

Opinion of the European Economic and Social Committee on 'Proposal for a Regulation of the European Parliament and of the Council on certain aspects of aviation safety with regard to the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the Union'

(COM(2018) 894 final – 2018/0434 (COD))

(2019/C 190/06)

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Legal basis	Article 100(2) of the Treaty on the Functioning of the European Union
Section responsible	Transport, Energy, Infrastructure and the Information Society
Bureau decision	22.1.2019
Adopted at plenary	20.2.2019
Plenary session No	541
Outcome of vote (for/against/abstentions)	79/0/0

1. Conclusions and recommendations

1.1. The EESC has repeatedly underlined that international aviation can only assume its role as an enabler for economic growth sustainably, if highest levels of safety are maintained. Prerequisites for safety are uniform standards which are implemented by all stakeholders and monitored by empowered agencies. Brexit may jeopardise such standards and uniform application in Europe in the field of aviation safety, because the pertinent EU regulations could no longer apply to UK aviation stakeholders as of March 2019.

1.2. The Draft Opinion of the European Economic and Social Committee (EESC) to ensure basic air connectivity (TEN/689), and this Opinion should be seen as evaluating specific aspects of the same regulatory initiative of the European Commission (Commission). The underlying assumption of both Draft Opinions is that the legal basis for aviation activity in the single Aviation Market, Regulation (EC) No 1008/2008 of the European Parliament and of the Council ⁽¹⁾, and other EU Regulations regulating diverse aspects relevant for aviation, such as, in particular, Regulation (EU) 2018/1139 of the European Parliament and of the Council ⁽²⁾, as well as acts adopted in accordance with Regulation (EC) No 216/2008 of the European Parliament and of the Council ⁽³⁾ will cease to apply to UK registered airlines after the United Kingdom withdraws from the European Union (Brexit).

⁽¹⁾ Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community (OJ L 293, 31.10.2008, p. 3).

⁽²⁾ Regulation (EU) 2018/1139 of the European Parliament and of the Council of 4 July 2018 on common rules in the field of civil aviation and establishing a European Union Aviation Safety Agency, and amending Regulations (EC) No 2111/2005, (EC) No 1008/2008, (EU) No 996/2010, (EU) No 376/2014 and Directives 2014/30/EU and 2014/53/EU of the European Parliament and of the Council, and repealing Regulations (EC) No 552/2004 and (EC) No 216/2008 of the European Parliament and of the Council and Council Regulation (EEC) No 3922/91 (OJ L 212, 22.8.2018, p. 1).

⁽³⁾ 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, and repealing Council Directive 91/670/EEC, Regulation (EC) No 1592/2002 and Directive 2004/36/EC (OJ L 79, 19.3.2008, p. 1).

1.3. In order to reduce the legal uncertainty and planning instability after 29 March 2019, a Withdrawal Agreement has been negotiated between the EU and the UK to enable the UK government to establish national law and regulatory measures as the future regulatory framework for the UK aviation sector. The Withdrawal Agreement has, however, as yet not been ratified by the UK parliament. In the context of a contingency action plan developed in summer 2018, the Commission has therefore drafted, inter alia, a Regulation of the European Parliament and of the Council on certain aspects of aviation safety with regard to the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the Union (Regulation).

1.4. In the case of absence of any other legal basis, it is unclear whether certificates issued by the UK under EU law will still be valid, how UK registered airlines could obtain the required certification as of 30 March 2019, and how repair and maintenance companies in the UK could continue to deliver spare parts and services with the licensing as required by EU law. In order to resolve these issues and establish a legal basis to ensure a smooth transition to the application of UK law, a contingency Regulation is urgently required, should the Withdrawal Agreement not be adopted.

1.5. Although stakeholders can, in many instances, resolve issues related to the continued validity of the certificates by turning to a civil aviation authority of the EU27, or applying for a third country certificate issued by the European Aviation safety Agency (EASA), there are instances where such mitigation is not possible. These situations can only be resolved if a legal basis is established.

1.6. Contingency measures are required as a matter of urgency, but the EU regulation should only become effective to resolve safety issues related to aviation which could not otherwise be resolved. The regulation must therefore be of temporary nature until the UK has established national agencies and national legislation to assume the role of a safety agency.

1.7. The EESC commends the Commission for this regulatory initiative which acknowledges specific problems which could arise in the event of a no-deal scenario in the field of aviation safety. The Regulation will provide the sector with the required assurances that the certification process will not be jeopardised during the transition of the UK from a Member State to the status of a third country. The travelling public will likewise be given the assurance, that safe operations will be provided for beyond 29 March 2019.

1.8. The EESC agrees with the Commission's argumentation that the purpose of the Regulation is not to extend the status quo, but to provide for contingency measures considered urgent to mitigate possible damage to the air travel between EU and UK. The proposed Regulation is only applicable temporarily to enable the sector to continue to adhere to highest safety standards.

1.9. The EESC urges the United Kingdom to conclude bilateral safety agreements as soon as possible with the EU and with other third countries so as to establish the required consensus on the mutual recognition of certificates issued by the UK and these other parties.

2. **Regulatory context**

2.1. *International agreements*

2.1.1. A number of aviation-related agreements entered by the EU on behalf of the Member States needs to be replicated by the UK after Brexit. With respect to MRO (maintenance, repair and overhaul), aviation manufacturing, repair facilities as well as safety standards, the most important agreement is the EU-US bilateral aviation safety agreement (BASA).

2.1.2. According to this agreement the safety agencies of both sides, Federal Aviation Administration (FAA) and European Aviation Safety Agency (EASA) respectively, mutually accept each other's certification and approval processes; only one approval is needed. In the case of the UK, FAA would no longer be able to rely on UK Civil Aviation Authority (CAA) inspections of FAA licenced repair stations in the UK. FAA inspections would be required, as well as CAA approval.

2.1.3. Because the BASA frequently refers to EU Member States, the UK could only preserve the status quo if the US agreed to treat the UK as if it were still a member of the EU during the transition period and conclude a separate BASA with the UK. Although legally still under debate, such an agreement would need the consent of the EU, if it is to come into effect during the transition period — Decision of European Court of Justice on the EU-Singapore free trade agreement: distinction between agreements on transportation of passengers and goods, from agreements on services such as maintenance and repair. Agreements on the latter fall under the common commercial policy, and therefore exclusive competence of the EU: therefore a replacement of the EU-US BASA by a UK-US BASA would require EU consent. This would be likely to happen, since the purpose of the Withdrawal Agreement was to facilitate orderly transition.

2.1.4. The UK has announced that negotiations are ongoing with USA, Brazil and Canada on bilateral BASA; finalising these will prove difficult in the absence of a safety agreement EU-UK, particularly any agreement on the status of the UK in EASA.

2.2. EASA

2.2.1. After Brexit, the UK could apply for some form of associate membership of EASA to maintain the advantages of mutual EU/US recognition and to ensure clarity with respect to the safety standards to be applied by the UK. As party of the Chicago Convention, the UK would be a valid applicant for associate membership of EASA; it would however have to apply the relevant EU aviation law.

2.3. Aviation safety in case of 'hard Brexit'

2.3.1. To mitigate possible complete interruptions of air traffic between the EU and the UK in the scenario without a ratified Withdrawal Agreement, the Commission has adopted two proposals for regulations: first temporarily ensuring the provision of certain air services between the UK and the EU and extending the validity of certain existing licenses, respectively. The scope of basic air connectivity is addressed by another EESC opinion — TEN/689.

2.3.2. The second proposal for a Regulation on certain aspects of aviation safety with regard to Brexit concerns the extension of validity for certificates for certain aeronautical products, parts, appliances and companies. While some remedies are applicable to stakeholders in this regard in the form of switching to an EU CAA or submitting an early application to EASA for third country certificates, not all possible disruptions can be mitigated by those measures.

2.3.3. The urgency to provide extended validity periods is closely linked to the UK having to take over responsibilities previously conferred to EASA, in order to be able to issue licenses again. EASA in turn can only issue certain certificates on the basis of a third country license⁽⁴⁾. Hence, the extended validity serves to bridge the time it will take for EASA and operators to issue certain certificates under the new third country status of the UK.

3. Content of proposed Regulation

3.1. The proposed Regulation covers a range of certificates valid before the withdrawal date, but generally differentiates between certificates issued by EASA to natural or legal persons with their principle place of business in the UK, and those issued by natural or legal persons certified by the competent UK authority⁽⁵⁾.

⁽⁴⁾ Regulation 2018/1139, Article 68.

⁽⁵⁾ COM(2018) 894 final, Article 1(2).

3.2. The former certificates are mainly type certificates and restricted type certificates, approval of changes or supplements for those certificates, repair approvals, European Technical Standard Order authorisations, as well as design organisation approvals ⁽⁶⁾. These certificates will remain valid for 9 months, with the possibility for extension under further delegated acts by the Commission ⁽⁷⁾.

3.3. The latter certificates mostly relate to release certificates for products, parts and appliances, completion of maintenance, and airworthiness review ⁽⁸⁾. Those certificates remain valid to ensure the continued use of the products parts and appliances in or as aircraft ⁽⁹⁾. Additionally, the proposed regulation ensures that EU Member State authorities or EASA take account of examinations of training organisations previously overseen by the competent UK authority ⁽¹⁰⁾.

3.4. Since an invalidity of certificates would not just impact the placement on the market of aviation products but their actual use, the continued validity of licenses is imperative, where the only viable alternative is to relocate e.g. the production of aviation products to EU jurisdictions to circumvent the time gap for the issuing of third country certificates.

3.5. The importance of the measure is further underlined by the often-limited number of producers for certain aircraft components. Nonetheless, the fact that there won't be any issuance of new e.g. type certificates, which could significantly disrupt the operations of those companies not able to shift certification to EU jurisdictions, and in turn their customers which might be reliant on specific products and the certification thereof, remains a factor that might cause disruption.

4. Specific comments

4.1. *Concerns raised by stakeholders*

4.1.1. Aviation stakeholders acknowledge the urgent need to ensure that this sector can continue to operate safely. The proposed Regulation provides sufficient contingency; time-limited and well targeted transition platform.

4.1.2. According to some stakeholders referred to during preparation of this opinion, Articles 5, 6, 7 and 8 of the Regulation should refer not only to the holders of certificates but the legal or natural persons which issue certificates. This would provide legal certainty to all parties involved in the certification process, that the status quo would be extended beyond 29 March 2019.

4.1.3. The EESC agrees with the Commission's argumentation that the purpose of the Regulation is not to extend the status quo, but to provide for contingency measures considered urgent to mitigate possible damage to the sector. The stakeholders were aware of the discussions pertaining to the Brexit but cannot in all situations themselves resort to alternative actions to mitigate the effects of Brexit on the safety of aviation. They therefore need assurances of legal certainty. This is not the case for the issuers of the certificates in the form of an EU Regulation to explicitly provide them with the legal certainty of continued certification. Such certainty will be provided by new national legislation in the UK.

4.1.4. The EESC commends the Commission for this regulatory initiative which acknowledges specific problems which could arise in the event of a no-deal scenario in the field of aviation safety. The Regulation will provide the sector with the required assurances that the certification process will not be jeopardised during the transition of the UK from a Member State to the status of a third country. The travelling public will likewise be given the assurance, that safe operations will be provided for beyond 29 March 2019.

⁽⁶⁾ COM(2018) 894 final, Annex I section 1.

⁽⁷⁾ COM(2018) 894 final, Article 3.

⁽⁸⁾ COM(2018) 894 final, Annex I section 2.

⁽⁹⁾ COM(2018) 894 final, Article 4.

⁽¹⁰⁾ COM(2018) 894 final, Article 5.

4.1.5. The EESC strongly endorses this approach and encourages the Parties to conclude as rapidly as possible a bilateral air safety agreement to conclude in mutual consent how the safety agencies of both sides will co-operate in future to ensure a harmonised implementation of safety measures throughout Europe.

4.1.6. The EESC also urges the UK to conclude a BASA with the leading economic powers, in particular the USA, so as to maintain continuity and coherence in the safety measures pursued so far on the North Atlantic market.

Brussels, 20 February 2019.

The President
of the European Economic and Social Committee
Luca JAHIER
