Part 1 – The impact of the EU-UK Trade and Cooperation Agreement on aviation

In the play *Waiting for Godot*, Vladimir asks Estragon what they should do, having waited an indiscernible age for Godot to arrive. Estragon suggests not doing anything, explaining: "*It's safer*". Vladimir proposes instead waiting longer to see what Godot has to say, "*I'm curious to hear what he has to offer. Then we'll take it or leave it*". Godot, of course, famously never arrives in the play, by contrast, however, Brexit finally has.

The UK exited the EU on 31 January 2020, with the transition period in the Withdrawal Agreement[1] ending on 31 December 2020. All EU Treaties and Directives therefore no longer apply in relation to the UK, and the jurisdiction of the Court of Justice for the EU (CJEU) has ended. However, all EU regulations continue to apply in UK domestic law, by virtue of the European Union (Withdrawal) Act 2018, to the extent that they are not modified or revoked by regulations under this Act.

On 24 December 2020, the European Commission and the UK agreed the Trade and Cooperation Agreement ('the TCA')[2] which sets out the basis for the future EU and UK relationship in relation to trade, transport, and a number of other areas such as fishing and criminal law enforcement. The TCA was formally approved by all 27 EU countries and the UK Parliament[3], and is provisionally implemented pending formal approval by the European Parliament in early 2021.

This article (Part 1 of 2) sets out what impact the TCA has, and is likely to have, on aviation between the UK and the EU now and in the future. Part 2 sets out the TCA's impact on travel (including passenger claims) and what is missing from the agreement, particularly in relation to civil jurisdiction, applicable law, and enforcement.

The section of the TCA entitled 'Heading Two: Aviation[4]' runs to just 25 pages out of a total

[1] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/840655/Agreement_on_the_withdrawal_of_the_United_Kingdom_of_Great_Britain_and_Northern_Ireland_from_the_European_Union_and_the_European_Atomic_Energy_Community.pdf

[2] Full title: 'The Trade and Cooperation Agreement between The European Union and The European Atomic Energy Community, of the one part, and The United Kingdom of Great Britain and Northern Ireland, of the other part'. Found at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/948119/EU-UK_Trade_and_Cooperation_Agreement_24.12.2020.pdf

[3] Through the European Union (Future Relationship) Act 2020.

[4] Found in Part Two: Heading Two, p.221 onwards.

of 1246[5], with the largest sub-section concerning, perhaps unsurprisingly, aviation safety. The section also has an annex entitled 'Annex Avsaf-1: Airworthiness and Environment Certification'[6], running to 34 pages.

With regards to aviation, the TCA, in summary, provides for:

- the continuation of air transport services between the UK and the EU;
- the removal of direct access for UK air carriers to EU internal routes and vice-versa;
- limitations on ownership and control of airlines designated to operate UK-EU routes;
- a framework air safety agreement for mutual recognition of certain certificates, licences, and approvals; and
- the establishment of a Specialised Committee on Air Transport which has responsibility for (a) monitoring the liberalisation of ownership and control requirements for carriers; (b) monitoring the removal of barriers that distort fair competition and opportunities; (c) drafting and adopting further aviation safety uniformity.

Carriers and other providers of airport services will, of course, be affected to a greater or lesser extent by the provisions for trade in goods, services, and digital products; payment transfers; IP; and public procurement set out in separate Titles in Part Two of the TCA, however, those provisions are outside the scope of this article.

Operating and traffic rights

The TCA represents the end of over 25 years of UK participation in the EU single aviation market, the European Common Aviation Area (ECCA), with all nine freedoms that entailed for UK and EU carriers flying in and out of the two territories. UK and EU carriers are now treated as third country operators in each other's airspace.

Article 2[7] provides that, subject to its provisions on air traffic rights (detailed below), UK carriers are permitted to operate on routes from the UK via intermediate points to points in the EU and beyond. Similarly, EU carriers have the right to operate on routes from the EU via intermediate points to points in the UK and beyond.

Article 3 sets out what traffic rights carriers from the UK and EU have respectively in stopping over and flying across each other's territory. In essence, respective EU and UK carriers are granted:

[5] Including all Annexes and Protocols therein.
[6] P.786 onwards.
[7] Reference in this document to 'an Article' is reference to the articles found in Part Two: Heading Two: Aviation, however, the full name for each article is, for example, 'Article AIRTRN:1' for Article 1.

(a) first and second freedom rights[8] – to fly across one party's[9] territory without landing and to make stops in that party's territory for non-traffic purposes (e.g. refuelling or maintenance); and

(b) third and fourth freedom rights – to make stops in one party's territory to provide scheduled and non-scheduled air transport services between any points in its territory and any points in the other party's territory.

The first to fourth freedoms are granted to each party's designated (i.e. domestically registered) carriers, subject to operating authorisations, but without limitation on tariffs, schedules, or capacity.

Article 3 prohibits the EU and the UK from unilaterally imposing limits on the volume of traffic operated in accordance with these rights, except as may be required for non-discriminatory reasons such as air traffic, customs, technical, safety, health, or environmental reasons.

To benefit from these operating rights carriers must comply with the ownership and control requirements in Article 6 which are detailed in a further sub-heading below.

The TCA explicitly prohibits fifth to ninth freedom rights, in other words, the ability of UK carriers to operate services on routes which are within individual EU Member States (cabotage) or between Member States, or from a Member State to a third country, or, conversely, for EU carriers to operate services on routes which are within the UK or to third country from/to the UK.

Individual EU Member States are, however, permitted to enter into bilateral arrangements with the UK to grant each other's respective carriers to operate:

(1) all-cargo flights which make stops for the offload and uplift of cargo in the territory of a Member State or the UK before departing for a third-country destination (fifth freedom flights); and

(2) non-scheduled air transport services beyond the rights provided for in the TCA, provided such services do not constitute scheduled services in "*disguised form*"[10].

Upon entering into bilateral agreements, cargo flights with an intermediary stop in the UK or EU can be maintained, ensuring the continuation of established cargo hubs such as Heathrow and Schiphol.

The creation of bilateral agreements will also be of particular importance to operators who

[8] Such terms are not found in the TCA itself but are commonly established rights in international law (following the Chicago Convention 1944) and in EU law.
[9] References to 'a party' and 'Parties' in this article is to the EU and UK respectively and both together.
[10] Article 3(9).

provide charter (i.e. non-scheduled) flights to popular holiday destinations, thus ensuring the maintenance of an important business model.

Although the TCA makes no provisions for bilaterally-agreed, fifth freedom passenger flights, carriers can still benefit from the code-sharing provisions detailed under the next sub-hearing.

In the absence of bilateral agreements, UK and EU carriers will have to restructure their operations to obtain a second UK/EU operating licences and air operator certificates to continue running cabotage and/or fifth freedom routes. easyJet has already taken such measures, restructuring its operations to retain an EU operating licence through its Austrian easyJet Europe subsidiary, thereby ensuring access to the ECAA.

The scope of bilateral air transport agreements between the UK and individual EU Member States will be subject to the TCA's provisions and, from the Member States' point of view, potential infringement proceedings brought by the EU Commission if any such agreement contravenes EU treaty rules.

The TCA will not, however, affect bilateral air transport agreements entered into by the UK as signatory in its own right (i.e. to which the EU is not party) with non-EU states, for example those entered into with Brazil, China, and India, and most recently the USA (in November 2020).

Code-sharing and blocked space arrangements

Article 4 allows for UK and EU carriers to act either as marketing carrier or operating carrier in codeshare or blocked space arrangements with the other party's carriers, or with third country carriers which have the necessary rights to participate in such arrangements (i.e. the required permissions, certificates, and licences to operate in one party's territory).

Where both the points of origin and destination are exclusively in another party's territory, or where one point is in one party's territory and the other is situated in a third country, the carriage being provided must form part of a carriage by the marketing carrier between a point in the territory of its party and that destination point in the territory of the other party. A UK carrier therefore cannot operate between two EU airports, however, it could UK code-share with an EU operating carrier, selling tickets on such a route as the marketing carrier, provided that it also sold tickets from a point of origin in the UK to one of those EU airports. For example, BA could sell tickets from Amsterdam to Warsaw (the route being operated by an EU carrier), provided it also offered a flight from the UK to Amsterdam as part of the sale. To ensure compliance, purchasers have to be informed at the point of reservation (i.e. sale) as to which carrier is operating which flight.

Article 4 additionally provides welcomed operational flexibility by expressly permitting carriers to transfer passengers and/or cargo between aircraft of the same carrier at any point (change of gauge), and serve more than one point within the UK or EU in a single

service (co-terminalisation). This means UK carriers are able to operate a high-capacity aircraft to EU hub airports, offload passengers at those airports, and then transfer any transiting passengers onto smaller aircraft continuing on to regional destinations within the EU.

Operating authorisations for carriers

Article 6 sets out the operating authorisations required for carriers to operate between the territories of the EU and UK, specifically who can own and control an authorised carrier and how carriers are granted regulatory licences and certificates.

In relation to the ownership and control of carriers, Article 6 requires:

(1) An EU carrier to have a principal place of business in the EU, hold an EASA Operating Licence (OL) and Air Operator Certificate (AOC), and be majority owned and effectively controlled by EU or European Free Trade Association (EFTA) nationals.

(2) An UK carrier to have a principal place of business in the UK, hold an EASA OL and AOC at the end of the Brexit transition period, and be majority owned and effectively controlled by UK and/or EU or EFTA nationals.

(3) Any UK carriers not holding an EASA OL and AOC at the end of the Brexit transition period, to have a principal place of business in the UK, hold a CAA OL and AOC, and be majority owned and effectively controlled by UK nationals.

The term 'nationals' is not defined, however, elsewhere in the TCA a distinction is drawn between a party's nationals and "*legal persons of a Member State of the United Kingdom*"[11], so the expression must refer to natural persons who have nationality in the particular state.

EU carriers are essentially unaffected by Article 6 given the pre-existing need to obtain an EASA OL and AOC under Regulation (EC) 1008/2008 in order to operate in EU Member States' airspace.

By comparison, the CAA no longer requires an air carrier to be a UK carrier for the purposes of being a carrier qualifying for the granting of an OL, provided the carrier is eligible to operate services on the route concerned under or by virtue of an agreement between the UK and another country[12].

It is noteworthy that both Ryanair and Wizz Air have recently taken steps to restrict the voting rights of non-EU shareholders to ensure they remains majority EU owned and controlled post-Brexit, thus protecting their EASA operating licences.

[11] See, for example,
[12] Operation of Air Services (Amendment etc.) (EU Exit) Regulations 2018, SI 2018/1392, Schedule 2, para 6(d).

The TCA does not stipulate minimum application times for operating rights, instead requiring each party to grant authorisation with "*minimum procedural delay*"[13].

Under Article 7, the EU and UK can only require notification of "*operating plans, programmes, or schedules for information purposes*" and must minimise any administrative burdens associated with any notification requirements.

Article 8 makes provision for the EU or UK to take action against a carrier of the other party if that carrier fails to meet the operating conditions applicable to them; such action including the revocation or suspension of operating licences. However, the Article also sets out specified notification, consultation, and dispute resolution requirements if one party takes remedial action against the carrier of another, culminating in the potential for the parties to enter into arbitration proceedings if a dispute persists (the procedure for which is set out in Part Six of the TCA)[14].

Article 9 sets out the EU and the UK's agreement for the newly-formed Specialised Committee on Air Transport (hereafter 'the Specialised Committee') to examine options for reciprocal liberalisation of ownership and control within 12 months of the TCA coming into force (on 1 January 2021), and thereafter at any time following a request to do so from one of the parties.

Compliance with laws and regulations

Article 10 obliges carriers and passengers, crew, baggage, cargo, and mail carried by the carriers to comply with the laws and regulations (including entry, clearance, immigration, passports, customs, quarantine, and postal regulations) of the party they are entering, operating within, or leaving, respectively. This includes the continuation on the part of carriers to ensure only passengers with the correct travel documents for entry into, or transit through, the territory of the other party are carried to that territory.

Non-discrimination and 'doing business'

Article 11 obliges the EU and UK to each eliminate all forms of discrimination which would adversely affect the fair and equal opportunity of each party's carriers to compete in exercising their rights to provide air transport services. Again, if a dispute arises between the parties, the same notification, consultation, and dispute resolution requirements as set out in Article 8 will apply (including the potential for arbitration).

Article 12 sets out the parties' agreement to cooperate in removing obstacles to 'doing business' for their air carriers where such obstacles "*may hamper commercial operations, distort competition or affect equal opportunities to compete*", with progress to be monitored by the Specialised Committee.

[13] Article AIRTRN.6(1).
[14] Page 383 onwards.

Air transport between the EU and UK is also subject to the TCA's general level playing field requirements[15] for open and fair competition which, in the field of air transport, is likely to mirror in practice the principles and measures set out in Regulation (EU) 2019/712 of the European Parliament and of the Council of 17 April 2019 on safeguarding fair competition in international air transport.

Commercial operations (establishments, ground handling and leasing)

Article 13 permits each party's carriers to establish offices and facilities in the territory of the other party as is necessary to provide air transport services "*without restrictions or discrimination*", subject to safety and security regulations, and the availability of space if located at an airport. Where employment authorisations are required for personnel at such offices, the parties agree to process applications for such authorisations expeditiously, "*subject to the relevant laws and regulations*".

The Article further provides for carriers of one party to perform ground handling (GH) themselves in the other party's territory without restriction (unless contrary to safety or security concerns). Carriers are also not obliged to choose any particular GH providers whilst operating in the territory of the other party, and must receive whatever GH services they do chose on no less favourable terms than those available to carriers from the other party.

The Article also places limitation on the operating rights of air carriers using leased aircraft. To benefit from the traffic rights set out in Article 3, a UK or EU air carrier must either use a leased aircraft which is:

(1) dry leased (i.e. without crew); or

(2) wet leased with crew from another carrier(s)of the same Party (i.e. EU or UK) as the lessee carrier; or

(3) wet leased with crew from a carrier(s) of the other party, or a foreign carrier(s), if justified on the basis of exceptional needs, seasonal capacity needs, or operational difficulties of the lessee and the lease does not exceed the duration strictly necessary to fulfil those needs or difficulties.

Prior to granting operating authorisation for leasing arrangements, the UK or EU can require that their respective competent authorities (i.e. EASA and the CAA) verify compliance with the above conditions prior to granting approval.

[15] Set out in the TCA's Preamble and Title XI of Part Two: Trade, Transport, Fisheries and other arrangements.

Tucked away at pages 579 and 639 of the TCA, under a section entitled 'Reservation No. 6 - Business services'[16], is a requirement for dry leased aircraft to comply with respective UK/EU aircraft registration requirements, including any requirement for the aircraft to be owned either by natural persons meeting specific nationality criteria or by enterprises meeting specific criteria regarding ownership of capital and control (CPC 83104).

Charges and tariffs

Article 15 obliges the parties to each only impose user charges on the other's carriers for the use of air navigation and air traffic control that are cost-related, non-discriminatory, and no less favourable than the most favourable terms available to the other's carriers. Any other user charges must be "*just, reasonable, not unjustly discriminatory, and equitably apportioned among categories of users*".

On tariffs – defined as "*any fare, rate or charge for the carriage of passengers, baggage or cargo*" – the parties can permit their carriers to impose such tariffs "*on the basis of fair competition*", a term that is undefined but must be read in the context of the whole section of the TCA concerning aviation.

Aviation safety

Article 18 provides for mutual recognition of certificates of airworthiness, certificates of competency, and licences issued or validated by the EU or UK's competent authorities, provided that they were issued or validated pursuant to and in conformity with the relevant international standards established under the Chicago Convention. This means, in effect that EASA licences, approvals and permits held by UK entities and individuals automatically become UK-issued authorisations.

If either party considers that minimum safety standards are not being met, either as a result of consultations or ramp inspections (both processes being set out in Article 18), the concerned party can refuse, revoke, suspend, impose conditions on or limit its operating authorisations or technical permissions, or to otherwise refuse, revoke, suspend, impose conditions on or limit the operations of the other party's air carriers. Unsurprisingly, the Article lays out the same notification, consultation, and dispute resolution requirements as set out in Articles 8 and 11 (including arbitration provisions).

Although the UK has left the European Union Aviation Safety Agency (EASA) system, the body of EU law that governs aviation safety is more or less adopted wholesale by the UK, with only minor amendments brought in via statutory instruments to ensure that it makes sense in a UK context, such as replacing references to EASA with the CAA.

[16] Annex SERVIN-1: Existing Measures sets out Schedules of measures taken by the UK, the EU, or individual Member States, that conflict with the obligations under the TCA to permit fair market access.

Furthermore, a separate section of the TCA (Title II: Aviation Safety) provides a mechanism by which the parties may cooperate on a number of subjects related to aviation safety, including airworthiness, environmental, design, and MRO certificates; personnel licensing and training; air traffic management and air navigation services; and any other areas subject to the Annexes of the Chicago Convention. Such cooperation is to be established by way of annexes adopted by the Specialised Committee, covering each subject in detail.

Annex Avsaf-1: Airworthiness and Environment Certification provides for the creation of a Certification Oversight Board, answerable to the Specialised Committee, to, inter alia, propose amendments to any annexes on aviation safety created by the Committee, and to share concerns and resolve technical issues between competent authorities on certification.

Title II also requires the parties to exchange safety information, cooperate on enforcement activities, and keep each other informed of proposed revisions to relevant safety rules so as to afford an opportunity to the other to comment on such revisions and give due consideration to such comments.

Aviation security

Article 19 sets out that the EU and UK shall provide each other, upon request, with all necessary assistance to address any threats to the security of civil aviation (including aircraft seizure and endangerment of aircraft, passengers, crew, airports and air navigation facilities), and to endeavour to cooperate on aviation security matters to the highest extent (including exchanging information on threats and risks, sharing of best practices, and cooperating on the technical development and recognition of aviation security standards).

The Article further provides that both parties, their carriers and airport operators, will conform with the aviation security standards established by the UN International Civil Aviation Organisation (ICAO), including in relation to the screening of passengers, baggage and cargo and controlling access to security restricted areas. The UK has already retained in domestic law the aviation security standards contained in Regulation (EC) No.300/2008 and the EU instruments made under it, and therefore, like aviation safety, little change with be seen in the regulatory sphere in the short to medium term.

The Article also makes provision for the EU or UK to take action against a carrier of the other party if that carrier fails to meet the security obligations set out therein, such action to include the potential for revocation or suspension of operating licences. It also contains the now-familiar notification, consultation, and dispute resolution requirements if one party takes remedial action against the carrier of another, culminating in the potential for arbitration proceedings (as seen in in Articles 8, 11 and 18).

Air traffic management

Article 20 sets out obligations on the parties, their competent authorities and air navigation service providers, to co-operate to "*enhance the safe and efficient functioning of air traffic*"

in Europe, including through data and performance information exchange and the modernisation of air traffic management programmes.

Given that the European Organisation for the Safety of Air Navigation (EUROCONTROL) is outside of the EU infrastructure, the UK's membership of it is unaffected by Brexit and the TCA's provisions, though there can be little doubt that the organisation will be integrally involved in assisting the parties in complying with Article 20 going forward.

Suspension and termination of the TCA

Article 24 stipulates that the whole section ('Title') concerning aviation may be suspended in accordance with Article INST.24 [Temporary remedies] or terminated in accordance with Article 25. In either case, specific notice periods are provided for.

If the whole of the TCA is terminated (in accordance with Article FINPROV.8 [Termination]) the whole of the aviation section will continue to apply until the end of the IATA traffic season in progress on the date of termination (being either winter or summer).

Slot allocations

The TCA says nothing about the allocation of slots, i.e. permissions to use the airport infrastructure to operate an air service.

Slot allocation in the UK has been governed for nearly three decades by Regulation (EEC) No. 95/93 on common rules for the allocation of slots at Community airports, which was transposed into UK law by the Airports Slot Allocation Regulations 2006 (SI 2006/2665). Both the EU and UK regulations incorporate the principles of global industry guidelines known as the Worldwide Airport Slot Guidelines (WASG).

As the 2006 UK Regulations remain in force, slot allocation rules remain the same until the UK decides to replace them with new national rules. The UK coordinator of the rules is Airport Coordination Limited (ACL).

The main features of the rules are the so-called 'grandfather rights', which enable carriers to retain their slots if they have used them 80% of the time in the last winter and summer season (the so-called '80/20' or 'Use it or Lose it' rule). The European Commission waived the rule for the 2020 summer and winter seasons because of the Covid-19 pandemic, and on 14 October 2020, extended the slot waiver to cover the entire winter season until 27 March 2021.

This is one area in which divergence may take place at quicker pace that others which are subject to the TCA's provisions, particular if the UK and the EU take differing stances on the need to continue to protect the industry from the ravages of the pandemic.

Data protection

Part Three of the TCA, which deals with law enforcement and judicial co-operation in criminal matters, contains an entire Title (Title III) on transfer and processing of passenger name record (PNR) data, regulating the basis on which EU carriers may transmit PNR data to the UK competent authorities[17], and how those UK authorities must handle that data.

The obligations are not reciprocal, i.e. Title III does not set out how UK carriers may transmit PNR data to EU competent authorities, and how those EU authorities must handle that data.

Article 28 of Title III sets out, in considerable detail UK reporting requirements to the Specialised Committee on Law Enforcement and Judicial Cooperation (set up under the TCA) relating to derogations of the UK's obligations under the Title (e.g. deleting PNR data after a certain period) if the UK considers "*certain passengers present the existence of a risk in terms of the fight against terrorism and serious crime*"[18].

More generally, Article FINPROV.10A (Interim provision for transmission of personal data to the United Kingdom) provides for a four-month window, which can be extended to six months, during which the UK will not be treated as a 'third country' for GDPR purposes, thereby allowing the free flow of data between the EU and EEA Member States to the UK as was the case before 1 January 2021.

The interim data transfer window only remains open provided that the UK: (a) does not change its data protection laws from those in place on 31 December 2020 (i.e. the UK GDPR as set out in the Data Protection Act 2018); and (b) does not exercise any of its 'designated powers' without agreement from the UK, such as publishing its own set of 'standard contractual clauses' or approve a draft Code of Conduct with respect to international transfers of data.

If the data window closes or expires without extension, those in the UK would need to put in place additional transfer mechanisms (mandated by the EU) in order to transfer data from the EU to the UK.

Environmental issues

The TCA is silent on environmental issues so far as aviation is concerned.

In terms of carbon-trading, Brexit represents no drastic change to UK carriers' carbon emissions obligations in the short to medium term; those obligations now being governed by a mixture of the EU Emissions Trading System (EU–ETS) and the UK Emissions Trading System (UK–ETS), the latter having been set up in November 2020 under the Greenhouse Gas Emissions Trading Scheme Order 2020 (SI 2020/1265).

[17] The identities of the authorities are not actually spelt out in the TCA.
[18] Article LAW.PNR.28(4).

EU–ETS will continue to apply to all flights to the UK originating in an EEA state, whilst UK–ETS will apply to all UK domestic flights (including to Gibraltar) and all flights to EEA states originating in the UK. The two systems are very similar, save that the cap on emissions imposed by the UK scheme is currently 5% lower. In England, the regulator becomes the Environment Agency.

UK carriers will still have to report and surrender allowances under the EU-ETS for UK domestic flights until the end of March 2021 to comply with the UK's obligations under Article 96(2) of the Withdrawal Agreement. The surrender of allowances under the UK- ETS must take place on or before 30 April 2022 for 2021[19].

Given the dramatic reduction in flights as a result of the Covid-19 pandemic, some carriers may become exempt from the UK–ETS in accordance with Article 7 of the 2020 Order.

As regards noise regulation, there will be no significant changes as Regulation (EU) No. 598/2014 is due to be retained in UK law, with only minor amendments to reflect the change in the relevant regulatory authorities, although at the time of writing the particular statutory instrument has yet to be laid before Parliament or published on legislation.gov.uk.

Conclusion

In light of the TCA, Brexit represents a new, albeit familiar legal and regulatory environment for the UK's aviation industry. With the retention of the vast majority of EU law, and the UK's continued participation in other international treaties (such as the Chicago and Montreal Conventions), many aspects of UK aviation and travel law will look virtually identical to that of EU law, at least in the short to medium term.

The TCA makes clear that any regulatory divergence that the UK might wish to pursue will come at a substantial cost in losing access rights to the EU market. If divergence in aviation safety standards and requirements does take place, operators will be forced to adopt dual-compliance models in order to maintain full market access across both jurisdictions.

It is clear that Brexit imbues the CAA with substantially more regulatory responsibilities that when the UK was part of the EU. Whether the organisation can rise to the challenge will depend to a large degree on more funding and resources being made available to it.

What impact the Specialised Committee on Air Transport will have – in its role in the potential liberalisation of carrier ownership and control requirements, the removal of barriers to fair competition and opportunities, and the crafting of greater aviation safety uniformity – remains to be seen.

[19] Article 34, 2020 Order.

How quickly bilateral cargo and charter-flight agreements can be signed between the UK and individual EU Member States will dictate, in large part, Heathrow's long-term future as a cargo hub and the choice available to UK tourists.

From a lawyer's perspective, the two greatest changes Brexit represents are:

(1) that the UK is no longer obligated to adhere to EU law (including CJEU judgments) made after 31 December 2020[20]; and

(2) that the TCA creates no rights for individuals or corporate entities, and therefore no provision of the agreement can be enforced by anyone save the UK and EU authorities themselves[21]. The time when UK claimants could enforce their rights under EU law before domestic courts and/or the CJEU will become just a memory. Only time will tell as to whether a body of jurisprudence will develop in EU-UK arbitration proceedings which lawyers can draw on[22].

Towards the end of *Waiting for Godot*, one of the characters, Pozzo, observes that he seems unable to depart the scene. Estragon gives the sober reply: "*Such is life*". The reality for the UK looks existentially similar – the inability to fully depart the EU's sphere of influence being the cost of protecting the aviation industry and countless others.

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[20] Though UK courts should "have regard to" future CJEU decisions: s.6(2), European Union (Withdrawal) Act 2018.
[21] Article COMPROV.16: Private rights.
[22] Rulings and decisions being made publicly available by the parties: Article INST.29(5).