

# POSITION SUMMARY



## BREXIT

October 2017

### KEY MESSAGES

- Our sectors currently depend on the freedom of movement of goods and benefit from the freedom of movement of people and capital within the EU (including the UK)
- There are historic and economically significant wine and spirit trade flows between the EU and UK. It is vital for the continued success of EU and UK businesses that this trade is maintained after Brexit with minimum disturbance
- We therefore strongly urge the EU and UK to reach a negotiated settlement. No deal is not an acceptable outcome for our sector
- Our aim is a gold standard, living agreement between the EU and UK that preserves fair competition and maintains consumer confidence in our products
- The future regime should maintain a high degree of harmonisation or convergence of legislation including wine and spirits definitions, oenological practices and the recognition of GIs
- We need 'frictionless' trade between the EU and UK through a comprehensive customs agreement to avoid border tariffs, processing delays, (possible) conformity assessments and related administration costs
- Transitional implementation arrangements will be needed. An early announcement of those arrangements will facilitate business planning. As part of this, they should guarantee the maintenance of all the EU acquis relevant to wine and spirits, as well as the continued application of FTAs
- Agreement to allow people currently legally working in the EU28 to remain in their place of work and for future hirings and movements to be as seamless as possible

**This is a joint paper, representing the views of the members of spiritsEUROPE, the Comité Européen des Entreprises Vins, the Scotch Whisky Association and the Wine & Spirit Trade Association. We have shared interests, both human and corporate, based on a high degree of positive integration and industry collaboration over the last 44 years.**

## Introduction

The wine and spirits sectors, and the jobs and communities which depend on their export success, have benefitted enormously over the years from the creation of the EU internal market, and from the various bilateral and multilateral trade deals negotiated with third markets around the world. Our sectors depend on the freedom of movement of goods, and also benefit from the freedom of movement of people and capital within the EU (including the UK).

The UK is the world's second largest importer of wine by volume and by value and is a significant market for wines produced in the EU. Wine traded between the EU and UK is not currently subject to tariffs. Unless the UK remains in the Customs Union or a Free Trade Agreement is negotiated between EU and UK, this tariff-free environment would change post-Brexit.

In total, wine exports from the EU27 to the UK currently account for €2.3 billion (in 2016), representing just above two-thirds of the value of all UK wine imports and accounting for around 20% of EU27 wine exports. At the same time, wine comes in at sixth spot in a list of the UK's most exported food and drink products.

- **EU27 wine → UK market: €2.3 billion**
- **UK → EU27 market: €204 million**

For spirits, just under €2.7 billion worth of products are shipped between the EU27 and the UK each year. It is worth noting that spirits traded between the UK and EU27 are not subject to tariffs and this will remain the case after Brexit, given the EU's WTO bound rate on almost all spirits is 0%.

- **UK spirits → EU27: €2.1 billion**
- **EU27 → UK: €591 million**

European spirit and wine success is based on tradition, know-how and recipes handed down through generations.

The existing 46 spirit categories like rum, whisky, vodka, etc and the +/- 240 geographical indications (GIs) registered in Europe, such as Cognac, Scotch Whisky, Irish Whiskey, Polish Vodka, etc... are clear indications of a sector rooted in culture and tradition.

European wine also has a world-renowned provenance and history, and has been long associated with leading the global wine category. There are 1,929 PDO and PGIs associated with European wine, with French, Italian and Spanish wines leading the GI table. Some 63% of EU wines are protected by a PDO/PGI, and EU PDO/PGI wines represent 90% of the total EU wine exports in value.

Both the European Council and the British Prime Minister have emphasised the need for the EU27 and UK to remain close partners in the future. We welcome these commitments which are critical if an agreement is to be reached which minimises disruption to the trade flows between the EU27 and UK. This paper sets out our requests and suggestions on the specific issues that affect our wines and spirits producers.

## The shape of the future relationship

As the rules under the Internal Market work well for our sectors, we strongly support the announcement that an Act will be introduced in the UK that will incorporate relevant existing EU law into domestic UK law.

Once Brexit becomes effective, it is possible that some of those rules, regulations and standards may diverge over time, as legislators in the UK and/or EU27 adopt different policies.

We strongly support the UK and EU securing a deep and comprehensive trade agreement.

- **We urge the EU27 and UK to agree a gold standard agreement that preserves wine and spirits tariff-free trade, fair competition and maintains consumer confidence in our products.**

It is, however, unlikely that a comprehensive bilateral trade deal will be secured by March 2019. A transitional implementation period will be necessary to avoid disruption. For business planning, both in the EU27 and in the UK, companies will need to know these transitional implementation arrangements well in advance to avoid costs, confusion and legal uncertainty.

- **We call for predictable, pragmatic, non-disruptive transitional implementation arrangements, allowing businesses to continue trading in the knowledge that the rules will not change at all without a phase-in period – and, ideally, to announce the broad outline of such a transitional arrangement *by the end of March 2018*.**

In view of the number of live trade policy issues around the world, it is critical that the EU and UK continue to work in partnership to tackle global trade barriers. The transition agreement should include not only the future EU27-UK relationship but also should guarantee the maintenance of all the EU acquis relevant to wine and spirits, as well as the continued application of FTAs.

- **Until the point when the UK ceases to be a member of the EU, we call on the EU to support the UK's trade interests alongside other EU Member States, including full enforcement of WTO and free trade agreement (FTA) obligations, and the UK should continue to support the EU's ambitious international trade strategy and interests.**

## Preservation of rules affecting our sectors

Wines are subject to very detailed sets of rules that notably encompass definitions, oenological practices, presentation and labelling regulations, including the protection of wine “traditional terms”, the EU organic regulations and the rules regulating wine products.

For all spirits producers, the ‘Spirit Drinks Regulation’ 110/2008, is of critical importance: it sets out rules on the definition, production and labelling of all spirits made, sold in, and exported from the EU. It provides certainty and confidence to consumers who know exactly what they are purchasing, without fear of deception. It also protects the quality and traditional production methods which are the basis for the sector’s success in international markets and ensures the protection of spirits GIs.

EU food labelling laws apply to all wines and spirits sold in the Internal Market and ensure consumers receive consistent and proportionate information about the foodstuffs they consume wherever they are purchased in the EU.

Within the EU, there are harmonised rules for the use of additives and flavourings. This includes maximum levels where appropriate and a standardised approval process involving the European Food Safety Authority (EFSA). This means consumers are protected and that producers all operate to the same rules.

Divergence in the EU27 and UK wine and spirits’ legal frameworks would affect trade directly by creating non-tariff barriers and would undermine consumer confidence in our products.

- **All acts and specific provisions impacting the wine and spirits sectors should continue to be applicable to the import into and marketing in UK of products originating in the European Union once the UK leaves the Union. If convergence of legislation is not feasible, mutual recognition of EU27 and UK standards, or equivalence, will be important for the smooth flow of trade. Wines and spirits produced in accordance to OIV Standards or Codex Alimentarius should be authorised to be marketed in the EU and UK.**
- **In the interests of preventing labelling barriers, the UK should adopt EU food labelling rules and to maintain, as appropriate, food labelling rules that are the same as those in force in the EU27. A mechanism will also be required after its departure from the EU to ensure UK laws are updated as EU27 structures evolve.**

## GI protection and rules of origin

Spirits Geographical Indications and Wine Protected Denomination of Origin and Protected Geographical Indication systems are key pillars and assets for the trade of high-added-value wines and spirits. The mutual recognition and protection of PDO/PGI wines and GI spirits is fundamental for producers and consumers.

There seems little doubt that rules of origin in the UK post-Brexit will reflect international and EU standards. However, some aspects that have not been agreed at international level, such as residual rules, have been the object of specific local arrangements.

- **EU and UK should maintain the same level of protection for wine and spirits GIs after Brexit.**
- **UK should establish a GI register to ensure there is adequate GI, PDO and PGI protection for EU products in the UK, mirroring the EU system.**
- **The EU and UK should include a GI/PDO/PGI mutual recognition and protection system in the future FTA, based on a dynamic link to each other's registers as well as rules for enforcement (including ex-officio enforcement) and the coordination of controls.**
- **The UK and EU27 should agree on consistent rules of origin provisions that minimise disruption and costs for the industry. For instance, we would welcome diagonal cumulation rules to provide stability to value chains that trade between the UK, EU27 and EU FTA countries.**
- **Specific arrangements will be required to ensure no obstacles for Irish Whiskey and Irish Cream<sup>1</sup> - which are cross-border GIs that can be made both in the Republic of Ireland and Northern Ireland.**

## Customs

Our sectors have benefited from EU-wide procedures and processes which help to make trade between Member States as smooth as possible. Although there are no customs duties within the EU, regulatory procedures to track and control goods while moving within the EU still exist. The electronic Excise Movement & Control System (EMCS), for example, captures and processes information electronically, in real time, on all movements of excise goods in duty suspension within the European Union. The system allows goods to move within an almost paperless environment, helps to tackle excise diversion fraud and provides instant discharge of duty liability when the goods arrive at their destination.

It remains to be seen whether the UK can still be part of EMCS after leaving the EU, or whether another procedure will need to be followed or developed. However, it remains important that, where possible, the export of UK and EU spirit drinks is subject to expedited procedures through ports on the basis of advance electronic notification and clearance.

When it leaves the EU, and in the absence of a new customs arrangement being agreed, the UK will become a third country and trade between it and the EU will be subject to import and export procedures and control. It is imperative that the UK's import and export declaration system

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<sup>1</sup> Please note that Poitin is also made in both Ireland and Northern Ireland. However, the relevant EU legislation, 110/2008, inadvertently omitted the reference. Steps are being taken to remedy the oversight.

(currently processed via CHIEF – Customs Handling of Import and Export Freight) is able to cope with the increased number of declarations associated with UK/EU27 trade. The UK has a programme in place - Customs Declarations Services - which will replace CHIEF. It is vital that this system is delivered before Brexit.

Brexit will also change the procedures for UK excise goods which move through the EU27 and are then exported. For example, goods might move through a Member State to a third country, or via a Member State to an EEA country. Procedures are also likely to change for EU27 excise goods which move through, or are exported from, the UK. Given the large volume of goods passing to and from the UK to the EU27 it is critical that electronic systems are in place to manage those imports and exports efficiently and that the procedures are clear and understood by all parties.

- **We seek ‘frictionless’ trade between the EU and UK through a comprehensive customs agreement so as to avoid border tariffs, processing delays, (possible) conformity assessment and related administration costs. Beyond 2019, we very strongly support the rapid negotiation of a full Free Trade Agreement between EU27 and UK.**
- **We call for continued wine and spirits tariff-free trade between the UK and EU27. In addition, it will be important that tariffs are not introduced on the sectors’ inputs, such as cereals, cream, point-of-sale materials, glass and other packaging materials.**
- **Brexit must not unduly disrupt movement of goods between UK and EU. Priority should be given to addressing the risk of serious delays at EU27 and UK locations where there is currently no - or limited – access to carry out customs controls and clearances. We would like to draw attention to the particular importance of addressing the case for products in transit through the EU27 for re-export. We call for simplified mechanisms that are clear and understood by all parties.**
- **In order to avoid disruption and give the time to establish the infrastructure needed, sufficient transitional provisions must be made to address the situation for locations such as Dover-Calais to enable freight to flow freely where there is no existing process for managing declarations.**
- **Specific measures should be agreed to minimise the impact on trade between the Republic of Ireland and the UK and which recognises and protects the functioning of the All-Island economy, particularly the integrated All-Island drinks industry.**
- **Due to the specific requirements of excisable goods, we request that our sectors be included in discussions on areas where special arrangements may be required under the new EU27-UK relationship.**

## **IP rights and protection**

Currently, the UK applies the regional trademark exhaustion principle adopted by the EU. A national trademark exhaustion principle is needed. An international exhaustion principle would not only

weaken the protection of trade-mark owners in the UK, of which many have invested into the UK spirits industry, but would also have repercussion in terms of spirits circulation - a key sector request. To prevent illicit parallel trade to flow within the EU, a firewall needs to be established that supports a proper customs and excise circulation differentiated system.

- **The UK to adopt a national trademark exhaustion principle. Failing to do so would allow parallel imports to flow to the UK, and for the UK to become a platform towards the EU27.**
- **The EU and UK to grandfather the rights associated to the European trademarks brands which have been registered with EUIPO before Brexit.**
- **The UK and EU27 should continue to cooperate to seize counterfeit goods.**

## A continued skilled workforce

Many of our companies employ people from across the EU, whether it is in production, the back office, visitor centre, marketing or elsewhere in their operations. The situation between the Republic and Northern Ireland is a particular case as companies have sales, marketing, global business and customer support teams in both locations servicing not only the British and Irish markets but global markets too.

- **We request that the EU27 and UK allow people currently working in their territories to remain in their place of work and focus on the importance of being able to move talent and people easily between the EU27 and UK in the future.**

## Partnership for trade

Unlike traditional trade deals, the new partnership between the EU 27 and UK must deal with challenges linked to regulatory divergence over time, not convergence. That makes mechanisms for agreeing relevant changes in the rules, or disputes over the agreement, a key issue. There needs to be a clear process in place that guarantees effective collaboration between EU/UK policy makers *and* business when there are relevant changes to the rules or when disputes over the agreement arise. Our view is that the traditional FTA approach to disputes, namely State-to-State, will not be sufficient.

- **A process should be designed to enable both parties to raise formal concerns about trade-related issues in a joint forum – as in many trade agreements today – complemented by direct private sector access (associations and companies) to dispute settlement procedures under a future EU27/UK agreement.**
- **In addition, we support the creation of technical sectoral committees, that would allow EU and UK experts to exchange on matters of relevance for the sector. The committees should also be open to the participation of private sector experts from both sides.**

Once the UK leaves the EU, and assuming it does not maintain a Customs Union with the EU27, then both will subsequently negotiate their own trade deals with third countries around the world.

The EU27 and the UK wine and spirits producers are champions of international trade and it will be important that a strong collaboration is implemented to facilitate the fair and smooth international trade of our wines and spirits.

- **Although tariff negotiations with third countries will be done separately, both EU and UK negotiators should work together to ensure that coherent regulatory requirements are established in third countries.**
- **We call for a mechanism to allow the EU27 and UK to cooperate closely to tackle market access barriers that arise in third countries as well as on future multilateral negotiations. We already work closely with our colleagues in the US, Canada, Australia and others when we encounter protectionist policies – we will strongly support the same collaboration between the UK and EU27.**
- **Transitional arrangements should guarantee the maintenance of all the EU acquis, relevant to wine and spirits, as well as the continued application of FTAs. We call on the EU and UK to ensure that Brexit will not lead to any negative consequence on the smooth and fair enforcement of the existing EU bilateral agreements in place with third countries.**

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