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**Subject:** Internal EU27 preparatory discussions on the framework for the future relationship: "Transport"

**Origin:** European Commission, Task Force for the Preparation and Conduct of the Negotiations with the United Kingdom under Article 50 TEU

**Remarks:** These slides are for presentational and information purposes only and were presented to the Council Working Party (Article 50) on 20 February 2018. The contents are without prejudice to discussions on the framework of the future relationship.

In December 2017, the European Council invited the Council (Art. 50) together with the Union negotiator to continue internal preparatory discussions on the scope of the future EU-UK relationship. The slides support those discussions. They are based on the April European Council guidelines which continue to apply in their entirety.

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Internal preparatory discussions on  
framework for future relationship

# **Road, rail and maritime transport**

**AD HOC WORKING PARTY ON ARTICLE 50** (*Seminar mode*)  
**20/02/2018**

# **Part I:**

# **Consequences of the withdrawal of the United Kingdom from the EU**

# Key parameters informing discussion

## The UK becomes a third country

- **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 role)
  - Integrity of the Single Market
  - No "cherry picking"
  - Level playing field
  - Consistent approach towards third country partners

## The UK is leaving the Single Market

**EU-UK road, rail and maritime transport relationship to be based on new legal framework**

# Consequences of the UK becoming a third country in the road transport sector (1/3)

- **UK exits Internal market for road transport**
- **All current EU law-based rights, obligations and benefits cease:**
  - **End of market access based on Community licence**  
(no basis for international carriage of goods or passengers between EU and UK; end of cabotage rights)
  - **End of mutual recognition** of driving licences, vehicle registration documents and certificates of professional competence for drivers
  - **End of cross-border enforcement** of traffic offences

**Reminder:** New Customs and border controls impacting operations

# Consequences of the UK becoming a third country in the road transport sector (2/3)

- International 'fall back' for:
  - **Market access in freight transport** limited to multilateral **ECMT** (*'European Conference of Ministers of Transport'*) quotas
  - **Recognition of driving licences and vehicle registration documents** based on **1949 Geneva Convention on Road Traffic** (not for DE, HR, EE, LV and LT)
  - **Recognition of driver cards and tachographs** in international transport based on **AETR agreement** (European agreement concerning the Work of Crews of Vehicles Engaged in International Road Transport)
  - Safety and security aspects (only) of **transport of dangerous goods** fully covered by **ADR Agreement** (European agreement concerning the International Carriage of Dangerous Goods by Road )

# Consequences of the UK becoming a third country in the road transport sector (3/3)

- Limited international fall-back on territorial and access rights means by default:
  - *Considerable reduction of territorial and market access, i.e.:*
    - **No more basis for international road transport operations between EU and UK** beyond very limited ECMT multilateral quotas
    - **End of cabotage operations**
    - **End of transit rights** (unless covered by ECMT permit)
  - *End of cross-border enforcement of traffic offences*

# Consequences of the UK becoming a third country in the rail transport sector (1/2)

- **UK exits the Single European Rail Area (SERA)**
- **All current EU law-based rights, obligations and benefits cease:**
  - **End of market access for rail services** and products
  - **End of mutual recognition** for
    - operating licence
    - safety certificates
    - vehicle authorisations
    - train driver licences
    - conformity assessment certifications
    - maintenance activities
- **End of the UK's participation in the European Union Agency for Railways (ERA)**

**Reminder:** New Customs and border controls impacting operations <sup>7</sup>



# Consequences of the UK becoming a third country in the rail transport sector (2/2)

- International 'Fallback' :

- *For **train operations:***

- Admission governed by **COTIF** (*'Convention concerning International Carriage by Rail'*)
  - Vehicle authorisations (with limitations)
  - Maintenance activities

- *For **governing the Channel Tunnel:***

- Intergovernmental agreement between FR and UK

# Consequences of the UK becoming a third country in the maritime transport sector (1/2)

- **UK exits Internal market for maritime services**
- **All current EU law-based rights, obligations and benefits cease:**
  - End of **cabotage** rights (note: UK policy of '*Open coast*' at the moment, i.e. cabotage unilaterally allowed)
  - End of non-discriminatory access to provision of **public maritime services** and **port services**
  - End of mutual recognition of **seafarers' certificates** and **marine equipment approvals**
  - End of validity of UK sponsorship of Recognised Organisations (Lloyds Register (LR) and American Bureau of Shipping (ABS))
  - End of the UK's participation in **European Maritime Safety Agency (EMSA)**

# Consequences of the UK becoming a third country in the maritime transport sector (2/2)

- International 'Fallback':
  - **SOLAS** (International Convention for the Safety of Life at Sea), **MARPOL** (International Convention for the Safety of Life at Sea), **STCW** (International Convention on Standards of Training, Certification and Watchkeeping for Seafarers) and other international conventions **under the IMO & Maritime Labour Convention (MLC) under the International Labour Office (ILO)** (specific rules on safety, security, environment and labour)
  - **Enforcement and supervision** of international rules:
    - Trade issues: WTO dispute settlement system
    - Compliance issues: Port State control (UK and/or MS)

# UK withdrawal implications for road, rail and maritime transport

Phases/scenarios	Aspects to consider
<b>TRANSITION</b>	
<b>FUTURE</b> based on new framework	<ul style="list-style-type: none"><li>• <b>Market Access</b></li><li>• <b>Regulatory matters</b></li><li>• <b>Enforcement &amp; Supervision</b></li></ul>
<b>PREPAREDNESS</b> For the UK becoming a third country, including in a no deal scenario	

# Transition (1/2)

**If TRANSITION AGREEMENT WITH UK reached**  
(EUCO guidelines 15/12/2017 and negotiation Directives)

UK applies **all acquis and keeps participating in the Single Market** for a limited period

**Status quo** would be maintained:

- Market access based on EU acquis
- UK 'assimilated' to EU Member State
- Harmonised standards for access to the profession; security, safety, environmental and social rules; technical rules and mutual recognition of certificates, licences and attestations;
- Level playing field secured (e.g. State Aid control)
- Single supervision & enforcement (CJEU)
- Rail: implementation of 4<sup>th</sup> Railway Package

# Transition (2/2)

- Assimilation of UK to EU Member State:
  - UK no longer part of the EU institutions and bodies
  - UK invitation to meetings of committees or Commission expert groups and other similar entities or of the agencies (ERA, S2R Joint Undertaking, EMSA), offices or bodies where Member States are represented **only exceptionally on a case-by-case basis** and without voting rights
- **External effects** of UK becoming a third country:
  - UK remains bound by the obligations stemming from EU international agreements covering land and maritime transport (e.g. EU-CH Land Transport Agreement, Interbus, EU-China Maritime Transport Agreement)
  - UK should no longer participate in bodies set up by those agreements

# Options for the future

## ❌ Internal Market

- EU Transport Acquis
  - Market access
  - Safety
  - Security
  - Social issues
  - International relations
  - Environment
- Enforcement/CJEU
- Competition acquis
- State Aid acquis



## ✅ External relations

- **Integrated transport area**  
(EEA; EU-CH) ❌ UK red lines  
❌ EU principles
  - Access rights specified (up to unlimited)
  - Application of EU Acquis
  - Alignment with CJEU interpretation of acquis
- **EU Sectoral Agreements**
  - Territorial rights and access rights
  - Autonomous regulatory and enforcement frameworks
  - Governance issues
  - Level playing field considerations (state aid, social and environmental rules)
- **FTA (Relevant transport services)**
  - National / MFN treatment
  - Market access
  - Regulatory pillar (cooperation)
  - 'Trade' governance (Dispute settlement through Joint Committee and Arbitration)
- **MS-UK sectoral agreements e.g.:**
  - **Rail:** Art 14 of SERA Directive

## **Part II:**

### **Future:**

**Existing models, options and  
specific issues for consideration**



# Default international trade framework, EU commitments in GATS: Road, rail and maritime

## ● Road

- **Cross-border:** EU has not undertaken any commitment.
- **Establishment:** several Member States have committed establishment under certain conditions, except for cabotage

## ● Rail

- **Cross-border & Establishment:** EU except one Member State has not undertaken any commitment. One Member State has undertaken some partial commitments.

## ● Maritime

- **Cross-border & Establishment:** EU except three Member States has not undertaken any commitment.
- One Member State fully open, the other two except for cabotage.

## Keep in mind:

- EU has **limited obligations in GATS**, mainly on establishment
- Any WTO member to benefit from EU commitments

# EU commitments in FTAs :

## Road, rail and maritime

- **Road**

- **Cross-border** : EU has not undertaken any commitment
- **Establishment**: EU undertakes to allow establishment under certain conditions, except for cabotage.

- **Rail**

- **Cross-border** : EU has not undertaken any commitment.
- **Establishment**: EU undertakes to allow establishment in some FTAs (e.g. Korea and CETA).

- **Maritime**

- **Cross-border** : EU is fully open, except for cabotage. Openness on feeder and empty containers varies depending on the FTAs.
- **Establishment**: EU is open under certain conditions (notably for the flagging of vessels).

### Keep in mind:

- General domestic regulatory principles apply horizontally
- **Specific chapter on maritime** transport

Note: Because of the large number of FTAs concluded, the information provided above is fairly accurate in general terms, but should be taken with caution

# MFN Exemptions

## Road

**GATS:** EU in general protected by MFN exemption

**FTAs:** EU is protected by MFN exemption but needs to be reviewed for each FTA

## Rail

**GATS:** EU in general **not** fully protected by MFN exemption

**FTAs:** MFN exemption in some FTAs but needs to be reviewed for each FTA

## Maritime

**GATS:** EU in general shielded from application of MFN principle in GATS.

**FTAs:** Protected for Cabotage. Other MFN exemptions in FTAs need to be reviewed for each FTA

# Future relationship in road transport

- **Outside the single market 'eco-system', access through bilateral quota system**
- Issues to be considered
  - international transport
  - transit rights

# Future relationship in rail transport

- **Article 14 of SERA Directive: Cross-border agreement between third countries and one or more MS.**
  - Existing EU-law based tool to engage third country on the basis of the need to facilitate cross border services
  - Can be set up between MS, or between MS and 3rd countries. Can have more than 2 parties
  - Has to be compatible with Union law and EU transport policy
  - Commission to be notified, and can be invited to participate in negotiations. Application of the agreement requires Commission's authorisation
  - Note! Not always protected by a relevant MFN "exemption" in the GATS

# Future relationship in maritime transport

- **Market access: already open** (except cabotage)
- **Regulatory aspects:** safety, security, environment and labour rules are mostly international

# Preparedness

- **Preparedness** to UK withdrawal:
  - Need to raise public/stakeholders' **awareness** of need to anticipate and **adjust** (e.g. stakeholder notices: [https://ec.europa.eu/info/brexit/brexit-preparedness\\_en](https://ec.europa.eu/info/brexit/brexit-preparedness_en))
  - Possible adaptations to EU **law** if needed
  
- + **additional preparedness** for risk of **no deal**:
  - Basic connectivity in road transport to be ensured

# Summary

- UK applies **EU acquis** and is part of **Single Market**
- **UK bound by obligations** stemming from EU agreements with third countries and other international agreements (rail: COTIF)
- **UK out of EU Institutions and bodies**

Transition

Future

- **New framework** for transport relations where needed
- Outside the Single Market, international transport and transit rights through **bilateral quota system**

- **Stakeholders' awareness and adjustment**
- Adaptations of EU law if needed  
**+ if no deal:** Basic connectivity in road transport to be ensured

Preparedness