

Brexit



and its influence on European transport

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Overview

- “Orderly” Brexit
 - Withdrawal Agreement
 - Impact on transport
- “No-deal” Brexit
 - Impact on transport
 - Preparedness and contingency planning
- Future transport relationship
 - Political Declaration
 - “Orderly” Brexit
 - “No-deal” Brexit

Key parameters for Brexit

discussions

- The UK becomes a third country
- The UK is leaving the Single Market

- UK red lines:
 - Regulatory autonomy
 - End of CJEU jurisdiction
 - End of freedom of movement of people

- EU 27 guiding principles:
 - Autonomy of the Union and its legal order (incl. CJEU)
 - Integrity of the Single Market
 - No "cherry picking"
 - Level playing field
 - Consistent approach towards third country partners

“Orderly” Brexit

- Article 50 TEU negotiations between EU27 and the UK on:
 - the terms of the UK’s withdrawal from the EU – Withdrawal Agreement (negotiations concluded on 14/11/2018)
 - The framework for the future EU-UK relationship – Political Declaration (negotiations concluded on 22/11/2018)
- EU27 leaders have endorsed the Withdrawal Agreement and the Political Declaration on 25/11/2018
- The UK has not yet ratified the Withdrawal Agreement
- Original Brexit date – 29/03/2019
- European Council granted 2 extensions (Article 50(3) TEU) – new Brexit date is 31/10/2019

Withdrawal Agreement

- Transition period until 31/12/2020 - option to extend transition period for 1 or 2 years – decision to be taken by EU and UK until 01/07/2020
- Protocol on Ireland and Northern Ireland - backstop in case a solution is not found until the end of the transition period to avoid a hard border on the island of Ireland
- Primacy and direct effect of the provisions in the EU and the UK + consistency with ECJ case-law delivered before the end of the transition and UK courts to pay due regard to ECJ case-law delivered after the transition -> ensuring same legal effects in the EU and the UK
- References to EU law in the WA are dynamic (some exceptions) -> UK must comply with amendments to EU law adopted until the end of the transition

Withdrawal Agreement

- Citizens' rights - protecting the rights of over 3 million EU citizens in the UK and over 1 million UK nationals in the EU
- Separation issues - winding-down of current arrangements and providing for an orderly withdrawal (e.g. to allow for goods placed on the market before the end of the transition to continue to their destination, protection of existing intellectual property rights and geographical indications, winding down of ongoing police and judicial cooperation and other administrative and judicial procedures, the use of data and information exchanged before the end of the transition, issues related to Euratom, etc.)
- Financial settlement - the UK and the EU will honour all financial obligations undertaken while the UK was a MS
- Governance of the WA - effective management, implementation and enforcement of the agreement, including dispute settlement

Withdrawal Agreement

- Dispute settlement:
- First instance – Joint Committee
- Second instance – Arbitration
 - Decisions are binding to the EU and the UK
 - For questions concerning EU law – the arbitration panel must refer the questions to the ECJ for a binding ruling
 - Both parties may ask that a question is referred to the ECJ – decision up to the arbitration panel (reasoned opinion in case of rejection)
 - In case of non-compliance – lump sum or penalty payments
- Third instance – suspension of parts of the WA (except citizens' rights) or part of other EU-UK agreements – review by the arbitration panel

Transition period

- From the withdrawal the UK becomes a 3rd country:
- No longer part of EU decision-making and no longer represented in the EU institutions, bodies, agencies, committees, expert groups or other similar entities (some exemptions – if it is in the EU's interest or if it concerns individual acts addressed to the UK or persons residing or established in the UK)
- The UK can negotiate, sign and ratify agreements with other 3rd countries – BUT they cannot enter into force or apply until the end of the transition
- The UK and the EU can start negotiating their future agreements

Transition period

- The UK becomes a 3rd country – BUT the entire EU acquis will continue applying to and in the UK
- The UK remains a full member of the Customs Union and the Single Market (including all 4 freedoms); the UK will continue implementing and applying all EU policies and rules; the UK will continue contributing to the EU budget in line with the existing MFF
- The ECJ retains full jurisdiction under the Treaties as regards the UK; all changes to the EU acquis will automatically apply to and in the UK; EU institutions, bodies, offices and agencies retain all powers conferred to them under EU law towards the UK
- The UK will remain bound by all obligations stemming from international agreements related to the EU (EU-only and EU/MSs mixed) – the EU will inform the other parties of these agreements that during the transition the UK is to be treated as a MS

Irish Protocol - the backstop

- Main objective: avoid a hard border between IE and NI, protect the Good Friday Agreement, the Single Electricity Market and the all-island economy, and ensure North-South cooperation
- Kicks in after the transition period expires if by that time no agreement is reached that helps to avoid a hard border on the island of Ireland
- The backstop will apply unless and until it is superseded, in whole or in part, by any subsequent agreement – the EU and the UK have committed to reaching this agreement by 01/07/2020 (deadline for extension of the transition period)
- Ireland and the UK can maintain the Common Travel Area between the two countries to ensure free movement of people between them – applies to travel of any EU citizens between the UK and IE

Irish Protocol - the backstop

- Establishment of a single EU-UK customs territory – avoids the need for tariffs, quotas or checks on rules of origin between the EU and the UK
- Strong rules to ensure a level playing field between the EU and the UK
- The Union's Customs Code (including rules for releasing products into free circulation within the EU) will continue to apply to NI (not the rest of the UK) – no restrictions for NI when placing products on the Single Market
- The UK in respect of Northern Ireland will remain aligned to rules essential to the Single Market and indispensable for avoiding a hard border: legislation on goods, SPS rules, rules on agricultural production/marketing, VAT and excise in respect of goods, and state aid rules -> NI remains part of the Single Market for goods

“Orderly” Brexit - impact on transport

- During the transition period – status quo -> the UK will continue to apply the entire transport *acquis*
- The UK remains part of the Customs Union and the Single Market -> free movement of people, goods and freedom to provide transport services
- Transport between the EU27 and the UK would continue without interruptions or restrictions
- The UK would remain part of the EU aviation, rail and maritime safety and security eco-system (but no participation in decision-making)
- Potential impact on international transport agreements
- What happens after the expiry of the transition period? – future transport relationship to be negotiated; Political Declaration gives framework for all transport modes

“No-deal” Brexit - impact on transport

- The UK has not ratified the Withdrawal Agreement – risk of a “no-deal” Brexit remains high
- 31/10/2019 – if the UK leaves without an agreement – EU *acquis* stops applying to and in the UK at midnight
- This would cause severe disruptions across sectors (food and medicines supplies, financial markets, tourism, just-in-time supply chains, manufacturing, etc.)
- Transport is one of the most effected sectors – “no-deal” Brexit would cause breakdown in connectivity between the EU and the UK
- Issues and impacts vary between transport modes – depending on EU and international legal frameworks
- Road and air transport are the most exposed, rail transport is geographically limited, maritime transport is largely regulated at international level

“No-deal” Brexit - aviation

- Market access:
 - Loss of traffic rights ->no flights between the EU27 and the UK (no WTO fall-back)
 - Third country restrictions on ownership and control of EU airlines kick-in – many EU airlines have significant UK equity
- Safety – UK no longer subject to EU's Aviation Safety System (including EASA):
 - End of mutual recognition of safety certificates and approvals
 - UK retakes role as "State of Design"
- Security:
 - Plains, passengers, cabin luggage and cargo flying from the United Kingdom and transiting via EU27 airports no longer exempted from a second security screening

“No-deal” Brexit - road transport

- Market access:
 - Loss of access to the UK for EU trucks and buses under Community licence
 - Loss of access to the EU for UK trucks and buses (Community licence no longer valid)
 - Fall-back options -> ECMT quotas for freight (23,000 EU27 vehicles in 2019); Interbus for passengers
- Licencing - end of mutual recognition based on EU law:
 - Driving licence and vehicle-related documents -> Geneva and Vienna Conventions on Road Traffic
 - Driver cards and tachographs -> European Agreement concerning the Work of Crews of Vehicles Engaged in International Road Transport (AETR)
 - CPC for driver/for operator -> ECMT “Quality Charter”; relevant UK legislation on CPCs (outside ECMT context)
- Dangerous goods:
 - Safety and security aspects -> European Agreement concerning the International Carriage of Dangerous Goods by Road (ADR)

“No-deal” Brexit - rail transport

- Main challenge – continuation of cross-border services
- Geographic impact – cross-Channel operations and UK/IE border
- Market access:
 - Access to EU27 railway market – UK operating licences no longer valid in EU27 (end of mutual recognition)
- Safety:
 - UK safety certificates and authorisations no longer valid in EU27 (end of mutual recognition)
- Driver certification:
 - UK train driver licences and certificates no longer valid in EU27 (end of mutual recognition)

“No-deal” Brexit - maritime transport

- Largely regulated at international level -> strong international fall-back options (SOLAS, MARPOL, STCW, IMO, MLC, ILO)
- Despite international framework, Brexit will have impact:
 - End of cabotage (unless unilaterally allowed)
 - End of non-discriminatory access to provision of public maritime services and port services
 - End of mutual recognition of seafarers' certificates
 - End of validity of UK sponsorship of Recognised Organisations
 - End of validity of certificates for marine equipment issued by UK Notified Bodies

“No-deal” Brexit - TEN-T

- After the UK leaves the EU the North Sea - Mediterranean trans European core network corridor between Ireland and Continental Europe would be disconnected – section currently running through the UK will no longer be part of the TEN-T
- Ireland would be isolated without direct connections to the rest of the TEN-T network
- This creates legal uncertainty for the financing of infrastructure projects on the corridor

Preparedness and contingency

- Preparedness – measures to prepare for the fact that the UK will leave the EU – EU27 framework has to remain fully functional
- The European Commission has started preparedness activities in 2017
- Contingency – measures to prepare for “no-deal” Brexit and mitigate the most severe disruptions where absolutely necessary
- Different types of measures and activities at EU level:
 - Commission communications – 5 published (latest on 12/06/2019)
 - Stakeholder notices on the impact of “no-deal” Brexit – overall 93 published; 11+1 on transport matters
 - EU27 technical expert seminars – 8 for transport
 - Legislative (19) and non-legislative (63) acts – in transport 6 legislative and 1 non-legislative act
 - Discussions with Member States and stakeholders

Key EU measures in transport

- Contingency
- Aviation:
 - Regulation ensuring basic air connectivity
 - Regulation on aviation safety
 - Commission Regulation on aviation security (“One Stop Security”)
- Road:
 - Regulation ensuring basic road freight and road passenger connectivity
- Rail:
 - Regulation ensuring railway safety and connectivity
- Preparedness
 - TEN-T – realignment of the North Sea – Mediterranean corridor
 - Maritime – inspections of recognised organisations

Contingency measures in transport

- Key characteristics:
 - Only where absolutely necessary – in EU27 interest to avoid most severe disruptions and no other options are available
 - Unilateral EU measures – no negotiations with the UK
 - Require reciprocity – UK to grant the same rights to EU27 operators
 - Time-limited
- Aviation:
 - Regulation ensuring basic air connectivity – provides UK carriers with certain rights in the EU -> limited traffic rights (3rd+4th; 5th for cargo), limited marketing arrangements (code sharing, wet leasing), O&C grace period for EU carriers, PSOs transition period, strong rules on equivalence of rights and level playing field -> expires on 30/03/2020
 - Regulation on aviation safety – ensures continued operation of aircraft with parts made or serviced in the UK -> validity of some certificates extended for limited time; pilots and mechanics training in the UK can continue studies in the EU27
 - Commission Regulation on aviation security (“One Stop Security”) – UK

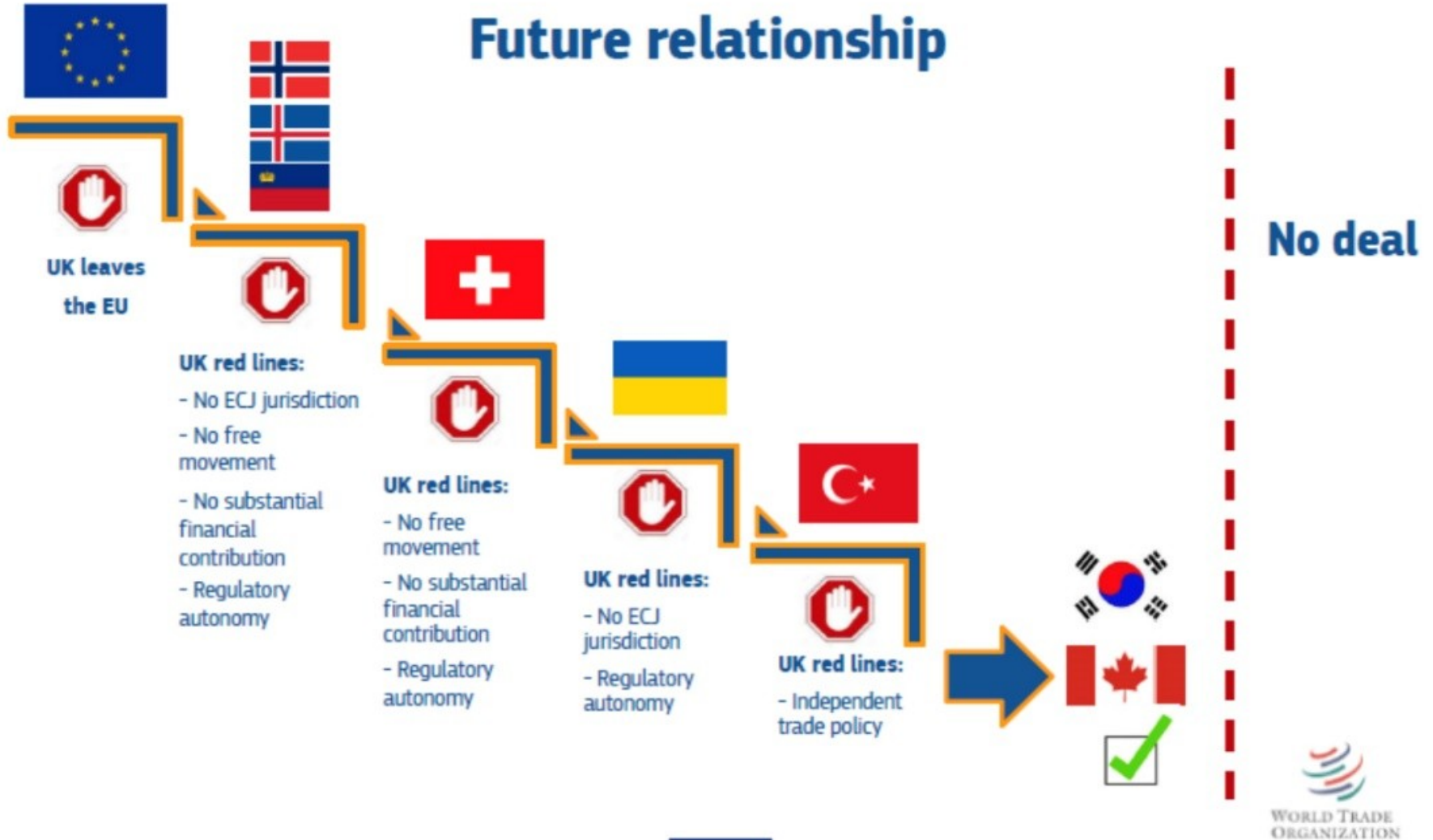
Contingency measures in transport

- Road transport:
 - Regulation ensuring basic road freight and road passenger connectivity – UK hauliers and bus operators are granted limited rights to carry out transport operations in the EU27 (point to point; only limited freight cabotage, passenger cabotage just in Irish border regions), adherence to relevant EU rules (social, workers' rights, safety), strong rules on equivalence of rights and level playing field -> expires on 31/12/2019
- Rail transport:
 - Regulation ensuring railway safety and connectivity – maintains the validity of safety authorisations (for infrastructure – Channel Tunnel), safety certificates (for UK railway undertakings), operating licences (for UK railway undertakings) and train driver licences (issued in the UK) for the purposes of reaching the first EU station or terminal after the border crossing – validity maintained for 9 months

Future relations - Political declaration

- “Establishes the parameters of an ambitious, broad, deep and flexible partnership across trade and economic cooperation, law enforcement and criminal justice, foreign policy, security and defence and wider areas of cooperation”
- The future relationship should be based on an overarching institutional framework covering chapters and linked agreements relating to specific areas of cooperation, but final legal form to be determined during the negotiations – Association Agreement one possible form for the overarching institutional framework
- Main element is a comprehensive trade agreement - to provide deep regulatory and customs co-operation to facilitate the movement of goods and to build and improve on the single customs territory provided for in the WA
- UK will no longer comply with free movement of persons
- Fishing rights – to be part of the “overall economic partnership”

Future relationship



Future transport relationship

- “No-deal” Brexit:
 - Contingency measures kick in to ensure basic connectivity
 - Decision on any potential discussions on the future relationship will be taken by EU27 leaders
- “Orderly” Brexit:
 - Political Declaration set out framework for overall discussions, including on transport
 - Negotiations can only start once the UK leaves the EU
 - For transport – different needs and options for different transport modes

Future transport relationship

- Political declaration:
- Aviation
 - Passenger and cargo air connectivity through a CATA – to cover market access and investment, aviation safety and security, air traffic management, and provisions to ensure open and fair competition (including consumer protection requirements and social standards)
 - Arrangements to enable cooperation with a view to high standards of aviation safety and security, including through close cooperation between EASA and the UK CAA
- Road
 - Ensure comparable market access for freight and passenger transport, based on appropriate and relevant consumer protection requirements and social standards, and obligations from relevant international agreements to which the UK and the EU/MSs are parties (AETR, Geneva and Vienna Conventions, ADR, Interbus) – WTO issues

Future transport relationship

- Political declaration:
- Rail
 - Bilateral arrangements between the parties (the EU and the UK) should be established, as appropriate, for cross-border rail services, including to facilitate the continued smooth functioning and operation of rail services, such as the Belfast-Dublin Enterprise Line and services through the Channel Tunnel
 - This allows for EU-UK agreements (e.g. in a FTA), rail agreements between MSs and the UK – if MSs are authorised by the EU, or special cross-border rail agreements already provided under EU law (Article 14 SERA Directive, Article 10(8) Rail Safety Directive)
- Maritime
 - Passenger and cargo connectivity in the maritime transport sector will be mainly based on the international legal framework
 - The future relationship should provide appropriate arrangements on market access for international maritime transport services and facilitate cooperation on maritime safety and security – including exchanges of information between EMSA and the UK MCA, consistent with the UK's status as a 3rd country

Thank you!

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