

© EIPA 2022 17

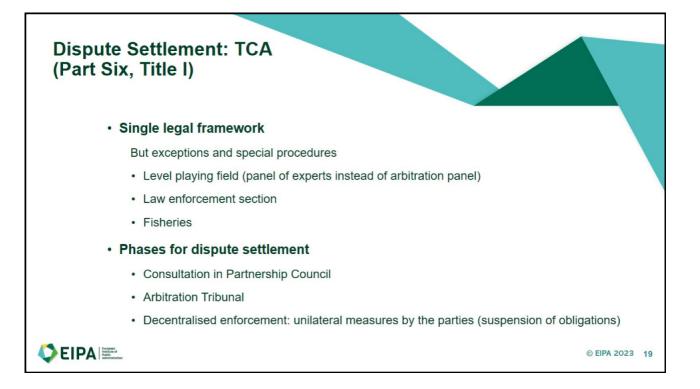
Dispute Settlement: Case Study

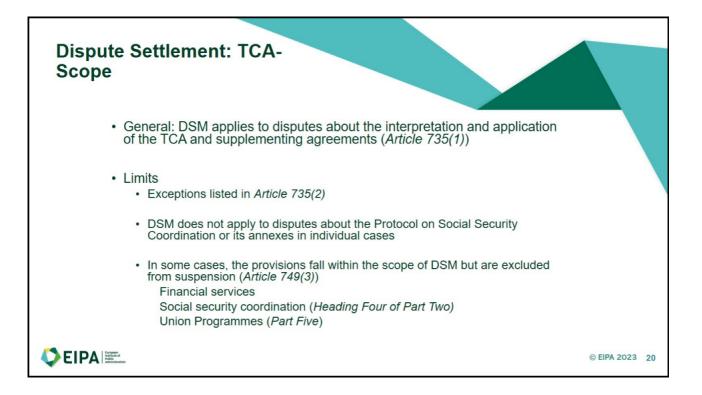
Article 419(2) "The United Kingdom shall enjoy the right for its air carriers to make stops in the territory of the Union to provide scheduled and non-scheduled air transport services between any points situated in the territory of the United Kingdom and any points situated in the territory of the Union (third and fourth freedom traffic rights)."

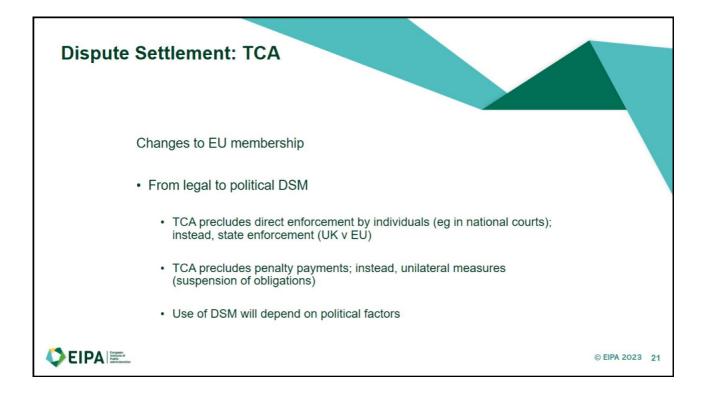
Article 419(6) "Neither Party shall unilaterally limit the volume of traffic, capacity, frequency, regularity, routing, origin or destination of the air transport services operated in accordance with paragraphs 2, 3 and 4, or the aircraft type or types operated for that purpose by the air carriers of the other Party, except as may be required for customs, technical, operational, air traffic management, safety, environmental or health protection reasons, in a non-discriminatory manner, or unless otherwise provided for in this Title."

427(2) "A Party (the "initiating Party") may proceed in accordance with paragraphs 3 to 6 where it considers that its air carriers' fair and equal opportunities to compete in the exercise of the rights provided for in this Title are adversely affected by discrimination prohibited by paragraph 1."

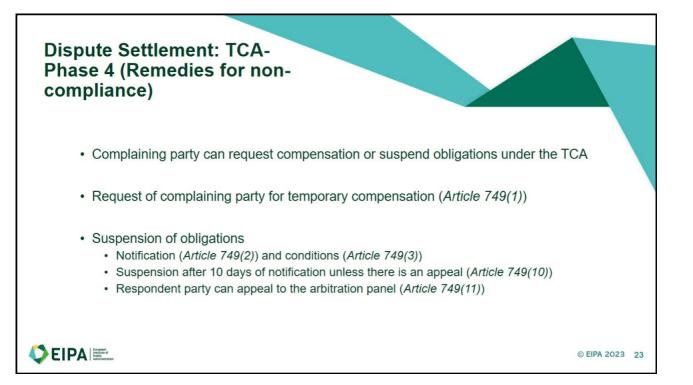
```
Dispute Settlement:
Overview
Part 1: Common and Institutional Provisions
Part 2: Trade
Part 3: Law Enforcement and Judicial Cooperation in Criminal Matters
Part 4: Thematic Cooperation
Part 5: Participation in Union Programmes
Part 6: Dispute Settlement and Horizontal Provisions
Part 7: Final Provisions
```

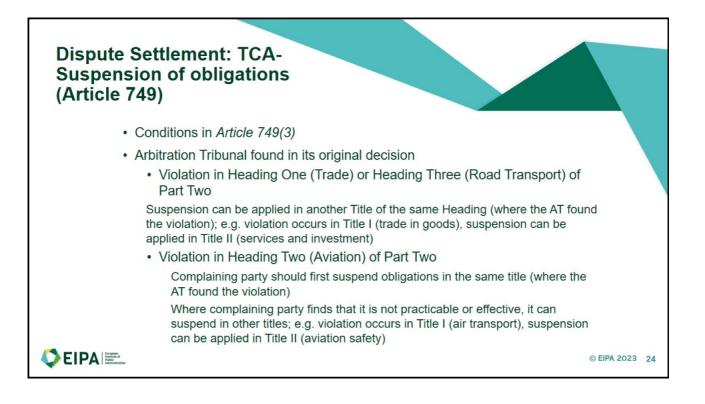












© EIPA 2023 25

Dispute Settlement: TCA-Suspension of obligations (Article 749), cont.

- · Arbitration Tribunal found in its original decision
 - Violation in Heading One (Trade), Heading Three (Road Transport), or Heading Five (Fisheries) of Part Two
 - Where the complaining party finds
 - · It is not practicable or effective to suspend obligations in the same Heading
 - · Where circumstances are serious enough

It can seek to suspend obligations under other covered provisions (within the scope of *Article* 735)

• Appeal by respondent party to arbitration tribunal (Article 749(11))

```
Additional Dispute Resolution
 Mechanisms

    Fisheries

      Compensatory measures in case of withdrawal or reduction of access (Article 501)
      Remedial measures and dispute resolution (Article 506): failure to comply with Heading Five of Part Two
  · Level playing field and 'rebalancing measures'
      LPF (Article 374): subsidies that cause or risks causing significant negative effect on trade
      LPF (Article 411): in case of significant regulatory divergence; this can trigger review (and possible
      termination) of trade and road transport provisions

    Road transport (Article 469)

      New regulatory measure in breach of Annex 31
      Remedial measures can be imposed

    Different arrangements for Part Three (law enforcement)

      With possible suspension of Title (or cross-retaliation across other Part Three Titles)
© EIPA 2023 26
```

Level Playing Field: Case Study

 Case Study 2: Steel, one of the largest UK steel companies, has announced that it will not be able to continue production at its plants in the UK without a significant bailout by the UK government. It has submitted a restructuring plan that which relies to a large extent on government support with a smaller contribution of its own funds or assets. In light of the large number of jobs at risk, the UK government has agreed to provide a rescue package that includes a mix of short terms loans, loan guarantees and cash payments.

© EIPA 2023 27

Level Playing Field: **Case Study** Article 367 Prohibited subsidies subject to conditions 3. Subsidies for restructuring an ailing or insolvent economic actor without the economic actor having prepared a credible restructuring plan shall be prohibited. The restructuring plan shall be based on realistic assumptions with a view to ensuring the return to long-term viability of the ailing or insolvent economic actor within a reasonable time period. During the preparation of the restructuring plan, the economic actor may receive temporary liquidity support in the form of loans or loan guarantees. Except for small and medium-sized enterprises, an economic actor or its owners, creditors or new investors shall contribute significant funds or assets to the cost of restructuring. For the purposes of this paragraph, an ailing or insolvent economic actor is one that would almost certainly go out of business in the short to medium term without the subsidy. 4. Other than in exceptional circumstances, subsidies for the rescue and restructuring of insolvent or ailing economic actors should only be allowed if they contribute to an objective of public interest by avoiding social hardship or preventing a severe market failure, in particular with regard to job losses or disruption of an important service that is difficult to replicate. Except in the case of unforeseeable circumstances not caused by the beneficiary, they should not be granted more than once in any five year period. EIPA

