

## Future UK-EU transport arrangements

**Organisation:** Rail Delivery Group (RDG)

**Address:** 200 Aldersgate Street, London EC1A 4HD

**Type:** Business representative organisation

The Rail Delivery Group (RDG) brings together passenger train operators, freight train operators, as well as Network Rail. Together with the rail supply chain, the rail industry, a partnership of the public and private sectors, is working with a plan [In Partnership for Britain's Prosperity](#) to change, improve and secure prosperity in Britain now and in the future.

The RDG provides services to enable its members to succeed in transforming and delivering a successful railway to the benefit of customers, the taxpayer and the UK economy. In addition, the RDG provides support and gives a voice to passenger and freight operators, as well as delivering important national ticketing, information and reservation services for passengers and staff.

Our railway is the backbone of the British economy. It employs around 240,000 people, moves 4.5 million people around Britain each day, and 86 million tonnes of freight each year. It spreads wealth to every part of the country. As a sector that imports and exports both goods and services, moves people across borders, and possesses mainland Britain's only physical link to the Continent, getting Brexit right for the rail industry will also be a barometer for whether the overall deal will enable Britain to prosper in the decades ahead.

It should be noted that for the purposes of this response, RDG does not cover matters pertaining to Northern Ireland. RDG thanks the Committee for the opportunity to input into the inquiry.

**For enquiries regarding this response, please contact:**

**Laura Wright**

**Head of International Policy**

[laura.wright@raildeliverygroup.com](mailto:laura.wright@raildeliverygroup.com)

[www.raildeliverygroup.com](http://www.raildeliverygroup.com)

## 1 Background

The EU Single Market has enabled British and European railway operating and manufacturing companies to set up complex supply chains and services that enhance competitiveness, growth and employment in both economies. With much at stake, freight and passenger operating companies and the rail supply chain are anticipating with interest the final outcome of the negotiations between the UK and the EU27.

Significant legislation regarding international and domestic rail travel originates from the EU. Successive 'Railway Packages' and the creation of the Single European Railway Area have liberalised rail traffic within the EU. This has created opportunities for British businesses to operate railway services on the continent and vice-versa. Aside from these important industry-specific frameworks, there are also EU regulations regarding environmental impact, safety and security standards and rights for employees (so-called horizontal legislation).

RDG has undertaken a detailed analysis of Brexit across passenger and freight and infrastructure management issues. We have distilled this into four high-level policy asks:

1. **Smooth cross border transport:** 10 million passengers and 2000 freight services use the Channel Tunnel each year. Passenger and freight train operators need to access rail infrastructure without undue cost, delay or operational boundaries.
2. **Reciprocal market access:** Foreign-owned operators currently participate in the franchising market and UK businesses have an increasingly strong presence in EU markets. The rail industry needs an agreement which allows reciprocal market access to both EU and UK railway companies and their owning groups without complications.
3. **Access to EU skills:** 20 per cent of the rail industry's workforce are non-UK EU nationals. The industry relies on continued access to skilled workers to continue operating and upgrading the railway, to support economic growth. Government and the industry should work together to ensure the industry can have access to a sufficient number of skilled workers either trained domestically or from the EU.
4. **Clear application of railway standards:** The sector relies on technical specifications for interoperability (TSIs) created at EU-level. Ideally, the sector would have continued influence in the design of European standards and, where in the interests of efficiency/safety, continued application of EU standards.

RDG welcomed the publication of July's White Paper as it provided some additional certainty as to the Government's position. However, we did have a number of concerns which are explored in the responses to the specific questions in this paper. RDG is hopeful that with the continued collaboration with DfT and DExEU many of the issues raised in this submission can be resolved so long as a deal is reached with the EU.

## 2 Rail-specific Questions

### 2.1 Is there a positive case for UK divergence from EU rail legislation, including the four 'railway packages'?

There are more than 35 pieces of rail-specific EU legislation that apply to the industry along with many so-called horizontal regulations, directives and implementing acts. RDG believes in an open and

competitive rail sector where the independent infrastructure manager (IM) is able to operate and develop the network in the interests of all its railway undertaking (RU) customers and, ultimately, passengers and freight users. As such, RDG supported the European Commission's initiatives delivered by this legislation, particularly those which aim to open up rail markets (the 'railway packages').

In this context, RDG supported both the technical and market pillars of the latest Commission initiative- the Fourth Railway Package- as it progressed through the European legislative process. Indeed, due to the fact that British railways spearheaded liberalisation in the early 1990s, EU legislation has required very little change. Nonetheless, RDG successfully secured amendments where the text was potentially problematic to mature liberalised markets.

## 2.1.1 The importance of convergence for reciprocal market access

Foreign involvement in the British franchising market is well-documented and we have welcomed the jobs and investment that international transport businesses have wanted to bring here to learn from and build on our successes. British businesses are also increasing their presence in mainland Europe and we want to make sure that these companies have access to markets, so we can export our expertise. Both of these developments can help bring jobs and prosperity to Britain.

Notwithstanding the outcome of Brexit negotiations, RDG believes the Fourth Railway Package opens opportunities for British operators wishing to operate in other EU markets. RDG's members already operate public service contracts in Germany and other EU markets and are seeking to enter a number of the newly liberalising markets across the EU. If EU member states adequately implement the Fourth Railway Package there will be more opportunities for British operators to export their expertise.

Without an arrangement which allows EU companies to enjoy the same access to the UK market as before Brexit, there could be complications from the point of UK withdrawal from the EU. We believe that to some extent such reciprocal market access will be reliant on convergence on many of the elements of the Fourth Railway Package.

In any case, as UK legislation pertaining to the liberalisation of the railways largely predates EU measures, any divergence would mean a significant policy shift and require primary legislation following the UK's withdrawal from the EU.

## 2.1.2 The importance of technical convergence

The Fourth Railway Package technical pillar pertains to interoperability and the role of the European Union Agency for Railways (The Agency). This framework also references to the mandatory requirements contained in European Regulations called Technical Specifications for Interoperability (TSIs) developed by The Agency in collaboration with the industry.

The primary purpose of the TSIs is to harmonise requirements across Europe to the extent necessary to meet objectives of European legislation; namely to open up and grow the European rail market for products and services and facilitate cross border traffic with the aim of effectively making the key aspects of the whole EU railway network 'technically the same' so that, in theory, any 'TSI compliant European train' could operate anywhere on the whole EU rail network.

Currently, as a result of how they were originally constructed to their own national standards, the EU's railways are fragmented in nature both technically and operationally and the TSIs are mandated to facilitate the harmonisation process to gradually address this network diversity. As a consequence of

this if they were applied in full without UK specific cases, import additional costs to otherwise compatible legacy infrastructure and railway vehicles.

As such the industry- including groups beyond RDG's membership- has agreed to a policy of assumed compliance post-Brexit and divergence only in cases where additional costs or compatibility issues would arise. The industry has devised a process by which to make this assessment on a whole industry, whole lifecycle basis.

Despite these plans there are some remaining concerns about the future relationship with The Agency which is needed to support future technical convergence.

### *2.1.2.1 Agency membership or cooperation*

The Government have confirmed that they do not intend to remain a part of any EU agencies, besides those strictly necessary. In her March 2018 Mansion House speech, the Prime Minister indicated that these agencies would be the European Medicines Agency (EMA), the European Chemicals Agency and the European Aviation Safety Agency (EASA). This means the Government will not seek membership of The Agency or a future bilateral relationship. This would significantly reduce any ability to influence TSIs and Common Safety Methods (where the UK has successfully provided significant influence).

There are a number of areas where it will be essential to maintain close relationships with The Agency to enable international train operations. These work in both directions, with the UK recognising the Single Safety Certificates issued by The Agency along with train driving licences issued by other member states and cross acceptance certificates for rolling stock. Equally this needs to be a two-way relationship with The Agency recognising UK based maintenance activity and UK-issued train driving licences.

Without a future relationship with the Agency, there are risks associated with convergence with the EU as either specifications develop which are no longer fit for the UK or rail-components become more expensive as the UK pursues bespoke arrangements.

### *2.1.3 The White Paper and the 'railway packages'*

#### *2.1.3.1 Convergence and divergence*

The Government's July White Paper on Brexit states that beyond cross border services; "the UK will have the flexibility to shape its own domestic railway legislation to meet the needs of its passengers and freight shippers and reflect the unique characteristics of the rail network within the UK." RDG's operator members believe this suggests that the Government is signalling divergence from the TSIs. RDG would not support this change without due consideration.

The White Paper states that there will be a common rule book for goods, which we assume will include railway goods the UK currently successfully exports to the EU. A common rule book suggests that regulatory convergence is required. This means that UK rail suppliers could be in the unenviable situation that their exported goods are complying with one set of TSIs whilst anything remaining in Great Britain will depend on another, losing them economies of scale and potentially pushing additional costs into the industry and ultimately passengers and freight customers.

#### *2.1.3.2 Agency membership*

The White Paper says that the Government wishes to retain, "participation by the UK in those EU agencies that provide authorisations for goods in highly regulated sectors – namely the European

Chemicals Agency, the European Aviation Safety Agency, and the European Medicines Agency – accepting the rules of these agencies and contributing to their costs, under new arrangements that recognise the UK will not be a Member State”. Whilst The Agency is clearly not listed, it does have the characteristics the Government defines as important when considering retaining membership.

In addition, as there will be a common rule book on goods- including railway goods as outlined above- it is highly likely that at least some form of relationship with The Agency will be required in the future. RDG would be concerned if there were to be an asymmetrical relationship with the Agency with closer ties for suppliers than operators or infrastructure managers.

## **2.2 What are the implications of the Government's proposed approach of pursuing bilateral agreements with the Governments of France, Belgium and the Netherlands for services through the Channel Tunnel and with the Irish Government for the Belfast- Dublin Enterprise line?**

As outlined in the pre-amble this response only pertains to the Channel Tunnel as RDG does not have members in Northern Ireland.

10 million passengers and nearly 2000 freight services use the Channel Tunnel every year (excluding le shuttle and RoRo freight). It is vital that passenger and freight services continue to run smoothly in the future and there are opportunities for the market to grow. Smooth cross-border rail services rely on mutual recognition of certain licenses and certificates and the reservation of paths in the EU countries in which they start or make their onward journey into; proposals for a bilateral agreement will support this mutual recognition.

RDG has advocated for a bilateral agreement with the EU to ensure smooth cross border transport and provided suggestions to DfT for forms of words based on the Swiss Land Transport Agreement (LTA). At present there are plans to have bilateral agreements with France, The Netherlands and Belgium as referenced in the UK Government's White Paper. RDG also believes an agreement with the EU or with additional Member States including, for example, Germany could be pursued.

Wider reaching bilateral agreements will not only help support future growth in the passenger market but will give additional reassurance to international freight operators. Current regular freight flows go between Great Britain and Spain, France, Germany, Italy and Belgium. However, given the opportunities for inland customs clearance in the future (as supported by the Taxation (Cross Border Trade) Bill) RDG hopes that international rail is well-positioned to grow in the future and therefore more extensive agreements would be helpful.

## **2.3 Is a post-Brexit agreement on rail transport in the mutual interest of the EU and the UK? If so, what provisions would be necessary for such an arrangement to be effective?**

RDG and all its members would strongly support a post-Brexit agreement on rail transport. Any firm agreement particularly on securing future international services and reciprocal market access for rail goods and services would be a strong signal to the market and give the industry much-needed certainty. Reciprocity would rely largely on mutual recognition and convergence on certain regulations.

## **2.4 What would be the implications of 'no deal' for the UK's rail industry? Are there any existing international arrangements that could be utilised instead?**

In March 2018, RDG welcomed the agreement of an implementation or transition period in principle. This is because all the risk mitigation measures arising from Brexit require time to either put in place procedurally or build infrastructure to mitigate operational risks. The least favourable outcome for

business would be a no-deal Brexit. The rail industry wants to avoid this and will continue to cooperate with Government to find suitable outcomes and secure transitional arrangements.

During September and October RDG, along with its members, will be undertaking more detailed business continuity planning to ensure certainty for operations in the event of no deal. We have already identified a number of issues that will need to be resolved in the event of a no-deal Brexit which we are discussing with DfT.

### 3 Multi-modal questions

#### 3.1 Do any existing agreements between the EU and third countries provide a useful precedent for a future UK-EU transport relationship?

RDG has undertaken an analysis of the Norway/EU relationship, EU/Swiss relations and how the US and Canada run cross border rail services, all of which provide interesting precedents or lessons. The Convention concerning International Carriage by Rail (COTIF) will also be very helpful for the UK when we leave the EU.

##### 3.1.1 Norway and Switzerland

The Agreement creating the European Economic Area (EEA) entered into force on 1 January 1994. It allows EEA member states (currently Norway, Iceland and Liechtenstein) to participate in the Internal Market on the basis of their application of the Internal Market relevant acquis. All new relevant Community legislation is incorporated into the Agreement and thus applies throughout the EEA, ensuring the homogeneity of the market. If the UK were to be a member of the EEA it would adopt around 75% of EU law which RDG believes would include the majority of current EU rail legislation.

The Swiss Land Transport Agreement (LTA) with the EU opens up the market for the transport of persons and goods by road and rail between Switzerland and the EU. At the same time, it provides a contractual basis for the introduction of a distance-based charge for Heavy Good Vehicles (HGVs) and for that charge to be gradually increased. Since its introduction in 2001, the HGV charge has helped finance the development of railway infrastructure in Switzerland and has become an important instrument in transferring the transport of goods from road to rail. In accepting the LTA, the EU officially recognised this aspect of Swiss transport policy. In exchange, Switzerland has accepted the gradual increase in weight limits for heavy vehicles from 28 to 40 tonnes (since 2005).

The aim of the LTA is to create comparable market access and competition conditions for road and rail transport companies in Switzerland and the EU. On the basis of the agreement, Swiss transport operators can convey goods from one EU state to another. The only area of the market excluded from liberalisation is that of cabotage, i.e. the transport between two points in the same country.

Membership of The Agency is a possibility under both the Norwegian and Swiss framework. EEA members participate in the agencies through decisions of the EEA Joint Committee. Norway participates in a number of these agencies through provisions in the Agreement. This comes with a commitment to making annual financial contributions to the relevant EU budget. Unlike the UK as a full member of the EU, Norway does not have the right to vote on decisions taken by the Management Board of the Agency.

Unlike Norway, Switzerland cannot be part of EU agencies as a right. Participation is usually negotiated as part of bilateral agreements and comes with financial contributions. At the moment, Swiss

membership of the Agency has been put on hold due to the 2014 referendum in Switzerland on limiting immigration. The anticipated cost of joining the Agency will be €1m.

Whilst both, the EEA and the Bilateral Agreement systems, work for Norway and Switzerland, there could be disadvantages for the UK and the British rail industry. For the British rail sector this would mean that the UK would lose all powers to influence the EU, whilst being required to implement EU policy and standards if the country wanted to continue trading within the single market.

Particular general disadvantages for the rail industry would be as follows:

- No say in decision-making process (no vote in The Agency, at European Council, or in the European Parliament and limited access to representatives of those institutions);
- Lack of influence (definition and implementation of railway standards, lack of influence on legislation proposals that would impact the sector);
- Lack of information (late information on planned legislative proposals);
- Cost of setting up a Brussels office and accessing information;
- Inefficiency of “Indirect lobbying” (heavily relying on other European rail organisations to represent the UK’s interests); and
- Dilution of RDG relationship with the Commission.

### 3.1.2 USA and Canada

The US and Canada provide an interesting case study for how countries outside an economic, social and customs union facilitate cross-border travel.

Despite there being a hard border between the US and Canada, both countries aim to facilitate cross-border travel by cooperating on a governmental and a business level. The US and Canada have both agreed to a “Smart Border Action Plan” to enhance the security of the shared border whilst facilitating the legitimate flow of people and goods. This includes cooperation on issues such as biometric identifiers, creating a single inspection system, coordinating visa policy, sharing advanced passenger information records or creating compatible databases, for example.

Speaking to Amtrak and ViaRail last year, RDG understood that where legislation did not provide for any support or limit businesses in finding alternative solutions, a cooperative relationship tends to lead to pragmatic solutions on a business level. Amtrak and Via Rail, as well as the respective regulatory bodies are in regular contact to ensure a smooth flow of goods and people across the border.

International operations between the US and Canada have a reciprocal nature. This is primarily based on the fact that the Federal Railroad Administration (FRA, US) recognises Transport Canada as its ‘sister’ agency having similar qualification and certification requirements for locomotive engineers and other operating crew members.

In order to be allowed to operate in the US or Canada, the operating crew has to pass both US and Canadian operating rules. This means that staff will on average have to know four to five different operating rule books, considering that within the US, each state can have different operating rules. Staff will have to know the rules of the states on the route of the train.

The US and Canada are signatories to a joint border and inspection programmes which strengthens their faith in each other’s systems. The American and the Canadian border agencies both work very closely together, trying to develop the same standards and sharing as much information as possible.

This kind of framework would import additional unnecessary, and potentially unworkable complexity into a cross-border relationship that currently works smoothly for passenger and freight services.

RDG took the train from New York City to Montreal to experience the border-crossing procedures on the Adirondack service first hand and further information on this experience is available via our website: [https://www.raildeliverygroup.com/files/Publications/2017-09\\_border\\_controls\\_post\\_brexit\\_us\\_canada\\_report.pdf](https://www.raildeliverygroup.com/files/Publications/2017-09_border_controls_post_brexit_us_canada_report.pdf)

### 3.1.3 COTIF

The Convention concerning International Carriage by Rail (COTIF) applies in Europe, the Maghreb and in the Middle East. This framework will become increasingly important for international rail travel between the UK and EU post-Brexit if the models above are not adopted. The seven appendices of COTIF provide a framework to facilitate international rail travel including in the following relevant areas:

- CIV Contract of carriage of passengers (international);
- CUV Use of vehicles (international); and
- CUI Contract of carriage of international freight.

There are some limitations to COTIF, however it may be used to back-fill some gaps post-Brexit. RDG are currently working with the Intergovernmental Organisation for International Carriage by Rail (OTIF) and the International Transport Committee (CIT) to understand the framework and how it could support international traffic post-Brexit.

### 3.2 Are there any EU transport infrastructure projects that it would be in the UK's interest to remain involved with? For example, TEN-T projects?

TEN-T policy aims to overcome infrastructure barriers to the smooth operating of the internal market. It does this by requiring minimum standards to be in place on defined routes. It is accompanied by funding via the Connecting Europe Facility (CEF). Network Rail benefitted from around £75m of funding from the CEF in the last control period. However, given that the UK will no longer be eligible for funding post-Brexit RDG does not see a requirement to continue participating in the corridors.

European Rail Freight Corridors (RFCs) were established under Regulation 913/2010 concerning a European Rail Network for Competitive Freight. The Regulation sought to strengthen cooperation between Infrastructure Managers (IMs) on key operational aspects such as path allocation, interoperability and infrastructure development. In order to grow the rail freight market in Europe. Nine RFCs are currently in place across Europe which cover the continent extensively. The United Kingdom (UK) is on RFCNSM, North Sea-Mediterranean.

RDG members believe there are a number of reasons why remaining in RFCNSM will be beneficial to the rail industry following Brexit.

- The promotion of international rail freight;
- Consistency for applicants with clear access and certainty;
- Greater certainty for British operators going into mainland Europe and vice-versa;
- The Corridor Information Document (CID) is a useful and comprehensive source of information;
- The Corridor One Stop Shop (C-OSS) provides a collaborative framework;
- Clear and targeted route of collaboration with Eurotunnel; and
- Paths identified for freight through the Channel Tunnel.



In addition, the corridor will provide an invaluable platform for exchange post-Brexit. Where the UK will not be integral to the EU, remaining inside an organisation such as RFCNSM, will provide a forum for the industry to maintain relationships. Nonetheless, membership of a RFC is not operationally essential in the future.

### **3.3 What opportunities and challenges does Brexit present for passenger rights?**

RDG supports strong passenger rights and obligations and finds the Passenger Rights Regulation and the revision currently going through the EU legislative process useful in complementing existing measures on a national level in some areas. Train operators may give passengers more extensive rights than set out in EU regulations. National Rail Conditions of Travel (NRCoT) and operator specific conditions are comprehensive and currently exceed the requirements of EU regulations.

In Britain, passenger rights and responsibilities when travelling by train are set out in the National Rail Conditions of Travel (NRCoT). NRCoT applies to all domestic journeys by a scheduled passenger train service. Operator-specific conditions of carriage apply to international journeys.

RDG wants to avoid any legal uncertainty or complexity in any deviation following Brexit, and there may be some (limited) opportunities to simplify the regime. However, RDG recognises that the regulation is potentially helpful for international services by establishing a coherent framework between markets.

The situation may be more complex in the area of multi-modal passenger rights, where the European Commission has expressed an appetite to develop legislation. RDG will continue to watch this dossier even post-Brexit.

### **3.4 How prepared are the Department for Transport and UK transport agencies and bodies for Brexit, including the potential implications of 'no deal'?**

RDG has found the representatives from the Department for Exiting the EU (DExEU) and our lead Department, the Department for Transport (DfT), to be very well engaged with the sector, keen to listen and will consult with us as developments are made public. These individuals work hard to support the sector, minimise the risk of Brexit, and also help us identify potential opportunities.

However, whilst we work with these very capable individuals, who have excellent sector technical knowledge, we have concerns around the scale of the challenge for departments to deal with the high volume of legal inoperabilities that need to be rectified through the European Union (Withdrawal) Act and detailed planning for a potential no deal.

To support the Government's preparations for Brexit, and particularly no deal, the sector itself has stepped up to work in partnership with the DfT, inputting a range of advice and research into plans for negotiations, contingencies and legislation. RDG's overall priority is to prepare its members for Brexit and therefore we have made resources available to support this work including hiring an additional International Affairs Team member and freeing up other specialists in the organisation to work on Brexit.