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

# 2.4

Practitioner Training for UK Civil Servants

organised by the European Institute of Public Administration  
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## **Working with Europe and the EU – A New Context** 25-27 November 2024

*Day 2*

How does 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**



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## 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)



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## 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



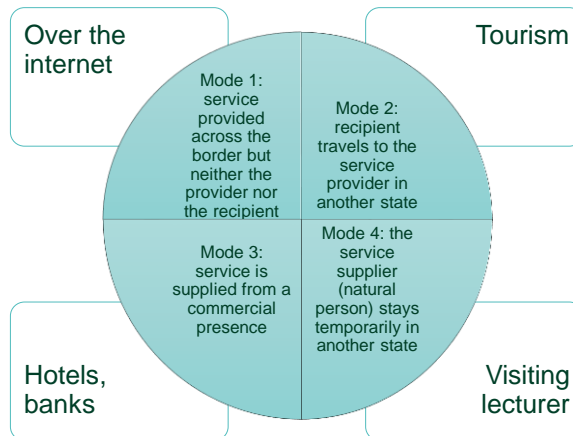
## Services: exceptions by MS

- No automatic or general mutual recognition of professional qualifications: Qualifications have to be recognised by the MS in which the service is provided
- MS may require visa and work permits
- MS may impose establishment requirement or economic needs or performance requirement
- Service may even be prohibited



## 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)

- 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)
- Each party grants **equivalence**
  - UK has granted 28 so far;
  - EU only 2, which are time-limited



## 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)*)
- But subject to limitations in *Annex 19 (Article 195)*
  - This allows parties to impose additional requirements for practice under home title



## 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 2024 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
- 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



## 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 hauliers
  - Once in the EU, UK hauliers can make up to two additional movements (cabotage or cross-trade) within the same Member State where the goods were first unloaded (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
- EU-wide visa waiver agreement is unlikely



## Future Developments

- Framework for recognition of professional qualifications
- Financial Services MoU (signed June 2023)
- Review
  - Special Review Clause (*Article 126*)
  - General (TCA) Review Clause (*Article 776*)