



International
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Working with Europe and the EU – A New Context

Practitioner Training for UK Civil Servants

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Working with Europe and the EU – A New Context 30 September – 2 October 2024

Day 2

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

- **trade in services**

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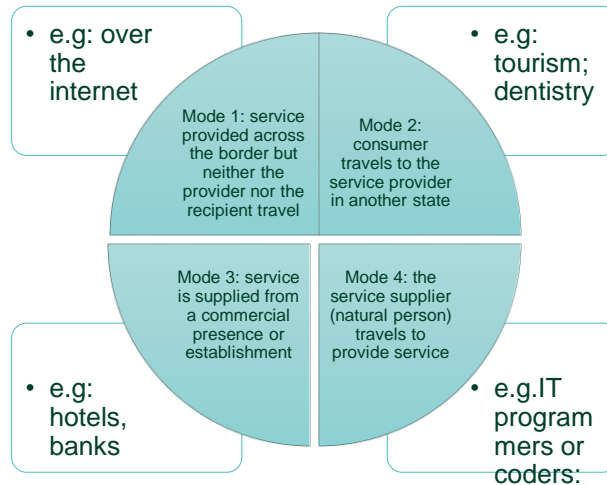


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Services

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



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Services: EU provisions

- **Single market for services**
 - Incomplete due to exclusions and exceptions but
- **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)

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Services in TCA

- **Less deep agreement built on GATS/WTO framework**
- **Host state regulation** (*Article 123(2)*)
 - No mutual recognition of home state regulation
- **No automatic right to offer services**
- **No automatic or general mutual recognition of qualifications** (but specific provisions address this point)
- **No passporting rights**
- **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

➤ Similar to other FTAs

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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*)

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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

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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 (host state)
(professional bodies or authorities can provide joint recommendations on the recognition of professional qualifications to the Partnership Council)
- 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

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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: Financial Services (Chapter 5, Section 5)

- **Scope**
 - Insurance
 - Banking and other financial services
- **Market access through establishment** (*Article 187*)
 - Branches are not covered
- Memorandum of Understanding establishing a **framework for financial services regulatory co-operation** (signed on 27 June 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

Future Developments

- Framework for recognition of professional qualifications
- Financial Services MoU (signed June 2023), see <https://www.gov.uk/government/publications/uk-eu-memorandum-of-understanding-on-financial-services-cooperation>
- Review
 - Special Review Clause (*Article 126*)
 - General (TCA) Review Clause (*Article 776*)

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)*

Implications of the digital economy for UK – EU trade

- The growth of digital trade and the digital economy
- Emergence of three digital regulatory realms
- Limited scope of multilateral provision in the WTO
- How digitalisation affects access to services markets
- Some issues in digital trade
 - Free flow of data
 - Data location
 - Data and consumer protection provisions
 - Source codes
 - Competition
- The EU Digital Single Market

