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## ***Working with Europe and the EU – A New Context***

# 2.4

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## **Working with Europe and the EU – A New Context 26 – 28 June 2023**

*Day 2*

How will the new framework of UK-EU relations work?

- **trade in services**

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## Services

- Part 2: Trade
  - **Heading One: Trade**
    - Trade in Goods
    - **Trade in Services and Investment**

## Services: EU provisions

- **Free movement provisions (TFEU)**
  - Employed persons (*Article 45*)
  - Self-employed persons
    - Provision of services on a temporary basis (*Article 56*)
    - Provision of services on a permanent basis (*Article 49*)
    - Includes natural and legal persons (companies)
- **EU Legislation**
  - Mutual recognition (e.g. doctors, nurses, architects, lawyers)
  - General Services Directive
  - Specific provision (e.g. for financial institutions)
    - Mainly based on home state control (passporting)

## Services: TCA

- **Host state regulation** (*Article 123(2)*)
- **No automatic right to offer services**
- **Movement restrictions** for natural persons and legal persons
  - Companies may have to establish themselves in the host state
  - Immigration rules of the parties apply
  - Visas for long-term stays necessary
- **No automatic or general mutual recognition of qualifications** (but specific provisions address this point)
- **No passporting rights**

➤ Similar to other FTAs

## Services: scope of the agreement

- Investment liberalization (*Chapter 2*)
- Cross-border trade in services (*Chapter 3*)
- Entry and temporary stay of natural persons for business purposes (*Chapter 4*)
- Regulatory Framework (*Chapter 5*)
  - Domestic regulation (*Section 1*)
  - General provisions (*Section 2*)
  - Delivery services (*Section 3*), eg postal services
  - Telecommunication Services (*Section 4*)
  - Financial services (*Section 5*)
  - International maritime transport services (*Section 6*)
  - Legal services (*Section 7*)

## Services

### Principles

- Market Access (*Articles 128 and 135*)
- National Treatment (*Articles 129 and 137*)
- Most Favoured Nation Treatment (*Articles 130 and 138*)
- No general requirement of local presence for cross-border supply (*Article 136*)

### Exceptions

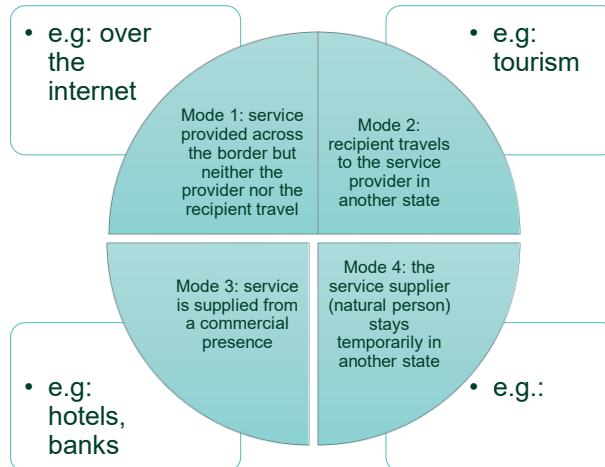
- Numerous exceptions (*Annexes 19 and 20*)
- Long list of non-conforming measures of the EU/MS
- Market access varies by sector and MS

## Services: exceptions by MS

- No automatic or general mutual recognition of professional qualifications  
Qualifications have to be recognised by the MS in which the service is provided  
But see Article 158 TCA (professional bodies or authorities can provide joint recommendations on the recognition of professional qualifications to the PC)
- MS may require visa and work permits
- MS may impose establishment requirement or economic needs or performance requirement
- Service may even be prohibited; UK nationals cannot
  - sell actuarial services in Italy
  - sell construction services in Cyprus
  - be surveyors in Bulgaria
  - be tobacconists in France

## Services

- Level of market access depends on mode of delivery
- Based on WTO GATS (General Agreement on Trade in Services)



## Services: Temporary Stay of Natural Persons for Business Purposes (Chapter 4)

- *Chapter 4 (Articles 140-145; Annexes 21-23)* relates to Mode 4 (provider travels to the recipient)
- Sets conditions of market access for certain categories of persons

### Scope of the chapter

- Business visitors for establishment purposes (*Article 141, Annex 21*)
- Contractual service suppliers (*Article 143, Annex 22*)
- Independent professionals (*Article 143, Annex 22*)
- Intra-corporate transferees (*Article 141, Annex 21*)
- Short-term business visitors (*Article 142, Annex 21*)

## Services: Temporary Stay of Natural Persons for Business Purposes (Chapter 4), cont.

- **Business visitors for establishment purposes** (*Article 141, Annex 21*)
  - Sole purpose is to set up an establishment (see *Article 140(5)*)
  - Stay for up to 90 days (out of 180 days)
  - For all sectors
- **Intra-corporate transferees** (*Article 141, Annex 21*)
  - Temporary migration of senior staff (3 years) and trainees (1 year)
  - For all sectors
- **Short-term business visitors** (*Article 142, Annex 21*)
  - No provision of service or paid activities (but see *Annex 21*)
  - Maximum stay of 90 days (out of 180 days)
  - For all sectors, but only for listed activities

## Services: Temporary Stay of Natural Persons for Business Purposes (Chapter 4), cont.

- **Contractual service suppliers** (*Article 143; but see Annex 22*)
  - Employee of a company which has a contract to supply services to a customer in the host party for not more than one year (contract requires stay abroad)
  - Employee has 3 years of professional experience; university degree or equivalent
  - Legally required professional qualification
  - Stay for duration of contract, but maximum 12 months
  - Only for listed sectors
- **Independent professionals** (*Article 143, Annex 22*)
  - Established as self-employed in home party (where the contract requires stay abroad)
  - 6 years of professional experience; university degree or equivalent
  - Legally required professional qualification
  - Stay for duration of contract, but maximum 12 months
  - Only for listed sectors

## Services: Relevant UK visa categories

- TCA provisions are implemented in the Immigration Rules

### Range of visa categories

- Business visitor rules
- Intra-company visas
- T5 Temporary Worker (International Agreement Worker)
- Representative of an Overseas Business

## Services: Financial Services (Chapter 5, Section 5)

- **Scope**
  - Insurance
  - Banking and other financial services
- **Market access through establishment** (*Article 187*)
  - Branches are not covered
- Memorandum to establish a **framework for regulatory co-operation** (see MoU from 26 March 2021) with a new draft MoU (published 19 May 2023), see <https://www.gov.uk/government/publications/uk-eu-memorandum-of-understanding-on-financial-services-cooperation>
- Each party grants **equivalence**
  - UK has granted 28 so far;
  - EU only 2, which are time-limited (CCPs; CSDs)

## Services: Legal Services

- *Chapter 5, Section 7 (Articles 192-194)*
- **Obligation to allow lawyers to supply 'designated legal services'**
  - UK lawyer can only advise clients in the EU on UK law and international law, but not EU law (*Article 193(a)*)
  - Subject to *Articles 128 and 135 (market access), 137 (national treatment) and 143 (contractual service suppliers and independent professionals)*
- **But subject to limitations in Annex 19 (Article 195)**
  - Existing measures apply
  - This allows EU MS to impose additional requirements for practice under home title
  - For EU: *Annex 19, Schedule of the Union, Reservation No 2 (Professional Services)*

## Services: Legal Services

- Depends on MS rules; e.g. in Austria, legal advice on UK law and international law only on a cross-border basis
- TCA does not cover cooperation on recognition and enforcement of judgements (UK has to accede to the Lugano Convention instead)



## Case Study: Musicians on Tour

- Legal context: TCA does not have provisions on the entertainment sector
- Economic context: DCMS estimates that music exports to the EU are worth £ 396 million
- Political context: UK and EU put forward proposals during the negotiations but could not reach agreement
- Problem: OneTimeOnly, a UK band, plans to tour the EU in 2022 covering France, Germany, Italy, Spain, and Austria. The four musicians have their instruments brought from the UK by a British haulage company. The piano consists of keys made from ivory. The band also intends to sell t-shirts and CDs as merchandise.

## Case Study: Musicians on Tour

- There is no specific provision in the TCA about musicians
- Musicians have to comply with the regulations in each of the 27 MS; a permit is necessary in Spain, but not in France
- In most MS, touring activities are possible without visas or work permits (20 out of 27 MS)
  - France, Germany, and Spain: permit-free for 90 days
  - Italy: permit-free for 90 days but may need justification
  - Croatia: work registration certificate required for up to 30 days
  - Austria visa required for paid work
  - See <https://www.gov.uk/government/news/visa-free-short-term-touring-allowed-in-20-member-states>

## Case Study: Musicians on Tour

- Additional rules for transport of equipment or instruments
- ATA Carnet (a customs document) facilitates movement of certain goods across borders negating the need for customs declarations
- An Economic Operators Registration and Identification (EORI) number is required if commercial merchandise is carried across a border and a customs declaration is required (when mass and value levels are exceeded)
- CITES permit or certificate may be required (where instrument contains endangered species like ivory), but considerable time (around 30 days) and cost involved in obtaining the documents

## Case Study: Musicians on Tour

- Haulage restrictions apply to UK-based haulier
  - Once in the EU, UK hauliers can make up to two additional movements (cabotage or cross-trade) within the EU with a maximum of 1 cabotage movement within a seven-day period
  - For Northern Irish hauliers, both additional movements can be cabotage when operating in Ireland, provided they follow a journey from Northern Ireland
  - Cabotage must be within the same EU country where the goods brought into the EU were first unloaded

- EU-wide visa waiver agreement is unlikely

## Future Developments

- Framework for recognition of professional qualifications
- Financial Services draft MoU (May 2023), see <https://www.gov.uk/government/news/visa-free-short-term-touring-allowed-in-20-member-states>
- Review
  - Special Review Clause (*Article 126*)
  - General (TCA) Review Clause (*Article 776*)

