



Open Skies Agreement (Membership) Bill [HL] HL Bill 20 of 2017–19

Summary

The [Open Skies Agreement \(Membership\) Bill \[HL\]](#) is a private member's bill introduced by Baroness Randerson (Liberal Democrat). It had its first reading on 29 June 2017 and is scheduled to have its second reading on 26 January 2018. The Bill has two clauses. The first would require the Government to consider the desirability of the UK continuing to be a party to the 'Open Skies Agreement' between the US and the EU as if it remained an EU member state (following the UK's withdrawal from the EU):

In negotiating and concluding an agreement in accordance with Article 50(2) of the Treaty on European Union, Ministers of the Crown must have regard to the desirability of continuing to participate in the Open Skies Agreement between the European Union and the United States of America, on the same basis as a member state of the European Union.¹

The second clause would extend the Act to the whole of the UK and states that it would come into force on the day on which the Act was passed. Article 50(2) of the Treaty on European Union provides that member states intending to withdraw from the EU shall notify the European Council and that the EU would then “negotiate and conclude an agreement with that State, setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union”.²

The US Department of State has described its 'open skies' agreements as policies designed to “eliminate government involvement in airline decision-making about routes, capacity, and pricing in international markets”.³ The US has pursued the establishment of such agreements since 1992.⁴ This followed the liberalisation of the US's internal domestic market, enabled by its Airline Deregulation Act 1978 (which removed the regulation of fares, routes and schedules in the US domestic market).⁵

Within the context of EU aviation agreements with the US, the 'Open Skies Agreement' is most often used to refer to the [EU-US Air Transport Agreement](#) (henceforth also referred to as the Open Skies Agreement in this Briefing). This is an agreement between the EU and the US to enable greater cooperation in aviation and greater market access. Baroness Randerson has described the Agreement as “fundamental to the travel of millions of passengers and to the ability of commercial airlines to operate, whilst keeping the costs of air travel affordable”.⁶ In regard to the Bill, she has stated that it “emphasises the importance of the UK's retention of the Open Skies Agreement and calls upon the Government to commit to protect the future of the UK's aviation industry”.⁷

An internal market in aviation operates between EU member states⁸ and has been extended to include what is referred to as the European Common Aviation Area (ECAA).⁹ Membership of the ECAA requires participating states to accept the European Community's aviation law (the Community's 'acquis').¹⁰

EU-US Air Transport Agreement

Originally signed in 2007 (with a second stage agreed in 2010), the EU-US Air Transport Agreement:

- Allows EU and US airlines to fly from anywhere in the EU to anywhere in the US and vice versa.¹¹
- Established closer regulatory cooperation between the EU and the US in areas such as security and the impact of aviation on the environment.¹²
- Ensures recognition of EU designation, providing equal market access for any EU carrier.¹³

Norway and Iceland acceded to the Open Skies Agreement in June 2011.

The European Commission has stated that the EU's "ultimate objective" is to create a transatlantic 'Open Aviation Area' with a single air transport market between the EU and the US, including free investment flows, no restrictions on air services and access to each other's domestic markets.¹⁴

In its inquiry *Brexit: Trade in Non-Financial Services*, the House of Lords European Union Committee heard evidence from organisations regarding the aviation industry and the UK's withdrawal from the EU. The Committee stated that some organisations were concerned that the EU's agreements with third countries could cease to apply to the UK once it leaves the EU without specific arrangements being put in place; this included the Open Skies Agreement with the US.¹⁵

The British Air Transport Association (BATA) told the Committee that contingency plans should be put in place between the UK and the US should a formal agreement not be reached before the UK leaves the EU.¹⁶ Brian Pearce, Chief Economist at the International Air Transport Association (IATA), expressed concern about the status of joint business ventures which "hub over London" should an agreement not be reached that protected Open Skies.¹⁷ Another witness, Dr Barry Humphreys (a former head of air services policy at the Civil Aviation Authority and now an aviation consultant) suggested that the UK could revert to 'Bermuda II', an agreement between the UK and the US which predated Open Skies. However, he believed that this was "such a restrictive" agreement that a more liberal one would be reached "very quickly and relatively easily".¹⁸ On 30 November 2017, the Committee held a follow-up evidence session specifically on trade in air services.¹⁹ On the specific issue of the Open Skies Agreement between the EU and the US, Tim Alderslade, Chief Executive of Airlines UK (the trade body for UK registered airlines), stated that he believed that there was "absolute consensus" between the UK and US on replicating the existing agreement:

The US carriers are lobbying for it very hard, because they do not want to go back to the incredibly restrictive arrangements before open skies was in place, when, literally, two US carriers had access to Heathrow.²⁰

As of 16 January 2017, the Government had not formally responded to the Committee's report. On 26 October 2017, the then Minister of State for Exiting the European Union, Baroness Anelay of St Johns, wrote to the Committee saying that the Government would "seek the earliest possible opportunity to publish the response as the negotiations [between the UK and the EU] progress".²¹ However, in oral evidence to the House of Commons Transport Committee, the Secretary of State for Transport, Chris Grayling, stated that it was his expectation and intention that the Open Skies Agreement would be retained between the UK and the US, stating that: "I cannot conceive of any US Transport Secretary who would not want that to be the case".²² In answer to a written question

on 20 September 2017, the Government stated that “as well as seeking suitable aviation arrangements with the EU, the Department for Transport is also working closely with the aviation community to ensure that this global industry continues to be a major success”.²³

Air Passenger Movements Between the UK and the US

In 2016, there were a total of 225 million international passenger movements at UK airports, of which 153 million were between the UK and EU states (or vice versa).²⁴ This represented 68 percent. There were 19 million passenger movements to or from the US at UK airports. This represented 9 percent of all worldwide movements. Taking the EU as a whole, the US was the second largest embarkation or landing point for international passenger movements at UK airports in 2016. These data only include direct flights to or from the UK.

In its written evidence to the House of Lords European Union Committee, the IATA stated that in 2015 the aviation sector contributed £55 billion to the UK’s gross domestic product (GDP) and that it supported 945,000 jobs.²⁵

Further Information

- [Debate on ‘Brexit: Trade in Non-financial Services \(EUC Report\)’](#), HL Hansard, 18 December 2017, cols 1926–64
- [Oral Question on ‘Brexit: Tourism’](#), 20 November 2017, HL Hansard, 20 November 2017, cols 2–5
- [Oral Question on ‘Leaving the EU: Aviation Agreements’](#), HC Hansard, 19 October 2017, cols 976–7
- [Debate on ‘Leaving the EU: Aviation Sector’](#), HC Hansard, 25 November 2016, cols 1215–22
- House of Lords European Union Committee, [Brexit: Trade in Non-Financial Services](#), 22 March 2017, HL Paper 135 of session 2016–17
- European Commission, [‘Aviation: 10 Years of the EU-US Air Transport Agreement’](#), 10 July 2017
- European Commission, [‘Air: Internal Market’](#), accessed 16 January 2018
- Institute for Government, [‘Aviation and the European Common Aviation Area \(ECAA\)’](#), 14 August 2017
- House of Commons Library, [Brexit: How Will it Affect Transport?](#), 12 June 2017, pp 12–19
- European Parliamentary Research Service, [EU External Aviation Policy](#), May 2016
- Office for National Statistics, [Travel Trends 2016](#), 18 May 2017

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- ¹ [Open Skies Agreement \(Amendment\) Bill \[HL\]](#), clause 1.
- ² [Treaty on European Union](#), article 50(2).
- ³ US Department of State, '[Air Service/Open Skies Agreements](#)', accessed 15 January 2018.
- ⁴ *ibid.*
- ⁵ European Parliamentary Research Service, [EU External Aviation Policy](#), May 2016, p 3.
- ⁶ Text provided by Baroness Randerson on request from the Library.
- ⁷ *ibid.*
- ⁸ European Commission, '[Air: Internal Market](#)', accessed 15 January 2018.
- ⁹ European Commission, '[International Aviation: ECAA](#)', accessed 15 January 2018.
- ¹⁰ *ibid.*
- ¹¹ House of Lords European Union Committee, [Brexite: Trade in Non-Financial Services](#), 22 March 2017, HL Paper 135 of session 2016–17, p 69.
- ¹² European Commission, '[Air: International Aviation: United States](#)', accessed 16 January 2018.
- ¹³ *ibid.*
- ¹⁴ *ibid.*
- ¹⁵ House of Lords European Union Committee, [Brexite: Trade in Non-Financial Services](#), 22 March 2017, HL Paper 135 of session 2016–17, p 69.
- ¹⁶ *ibid.*, p 70.
- ¹⁷ *ibid.*
- ¹⁸ *ibid.*
- ¹⁹ House of Lords European Union Committee, '[Committee Follows Up on Post-Brexit Trade in Air Services](#)', 30 November 2017.
- ²⁰ House of Lords European Union Committee, [Oral Evidence: Brexite: Trade in Non-Financial Services: Follow Up](#), 30 November 2017, Q10.
- ²¹ Department for Exiting the European Union, [Letter to the Rt Hon the Lord Whitty Chair, EU Internal Market Sub-Committee Brexite: Trade in Non-Financial Services](#), 26 October 2017.
- ²² House of Commons Transport Committee, [Oral Evidence: Departmental Priorities and Annual Report and Accounts, HC 745](#), 17 October 2016, Q74.
- ²³ House of Commons, '[Written Question: Aviation: Brexite](#)', 20 September 2017, 10160.
- ²⁴ An 'international passenger movement' denotes a passenger flying between the UK and the international country in question (in either direction); and Department for Transport, '[Air Traffic at UK Airports \(AVI01\)](#)', October 2017, table AVI0105.
- ²⁵ International Air Transport Association, [Written Evidence to the House of Lords EU Committee: TAS0005](#), October 2016.

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