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# Brexit: UK Border Management Issues



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## UK Border Management Issues

### Introduction

After Brexit the UK will need to change the way it manages its borders, in particular with respect to EU citizens and to goods moving to and from the EU. The UK currently operates a range of border controls: passport and visa checks; customs controls for third country imports and exports; food and plant safety and animal health checks; vehicle checks; and security checks to tackle smuggling (including people smuggling) and other forms of crime.

This paper explains how the UK's borders are managed at present and what further controls are likely to be needed after Brexit. Much will depend on the nature of the future relationship between the UK and the EU, and the extent to which it facilitates the movement of people and goods. This paper is complementary to the Senior Experts paper 'The UK & the EU Customs Unions: Issues & Questions'. The issues concerning the Anglo-Irish border are dealt with in a further Senior Experts paper, 'Brexit: The Irish Dimension'.

### Passport, visa checks & custom controls for individuals

#### Current situation

UK and EU citizens do not need visas to enter another EU Member State and can remain for up to 90 days provided they are able to support themselves. This free movement right can be exercised with a national identity card (where issued) or passport. As the UK is not a member of the Schengen area, the passports or identity cards of EU citizens entering the UK are checked at the border. Entry can be refused if the passport/identity card is out of date, forged, stolen or otherwise invalid.<sup>1</sup>

All Member States now issue passports with a biometric chip which means that passports can be scanned electronically. This process enables real-time fraud and other security checks to take place. These checks are assisted by EU databases. The first of these is the Schengen Information System (checked 539 million times by British police officers in 2017), which contains European Arrest Warrant notices, details of lost and stolen passports and other intelligence-related information relevant to border controls.<sup>2</sup> The Prüm Convention enables the exchange of DNA information, vehicle registrations and fingerprints between

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<sup>1</sup> These rights are set out in EU Directive 2004/38/EC, commonly known as the Citizens' Rights Directive: see *Directive 2004/38/EC of the European Parliament and of the Council on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC*, 2004 OJ L158/77, Article 5 *et seq.*

<sup>2</sup> Statistic from evidence given to the House of Lords EU Select Committee, quoted in 'EU-wide information system threatened by Brexit used by UK 539 million times every year, police say', Lizzie Dearden, *The Independent*, 2 May 2018

Member States.<sup>3</sup> Europol, the EU police co-operation agency, maintains databases with intelligence about suspected terrorists, people traffickers and drug smugglers. The European Criminal Record Information System (ECRIS) enables the exchange of information about people's criminal records.<sup>4</sup>

When travelling within the EU, EU citizens are not normally subject to customs checks, (although Member States are allowed to make spot checks within their country or at the border with other Member States). This is because they can purchase and carry inside the EU any lawful items provided they are for personal use and are not for resale. Goods subject to excise duties, such as tobacco and alcohol, must clearly be for the use of the traveller, be transported by them and can be subject to quantitative limits.<sup>5</sup>

### After Brexit

Outside the EU, UK citizens would be subject to EU external border checks, with no priority queue at passport control. There would be no freedom of movement and the EU would be entitled to ask UK citizens to purchase a Schengen area visa (as many other third country nationals have to do). No doubt the UK will seek a reciprocal approach for EU citizens entering the UK (as there currently is with EEA countries and Switzerland) but it would be up to the EU as to whether it agreed.

The UK is seeking continuing access to the EU's main databases as part of its proposed security partnership after Brexit. Some access is given to countries outside the EU which are members of Schengen (e.g. Iceland, Norway and Switzerland) but the UK will not join Schengen and the access given to non-EU countries isn't necessarily real-time access.

Without agreement on some form of UK-EU customs arrangement, customs controls would be required. This could mean UK citizens being asked to pay duty on items they wish to take in or out of the Single Market, and baggage searches. Similarly, EU citizens entering or leaving the UK could find themselves subject to customs controls. It is also possible that the EU might ask for proof of health insurance if the UK was no longer participating in the European Health Insurance Card scheme.

## **Customs controls for businesses**

### Current situation

For trade within the EU, which is a customs union, customs rules are no longer applied (since 1 January 1993). As a result, UK businesses import or export goods to the EU without following standard customs procedures under the World Trade Organisation's (WTO) rules.<sup>6</sup> This means that no duties are levied on trade in the EU and no rules of origin apply within it.<sup>7</sup> Roughly 44 per cent of the UK's trade is with the rest of the EU. The goods element of

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<sup>3</sup> Technically the Prüm Decision, as the original inter-governmental treaty has been incorporated into EU law: see *Council Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime*, 2008 OJ L 210/1

<sup>4</sup> See European Commission, 'European Criminal Records Information System (ECRIS)', 25 June 2018

<sup>5</sup> See European Commission, 'Taxation and Customs Union: Within the EU', 4 January 2018

<sup>6</sup> For information on customs controls as regards business, see European Commission, 'Taxation and Customs Union: Business', 8 October 2017

<sup>7</sup> Rules of origin mean that a country may not export a product to another country unless an agreed percentage of that product has been made in the first country; this is to stop the import and then re-export of foreign made goods.

this was worth £382 billion in 2016. Much of this trade crosses the Channel by lorry – four million goods vehicles a year, 2.5 million of them through Dover alone.<sup>8</sup>

The absence of customs controls within the EU has led to the development of extensive cross-border supply chains. In some manufacturing sectors, such as automotive, it is common for the supply chain to be so time sensitive that production is managed so that parts arrive at the factory in the correct order for assembly. Honda oversees two million component movements daily in the UK and only keeps two hours' supply on the production line.<sup>9</sup>

EU customs rules dealing with third country trade are similar to those of most countries of the world. Aside from the basic rules – that is, customs declarations, duty on imported goods, food safety and other consumer protection rules, rules on the import or export of cultural items – the EU also has rules relating to VAT, excise duties and the collection of duties to fund its budget. These rules may vary if the country has a trade agreement (or agreements) with the EU. For example, Turkey is in a customs union for goods other than agricultural products and South Korea has a free trade agreement.

The UK implements these rules, collecting £3 billion in duties every year, and dealing with the 141,000 traders who currently make customs declarations for trade outside the EU.<sup>10</sup> Ninety-nine per cent of non-EU freight enters in containers; the volume of trade is such that only about three per cent of non-EU goods imports are subject to documentary checks, and an even smaller share to a physical inspection. Documentary checks on non-EU goods arriving by lorry take roughly three hours and physical searches five hours.<sup>11</sup>

### After Brexit

What happens will depend on the nature of the UK's relationship with the EU and other third countries after the transition period. If the UK were to trade on WTO rules alone, that would mean all trade with the EU would be subject to customs rules and the levying of duties. The operation of VAT would be affected too, with companies obliged to pay VAT upfront on imports.<sup>12</sup> Although the duties would be an issue (because the amount charged could increase prices), the impact would most immediately be felt in the delays and difficulties caused by the sudden imposition of customs rules on EU trade.

HM Revenue & Custom's computerised Customs Declaration System would have to deal with 200 million additional customs declarations annually; it is currently being replaced as it cannot cope with that number. In addition, around 138,000 traders who currently only trade within the EU would need to be added to the system; each would need a registration number and they would have to train their staff.<sup>13</sup> Many products would also need a rules

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<sup>8</sup> Discussed in House of Commons Home Affairs Select Committee, *Home Office delivery of Brexit: customs operations: First Report of Session 2017–19*, HC 540, 16 November 2017, para 10 *et seq.*

<sup>9</sup> See CBI, 'Planning for Brexit: the automotive sector', 12 December 2017

<sup>10</sup> House of Commons Home Affairs Select Committee, *op cit.*, para 12

<sup>11</sup> *Ibid.*, paras 17–18

<sup>12</sup> The accountancy firm Deloitte recently explained this and other problems with VAT in evidence to the House of Commons Treasury Select Committee: see Daniel Lyons, Partner, Tax Policy Group on behalf of Deloitte LLP, *Letter: Treasury Committee – VAT Inquiry*, 31 May 2018

<sup>13</sup> Co-Chairs of the Government's Border Planning Group, *Letter: Seventh Report of Session 2017–19: Brexit and the UK Border*, 27 March 2018, para 6

of origin certificate and exporters to the EU/EEA would have to continue to comply with Single Market rules.

The Freight Transport Association has estimated the impact as likely to generate a 17-mile tail back from Dover even if just two minutes per lorry were added to processing time after Brexit. Estimates of this sort of delay led an official report to conclude that food, medicine and other shortages could quickly result from the UK leaving without agreement.<sup>14</sup> There would also be problems for EU Member States as they too would have to apply customs controls to UK imports and process their own exports to the UK. The financial impact on UK businesses of even a streamlined process has been estimated by HMRC at £13-£20 billion a year.<sup>15</sup>

Even if the UK were able to conclude a *trade* agreement with the EU, it would still be leaving the EU's customs union, so customs rules would be applied. However, facilitation agreements between the EU and third countries have often been reached in the past in order to reduce this bureaucracy for both parties. The UK is seeking a customs agreement but the frictionless trade the UK and the EU currently enjoy will not be possible without membership of both the Single Market and the EU's customs union.

## **Food & plant safety & animal health**

### Current situation

The EU has a variety of controls on imported products, including on food, animals and animal products, animal feed and plants. These controls involve the pre-approval of products where possible, veterinary checks of processing plants carried out in third countries to ensure compliance as well as the interception and testing of some shipments at the border.<sup>16</sup> The EU has a programme for agreeing approved checks with third countries so that they can be carried out in the exporting country to the standards the EU requires. This reduces the need for checks at the border but it does not eliminate it.

The EU's controls are part of a wider system for ensuring food safety and consumer protection. This includes mandatory labelling of food products with details of the ingredients, and hygiene regulations designed to prevent contamination and disease. Food entering the EU must go through designated border inspection posts, the consignment must be accompanied by a certificate showing that it complies with EU food legislation and documentary and others checks must be carried out at the border.<sup>17</sup>

Regulations also cover the import of plants and plant products from non-EU countries. These controls are designed to protect native species and to keep out pests. The EU has designated some countries pest free and there are reduced checks for many plant species.<sup>18</sup>

### After Brexit

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<sup>14</sup> 'Brexit: No-deal would lead to immediate food and medicine shortages, government "doomsday" study claims', Oliver Wheaton, *The Independent*, 3 June 2018

<sup>15</sup> Jon Thompson, Chief Executive Officer & First Permanent Secretary, *Letter: Highly Streamlined Customs Arrangement Facilitations*, 4 June 2018

<sup>16</sup> See European Commission, 'Official controls on imported products', 29 May 2017

<sup>17</sup> See European Commission, *Notice to Stakeholders: Withdrawal of the United Kingdom and EU Food Law*, 1 February 2018, para 4.1

<sup>18</sup> See European Commission, 'Trade in plants & plant products from non-EU countries', 26 July 2017

The overwhelming majority of the UK's food exports go to the EU – 71 per cent in 2016, worth almost £10 billion.<sup>19</sup> Seven out of 10 of the UK's largest food export markets are in the EU, meaning that the UK has a strong incentive to remain aligned with EU food law.<sup>20</sup> But such an approach might limit the UK's ability to reach trade agreements with third countries whose regulatory approach is different (e.g. the USA).<sup>21</sup>

As explained above, the EU would require the UK's food exports to the EU to go through designated border inspection posts, have appropriate documentation and be produced in approved plants (in the case of animal products) and to specified standards. The UK will meet the EU's standards as a former Member State at the outset, but the EU would have to decide whether to waive or reduce its requirements either temporarily or permanently. It would be tempting for some Member States to insist on certification of full compliance with EU rules as a protectionist measure to try to keep out UK food exports. In any case, UK exporters would have to rapidly recruit and train staff in order to be able to meet any EU requirements, which in most cases they will have no experience of.

The UK would need to consider whether to maintain EU-standard controls on third country food imports so as to re-assure the EU that food exported from the UK met EU standards in terms of all of its ingredients. Without such controls UK food exports to the EU would be liable to challenge.

## **Vehicle & driver safety**

### Current situation

Most vehicle checks within the EU are not carried out at the border but outside the EU UK drivers might face vehicle checks at the border. While vehicle safety is a national responsibility, EU law permits roadside safety checks on commercial vehicles, whatever country they come from; this is partly because many commercial vehicles have to have tachographs fitted.<sup>22</sup> EU product rules on vehicle roadworthiness and on environmental standards ensure common standards. There is also an EU common format for national driving licences to make cross-border travel easier.

### After Brexit

UK road hauliers would need to remain compliant with EU standards if their vehicles were to continue to enter the EU and coming from a third country might face more random checks. Non-EU lorry drivers need a permit to operate across borders in the EU and these may be restricted in number (as is the case for Turkish lorry drivers).<sup>23</sup> In addition, hauliers would lose their cabotage rights under the Single Market, which could affect the viability of their business.<sup>24</sup> They would also need to remain compliant with EU rules on the use of tachographs to monitor drivers' hours and to take the required rest breaks. The UK would

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<sup>19</sup> Food and Drink Federation, *Exports Snapshot: UK food and drink export statistics 2016*, 29 March 2017

<sup>20</sup> *Ibid.*

<sup>21</sup> See Senior European Experts, *Brexit: The Implications for Agriculture & Food*, October 2016

<sup>22</sup> For guidance on tachograph rules, see HM Government, 'Drivers' hours and tachographs: goods vehicles', 4 October 2016

<sup>23</sup> The Government has brought forward a Bill to allow the UK to establish its own permit system after Brexit: see HM Government, 'The Haulage Permits and Trailer Registration Bill: an overview', 20 March 2018

<sup>24</sup> Cabotage means that vehicles can carry goods from (for example) the UK to another Member State and then return with a fresh load; the same applies to aviation and shipping.

need to decide its own approach to managing foreign vehicle safety on UK roads, including whether or not to follow existing EU rules. The validity of UK driving licences in the EU would need to be agreed (and vice versa).

## **Border security checks**

### Current situation

These are a national and not an EU responsibility but British police officers make extensive use of EU databases in the course of their work. Border security checks vary in type, scale and intensity depending on the airport, sea port or land border concerned. For example, the UK has intensive controls at the Port of Dover and on the nearby Channel Tunnel. This is because the high volume of vehicles and freight traffic makes smuggling easier. Controls are on a different scale at smaller ports and airports.

The UK has very specific rules designed to counter people smuggling - companies and drivers can be fined if illegal migrants are found in their vehicles.<sup>25</sup>

### After Brexit

National controls would be able to continue unaffected except where dependent on EU security databases, if the UK's access was withdrawn or restricted. The two biggest losses would affect extradition and police use of databases. If the current system could not be maintained, the UK would no longer be able to use European Arrest Warrants (EAW) to remove wanted persons from the UK or extradite them from the rest of the EU to the UK. Without the EAW, the UK would be forced to rely on the less-reliable and far slower procedures in the 1957 European extradition convention; a number of Member States are unable to operate that anymore as they have repealed the relevant laws.

In respect of databases, loss of real-time access to the Schengen Information System, to Prüm and to ECRIS would be a major concern to the police because they are used thousands of times every day by officers during their routine work.

## **Conclusion**

Border management is a complex, sensitive and costly exercise. Outside the EU, the UK would have to make considerable changes to its current border management systems to cope with a new regime. The nature of that regime will primarily depend on what agreement the UK reaches (if any) with the EU in respect of its future trading relationship as that has major implications for customs, food and plant safety and vehicle controls. It will also depend on whether the UK is able to reach a satisfactory agreement on visa and travel issues, crime and justice policy, including extradition, and on access to EU databases which are considered vital to UK security by the police and other agencies. Any changes will have to be implemented by the conclusion of the transition period at the end of 2020.

**June 2018**

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<sup>25</sup> For these rules and relevant guidance, see HM Government, 'Secure your vehicle to help stop illegal immigration', 7 February 2014



## Senior European Experts

The Senior European Experts Group is an independent body consisting of former high-ranking British diplomats and civil servants, including several former UK ambassadors to the EU, and former officials of the institutions of the EU.

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