus' appetite for future projects in the UK is not a given, with China being a serious option for Airbus to manufacture their products in the future.**

4. Ensuring proper control of State aid issues

The State aid control mechanism foreseen in the European treaties²⁵ is a unique system aimed at ensuring fair competition in the internal market. Although partly resembling the anti-subsidies provisions enshrined in the World Trade Organization (WTO) Agreement on Subsidies and Countervailing Measures (SCM Agreement), European State aid rules take a step further by conferring on the Commission a right to scrutinise subsidies before they are granted. State aid is in principle forbidden²⁶, but under certain conditions it can be compatible with EU law.²⁷

When the UK leaves the EU, State aid rules will cease to apply to the UK. Since there are no equivalent national provisions, the UK will then have considerable leeway to grant financial aid and subsidies to airport infrastructure projects and national airline operators without being subject to control by the Commission or the CJEU. This would create an uneven playing field potentially harming the environment and European airlines industry and citizens alike. Investments in airport infrastructure will inevitably lead to an increase in the rate of flights, entailing thus a significant raise of CO2 emissions.

To prevent the UK from becoming a 'carbon haven' for operators and airports, it is essential that EU State aid rules should continue to apply to the UK once it leaves the EU. The options below are listed in order of best to worst possibilities:

1. If the UK remains within the ECAA, it will have to accept EU State aid rules²⁸ and comply with future revisions. The UK will then have to accept CJEU jurisdiction but it will not have a voice in shaping future EU State aid rules.

2. The conclusion of an ambitious ASA - in line with the EU-Switzerland air transport agreement - could also guarantee the inclusion of State aid provisions.²⁹ Disputes under this type of agreement would be subject to CJEU jurisdiction.³⁰
3. In the event of a future EU-UK Free Trade Agreement, it is highly probable that State aid provisions - such as the ones included in recent trade agreements with Singapore and South Korea³¹ - could be envisaged. These would be subject to state-to-state dispute settlement.
4. **In case of a “no deal” situation, the UK, as a future independent member of the WTO, will only be bound to the SCM Agreement.** This is the worst option given that the SCM Agreement foresees a weak system on subsidies control focusing solely on trade in goods.³²

5. Agencies and cooperation at international level

The UK's future relationship with EASA is a contentious issue, simply put planes cannot be falling out of the sky post-Brexit. Aviation safety is a key EASA competence, by issuing type certificates for aircrafts and rules for the safety of airplanes, amongst other things. Once the UK leaves the EU, it loses its EASA membership. Consequently, type certificates are not issued, UK manufactured aircraft and aircraft components are not mutually recognised anymore and would need to be certified again when entering the EU. This would also make UK market access to the US for new technologies significantly more difficult as aircraft products are currently mutually recognised internationally through mutual recognition agreements with EASA.³³

In a June 2017 position paper on the Functioning of the Union Institutions Agencies and Bodies, the European Commission proposed that as a minimum, the UK remains a part of and continues to comply with agencies and bodies until its complete withdrawal, including regarding access to documents of the relevant institutions.³⁴ Continuity also after 29 March 2019 for the sake of airplane safety standards is a must. The UK currently plays a major role in EASA, providing two-thirds of the rules input for the European Safety Regulation.³⁵

A smooth transition for both the UK and the EU would be to ensure non-voting but fee paying membership of the UK in EASA.³⁶ This is not only the cheapest option for the UK - as entrusting the Civil Aviation Authority with a similar job could cost hundreds of millions, compared to the current £1 million per year⁻³⁷ but also the simplest in terms of certification and mutual recognition. Participation of non-EU countries is possible as long as they are a member of the Chicago Convention³⁸ and have concluded an agreement with the EU adopting and applying EU aviation safety rules.³⁹ The UK would then continue to be subject to CJEU jurisdiction.⁴⁰

It is worth mentioning that the UK/EU cooperation in ICAO would remain unchanged where it is effectively the members of the European Civil Aviation Conference (ECAC 44) working together.⁴¹ Brexit should not have any influence on this working relationship.

6. Conclusion

The following table summarises the best, medium and worst case scenarios for the future EU-UK relationship in aviation. The best case scenario offers a good balance between consumer and business interests regarding market access, while not undermining current environmental measures in place. **Which option will prevail in the end depends heavily on the UK's willingness to accept the jurisdiction of the CJEU.** Two things are very clear though. First, the UK cannot cherry pick among the several access rights, it can only accept a full package with obligations. Second, it is clear that the EU is in a stronger negotiating position. While EU carriers will be seeking to benefit from Brexit to gain more traffic rights, the EU must not give in on any environmental issues.

The current speed of the Brexit negotiations leaves doubt about having a final agreement by 29 March 2019. The paper shows that leaving without a deal UK airlines have more to lose than EU airlines. Short of striking an agreement a transitional arrangement would seem likely. Should this be the case, the transitional deal should contain all existing rights and obligations and should be limited in time. The final agreement must not be weakened.

Table 2:

Issue	Best case scenario	Medium case scenario	Worst case scenario
Future aviation relationship	UK joins ECAA This guarantees 9 freedoms of the air, CJEU jurisdiction and extension of EU standards (e.g. environmental standards)	Switzerland-style ASA Freedom of the air are restricted; CJEU jurisdiction; wide regulatory convergence	Less ambitious ASA (Open Skies, EU- Morocco) Freedom of the air are restricted; no CJEU jurisdiction; weak regulatory convergence (e.g. environmental standards)
Tackling climate change through ETS	Remaining in ETS (Norway model) This would ensure a smooth transition and continuity on tackling climate change	Linking agreement or retaining UK-EU flights in the ETS (Switzerland model) This would require the UK to create its own system and negotiate a linking agreement. Also, the EU could unilaterally retain UK-EU flights in the ETS	No deal on emissions trading The UK would only be then subject to ICAO's CO2 offsetting scheme (CORSA), which is much less ambitious than EU ETS
Ensuring State aid control	State aid rules through ECAA membership ECAA Agreement foresees acceptance of EU State aid rules	State aid provisions included in an ASA or a FTA These provisions do not mirror EU State aid rules but go beyond WTO rules on subsidies	WTO SCM Agreement In case of no deal, the UK would only be bound by the weak subsidies control foreseen in the WTO SCM agreement
Relationship with EASA (regulatory aspects)	UK becomes a paying, non-voting member of EASA This would ensure adhesion to aviation safety standards and mutual recognition	–	UK does not join EASA This would entail high costs of entrusting Civil Aviation Authority with a similar job and absence of mutual recognition

Endnotes

- Speech by Minister of Aviation and Trade Lord Ahmad of 7 March 2017: “We will be negotiating for a new, comprehensive, free trade agreement, giving us the best possible access to the European single market. And we want to secure the right access to European aviation markets.”
- Beyond the horizon The future of UK aviation A call for evidence on a new strategy available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/636625/aviation-strategy-call-for-evidence.pdf (retrieved 22.11.2017)
- Multilateral Agreement between the European Community and its Member States, the Republic of Albania, Bosnia and Herzegovina, the Republic of Bulgaria, the Republic of Croatia, the former Yugoslav Republic of Macedonia, the Republic of Iceland, the Republic of Montenegro, the Kingdom of Norway, Romania, the Republic of Serbia and the United Nations Interim Administration Mission in Kosovo on the establishment of a European Common Aviation Area - Annexes - Annexes - Declarations OJ L 285, 16.10.2006 (ECAA Agreement)
- For more information see Freedoms of the Air - ICAO available at <https://www.icao.int/Pages/freedomsAir.aspx> (retrieved 2.11.2017)
- See Annex I C. Aviation Safety ECAA Agreement
- The EU has also negotiated [horizontal agreements](#) with 17 other non-ECAA countries. Through these and the ECAA, the EU governs the UK's flight access to 44 countries, accounting for about 85% of all of Britain's international air traffic. See e.g. Arts. 15, 16, 20 ECAA Agreement
- Art 1 and Annex I ECAA Agreement
- The ECAA includes also non- EU countries such as Norway, Iceland, Albania, Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia, Montenegro, Serbia and Kosovo.
- Art 32 ECAA Agreement reads: “The European Community may ask any State or entity which is prepared to make its laws on air transport and associated matters compatible with those of the Community, and with which the Community has established or is establishing a framework of close economic cooperation, such as an Association Agreement, to participate in the ECAA. To this end, the Contracting Parties shall amend this Agreement accordingly.”
- Agreement between the European Community and the Swiss Confederation on Air Transport Available at http://eur-lex.europa.eu/resource.html?uri=cellar:fbce0d6-c474-436b-a29d-aefd1752bd70.0004.02/DOC_1&format=PDF (retrieved 15.11.2017)

11. See for example the EU- US Open Skies Agreement does not grant the CJEU jurisdiction, but instead uses a tribunal (Art 19) Available at <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=OJ-L:2007:134:FULL&from=EN> (retrieved 15.11.2017). In the latter case, the extent of market access depends on satisfactory implementation of EU rules, see EU- Mediterranean Aviation Agreement, available at [http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:22006A1229\(04\)&qid=1512039173006&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:22006A1229(04)&qid=1512039173006&from=EN) (retrieved 1.12.2017)
12. The EU- US Open Skies is a good example. The clause on environmental protection (Art 15) are not implemented. There are also continued disputes over the EU ETS. See European Parliament Study, An overview of the Air Services Agreements concluded by the EU, available at [http://www.europarl.europa.eu/RegData/etudes/note/join/2013/495849/IPOL-TRAN_NT\(2013\)495849_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/note/join/2013/495849/IPOL-TRAN_NT(2013)495849_EN.pdf) (retrieved 3.11.2017)
13. The EU- US Open Skies is a good example. The clause on environmental protection (Art 15) are not implemented. There are also continued disputes over the EU ETS. See European Parliament Study, An overview of the Air Services Agreements concluded by the EU, available at [http://www.europarl.europa.eu/RegData/etudes/note/join/2013/495849/IPOL-TRAN_NT\(2013\)495849_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/note/join/2013/495849/IPOL-TRAN_NT(2013)495849_EN.pdf) (retrieved 3.11.2017)
14. More on T&E's position on fuel tax exemptions can be found here: Fuel Taxation available at <https://www.transportenvironment.org/what-we-do/eu-transport-policy/fuel-taxation> and Does Aviation pat its way? Available at https://www.transportenvironment.org/sites/te/files/publications/2013_07_VAT%20Fuel%20Tax%20Loss%20One%20Pager_FINAL.pdf (retrieved 3.11.2017)
15. The EU is increasingly introducing clauses in its ASAs recognising states' right to tax fuel domestically. See e.g. Art 10.3 EU-Mediterranean Agreement stating that: 'This Agreement does not exempt fuel supplied by a Contracting Party to air carriers within its territory from taxes, levies, duties, fees, and charges similar to those referred to in paragraph 1. While entering, within, or leaving the territory of one Contracting Party, its laws and regulations relating to the sale, supply, and use of aircraft fuel shall be complied with by the other Contracting Party's air carriers.'
16. See current proposal Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on safeguarding competition in air transport, repealing Regulation (EC) No 868/2004 COM(2017) 289 final and accompanying impact assessment (SWD(2017) 182 final)
17. Article 25 of the EU ETS Directive (2003/87/EC) allows for the EU to conclude agreements with third countries listed in Annex B to the Kyoto Protocol -and which have ratified it- on mutual recognition of allowances between the Community scheme and other greenhouse emissions trading schemes
18. The EU- Switzerland Linking Agreement took seven years to be finalised.
19. Draft Commission Regulation amending Commission Regulation N°389/2013 of 2 May 2013 establishing a Union Registry
20. Consilium press release: Extending current aviation rules in the EU emissions trading system - provisional deal reached <https://www.consilium.europa.eu/en/press/press-releases/2017/10/18/aviation-rules-under-ets/> (retrieved 10.11.2017)
21. Commission proposes safeguard measures for EU Emissions Trading System https://ec.europa.eu/clima/news/commission-proposes-safeguard-measures-eu-emissions-trading-system_en (retrieved 10.11.2017)
22. It is relevant to underline that the proposed measure will not become effective in the event that EU law continues to apply in the UK by 30 April 2019 or in the case that "it is sufficiently ensured that the surrender of allowances takes place in a legally enforceable manner by no later than 15 March 2019."
23. The inclusion of Swiss flights in the EU ETS under 'Stop the clock' is lawful, says ECJ Advocate General available at <http://www.greenaironline.com/news.php?viewStory=2263> (retrieved 1 December 2017)
24. For further information, check T&E's report: "A comparison between ICAO's CO2 offsetting scheme and the EU ETS for aviation"
25. Articles 107, 108 and 109 TFEU
26. According to Article 107(1) TFEU, State aid is deemed to exist when a Member State grants, through its resources or its intervention, an advantage -in any form- to an undertaking on a selective basis, which entails a current or potential distortion of competition and which is likely to affect trade between Member States.
27. Article 107(2) and (3) TFEU list the exceptions under which State aid is automatically or potentially compatible with the internal market (e.g. aid granted to repair damage caused by natural disasters or aid to promote the execution of an important project of common European interest, etc.). Also, the General Block Exemption Regulation ([EU N° 651/2014 of June 2014](#)) declares certain categories of aid compatible with the internal market.
28. Annex III of the ECAA Agreement establishes the "rules on competition and State aid referred to in Article 14 of the main agreement"
29. Article 13 of the "Agreement between the European Community and the Swiss Confederation on Air Transport"
30. Article 20 of the "Agreement between the European Community and the Swiss Confederation on Air Transport"
31. While these provisions do not exactly mirror State aid rules under European Competition law, they go beyond (WTO+ provisions) what it is established in the SCM Agreement by including two additional prohibited categories of subsidies; envisaging comprehensive enhanced transparency provisions on the granting of subsidies; establishing an enforceable dispute settlement system with commercial sanctions; and foreseeing a rendezvous clause to discuss extending the scope of the agreement to the services sector.
32. Subsidies control under multilateral rules -namely the SCM agreement- presents relevant shortcomings: "First, the SCM does not cover subsidies to services. Secondly, in terms of procedure, the WTO's subsidy rules only provide for prospective remedies against measures that are already in force and have caused a (demonstrated) adverse effect on a WTO Member [...] Finally, as regards transparency, the SCM requires the notification of all subsidies every two years from each WTO member state, yet it does not provide for any effective sanction if reports are not submitted or are incomplete, which is frequently the case in practice."
33. See Select Committee on the European Union External Affairs Sub-Committee Corrected oral evidence: Brexit: Future trade between the UK and the EU in goods, Thursday 3 November 2016 available at <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/eu-external-affairs-subcommittee/brexit-future-trade-between-the-uk-and-the-eu-in-goods/oral/42814.html> (retrieved 14.11.2017)
34. Position paper transmitted to EU27 on Issues relating to the Functioning of the Union Institutions, Agencies and Bodies https://ec.europa.eu/commission/sites/beta-political/files/essential_principles_functioning_of_the_institutions_agencies_and_bodies_0.pdf (retrieved 04.09.2017)
35. Business, Energy and Industrial Strategy committee
36. Iceland, Liechtenstein, Norway and Switzerland are non- EU countries, but EASA Management Board members without voting rights. This is due to their ECAA membership.
37. See Select Committee on the European Union External Affairs Sub-Committee Corrected oral evidence: Brexit: Future trade between the UK and the EU in goods, Thursday 3 November 2016 available at
38. Chicago Convention on Civil Aviation available at https://www.icao.int/publications/Documents/7300_orig.pdf (retrieved 21.11.2017)

39. Iceland, Liechtenstein, Norway and Switzerland are EASA members. The Basic Regulation under which EASA operates provides for this possibility. See Art. 66 Regulation (EC) No 216/2008 of the European Parliament and of the Council of 20 February 2008 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency OJ L 79, 19.3.2008

40. Although the UK Government has stated before that it wants to withdraw from CJEU jurisdiction and regain sole control of lawmaking, **Theresa May has already conceded to the CJEU's jurisdiction during a transitional period.** It must be clear that continued participation in the EU single aviation market can only be granted to the UK accepts the CJEU's jurisdiction also after any transitional period. See also Theresa May concedes CJEU rule during Brexit transition available at <https://www.politico.eu/article/theresa-may-concedes-CJEU-rule-during-brexit-transition/> (retrieved 30.10.2017), also Govt to stay in EU air safety body in blurring of Brexit red line available at

41. See for a list of members of the European Civil Aviation Conference: <https://www.ecac-ceac.org/member-states> (retrieved 31.10.2017)