

Transportation and Logistics

Challenges caused by Brexit

27 February 2018

Core Recommendations

- Ensure legal certainty – already during Brexit negotiations. If necessary, this should be done through transitional provisions/rules or application on an interim basis.
- Precondition for transitional provisions: Full convergence with EU regulation (acquis communautaire), including full acceptance of jurisdiction of the ECJ.
- The new aviation agreement between the EU and UK must ensure the right balance guaranteeing liberal and open market access, mutual recognition, dispute settlement mechanisms, the principle of reciprocity and a fair balance of rights and obligations.
- Continuing membership/participation of the UK in the EU agencies EASA and EUAR.
- Safeguard supply chains for components.
- Avoid double certification and regulatory divergence between the UK and the EU. Establish mechanisms which ensure mutual recognition of standards regarding homologation, type approval, safety, documents and vehicle dimensions.
- Establish a level playing field concerning EU emissions legislation.
- Ensure continuing interoperability of transport systems, including technical and operational rules.
- Enable reciprocal access to occupations and recognition of occupations and documents in the transport sector.
- Secure reciprocal market access rights and the right to access the respective infrastructure systems.
- Continue framework programmes such as Horizon 2020.

BDI Task Force Brexit

The BDI is committed to supporting the Brexit negotiation teams with in-depth expertise in a number of areas of economic policy. In summer 2017, the BDI set up a Brexit task force together with its member organisations, company representatives and partners including the Association of German Banks (BdB), the German Insurance Association (GDV), the Federation of German Wholesale, Foreign Trade and Services (BGA), the Confederation of German Employers' Associations (BDA) and the Association of German Chambers of Commerce and Industry (DIHK).

The BDI Task Force Brexit has established ten project teams to address specific policy areas: (1) Trade in Goods, (2) Transportation and Logistics, (3) Data and ICT, (4) Taxation, (5) Legal consequences of Brexit in core areas of business law, (6) Energy and Climate Policy, (7) Market Access, (8) Workforce Mobility, (9) Banking, Finance and Insurance, (10) Negotiation Process (including Northern Ireland, Research and Development, Defence, Financial Commitments).

The objective of the project teams is to identify the potential risks posed by the exit of the UK from the EU and to propose constructive approaches to countering these risks. The project teams are looking at the regulatory issues in the individual policy areas on the European and the national level. The BDI is also a member of a similar task force at Business Europe, the umbrella organisation for European business. The work of the BDI Task Force Brexit will progress in line with the official negotiations.

This position paper is based on the background information developed by the BDI Brexit Task Force. The views expressed in this position paper are those of the BDI and do not necessarily reflect those of the other members of the Task Force.

Contents

Transportation and Logistics: Challenges caused by Brexit	4
Modes of Transport: Assumptions and Measures.....	5
Aviation	5
Mobility and Automotive	6
Maritime.....	8
Rail	9
Road Haulage Industry / Transport	10
Imprint	12

Transportation and Logistics: Challenges caused by Brexit

The mobility, transportation and logistics sector is essential for ensuring the free movement of persons and goods as well as the proper functioning of the EU internal market. At the same time, it is heavily regulated at European level. While there is still uncertainty regarding the actual implications of Brexit on the transport sector, the fundamental freedoms of the EU and the advantages of the internal market for business and consumers must be upheld unconditionally.

Maintaining the current level of connectivity is indispensable to ensuring an open mobility and transportation sector and continued economic growth. However, it is unlikely that a final agreement regulating future relations between the EU and the UK will be in place by the date of withdrawal. The transport sector is therefore in favour of transitional arrangements that guarantee the continued application of existing market provisions especially for cross-border services. Agreeing on transitional arrangements for a fixed period of time after Brexit would allow operators to continue working smoothly and provide additional time for a long-term transport agreement to be concluded.

An open legal framework for data and innovative passenger as well as goods transport concepts is the basis for comprehensive digital mobility solutions. Mobility, transportation and logistics are not restricted by national borders. This legal framework must therefore be developed both nationally and internationally. The legal framework conditions for the collection, evaluation and use of mobility, transportation and logistics data can be developed and implemented while respecting data protection and data security.

In the following, the potential and acute challenges associated with the UK's exit from the EU will be identified for the five principal modes of transport: Aviation, Mobility and Automotive, Maritime, Rail, and Road Haulage. Subsequently, the remit is to develop constructive and enforceable measures to prevent damage of any kind being caused to EU industry.

Modes of Transport: Assumptions and Measures

Aviation

Assumptions

On the day of withdrawal from the EU, the UK would become a so called third country without the right to participate in the European Common Aviation Area (ECAA) if no agreement is reached. However, the aviation and UAV (unmanned aerial vehicle) industry depends on legal certainty and needs long planning periods for airports and airlines. Planning for the holiday season 2019 is already underway. To prevent severe disruptions and enable the industry to adjust to the new situation, agreements for a possible transitional period and eventually for the long-term relations need to be concluded swiftly, as there is no WTO safety net in place.

Additionally, our key concerns are to avoid double certification and divergence of regulations between the EU and the UK in the field of civilian aviation safety (see Regulation (EC) No. 216/2008 in the recently revised version). The European Aviation Safety Agency (EASA) is responsible for the development of common safety rules for aviation and UAVs at European level. It monitors the implementation of standards through inspections in the Member States and provides the necessary technical expertise, training and research.¹ If the UK is no longer under the authority of the EASA, an additional UK certification process would be established. The potentially ensuing discrepancies between the applicable regulations in the UK and the EU would encumber the industry.

A further potential challenge is in the production of components, such as wings for aircraft. Some components cross the Channel between the UK and France several times before the final product rolls off the production line. It is questionable whether certain parts will still be obtainable quickly and affordably after Brexit. Non-tariff barriers could seriously disrupt the supply chain and cause additional costs and burden.

Measures

The primary objective of the aviation and UAV sector is to ensure legal certainty during and after the Brexit negotiations. If necessary, this should be achieved through transitional provisions or by agreeing to maintain the status quo on an interim basis until a final agreement is reached. A precondition for transitional provisions or an application of the status quo on an interim basis must be full convergence with EU regulations (*acquis communautaire*), including full acceptance of the jurisdiction of the European Court of Justice (ECJ). The EU aviation regulatory framework (*aviation acquis*) includes, among others, the application of the four fundamental freedoms, consumer and climate protection provisions as well as primacy of ECJ over national law. The UK has already indicated that it will fully incorporate EU legislation into domestic UK law to ensure a smooth transition. This must be monitored closely.

Ultimately – after a transition period – a comprehensive aviation agreement must be agreed to regulate the future relations between the EU and the UK. The industry on both sides should be given sufficient time to properly adapt to a new set of rules after March 2019, which could amount to around five years. If the status quo (with full acceptance of the aviation *acquis* and ECJ) cannot be maintained, a new aviation agreement will have to be negotiated. The new aviation agreement between the EU and the UK must ensure the right balance between guaranteeing liberal and open market access, mutual recognition, dispute settlement mechanisms, the principle of reciprocity and a fair balance of rights and

¹ EASA, About EASA <<https://www.easa.europa.eu/the-agency/faqs/about-easa>>, [accessed 28.11.2017].

obligations. A one-sided elimination of obligations cannot result in equal rights. A future aviation status of the UK comparable with Switzerland or Norway (incl. full convergence with the EU acquis) could be a suitable approach.

Concerning the EASA there are two possible options. The EU and the UK could negotiate a Bilateral Aviation Safety Agreement (“BASA”) that reflects the above-mentioned priorities of no duplication and no divergence. A Working Agreement could be adopted swiftly to ensure a stable framework in the interim. Alternatively, the UK and the EU could agree that the UK continues participating in the EASA after Brexit. This option would also prevent disparity between EU and UK regulations. A continued de-facto membership/participation or simple regulation by EASA of the UK would also allow the EASA to continue using the aviation competence of the UK.

The upcoming drone regulation of the European Aviation Safety Agency (EASA) will lay down a framework for the safe use of drones within the current aviation infrastructure and in the future development of the growing drone market. The automation and connectivity of drones is an important issue for the further development of the EU’s U-space plan and aviation strategy, which includes the integration of drones into a full-service network. The UK should adapt and accept the EASA regulations as a basis for future digital trends in the aviation and UAV market.

Regarding the production of components, there are two possible scenarios. Either the status quo is maintained with applicable customs solutions, or, components currently produced in the UK may be replaced by similar parts produced within the EU or production relocated entirely to the continent.

Mobility and Automotive

Assumptions

The European single market provides for a high level of economic and regulatory integration in the automotive sector. The strategic structure of business operations in this sector, its supply chains, production sites and distribution networks, are all deeply integrated. Vehicle manufacturers currently operate almost 300 plants across the EU28, often manufacturing components such as engines in one country and assembling vehicles in another. Such integrated business models would not be possible without the four freedoms of the single market.

In the automotive sector, EU-wide homologation and type approval standards and procedures ensure that products are mutually recognized within the internal market. Technical harmonisation in the EU is based on the Whole Vehicle Type Approval System (WVTA). Under the WVTA, a manufacturer can obtain certification for a vehicle type in one EU country and market it EU-wide without further tests. If the UK introduces new UK-specific regulations, the EU27 WVTA would no longer be valid in the UK and vice versa, which would pose a heavy burden on both the European and the British automotive industry. Double approval of the same vehicle type would be required, by the EU27 and the UK respectively. The procedure of EU Exemption Type Approval also needs to be considered in this context as it may become more important, particularly for innovations in the field of automated driving.

Regarding EU carbon emission provisions, the EU 2021 legislation on CO₂ is of concern to the automotive sector. It needs to be regulated whether the UK fleet will continue to be monitored together with that of the EU. Other points that need to be addressed are EU emissions legislation for 2025/2030 and Real Driving Emissions (RDE).

Similarly to the production of components in the aviation sector, the automotive sector also relies on the free and efficient interchange of parts between the UK and the EU. It is questionable whether certain parts will still be obtainable quickly and affordably after Brexit.

Measures

In view of the development of the legal framework for smart mobility solutions mentioned above, the expansion of the transport and broadband network will need to be driven forward in synergy. The allocation of frequencies (e.g. for wifi and 5G) will particularly need an integrative approach. This is the only way that a technological basis for transnational mobility solutions in the EU and the UK can be established.

As with the aviation sector, ensuring legal certainty and avoiding regulatory divergence is of crucial importance to the automotive industry.

Goods that have been put on the market in line with regulations before the Brexit date should be accepted by the EU and the UK in equal measure. Regarding future homologation and type approval after Brexit, the UK should refrain from adopting UK-specific provisions and procedures. In that regard, UK should remain in the UN 1958/98 System.² The UK should continue to implement the international vehicle approval procedures. Whatever shape Brexit ultimately takes, a mechanism will need to be established to ensure the mutual recognition of EU and UNECE standards regarding homologation, type approval, safety standards as well as CO₂ and emission standards. These standards must ensure the right of UK homologation. Regarding the EU 2021 CO₂ legislation, the UK and the EU fleet could be monitored together in the same way as Norway and Iceland. Furthermore, UK should comply with the post-2020 EU regulation scheduled for adoption in 2018.

A mechanism should be implemented for accepting and implementing EU automotive regulations in the UK. Irrespective of the outcome of the UK-EU negotiations, the UK should refrain from UK-specific regulations that deviate from European/UNECE equivalents.

Regarding the production of components, the exchange of goods between the UK and the EU should continue to be unrestricted, with no market barriers or longer lead times caused by laborious customs controls. Not doing so may result in productivity losses for both the UK and the EU automotive sector.

² UN 1958 Agreement concerning the Adoption of Harmonized Technical United Nations Regulations for Wheeled vehicles, Equipment and Parts which can be fitted and/or be used on wheeled vehicles and the conditions for reciprocal recognition of approvals granted on the basis of these United Nations Regulations, < https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XI-B-16&chapter=11&clang=_en>.

Maritime

Assumptions

The EU short sea shipping sector operates in a highly deregulated environment. Ensuring legal certainty in this sector requires clarification of the impact on individual EU laws. These include Council Regulation No 3577/92 on maritime cabotage and Council Regulation No 4055/86 on applying the principle of freedom to provide services to maritime transport between Member States and between Member States and third countries. In case of a hard Brexit, these regulations would no longer be applicable. Instead, the Geneva Convention and Statute on the International Regime of Maritime Ports of 1923 may become applicable. However, only 17 EU Member States have ratified the Convention and coastal shipping is explicitly not included. Furthermore, feeder services (the relay of international cargo) are not covered by the Geneva Convention and Statute.

The question has been raised whether feeder services should be considered as international services falling within the scope of Regulation No 4055/86 (which does not impose any flag requirement) or as cabotage services falling within the scope of Regulation No 3577/92 (where there is a Union-flag requirement).

In cases where the feedering consists in pre- or onward transportation between two ports of the same Member State X of cargo (a) with destination in a Member State Y or in a third country, or (b) coming from a Member State Y or a third country, Member State X could reserve such feeder services for Union-flagged vessels. In fact, in all the Member States where cabotage services are reserved for Union flagged vessels in accordance with regulation No 3577/92, feeder services are considered to be cabotage services, whereas in the rest of the Member States, feedering is free.

Allowing a company to perform feeder services for the carriage of international cargo following or preceding an international voyage may lead to substantial savings in the cost of transport and contribute to a better efficiency of services offered. For this reason, certain aspects of feedering are increasingly the subject of negotiations in trade agreement discussions.

For the maritime sector, the adoption of environmental standards in the UK is of concern. It remains to be seen whether the UK will continue to apply EU regulations or instead follow the regulations of the International Maritime Organisation (IMO). The plans of the EU to introduce an Emission Trading System (ETS) in the EU starting in 2023 would not cover the UK. This could result in a distortion of competition.

Measures

A new shipping agreement must be negotiated between the EU and the UK which encompasses the provisions of EU Regulation 4055/86 and 3577/92 as well as parts of the Geneva Convention and Statute on the International Regime of Maritime Ports.

In terms of emission standards, the EU should refrain from adopting unilateral climate protection measures. Instead, a common solution needs to be found within the framework of the IMO to avoid discrimination against the European maritime sector.

Rail

Assumptions

Following withdrawal, trains may no longer be allowed to legally cross the border between the UK and Ireland or the UK and France. Furthermore, the operations of EU railway companies in the UK and vice versa may generally be subject to new and stricter requirements. However, an undisrupted rail transport service throughout and after the Brexit negotiations is of high public relevance. The future framework of relations between the UK and the EU should therefore be as close to the present framework as possible. Current legislation on the creation of the Single European Railway Area (SERA) is laid down in four railway packages³. Post-Brexit, an agreement will need to be found to ensure access to the railway markets and the interoperability of railway systems including smart solutions, technical and operational rules and EU train driver licences and certificates. This is the only way that a technological as well as a legal basis for transnational solutions between the EU and the UK can be created.

If the common European rules cease to apply and railway standards are no longer mutually recognised, the legal and regulatory ramifications for EU-based companies in the UK and UK-based companies in the EU market and for the rail supply industry could be substantial.

Additionally, future developments in technical standards and rules for rail transport should be aligned (Technical Specifications for Interoperability (TSI), decisions of the EU Agency for Railways (EUAR)). The UK will have to appoint a new agency to be in charge of the British railway sector once it is no longer supervised by the EUAR.

Brexit must not undermine the access of UK operators to the EU market and the access of EU operators to the UK market on the basis of symmetrical conditions.

Measures

The harmonisation of technical requirements and mutual recognition processes in the Single European Railway Area (SERA) – regarding interoperability, safety and operations – is crucial for European rail transport. Harmonisation is a precondition for mutual market access and is set to continue in the EU on the course set by the technical pillar of the Fourth Railway Package.

It is important that future changes in the technical framework conditions for the railway market are aligned as closely as possible between the EU and the UK. The EUAR will have to form a new relationship with the UK to support the implementation of TSIs and/or corresponding safety provisions where applicable. The relevant UK representatives should have access to a direct and regular exchange with the EUAR and their national counterparts. Conversely, EU, EFTA and EEA representatives should be able to have a regular exchange with their UK counterparts.

Access to the railway markets in the EU and the UK respectively and the respective conditions for access should be ensured.

³ European Commission (2017), <https://ec.europa.eu/transport/modes/rail/packages_en>, [accessed 30.11.2017].

Road Haulage Industry / Transport

Assumptions

In the event of a hard Brexit, borders and paperwork applicable to the road haulage sector would be regulated on the basis of pre-1993 legislation which would seriously impede transportation between the UK and the EU. To give an example, the ECMT quota would be reintroduced between EU27 and UK, thus limiting licences in both time and number. It is estimated that ECMT permits would only cover five percent of current demand for cross-border movements.

The reintroduction of customs clearances and tariffs would result in long traffic jams that will burden the transport sector and disrupt supply chains. Usually, when disruptions are on the horizon, the logistics sector prepares alternative routings and modes of transport. However, in this case, the lack of political clarity affects all possible transport alternatives as well, making investment decisions (e.g. in ships or aircraft) a gamble. Additionally, as on-time deliveries have become a key factor in cross-border supply chains and production processes, carriers might be held liable for downtime costs by their customers if they cannot deliver because of a Brexit-caused shutdown.

With the reintroduction of customs clearances, the logistics sector will need additional real estate including storage houses, well-trained staff and applicable IT. The markets for all three of these resources are very strained, the cost of investments here will be high and take several months to implement. These additional costs and the foreseeable contraction of the British economy and consumption will affect competition in this sector.

For the road haulage industry, rules on admission to the occupation of road transport operator (Regulation 1071/2009/EC) and access to the international road transport market (Regulation 1072/2009/EC) are of the utmost importance. This also covers the international road transport licence, the cabotage regime, driver attestation for drivers from third countries and the maintenance of the electronic register of road transport companies on serious infringements. In addition, the Combined Transport Directive (92/106/EEC) also needs to be considered. These provisions are included in the Road Mobility Package 2017 on market access and admission to occupations.

Furthermore, the mutual recognition of documents, vehicle dimension and mass requirements needs to be ensured.

Measures

Regarding a possible transition period, the status quo should be upheld to ensure continuity without disrupting trade flows. Concerning future relations, it is extremely important to both the logistics sector and its customers that cross-border trade is not disrupted, and stability and confidence in the international supply chain are maintained. Market access should therefore not be regulated on the basis of quota systems, which would again disrupt the smooth flow of goods, but on the basis of qualitative criteria. These criteria should be predefined in a bilateral, up-to-date agreement between the EU and the UK. This agreement could either be a comprehensive agreement or take a more sectoral form as a road transport agreement. We hope that a pragmatic solution can be found to keep the administrative burden (e.g. through customs and new procedures) to a minimum and that suits both the UK and the EU27, and that future trade processes are decided in consultation with business to ensure a smooth transition.

In view of the development of the legal framework for smart mobility solutions mentioned above, the expansion of the transport and broadband network will need to be driven forward in synergy. The

allocation of frequencies (e.g. for wifi and 5G) will particularly need an integrative approach. This is the only way that a technological basis for transnational mobility solutions in the EU and the UK can be established (as mentioned in the above section on Mobility and Automotive).

Imprint

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