

25.02.2021

## PUBLIC LAW

# TRANSPORT BETWEEN THE UNITED KINGDOM AND THE EU – OVERVIEW OF THE CHANGES SINCE 1 JANUARY 2021

The transitional provisions of the EU Withdrawal Agreement with the UK ceased to apply on 31 December 2020. At the same time, the Trade and Cooperation Agreement that was concluded between the EU and the UK on 24 December 2020 has been provisionally applicable since 1 January 2021. The permanent applicability of the Agreement still requires the approval of the European Parliament, which is to be granted by 30 April 2021.

The transport sector is an essential economic driver in the relationships between the EU and the UK. Each year, around 210 million persons and 230 million tonnes of freight are transported between the two sides. In order to maintain and support these traffic flows, the Trade and Cooperation Agreement contains, among other things, provisions ensuring a level playing field for companies from the EU and the UK, as well as common, high standards for the rendering of transport services, for example with regard to passenger rights. Nonetheless, this does give rise to some substantial changes for European and British transport and logistics companies.

Specifically:

### 1. Air transport

The Trade and Cooperation Agreement regulates the aviation sector in detail. Since the UK is no longer a member of the European Union Aviation Safety Agency (EASA), British companies can no longer profit from the European fundamental freedoms, and mutual recognitions and permissions can no longer orient themselves to European regulations, replacement regulations have been enacted in order to ensure efficient air traffic between the EU and the UK.

Under the Trade and Cooperation Agreement, air traffic rights continue to apply for overflights, non-commercial stopover traffic and direct outward and return flights for the commercial transport of persons or freight. These rights are accompanied by the prohibitions of discrimination set out in the Agreement, which are meant to ensure a largely level playing field for British and European air carriers. In case of a discriminatory treatment that violates the Agreement, the parties may initiate arbitral proceedings.

However, a major restriction of access to the market results from the fact that in the passenger transport sector, British air carriers will no longer have the right to offer scheduled air transport services within the EU. It is likewise not allowed to offer scheduled flights between the EU and other third countries – even if they involve connecting flights. This applies vice versa to EU companies in the UK.

In the case of freight transportation between the EU Member States and the UK, on the other hand, it can be agreed that stopovers for connecting flights will be permissible as long as transport services within the EU are not involved.

Regulation (EU) 1008/2008 on the internal European aviation market no longer applies for the UK. Operating licenses for air carriers of both parties which were already issued and still valid on 31 December 2020 will continue to be recognized for air carriers which are owned directly or through majority ownership, and are effectively controlled by one or more Member States (including the United Kingdom), by other member states of the European Economic Area, by Switzerland, by nationals of such states, or by a combination thereof. Thus, the provisions

regarding the necessary licenses for the operation of air carriers are largely based on the former European regulations.

However, it should be noted that new operating licences for British air carriers can only be approved if the company is owned, directly or through majority ownership, and is effectively controlled by the United Kingdom, its nationals, or both and it has its principal place of business in the territory of the United Kingdom.

Licensing has been greatly facilitated in the field of aeronautics. A “certification board”, which has yet to be established, is to draw up common technical standards and validate type certificates. Minor changes can be accepted even without this procedure.

In case of threats to the security of aviation, the EU and the UK assure each other of their mutual assistance and agree to carry out joint inspections and adhere to minimum standards which have been established by the International Civil Aviation Organisation (ICAO), as well as the Convention on International Civil Aviation. Moreover, the UK is recognised as a third country with comparable security standards in accordance with Implementing Regulation (EU) 2019/413.

## **2. Rail transport**

The Trade and Cooperation Agreement does not mention rail transport. Operators of cross-border rail transport to or from the UK therefore require both a British and a European permit. The same essentially applies for safety certificates for the trains that are used.

## **3. Road transport**

Commercial road haulage and passenger transport vehicles are dealt with in detail in the Trade and Cooperation Agreement. Unless one of the exceptions listed in Article 6 of Heading Three, Title 1 (ROAD) – which include transport in motor vehicles with a low laden mass, transport of medical products and other aid supplies, of vehicles which have suffered damage and transport for own use, among other things – applies, road haulage operations will require a license which is issued by the public authorities of the parties and mutually recognised. Road haulage companies from the EU which are already in possession of a valid EU licence may continue to transport goods to and from the UK. The certificates of fitness for the drivers, as well as requirements for the vehicles, are also jointly regulated and described in detail in the Annex of the Agreement.

While the transport of goods between the UK and the EU is generally possible for the company involved without substantial restrictions, more stringent conditions apply for the transport of goods within the UK and the EU. Accordingly, a delivery vehicle belonging to an EU company may only undertake two additional transports in connection with a delivery to the UK within seven days of the unloading before it has to return to the EU. Likewise, British companies may only undertake two transports within the EU and only one within an EU Member State.

Passenger transport services between the UK and the EU are still possible as long as the relevant companies have an authorisation. This authorisation is issued by the competent authority of the party and mutually recognised. British transport companies are not allowed to offer a route on which the point of departure or point of arrival is a location within the EU. This also applies conversely for EU companies which are active in the UK.

## **4. Shipping**

Apart from international shipping services, shipping is not mentioned separately in the Agreement. Accordingly, British nationals and companies have generally lost the right for their vessels to fly the German flag. British ships still need an authorisation for maritime cabotage in Germany from the Federal Waterways and Shipping Agency (*Genehmigung der Generaldirektion für Wasserstraßen und Schifffahrt*). Necessary ship inspections and surveys may also be carried out by mutually recognised international organisations. Port State controls are now exclusively governed by the rules of the [Paris Memorandum of Understanding on Port State Control](#). With regard to liner services between the EU and UK, ships must now submit a security report every time they enter a port.

The Trade and Cooperation Agreement does not contain specific provisions as to inland waterway transport. Thus, British companies have also lost their access to European inland waterways transport, since such companies must have an establishment within the EU and belong to nationals of EU Member States, who must also be resident in the EU. Moreover, British boatmaster’s certificates are no longer valid in the EU.

## **5. Conclusion**

Although the conclusion of the Trade and Cooperation Agreement averted the worst case scenario of a “no deal

Brexit”, the Agreement cannot compensate for the restrictions of the market access and bureaucratic burdens resulting from the fact that the advantages of the unrestricted European internal market for the transport and traffic sector no longer exist.

Regulations were adopted for the aviation and road transport sectors which largely enable the cross-border transport of goods and persons. Nonetheless, in particular the ability to offer transport services within the territory of the other party is restricted or even completely prohibited. Furthermore, as a consequence of the Brexit, operators can generally no longer benefit from the automatic recognition of licenses and authorisations. This will lead to a considerable increase in administrative burden and additional expenses. Since fast and reliable supply chains are of essential importance for the transport sector, transport and logistics companies should examine thoroughly the impact of the Trade and Cooperation Agreement on their respective sectors and ensure that the new requirements are complied with.

#### EXPERTISE

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**Public Law**

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