

Constitution, Europe, External Affairs and Culture Committee
Thursday 21 November 2024
25th Meeting, 2024 (Session 6)

Review of the EU-UK Trade and Cooperation Agreement inquiry: Part 2

1. The Committee published the [UK-EU Trade and Cooperation Agreement: Barriers to trade in goods and opportunities to improve the UK-EU trading relationship](#) report on 10 September 2024, following the first part of our [Review of the EU-UK Trade and Cooperation Agreement](#) inquiry.
2. That piece of work focused on trade in goods between the UK and the EU. The second part of the inquiry – which began on 31 October with [a panel representing the legal profession](#) – is currently focusing on trade in services (including the mutual recognition of professional qualifications) and will subsequently cover youth mobility.
3. The Cabinet Secretary's [response to CEEACC TCA Report Part I](#) set out the Scottish Government priorities for improving UK EU relations, including—
 - Seek full participation in relevant EU programmes, with specific priority to request a commitment to open negotiations with the EU Council to discuss options for partial or full association with Erasmus+ and Creative Europe
 - Seek restored opportunities for professionals in sectors across our economy to work in the EU
4. Our witnesses for this week's panel are—
 - Professor Catherine Barnard, Professor of European and Employment Law, University of Cambridge
 - Professor Sarah Hall, Deputy Director, [UK in a Changing Europe](#)
 - Mike Buckley, Director, [Independent Commission on UK EU Relations](#)
 - Professor Jonathan Portes, Professor of Economics and Public Policy, King's College London
5. A SPICe briefing is provided at **Annexe A**, and it is noted that UK in a Changing Europe also gave evidence on part 1 of the inquiry ([see papers for 14 March 2024](#)) albeit that session was more about an overview of the anticipated options for the TCA review.

Clerks to the Committee
November 2024

The logo for SPICe, featuring the letters 'SPICe' in a white, sans-serif font on a dark purple background.The text 'The Information Centre' and 'An t-Ionad Fiosrachaidh' in white, sans-serif font on a dark purple background.

Constitution, Europe, External Affairs and Culture Committee

25th Meeting, 2024 (Session 6), Thursday, 21 November

Inquiry into the review of the EU-UK Trade and Cooperation Agreement – Phase 2: trade in services and mobility of people

This paper for today's Committee meeting includes background briefing on trade in services, mutual recognition of professional qualifications and mobility provisions which were previously highlighted in the [SPICe paper provided to the Committee for its meeting on 31 October 2024](#). A summary of the issues discussed at the meeting on 31 October 2024 is appended to this paper along with a summary of issues to discuss in today's evidence session.

Context

The first phase of the Committee's inquiry into the review of the Trade and Cooperation Agreement [focused on the provisions related to trade in goods](#) and reported on 10 September 2024.

At its meeting on 5 September 2024, the Committee agreed to take evidence in relation to—

- Trade in services, such as financial and legal services, (including mutual recognition of professional qualifications), and
- The mobility of people (including youth mobility schemes, Erasmus+, and touring artists and creative professionals).

Both these areas are addressed in the free trade agreement section of the TCA.

Trade in services as an EU member state

Whilst the TCA provides a number of measures to facilitate the trade in goods, it is more limited in its coverage of trade in services. As a result of Brexit and the UK decision to leave the Single Market, UK service providers lost the right to free movement in the EU and the right to freely provide services across the EU.

For EU member states, the free movement of services covers two elements:

- i. the freedom of establishment for individuals and companies to provide services in another Member State on a 'permanent' basis and
- ii. the freedom to provide cross border services to a recipient established in another Member State on a 'temporary' basis. This may involve cross-border movement by the service provider or the recipient, or, in the case of services delivered online or at a distance, no cross-border movement by either party.

This means that EU based service providers who follow the regulations and rules in their home country can freely provide services elsewhere in the EU Single Market.

Writing for the UK in a Changing Europe, Dr Sarah Hall [summarised the possible barriers for trade in services](#):

“For services, barriers to trade are so-called non-tariff barriers that regulate both services delivered cross-border and the person delivering them, for example, by specifying the qualifications and work experience of the service provider. Trade agreements in services aim to make delivery of cross-border services easier by reducing (or removing) these barriers, by, for example, recognising qualifications from other jurisdictions so that individuals no longer require checks and paperwork. They also include provisions that make it easier to establish an office overseas.”

Trade in services under the Trade and Cooperation Agreement

When the UK left the EU, UK service providers such as lawyers, architects, businesspeople or other professionals lost the ability to freely provide services in EU member states. Instead, they are required to abide by the domestic rules, procedures, and authorisations applicable to their activities in the member states where they operate. This means complying with – often varying – host-country rules of each Member State, as they will no longer benefit from the EU's common rules or mutual recognition of standards across the EU.

European Commission [guidance on the TCA summarises how the agreement supports trade in services](#):

“The EU-UK Trade and Cooperation Agreement (TCA) provides for a significant level of openness for trade in services and investment in many sectors including professional and business services (e.g. legal, auditing, architectural services), delivery and telecommunication services, computer-

related and digital services, financial services, research and development services, most transport services and environmental services...

... The actual level of market access will depend on the way the service is supplied: whether it is supplied on a cross-border basis from the home country of the supplier, e.g. over the internet ('mode 1'); supplied to the consumer in the country of the supplier, for example a tourist travelling abroad and purchasing services ('mode 2'); supplied via a locally-established enterprise owned by the foreign service supplier ('mode 3'), or through the temporary presence in the territory of another country by a service supplier who is a natural person ('mode 4'). In practice, the actual ability to supply a particular service or invest in a certain sector also depends on specific reservations set out in the TCA, which may be imposed on EU service suppliers when supplying services in the UK in some sectors, and vice-versa."

The [World Trade Organisation provides further information on the four modes](#) which are used to define services trade and which are referenced above.

The TCA's impact on different service providers in the UK is not uniform as the Agreement does not provide a common approach for all services trade.

Mutual recognition of professional qualifications under the TCA

A contributor to the way in which the EU has facilitated trade in services is through a process of mutual recognition of professional qualifications.

European Union member states usually regulate access to professions such as medicine, nursing and engineering in their own countries in order to protect the public. However, requiring professionals to re-train if they want to work in another Member State would discourage mobility and limit their freedom of establishment. To avoid this, EU member states agreed an approach to facilitate the mutual recognition of professional qualifications meaning where a professional is qualified in one member state, they are able to freely work in another member state.

The TCA provides very little in the way of supporting continued mutual recognition of qualifications for UK workers in the EU and vice versa. Instead, EU qualified workers wishing to work in the UK and UK nationals wishing to work in the EU must meet the qualification requirements of the UK and each individual Member State respectively.

However, the Agreement includes a commitment from both sides that they may seek to negotiate more detailed reciprocal arrangements on a sector-by-sector basis in the future.

Writing in December 2021, Dr Sarah Hall [set out the impact of the TCA on some professionals in](#) the UK:

"For professional business services such as audit and architecture, the ending of the Mutual Recognition of Professional Qualifications has erected new trade barriers with the EU. The UK had pressed for automatic recognition to

continue in the TCA, but the EU refused. Instead, a process similar to that in the CETA was reached, whereby professional bodies will have to separately negotiate mutual recognition agreements. This is likely to be a drawn-out process: so far only the architecture profession has started the process. The only exception in the TCA is for lawyers. The TCA allows British lawyers to practise under their UK title and provide advice in the EU on UK and international law.

Mobility of people under the Trade and Cooperation Agreement

As referenced above, the UK's decision to leave the Single Market meant that the automatic right to freedom of movement was lost for UK nationals. As a result, EU qualified workers wishing to work in the UK and UK nationals wishing to work in the EU have to meet the qualification requirements of the UK and each individual Member State respectively.

[According to Catherine Barnard, Professor of EU law at the University of Cambridge and Trinity College, and deputy director of UK in a Changing Europe and Emilija Leinarte, British Academy Postdoctoral Fellow at the Lauterpacht Centre for International Law at the University of Cambridge, Trinity College](#), during negotiation of the TCA, the European Commission proposed that a standalone chapter on mobility should be included in the Agreement but this was rejected by the UK Government at the time. As a result, the mobility provisions in the TCA make no commitment as such for visa-free travel instead allowing visa-free travel for short-term visits. From a UK perspective travelling to the EU, the Schengen visa allows people to travel to any members of the Schengen Area for stays of up to 90 days for tourism or business purposes.

Mobility under the TCA is temporary in nature and is limited to those who are engaged in trade in services. However, as Catherine Barnard and Emilija Leinarte have highlighted, under the TCA significant groups of persons will be excluded from the TCA even if they are engaged in the provision of services. One such group is musicians and other creative professionals.

The UK Government's decision not to include participation in the EU's youth mobility programme Erasmus+ within the TCA also means that young people from the UK do not have opportunities to live, study and work in the EU in the same way as they enjoyed when the UK was a member state.

For persons wishing to undertake business in the EU or the UK, the mobility rights in the TCA are [slightly more expansive](#):

“The EU-UK TCA includes limited mobility rights for natural persons intended to facilitate certain categories of business and professional mobility, in the context of trade in services: business visitors for establishment purposes, intra-corporate transferees, short-term business visitors, independent professionals and contractual service providers. However, these persons are subject to eligibility criteria and conditions as regards their experience, professional status, remuneration and allowed length of stay. Additional

restrictions are found in the reservations made by Member States and the UK.”

More detail on the TCA’s approach to temporary business travel is available in this [House of Commons Library briefing](#).

Summary of key issues discussed with the legal services panel on 31 October 2024

At the meeting on 31 October 2024, the Committee took evidence from:

- Dr Ross Anderson (Faculty of Advocates)
- Professor David Collins (City St George’s, University of London)
- Dr Adam Marks (Law Society of Scotland)

Legal services provision as an EU member state and under the TCA

Members discussed the opportunities to provide legal services in the EU when the UK was a member compared to the situation under the TCA with witnesses from the legal profession. The witnesses told the Committee that when the UK was a member of the EU, Scottish lawyers could provide advice on EU law, had the right to appear in EU courts, and could register in another EU country to eventually provide advice on national law. The ability to give advice on EU law and the right of audience in EU courts have been lost.

Opportunities presented by the TCA

The panel indicated the recent reset of relations between the UK Government and the European Commission is seen as a positive development, and could potentially lead to a more constructive approach to trade relations. Professor David Collins indicated that the express mention of legal services in the TCA is a positive sign, and signals recognition of the importance of legal services to the economy. The panel also positively remarked that the TCA allows legal services providers to offer “designated legal services” concerning “home state law, public international law, and arbitration”, and includes new categories (such as inter-corporate transferees and business visitors for establishment purposes) not mentioned in WTO's GATS.

Challenges Arising from the TCA in Relation to Legal Services Provision

The Committee heard that the TCA has many reservations at the member state level, which may limit the liberalisation of legal services beyond what is established under the WTO's General Agreement on Trade in Services. The panel indicated that greater clarity from member states about what service activities are possible under the TCA is crucial. Similarly, the panel agreed that some issues, such as the definition of “designated legal services” in the TCA, need to be addressed at the EU-UK negotiating level and are beyond the influence of individual professional bodies.

The panel indicated that the upcoming implementation review process presents an opportunity to address current limitations. However, members of the panel noted that there are issues (e.g., the transparency and clarity of information from Member States required by Article 145 of the TCA) that could be addressed outside of the review process and as part of wider EU-UK relations.

Mobility and Fly-In/Fly-Out (FIFO) legal work

Specifically, the panel indicated Article 126 of the TCA, which commits both sides to review permitted activities for short term business visitors, could be addressed through the implementation review. The panel indicated that the mobility of professionals has been severely reduced as the legal services sector must now navigate 27 different legal regimes post-EU exit. The panel discussed how lawyers can provide legal advice on UK or Scotland-related matters and international legal matters if they have the appropriate visa. However, the need for country-specific visas complicates this process. Dr Adam Marks suggested that adding legal services to the list of permitted activities for short-term business visitors under Article 126 of the TCA could simplify this process.

The Committee also discussed the lack of comprehensive data on the extent to which Scottish lawyers provided advice on the laws of EU member states when the UK was a Member State. Panel members indicated it is generally believed that this was relatively infrequent because, in practice, law firms often collaborate with local professionals in EU member states. The panel indicated that clients generally prefer to be represented by lawyers who are recognised and familiar with the national courts and legal systems. This preference may reduce the frequency of Scottish lawyers appearing in foreign national courts and mitigate some of the challenges to service provision under the TCA.

The panel indicated that Scottish lawyers working in the EU tend to be concentrated in locations like Brussels and Luxembourg due to economic interests and significant legal institutions. Dr Adam Marks also indicated that challenges arose in geographical clusters. Luxembourg and Greece were specifically mentioned, due to the respective countries' legal frameworks not anticipating the TCA.

Mutual recognition agreements

The panel indicated that the EU currently seems unwilling to negotiate mutual recognition agreements for services, despite the UK's interest.

The Committee heard from Dr Ross Anderson that there is no mutual recognition between Ireland and Scotland. Dr Ross Anderson explained that Scottish lawyers often acquire dual qualifications in England and then use the appropriate route to qualify in Ireland. The primary reason for registering in Ireland is its EU membership, which grants lawyers rights of audience before EU courts and the ability to provide advice on EU law with legal professional privilege. Professor David Collins highlighted the complexity of Northern Ireland's situation, given its status within the EU single market, and suggested that Northern Ireland-based lawyers might still have rights of audience before the European Court of Justice.

Youth mobility

Members also discussed youth mobility and mobility of legal scholars with the panel. The discussion highlighted the significant impact of withdrawing from Erasmus on opportunities for law students and young lawyers, the potential benefits of the Turing scheme as a replacement, and the importance of youth mobility for professional development in the legal sector. Dr Adam Marks expressed support for rejoining a programme like Erasmus. Dr Ross Anderson cited the ending of the EuroDevil Scheme after 40 years due to uncertainty around freedom of movement and visas post-Brexit. Professor David Collins acknowledged the benefits of the Erasmus programme but indicated his view that the UK Turing scheme replacing the Erasmus scheme is “just as good”.

Today’s evidence session

Today’s evidence session is an opportunity for Members to discuss with witnesses what the provisions in the TCA mean for trade in services and how the process might be developed further in the context of the TCA review.

In addition to looking at trade in services, Members may also wish to discuss the challenges for professional sectors in reaching mutual recognition agreements and provisions around the mobility of UK professionals seeking to provide a service in an EU member state.

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