

Guidance Note

Edition 3 – March 2019

Brexit – What now for the marine industry?

Executive Summary

This guidance note tries to highlight various exit scenarios which may affect manufacturers that are:

- 1) In the UK exporting product to Europe
- 2) European manufacturers exporting products to the UK
- 3) In 'third' countries like Japan or USA who may be either exporting directly to the UK or using the UK as an entry point into Europe

This edition follows the recent approval by the UK House of Commons of a fallback plan to ask the European Union for an **extension** of the formal Article 50 divorce process. This could be agreed by EU Member States at a summit due to take place 22nd and 23rd March 2019 in Brussels. Before this summit the UK Parliament may vote again (for the 3rd time) on the draft withdrawal agreement and the outcome, depending on the changes made, could impact the length of the delay as well as some of the conditions associated with it.

Background

A public referendum asking whether the UK should leave or remain in the European Union was held on Thursday 23rd June 2016 with the Leave vote winning by nearly 52% to 48%.

Article 50 of the Treaty on European Union (TEU) was invoked by the UK on the 29th March 2017 which started the Member States withdraw from the EU and means that they would cease being a Member of the EU on 30th March 2019.

There are differing views as to whether Article 50 can be revoked as, despite a European Court of Justice ruling in December 2018 saying that a country that had given notice under Article 50 to leave the EU could exercise its sovereign right to revoke its notice, some UK lawyers have argued that the process could not necessarily be halted.

On the 22nd January 2018 the European Commission released a notice to [stakeholders' paper on the withdrawal of the United Kingdom and EU rules in the field of industrial products](#). Both the Machinery Directive 2006/42/EC and the Recreational Craft and Personal Watercraft Directive 2013/53/EU are listed in an Annex to the paper.

On the 1st of February 2019 the European Commission then released a list of [Questions and Answers \(Q&A\)](#) which gives further practical guidance on 'industrial products' using hypothetical examples to illustrate certain scenarios.

In July 2018 the UK Government released a paper titled '[The future relationship between the United Kingdom and the European Union](#)'.

This was followed by specific information being published on the 13th September 2018 relating to the sale of harmonised products that were subject to EU product specific rules – [link](#) to the website.

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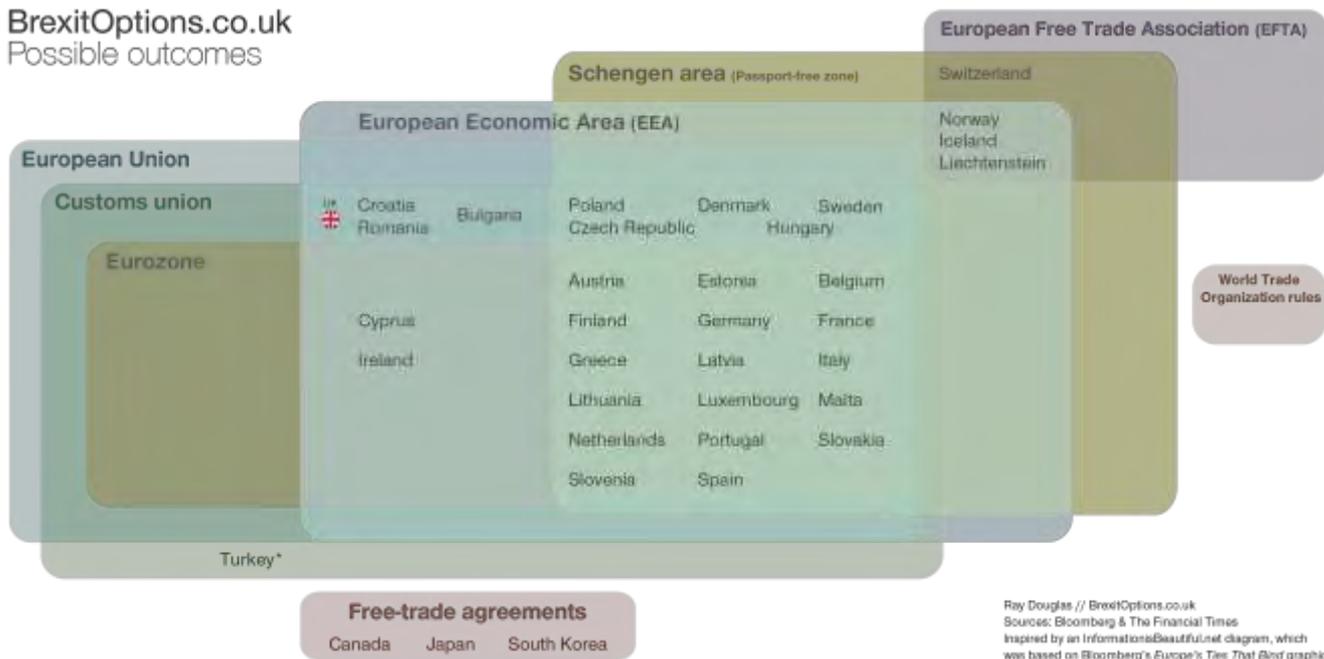
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Due to the considerable uncertainties which still exist, this guidance will need to be updated and revised as more details become known and further clarifications are made by both parties.

All members should ultimately prepare for the worst-case-scenario which is that no exit deal is reached between the UK and the EU. It is important that everyone keeps themselves informed of all the potential outcomes.

BrexitOptions.co.uk
Possible outcomes



Note: Should the UK further default to WTO trading arrangements in 2019, most marine products would fall within a 'bound' range for tariff duties imposed by the EU with average tariffs ranging from 2.3% to 4.2%

No exit deal or hard Brexit

Unless a ratified withdrawal agreement establishes another date, all European Union primary and secondary law will cease to apply to the United Kingdom from 30th March 2019 and the United Kingdom will then become a 'third country'.

The EU Recreational Craft and Personal Watercraft Directive was fully transposed into UK law as the Recreational Craft Regulations 2017 and the UK has already passed [legislation](#) that transfers all EU legislation into UK statute. This is to ensure that, in the short term, there are no regulatory 'gaps' and it is known as the repeal bill. This will become important in the future when the UK makes any changes to the regulations.

After Brexit, if there is no deal, the results of any conformity assessment carried out by UK notified bodies will no longer be recognised in the EU. This means that products tested by a UK notified body will no longer be able to be placed on the EU market without retesting and re-marking by an EU recognised conformity assessment body.

All economic operators needing to place products on the EU market are advised to take the necessary steps to ensure that, where the applicable conformity assessment procedures require the intervention of a Notified Body, they will hold certificates issued by an EU-27 Notified Body ([link](#) to the current NANDO database) to demonstrate compliance for their products as from the withdrawal date.

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Note: It may also be possible to initiate a transfer of the file and the corresponding certificate from the UK Notified Body to an EU-27 Notified Body, which would then take over the responsibility for that certificate but this depends on the specific conformity assessment procedures required and we have not been able to confirm this.

Notified bodies based in the UK will be granted new UK 'approved body' status and listed on a new UK database. The approved bodies will be able to assess products for the UK market against UK essential requirements (which, immediately after exit day, will be the same as EU essential requirements).

The UK Conformity Assessed (UKCA) marking, which is still subject to parliamentary approval, will be the new UK product marking that will be used for certain goods being placed on the UK market if there is no deal.

If a manufacturer relies solely on a self-declaration of conformity for the CE marking, they will be able to use the UKCA marking based on self-declaration but if they require third party assessment of conformity which is carried out by a UK conformity assessment body, they will have to apply the new UKCA marking after 29 March 2019. However, CE marking will apply if the certificate of conformity has been transferred to an EU-recognised body*. More details can be found [here](#) and the actual mark can be downloaded from this [link](#).

*Our understanding is that since the Recreational Craft and Personal Watercraft Directive 2013/53/EU is part of the 'New Approach' series of Directives which require CE marking, the products covered by the RCD are not provisionally required to have their conformity certificates transferred as this applies only to those 'type approval' processes found within the EU vehicle regulations.

More information on EU Exit Vehicle Regulations can be found [here](#).

In the previous edition of the guidance note we shared specific [guidance](#) from the UK's Department for Exiting the European Union (DExEU) and Department for Transport relating to motor vehicle type approval if there's no Brexit deal.

This document explains how existing EC type-approvals (for motor vehicles) would need to be converted into a UK type-approval to allow manufacturers to continue to place products on the market in the UK (with plans to issue provisional UK type-approvals to manufacturers that already have EC type-approvals). Products which do not require registration for use on the road, i.e. trailers, engines for non-road mobile machinery and components, may however continue to be placed on the market on the basis of existing EU approvals, at least until further UK legislation is introduced which is expected sometime in 2019.

Existing harmonised standards (used to demonstrate conformity with EU essential requirements) will become UK 'designated standards.' Manufacturers in the UK will be able to continue to use standards as a way of demonstrating conformity with UK essential requirements and following the standards will still give rise to a presumption of conformity with the essential requirements (as following harmonised standards does now). The UK will publish a full list of the references of UK designated standards which will be identical to the current EU harmonised standards published in the Official Journal for the purposes of the EU legislation.

In terms of **tariffs and duties** - If the UK leaves the EU in 2019 without an agreement, UK **exports** to EU member states will automatically defer to WTO trade rules and the UK will be subject to the 'applied rate' levied by the EU on external trading partners. British **import** duties will also be governed by WTO trade rules and the UK would most likely seek to broadly match the duties levied by the EU but this has yet to be confirmed. An example of the current tariffs applied to third country imports into the UK can be found [here](#) and guidance on what will happen to existing trade agreements if the UK leaves the EU without a deal can be found [here](#).

Members concerned about skippers licensing for private pleasure craft and berthing a UK flagged craft in an EU 27 country are advised to read the RYA's *No deal Brexit scenario* [here](#).

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If there are any questions around the EU's [Marine Equipment Directive](#) - MED (2014/90/EU) applying to equipment placed on board an EU ship then please read the [recent marine information note](#) (MIN 590) issued by the UK's Maritime & Coastguard Agency.

Additional voting by UK MPs

With the UK Prime Minister set to propose a revised withdrawal plan to the UK Parliament this may include making some additional clarifications on the Irish 'back-stop' and possibly implementing other critical changes.

Renegotiation of an exit deal between the UK and EU

This could take a period of time and would almost certainly require an **extension of Article 50** to delay Brexit. A request could be granted but only if all EU countries agree at a vote of the EU Council and the UK government would have to table a statutory instrument to change the definition of 'exit day' in the EU Withdrawal Act with MPs getting a chance to vote on this change. A post-Brexit transitional period, anticipated to last from 30 March 2019 until 31 December 2020, will take place if an exit deal is agreed.

Second referendum

Since there would have to be a new piece of UK legislation to make a referendum happen and to determine the rules as well as having enough time for the Electoral Commission to consider and advise on the referendum question, this too would also require an **extension or revocation of Article 50** to delay Brexit.

More information

- UK guidance on customs processes etc. if the UK leaves without a deal:
<https://www.gov.uk/guidance/declaring-your-goods-at-customs-if-the-uk-leaves-the-eu-with-no-deal>
- Additional guidance on importing goods into the UK is available here:
<https://www.gov.uk/browse/business/imports>
- Information on the World Trade Organisation agreements:
https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact2_e.htm