

Divergence Watch



TRANSPORT
& MOBILITY



Divergence Watch is a new quarterly publication by Ibec Global, which looks at the shifting relationship between the EU and the UK across different business sectors, helping business leaders navigate the cost and complexity of doing international business. In this issue, we focus on the impact of Brexit on mobility and transport, consider where divergence has taken place so far and its impact, and highlight the key areas business leaders should keep a close eye on in coming months.

The development of transport policy is an area of shared competence in the EU, with Member States and European Institutions each having a role. For a sector that looks for, and benefits significantly from, common rules across jurisdictions, there is an obvious interest in common policy being developed at the EU level.

In the immediate aftermath of the UK withdrawal from the EU, the agreements sought to minimise the more severe impacts of Brexit on the transport sector. In some cases, this took the form of a continued recognition of certification processes, in other areas it replaced some transport elements with new agreements to ensure continued connectivity.

For those companies operating in the transport space, Brexit has led to increased costs and administration as policies and processes were replicated. New certification requirements emerged for vehicles and equipment, new licensing requirements for staff, and duplicate systems such as the UK Emissions Trading

System to sit alongside the EU Emissions Trading System. While in some industries there may be an opportunity for companies to benefit from divergence allowing for reduced costs or the ability to launch new products in a less regulated environment, we can see that in the transport industry the market influence of the European Single Market is prevalent.

The impact on transport is not limited to the area of transport policy. When the United Kingdom left the European Union on 31 January 2020, they also left the European Single Market and Customs Union. This resulted in new procedures for moving goods to, from, or through the UK, excluding Northern Ireland, in addition to new requirements and rules for people travelling between the UK and the EU.

Beyond the transport sector, transport policy and new procedures are impacting businesses and their supply chains, especially in those sectors known to have high non-tariff barriers such as agriculture, food,



and motor vehicles (or their supply chains). In early 2021, a third of businesses were reporting that they had issues importing from the EU to the UK due to Brexit, with the most-cited reasons being delays at the border, additional customs and administrative costs, and regulatory checks. The impact of border delays is spread along the supply chains, complicating the logistics of deeply integrated supply chains, thus increasing the cost and complexity for international businesses.

DIVERGENCE AND COOPERATION

Road, maritime and aviation

Key elements of transport policy in Europe are developed at EU-level across all sectors: road, aviation, maritime and rail. The UK is no longer part of that process and does not benefit from the discussions around policy formation or the long-term strategy for transport. Within the UK, policy formation for all modes of transport sits entirely with the UK Government.

In this regard we can say divergence between the UK and the EU on transport policy is absolute. The policy is being developed through entirely different processes by entirely different actors.

Nonetheless, the issues faced by the EU and the UK are consistent, given the naturally cross-border nature of the industry. The level of recognition, reciprocity and the

spirit of cooperation are therefore fundamental.

The divergence between the UK and the EU however has resulted in some duplication of policy and programs. As the UK left the mechanisms of the EU, they replicated them. An example of this is with the EU Emissions Trading System (EU ETS). The EU ETS is a cornerstone of the EU's climate change policies and is the world's first major carbon trading market and remains the largest such market in the world. It is a key tool for reducing greenhouse gas emissions in a cost-effective manner.

When the UK left the EU it also left the EU ETS and put in place its own Emissions Trading System, the UK ETS. Airlines operating in Europe are required to make payments to offset their carbon usage under the ETS, post Brexit those same airlines that operate from a point in the UK to a point in the EEA now have to manage two different systems for



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Emissions Trading, the EU ETS and the UK ETS. This has again added both cost and administrative burden as systems are replicated across the jurisdictions.

We must also consider the impact of market forces on the sector. Transport is an industry which requires operators to meet rules and standards across multiple jurisdictions, whether transporting goods or people. As such it must be asked to what degree there can really be divergence and what would be the benefit?



Air passenger rights

As the UK now entirely controls its own transport policy, it has the freedom to act on areas where progress at an EU level is restricted or stalled. This was particularly evident this year where the UK has made advancements in some areas, notably the question of air passenger rights. In the summer of 2022, the UK Government adopted its Air Passenger Charter, a document that details the rights of passengers when flights are delayed or cancelled, and the obligations of airlines to their passengers.

This is in marked difference to the process in the EU which has been subject to substantial delays as Member States have struggled to find common ground with the Air Passenger Rights Regulation stuck in negotiations since 2013. While the new Charter adopted by the UK follows a similar pattern, their ability to move quickly on the topic is in stark contrast to the problems faced in the EU.

This is a clear divergence as the United Kingdom now operates with different rules in this area compared to the EU Member States. It points to the opportunity that withdrawal has provided the UK in terms of setting its own policies at its own pace.

Certification

As mentioned, operators in the transport sector benefit from close cooperation between different jurisdictions as this can reduce costs and administrative burdens. The withdrawal of the UK from the EU has created great upheaval

for the transport sector as many of the policies in place to facilitate the passage of people and goods through the EU are no longer applicable. This is most evident in the queues of trucks and passengers trying to enter the EU this summer, both subject to more stringent entry requirements.

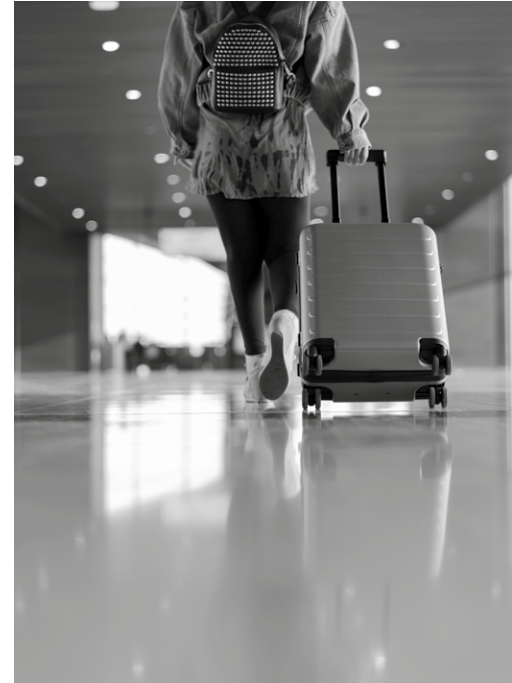
Within the transport sector there is, naturally, a desire to limit the impacts and to encourage closer cooperation. This is achieved through programs of reciprocity, along with the recognition of cross-jurisdictional certification processes and standards which apply to vehicles, craft, machinery, and workers. If a company can certify or gain a license in one jurisdiction and have that recognised in another it saves time and cost in recertifying.

To date there is little evidence of such cooperation.

Following the withdrawal of the UK from the EU provision was made for the UK authorities to continue to recognise the certification processes of EU bodies, this provision expires on 31 December 2022. We have already seen requirements for airlines that will operate in the UK to recertify with the UK authorities, and the same requirement for machinery to be used on maritime vessels to be certified with UK authorities. The most recent announcement is for the rail sector and similarly requires operators to seek certification before the deadline.

This lack of recognition and reciprocity between the UK and the EU is leading to an additional

cost and higher administrative burden for companies in the transport sector who are required to re-certify vehicles / craft and equipment.



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SUSTAINABILITY - COMMON PROBLEMS, DIFFERENT AMBITIONS?

While the UK and the EU may be both independently advancing transport policy, they need to address common issues. The most important topic in transport policy at this point in time is undoubtedly the question of sustainability.

Sustainability policy for Transport in the EU is primarily being advanced through the Fit for '55 package of legislative measures many of which are due to conclude in Q4 2022. In the UK we have yet to really see significant legislative action. In this regard we can say that the EU is clearly more advanced in their approach, however the ambition being set by the UK in many areas outstrips that of the EU. At the heart of it the positions being advanced in both jurisdictions are not dissimilar.

UK Transport Decarbonisation Plan

The UK plan, which was published in 2021, sets out ambitions for all transport sectors. On road transport the aim is to move to zero emissions buses and coaches, and to end the sales of new internal combustion engines vehicles by 2030. In the rail sector the UK targets 2050 for a net zero railway network and to see the introduction of battery and hydrogen powered trains. On maritime the UK is targeting a 2030 net zero for domestic maritime. All of these ambitions will be underpinned by investment from the UK Government on the infrastructure required to meet that goal.

In the aviation industry the UK Government published a more detailed plan, the Jet Zero strategy for net zero aviation which went into greater detail. The target for decarbonising the aviation sector is 2050, which is in line with industry and other jurisdiction's plans. Domestic aviation in the UK is targeting 2040 for reaching net zero, along with English airports achieving zero emissions by 2040. Notably the UK Government are focussing very heavily on the adoption of Sustainable Aviation Fuels (SAF) setting a target of a mandated use of SAFs of 10% by 2030, which is above the EU targets. The UK Government is supporting this with plans to have at least 5 UK based SAF plants under construction by 2025.

EU Fit for 55

The package of measures aims to cut EU emissions by at least 55% by 2030, revising climate, energy and transport-related legislation. This is in line with the EU's Climate Law, with the objective of achieving climate neutrality by 2050.

Regarding transport, the package's proposals include:

- Revision of the EU emissions trading system (ETS) to better cover aviation and create an ETS system for maritime and road transport emissions
- RefuelEU Aviation initiative, aiming to reduce the aviation sector's environmental footprint and proposing a mandatory blending mandate for sustainable aviation fuels, with at least 63% SAF by 2050
- FuelEU Maritime initiative, encouraging the use of greener alternative fuels in the maritime sector with the aim of cutting GHG emissions of the energy use on-board ships by up to 75% by 2050
- Revision of the Alternative Fuels Infrastructure regulation, aiming to accelerate the deployment of infrastructure for recharging and refuelling, and to provide alternative power supply for ships in ports and stationary aircraft
- Revision of the rules on CO2 emissions for cars and vans, introducing increased EU-wide reduction targets for 2030 and a 100% target for 2035
- Revision of the Renewable Energy Directive, increasing the EU target of renewable energy sources in the overall energy mix from 32% to at least 40%, and defining what criteria apply to energy feedstocks to qualify

The positions being advanced in the UK are not dissimilar to the steps being taken in the EU in terms of solutions being sought, although the ambition may be different.



Sustainable fuel

While both the UK and the EU are seeking a mandate for the uptake of Sustainable Aviation Fuel – the EU is considering a requirement of 2% of fuel to be SAF as of 2030 (this is still subject to negotiation), the UK is targeting a 10% mandate by 2030. While the EU is planning for a ban on sale of new internal combustion engine (ICE) vehicles as of 2035, the UK seeks such a ban as of 2030.

An important factor will be the level of cooperation between the EU and the UK on these policies to ensure they complement each other. On the question

of sustainable fuels for the transport sector, such as the aviation or shipping sectors, it will be important that the definition of sustainable fuels is consistent so that aircraft and ships taking on fuel in one jurisdiction will meet their obligations for sustainable fuel usage in another jurisdiction.

The transport sector will be watching closely how these policy areas evolve and will be seeking greater harmony. As the EU legislation is likely to conclude ahead of the UK rules being adopted, it is more likely that the transport industry will be asking the UK Government to follow Europe's lead.

FUTURE OF TRANSPORT

The future of transport raises similar issues on certification and the adoption of new technologies. From self-driving cars to the advent of Urban Air Mobility and Hyperloop technologies, there are many debates that need to feature within the development of these policy areas and realise the opportunities they present. In many of these areas the EU is already ahead in terms of policy development, this is particularly the case in Urban Air Mobility where the EU, drawing on the

expertise of the European Aviation Safety Agency (EASA) and EuroControl, have moved quickly to develop policy and industry guidance and are now leading the debate globally in this space.

These discussions are setting the stage for new technologies and the industry is responding to the standards being developed at EU-level as part of their development plans. Again, it is more likely in this space that as the EU and its Member States progress, the UK will be asked to follow in their footsteps.

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DIVERGENCE BEYOND TRANSPORT

The transport industry is affected by several policy areas beyond the simple focus of transport policy, including customs legislation, sustainability policy, cybersecurity and data policy. Divergence across these policy areas will also have significant knock-on effects.

Data policy, whether under privacy of individuals (GDPR) or non-personal data, is increasingly important to transport due to the large volumes of data that computers now generate in smart vehicles. As we move towards the introduction of new technologies like autonomous vehicles this becomes even more important as such systems often require open access to data (for example in judging liability in the event of an accident).

The UK government have indicated a desire to move away from the EU regulatory framework on data (specifically GDPR), UK manufactured road vehicles would have to be compliant not only with EU standards for autonomous vehicles but also with EU data policy. Continuing to diverge on standards could hinder the access to EU markets for UK manufacturers.

MARKET INFLUENCE

While we can point to clear divergence in terms of transport policy formation, we must also acknowledge the impact of market forces, in particular the EU Single Market. Decisions taken on policy areas that affect the placing of goods, or the operating of services, in the European Union Single Market will continue to impact on UK companies operating in the transport sector.

The most obvious reasoning for this is that UK transport industries will want to have continued access to their largest market. Another important factor is the operation of the Northern Ireland Protocol which applies the rules for the Single Market to Northern Ireland. For a UK produced product to be sold in Northern Ireland, it must meet the Single Market rules and standards. In 2022 the EU introduced new rules stipulating that the 'frontal' crash protection in road vehicles must not disadvantage women and older people. This means airbags and seatbelts must be

designed to protect men and women equally in response to a bias in male physiology in safety design and testing.

England, Wales, and Scotland have so far not developed plans to introduce similar legislation, despite the Department for Transport having previously been involved in drawing up new safety measures including around frontal protection. The testing rule is one of 15 new vehicle safety standards being introduced by the EU as part of the revised General Safety Regulation. (The rules will apply to Northern Ireland because of the operation of the protocol).

While the UK could argue that UK manufacturers can gain a price advantage by not implementing the new rules, which would mean higher costs for manufacturers. The associated cost is that UK vehicles will not have the latest safety technology. The Parliamentary Advisory Council for Transport Safety (PACTS) reports that it is estimated that the new EU regulations would prevent 1,762 deaths over 15,000 serious injuries by 2037. It also notes

that the reforms have the wide support of the 'safety stakeholders and the UK automotive industry' and would entail minimal costs to taxpayers and consumers 'because the measures will be fitted as standard'.

Many UK manufacturers may choose to follow the new EU rules nonetheless, as this will be necessary to sell into the EU market (including Northern Ireland). As the EU is by far the largest market for UK car exports and there is little desire to manufacture to different specifications to the EU. Furthermore, UK manufacturers are unlikely to want their EU competitors to be able to market 'safer' vehicles against their UK manufactured ones.

This is one area where the discussion of divergence becomes blurred. On the one hand we can say with certainty that policy formation is separate, but we can also clearly identify the influence that EU standards will on the UK market.

KEY TAKEAWAYS

The key takeaway for business is that there remains a dichotomy between the desire of industry (on the most part) to have closer cooperation between the EU and the UK on transport policy especially in the areas of certification and standards, and the continued divergence between the UK and the EU on key policy areas. This has an impact on business in terms of cost and administrative burden.

Beyond the transport sector, transport policy and new procedures are also impacting businesses and their supply chains. Delays at the border, additional customs and administrative costs, and regulatory checks are complicating the logistics of deeply integrated supply chains, increasing the cost and complexity for international businesses.

While we can say that UK and EU divergence on transport policy is absolute, the reality of the transport sector means that its impact remains uncertain.

The problems being faced by the transport sector are the same whether in the EU or in the UK, and the industry is seeking solutions that are consistent and reflect global or international operations.

More important is the question of market influence, since companies do not wish to operate different product lines or services to meet different standards. As such they are more likely just to apply the higher standard, wherever that comes from, to meet the requirements of both markets. Business leaders might therefore struggle to find practical benefits from transport policy divergence.

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