

Brexit: a shot across the bows

Richard North, 23/06/2018

So, after my pointing it out **in November**, the media finally pick it up, more than six months later, after being spoon-fed by Airbus. And such is the grip the *Telegraph* have on the issues that it has its political editor Gordon Rayner and political correspondent Jack Maidment actually writing about Airbus being "certified under IATA rules".

This clever pair, also wrongly (but in common with many other hacks) talk about Airbus certifications becoming invalid at the end of March next year – demonstrating again that they don't have the first idea what they are talking about.

In July 2008, EASA* **issued its first** Single Production Organisation Approval – and that was to Airbus fixed-wing manufacturing. Helicopters **followed later**. That means precisely what **I wrote yesterday**, that Airbus is regulated directly by EASA. It will not be directly affected by Brexit. It will remain regulated by EASA even after we leave the EU – the UK operations voluntarily adopting EU law and control in order to work as part of the Airbus conglomerate.

The problem comes with the 215 (or so) production organisations in the UK approved by the **Civil Aviation Authority**, many of which will supply Airbus, including GKN engineering which does much of the wing fabrication under contract to Airbus. Once the UK leaves the EU and becomes a third country, in order to keep supplying Airbus, they must re-apply directly to EASA for approval. Until they have regained that approval, they will no longer be able to deliver parts or assemblies for use in aircraft certified by EASA.

The potential for disruption is obvious, not least as the industry is asserting that parts approved by the CAA currently fitted to such aircraft will invalidate their airworthiness certificates, preventing them being flown until the parts are replaced or revalidated.

As regards new, post-Brexit approvals, it is bound to take EASA a while to deal with the applicants, especially as they cannot actually apply until the UK is a third country. That would suggest that there is bound to be some discontinuity, with Airbus unable to continue manufacturing aircraft for an unspecified period.

This is nothing to do with aid funding from the EU, as **Nigel Farage** foolishly asserts. And if the media was on the ball, it would not be consulting this time-expired politician. He has nothing worthwhile to say about the situation. Nor does this, as **John Longworth** from "Leave means Leave" prominently maintains, scream of "more project fear". I was writing about this entirely independently in November last, confirmed directly from EASA in **December**.

Ironically, exactly the same message was delivered by the House of Commons Business, Energy and Industrial Strategy **Select Committee** on 14 March of this year – only just over three months ago. In a report entitled "The impact of Brexit on the aerospace sector", the consequences of leaving EASA were spelled out by the aerospace representative body ADS**:

In those circumstances, our regulatory regime is effectively non-functioning, because whilst all the people and all the processes are the same, if there is no mechanism for recognition of it, effectively it has no value or validity. We cannot [sell anything]... there is a broader range of issues around the... people doing the maintenance of those aircraft. If they are not recognised as being appropriate people to do that work, then even if they have done the work, the aircraft will not be regarded as fit to fly. It is chaotic because we do not know exactly what arrangements may or may not be put in place in order to try to bridge that gap.

ADS went on to tell the Committee that the UK's CAA did not currently have the capability to take over the functions of EASA, and that "We have estimated a five- to 10-year period in order to even begin that process". Strikingly, the chief executive of the CAA has said that it is not undertaking any preparatory work for taking over the responsibilities of EASA, since "**it would be misleading to suggest that's a viable option**".

Needless to say, after ignoring my work for so long, the media scarcely gave this report any attention, typified by the *Independent* which downplayed the findings with the headline: "Britain must follow Brussels rules on aerospace after Brexit to protect industry". Those journalists now give Farage and Longworth house room, instead of setting out the facts, which tells you a great deal about the state of our media. It is much easier to present Airbus as a "biff-bam" confrontation than explore (or even report) the real issues.

What has brought this into high profile, of course, is the **press release** from Airbus. This made it personal, turning a theoretical issue into something with a face to attach to it, in the form of Chief Operating Officer Tom Williams.

What would otherwise be the dry publication of the Airbus **risk assessment** thus became a media event.

Saying nothing that hadn't been said before, the assessment stated in bald terms that "exiting the EU next year without a deal – therefore leaving both the single market and customs union immediately and without any agreed transition – would lead to severe disruption and interruption of UK production". This was enough to set the media on fire.

Immediately, one can see how a "no deal" scenario with no transition period, would spook the company – that would give it no time to secure its supply base. **But it is less than obvious why it should be concerned about leaving the Single Market and the customs union. Tariffs are not an issue for aviation parts and, to an extent, aviation lies outside the Single Market, with its own unique regulatory system.**

For instance, it would serve Airbus's interests if the UK could enjoy the same sort of deal with EASA as have Efta members. That would allow the CAA to retain control over approving production organisations and thereby assure the continuity of supplies after Brexit. The EEA (aka Single Market) is not an issue here – the same deal is open to Switzerland.

This, though, is **not** necessarily as simple as it would appear. The Efta States were members of the predecessor organisation to EASA, the Joint Aviation Authorities (JAA) and have acquired certain grandfather rights on dissolution of the organisation in 2009.

Then, Efta States have adopted the full EASA *acquis*, the laws respectively having been incorporated into the EEA Agreement and the Agreement between the European Community and the Swiss Confederation on Air Transport.

As a result of these formal treaty agreements, Efta States are treated as if they were EU Member States for the purposes of aviation safety requirements. But they are obliged to ensure on-going implementation of regulation, subject to any agreed opt-outs and are subject to EASA standardisation inspections as if they were EU Member States. Organisations located in EFTA States are treated as if they were located in an EU Member State and subject to approval and oversight by the local national aviation authorities.

Thus, without being a contracting party to the EEA Agreement, or having an agreement equivalent to that concluded by the Swiss, the UK would not have any approval authority over Airbus suppliers.

Even then, a semi-detached relationship with EASA would **not** be entirely to the advantage of the UK as a whole, representing the entire aviation industry. With no voting powers and without a right to be involved in the creation of aviation safety law, it would be seen as a **rule-taker**. However, there would be partial compensation through our membership of the global rule-maker, ICAO***, where we could exert some influence on international agenda.

Since full membership of EASA is not an option, the only sure way we could achieve parity with the EU is to re-establish our own regulatory system and then adopt the same style of relationship with the EU as has the United States, via a Bilateral Aviation Safety Agreement – with the possible option of sub-contracting some of the regulatory functions to EASA, or joint certification of the nature undertaken by EASA and the FAA.****

Better still, and worth working for, would be a trilateral agreement between the UK, the US and the EU, although it is hard to see what would induce the EU and the US to re-open the book on their agreement.

Neither a bilateral nor a trilateral agreement, however, gives us regulatory autonomy. The principles (and considerable detail) of aviation legislation is determined at global level via ICAO, while EASA and the US's FAA dominate implementation measures. **There is no "taking back control" as far as aviation goes – it is a global industry which is regulated globally.**

In the shorter term, the cheapest option would be to follow in the footsteps of Norway and Switzerland, but that would have an impact on the longer-term desirability of the UK as a home for aerospace manufacturing. Without a national champion at the regulatory table, UK firms would be disadvantaged by having always to react to legislation produced by others, rather than driving its own.

Here, Airbus would not be badly affected. It already has powerful champions in France and Germany (and Spain) and has no real need for UK support. But, as a base for operations, the attraction of the UK would diminish and would or could eventually see the firm taking its investment elsewhere.

The great torrent of publicity over Airbus, therefore, has not been helpful in obscuring the wider problem of how, post Brexit, we regulate the UK aviation industry. However, given the ineffable triviality of our media, there was never going to be an intelligent public debate anyway. Our journalists simply aren't up to it – not even in the specialist magazines.

What we have seen, though, is a shot across the bows from

industry, joined now by **BMW and others, which must surely give Mrs May pause for thought. If nothing else, she can be under no illusion that "no deal" is not an option. Even if we are no further forward in crafting a workable exit, that should focus minds for the European Council next week.**

* The European Aviation Safety Agency or EASA is an agency of the European Union with responsibility for civil aviation safety. It carries out certification, regulation, and standardisation, and also performs investigation and monitoring.

** ADS Group Limited, informally known as ADS, is the trade organisation representing the aerospace, defence, security and space industries in the United Kingdom.

*** The International Civil Aviation Organization is a specialized agency of the United Nations. It codifies the principles and techniques of international air navigation and more.

**** The Federal Aviation Administration of the United States is a national authority with powers to regulate all aspects of civil aviation.