

Brexit: Consequences on road and rail transport

Ensuring a smooth transition and legal clarity for the type-approval of motor vehicles and the interoperability of rail services in the UK and EU27 after Brexit

In the next few weeks, the Regulation (EU) No. 2018/858 on the approval of motor vehicles will replace the existing EU framework directive. With this, the EU aims to update and strengthen its whole type-approval framework. By combining both strong homologation requirements and specific market surveillance objectives, the EU has developed the most advanced system in the world.

UNECE regulations define the majority of all relevant type-approval requirements. Both the United Kingdom and the European Union will continue their intensive cooperation here after the withdrawal of the United Kingdom in March 2019.

DEKRA and the TÜV-Association (VdTÜV), representing a large share in technical services in Europe, are calling upon decision-makers to ensure a smooth transition for manufacturers, authorities and consumers. It is of paramount importance to preserve the high level of safety, quality and environmental protection that the EU and the UK have built up over the past years.

Proposal for a regulation of the transfer of type-approvals: A step in the right direction, but only the start of the journey

In June 2018, the EU Commission published a draft regulation aiming at complementing the future EU legislation on type-approval. It intends to grant exemptions to those manufacturers which had until now been working with UK type-approval certificates, in order to ensure a continuity of businesses after Brexit.

DEKRA and VdTÜV especially welcome the possibility to re-apply for a new type-approval in the EU27. However, legal coherence with the future EU type-approval regulation must be secured. It is important to avoid a so-called "cliff-edge scenario", which would only create legal uncertainty for all operators in the automotive value chain and would not be beneficial to anyone, least of all to consumers. It is crucial to manufacturers to ensure that the stock of vehicles manufactured can be sold and registered both in the UK and in the EU27 after the UK has left the EU.

However, such legislation is only part of the solution. The question of recognition by the UK of certificates issued by EU27 authorities must be addressed as well.

Furthermore, it is important to ensure regular alignment between the EU and the UK when it comes to technical harmonisation as discussed at the United Nations WP.29 sessions in Geneva. The European Commission conducts for example a structured and regular dialogue with partners such as Japan. The same should be pursued with UK.

A level playing field for technical services based in UK and the EU

The current and future EU legislation on type-approvals foresees the possibility for the EU to enter negotiations for bilateral agreements with third countries in order to make the designation of technical services organisations based in third countries possible (Article 68 of the future type-approval Regulation (EU) 2018/858).

DEKRA and VdTÜV urge the EU and UK authorities to initiate talks on such an agreement as quickly as possible.

In this context, it is important to ensure a level playing field and fair competition for UK and EU based technical services. Fair market access is essential for those EU technical services willing to carry out type-examination testing against UK standards for the UK market.

In any case, there should be no fast-track procedure for UK based technical services willing to be designated in the EU.

One-stop shop for type-examination services

No matter how the relationship between the UK and the EU evolves in the future, it is important that we eliminate any emerging regulatory divergence in the automotive sector. This is in the interest of all stakeholders.

However, since the UK will ultimately become a third country, it is not unrealistic to anticipate possible divergences in the everyday type-approval and type-examination practices.

In this context, technical services should be entitled to provide all necessary testing for the two markets in one procedure, according to the one-stop shop principle. In order to simplify the procedure it should be possible for one technical service to provide – at the same time and in one procedure – the two tests and the two reports needed for both markets.

Withdrawal of the United Kingdom and EU regulation in the rail sector

Over the past 25 years, the EU Commission has been very active in proposing restructuring the European rail transport market and in order to strengthen the position of railways vis-à-vis other transport modes. The EU Commission's efforts have concentrated on three major areas which are all crucial for developing a strong and competitive rail transport industry: (1) Opening the rail transport market to competition, (2) improving the interoperability and safety of national networks and (3) developing rail transport infrastructure.

For rail operators, Brexit means the end of open market access to rail services and of mutual recognition for operating licenses. For rail suppliers, the biggest issue concerns the placing on the market of TSI¹-compliant products covered by the Interoperability Directive 2008/57/EC², and the related conformity assessment procedures by a **Notified** or **Designated Body** (NoBo/ DeBo).

Any product placed on the market pursuant to Article 10 of Directive 2008/57/EC after the withdrawal date will need to be certified by a recognised body within the EU27. Products or subsystems certified by a UK-based NoBo or DeBo which have been authorised before withdrawal can still be used as long as their certification remains valid. Authorisations by a national safety authorisation pursuant to Articles 15, 20 and 21 of Directive 2008/57/EC for the placing in service of vehicles and subsystems will also remain valid after withdrawal, even if these are based on certificates of conformity issued in the UK. However, future authorisations would have to be based on certificates from NoBos and DeBos based in the EU27 countries.

As of the withdrawal date, the admission in the EU of railway vehicles and other railway material authorized in the United Kingdom and vice versa will be governed by the Convention concerning International Carriage by Rail (COTIF).

It is also worth mentioning that Brexit will not affect the management of the Channel Tunnel, since it operates under the terms of an intergovernmental agreement between France and the UK.

Conclusion

The regulatory framework on motor vehicles needs to be well prepared in order to ensure a smooth transition when the UK exits the EU. Motor vehicles are just one example of the need to ensure a level playing field for testing organisations in the future.

Other sectors such as the rail industry must also be considered when preparing the future regulatory framework on the designation and recognition of Notified Bodies and Designated Bodies.

1 European Union's Technical Specifications for Interoperability

2 The principles set out in this section will also apply in the framework of Directive (EU) 2016/797 of the European Parliament and of the Council as of 11 May 2016 on the interoperability of the rail system within the European Union (recast) (OJ L 138, 26.5.2016, p. 44) when the relevant provisions become applicable in the respective EU Member State.