

# Trading services in the EU - what's changed since Brexit and what you need to do

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# Speakers

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### International Employment and Mobility Consultancy Limited

- UK lawyer who has specialised in services trade between the UK and EU for in excess of 10 years
- Provided training programmes, consultancy advice and outsourced services to companies trading in goods and professional services





POLL: Which of these industries do you think export services? (select all that apply)





# Managing services in a post-Brexit world

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# UK/EU Trade and Cooperation Agreement

## What does the TCA mean for the UK?

The Trade and Cooperation Agreement is a framework for trade, goods & services between the EU and the UK

- ▶ Explicitly allows each member state flexibility to decide how they introduce parts of the TCA
- ▶ Each member state can adopt their own rules and have different processes and procedures for UK businesses
- ▶ In practice, the requirements to enter, or trade, in each of the remaining 27 member states will vary and need to be closely checked

## Trade in services

- ▶ The TCA has split the economy into 18 sectors
  - ▶ In each reservation, sector-related activities are coded
  - ▶ Each code has different restrictions
- ▶ Under each sector/code, some EU countries will have added their own restrictions for UK businesses wishing to begin or continue trading/operating in their country
- ▶ Each UK business will then need to visit the TCA to check whether their activities are covered by the TCA



## People services

- ▶ All rules relating to **movement of people** are found under the **Services chapter** in the TCA
- ▶ UK has **left the Single Market** including therefore, Single Market for services element
  - ▶ This provided short-term business travel access
- ▶ Each EU member state's **national laws can take precedence** over the TCA
- ▶ The TA has explicitly granted both the UK and EU member states the ability to impose **individual border control** measures and **visa requirements**
- ▶ This has resulted in the **UK's new immigration system** – this is separate from the TCA
  - ▶ Therefore, we can expect to **navigate individual EU member state's immigration rules**





Movement of people under the EU TCA

## Worker definitions under the TCA

- ▶ The TCA services chapter creates several new definitions of a worker
- ▶ The new categories apply to **UK workers travelling to the EU, and EU workers entering the UK**
- ▶ The new categories are:
  - ▶ Business Visitor for establishment purposes
  - ▶ Independent Professional
  - ▶ Contractual Service Supplier
  - ▶ Intra-Corporate-Transfer (ICT or secondment)
- ▶ These definitions may not be necessarily adopted by all EU member states

## Independent professionals

- ▶ **Self-employed** and workers who use their own service company
  - ▶ This also include agency workers if they are self-employed
- ▶ **New barriers** to this group
  - ▶ Cannot provide a service within the EU ***unless they contract with the final consumer***
- ▶ If they do contract with the final consumer, the contract ***cannot exceed 12 months*** and they must hold at least 6 years professional experience in the relevant activity

## Contractual Service Suppliers

- ▶ CSS is broadly speaking a new definition of what we called '**posted workers**'
- ▶ They must be employed (therefore does not include the self-employed or agency workers)
- ▶ Must be providing a service as per their employer's commercial contract with the **final consumer**
- ▶ This contract **must not exceed 12 month**
- ▶ The CSS must have been with their current employer for **at least a year**, have at **least 3 years professional relevant experience** and hold a **relevant qualification** if applicable to their job
- ▶ Cannot receive EU remuneration



## Intra – Corporate - Transfers

- ▶ ICTs are **internal employees** being transferred within the **same corporate group**
- ▶ ICTs must have been employed for a minimum period of **one year for manager and specialists**
- ▶ However, for trainees their minimum employment period is only **6 months**

## Intra – Corporate - Transfers

- ▶ **"Manager"** - is a senior employee who directs a department/division
  - ▶ Permissible length of stay – 3 years
- ▶ **"Specialist"** - has specialist knowledge essential to the firm's activity
  - ▶ Permissible length of stay – 3 years
- ▶ **"Trainee"** - a graduate temporarily transferred for career development
  - ▶ Permissible length of stay – 1 year
- ▶ Subject to individual member state rules

## Short-term Business Visitors (STBVs)

- ▶ **"STBV cannot engage in selling goods or supplying services to the public"**
- ▶ **"STBVs cannot provide any service"**
- ▶ **"STBVs do not require work permits but could be subject to border control"**
- ▶ **"Permissible length of stay: 90 days in any six-month period"**
- ▶ **"STBVs do not apply to local licensing, qualification and technical standards, required for work"**
- ▶ Each individual member state can impose different requirements

# Professional qualifications



## Mutual recognition of professional qualifications

- ▶ A UK qualification is **not automatically recognised** in the Switzerland/the EU
- ▶ UK mobile workers frequently **rely on their qualifications** when providing services
- ▶ **Often, gaining work permits depends on holding a recognised qualification**
- ▶ **Contractual obligations** may impose competence/qualification requirements on UK businesses

## Mutual recognition of professional qualifications

- ▶ Swiss/EU **insurance requirements**, or **national law** or **health and safety** requirements may require certain workers to be able to prove their competence by qualification
- ▶ UK businesses need to know **when workers need to hold specific qualifications** and **how to determine if they are recognised** in Switzerland/each EU member state they are going to work in

# Intellectual property and digital marketing

## Intellectual property rights

- ▶ **UK trademarks are unaffected** from Brexit however, additional applications may be needed to preserve recognition in the UK
- ▶ **UK remains a member of the relevant international conventions** for trademarks and designs and continues to recognise the same of the EU
- ▶ **Goods placed on market before Brexit retain their IP protection** and exhaustion of rights in the EU
- ▶ **Future applications/rights** are subject to **specialised committee** on IP Rights established under TCA
- ▶ UK rights holders should ensure they are **correctly entered on UK rights register** (UK patent office) and **continue to lodge applications** with EU Customs Authorities until TCA committee is functional



## Access to EU digital market for services

- ▶ UK has left Single Market and Digital Single Market meaning **no automatic access to trade or provide services**.
- ▶ However, the **DSA (Digital Single Market Legislation)** will **apply** to UK service providers who have a **substantial connection** to any EU member state.
- ▶ **This will in practice include UK based service providers/intermediaries trading with an EU member state.**

## Access to EU digital market for services

- ▶ UK service providers will therefore have to **comply with EU rules on Data Protection, e-commerce and digital security** to continue to trade in the EU.
- ▶ UK businesses should therefore **review their current business models**, seek **professional advice** and factor in regulatory **cost burdens** as a result of trading in two regulatory systems – the UK and the EU.
- ▶ This is a complex area and will require tailored specialist advice.

## Concerns for broadcasters

- ▶ The UK has no longer any automatic access to the Single Market
- ▶ The TCA provides no general right for broadcasters to provide services throughout the EU
- ▶ UK service providers need to check national rules in every case before they trade in the EU
- ▶ Most member states do have national exemptions for broadcasters but each one differs according to sector and country
- ▶ These in general, are a mix of work permits and Visa exemptions

## Concerns for broadcasters

- ▶ They will usually require compliance with a pre-notification procedure and local labour market rules
- ▶ Professional qualifications will no longer be automatically recognised and will need to be checked in each case
- ▶ Assume that the sector is outside any general right to trade and that work permits/Visas will take at least two months to obtain if applicable



POLL: Do you  
consider your  
business to be  
trading services in  
any way?



# Post-Brexit services trade: other factors

Kevin Shakespeare – Institute of Export & International Trade



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- » **WTO General Agreement on Trade in Services**
- » Single Euro Payments Area
- » Movement of Goods for E-Commerce Providers



# WTO General Agreement on Trade in Services (GATS)

GATS provides a general framework encouraging cross-border trade in services

Requires member states liberalise trade in services where possible, but with scope for members to make exceptions and exemptions if in national, or strategic interests

## Mode One

Supply of services cross-border

## Mode Two

Freedom to consume services in another country

## Mode Three

Establishment of commercial entities in another country

## Mode Four

Individuals can travel to other countries to supply services

# Third country status

The UK now has third country status to the EU  
For trade in services this has several impacts:

**Movement of  
people and services**

**Ability to hold data**

**Access to EU  
platforms and  
systems**

**Application of  
legislation**

**Ability to influence  
future policy – eg  
data security and  
compliance**

**Access to EU  
businesses and  
consumers**



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- 》 WTO General Agreement on Trade in Services
- 》 **Single Euro Payments Area**
- 》 Movement of Goods for E-Commerce Providers



# Single Euro Payment Area (SEPA)

SEPA applies for credit transfers and Direct Debits in Euros

- ◆ For Direct Debits there are two schemes
  - ◆ For consumers SDD core
  - ◆ For business SDD B2B
- ◆ Although the UK is no longer part of the EU, it is still part of the Single Euro Payments Area
- ◆ UK banks offer SEPA services
- ◆ Other countries which are part of the SEPA schemes include Iceland, Norway and Switzerland



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- 》 Single Euro Payments Area
- 》 **Movement of goods for e-commerce providers**



# Movement of goods for e-commerce providers

From January 2021 goods moving from Great Britain (GB) to the European Union (EU) became an export (previously they were known as 'dispatches')

Goods entering the EU from GB became an import (currently known as 'arrivals')

## January 2021

Export from GB

Requires export customs declarations

Goods zero-rated for VAT (as applied for Rest of World Trade)

Full proof of export file must be maintained for audit purposes

## January 2021

Import into EU

Requires import customs declarations and import duty if Rules of Origin requirements are not met

Import VAT becomes payable unless the 'importer' takes steps to defer VAT payable

# Low Value Consignment Relief (LVCR)

- ◆ From 1 July all items imported into the EU with a value less than €22 (£15) will no longer be exempt from VAT
- ◆ All goods sent directly from GB to consumers in the EU, will be subject to the local rate of VAT in the buyer's country



# Import One Stop Shop (IOSS)

- ◆ IOSS allows suppliers selling imported goods to the EU to collect, declare and pay the VAT to the tax authorities
- ◆ Rather than buyer paying the VAT when the goods are imported into the EU
- ◆ IOSS applies where the goods are valued at €150 or less
- ◆ Non-EU supplier must register for VAT in EU member state
  - ◆ May require appointment of a fiscal representative





POLL: What would  
you say is your  
biggest challenge  
you face trading  
services with the EU?



# Q&A Session

POLL: Would you be interested in further training or support for services trade in the EU following Brexit?





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