

Constitution, Europe, External Affairs and Culture Committee
Thursday 31 October 2024
24th 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. We now begin the second part of that inquiry, with the focus on services (including the mutual recognition of professional qualifications) and mobility of people (including labour mobility, youth mobility, and touring artists).
3. Our witnesses for this panel are—
 - Dr Adam Marks, International Policy Executive, Law Society of Scotland
 - Professor David Collins, Professor of International Economic Law, City University of London
 - Ross Anderson, Advocate, Faculty of Advocates
4. A SPICe briefing is provided at **Annexe A** and earlier written submissions from the witnesses at **Annexe B** (though please note in reference to the submissions from the Law Society of Scotland and the Faculty of Advocate that both are now [members of the UK Domestic Advisory Group](#)).

Clerks to the Committee
October 2024

SPICe

The Information Centre
An t-Ionad Fiosrachaidh

Constitution, Europe, External Affairs and Culture Committee

24th Meeting, 2024 (Session 6), Thursday, 31 October

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

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](#) 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](#).

Legal services under the TCA

The focus of today's meeting is on how the TCA is working for legal services providers. To inform the evidence session, this section of the briefing highlights relevant sections of the [written evidence provided by the Law Society of Scotland](#) at the outset of the Committee's TCA inquiry last year and a [blog written by David Collins](#) for the City Law Forum published in December 2021. [Both of which are included in full in Annexe B to these papers, along with earlier written evidence from the Faculty of Advocates]

Both the Law Society of Scotland and David Collins highlighted that for legal services the TCA included some positive points, not least the fact that legal services were recognised within the context of a free trade agreement.

David Collins also identified the recognition of the principle of home title practice within the TCA as being a positive development. He explained:

“Under the home title principle, parties to the TCA agree to permit practice by lawyers of the other party under their home jurisdiction professional qualification with regards to advice on home country and public international law, as well as arbitration, conciliation and mediation.”

However, he also highlighted concerns about the way in which the language used in the TCA:

“appears to contemplate a restrictive interpretation of the home title rules. The relevant provision in the TCA (Article 194) expressly refers to the categories of Contractual Services Suppliers (CSSs) and Independent Professionals but it omits other key categories of business visitors such as Intra-Corporate Transferees (ICTs) and Business Visitors for Establishment/Investment Purposes (BVEP/BVIP).”

The Law Society of Scotland set out how its members are affected by the move from EU membership to the TCA governing the UK-EU relationship:

“Our members and firms working in the EU practice across a wide range of areas covering family, banking commercial, tax, employment, dispute resolution, social welfare and climate law. Of these a majority have faced either challenges or impediments to their ability to work since Brexit. Whilst all recognise that the TCA is not going to be re-negotiated they emphasise that they have faced significant challenges in securing their continued right to practice and that they face other challenges in regard to changing rules and promotion prospects in the future.

In particular, the lack of ability to appear before EU courts was identified as a barrier to continuing their work in many cases.”

A key issue highlighted by David Collins and the Law Society of Scotland is the requirement to abide by the rules of 27 different EU member states. David Collins suggested that the TCA offers little more than other non-EU country lawyers get who operate with the EU on WTO General Agreement on Trade in Services (GATS) Most Favoured Nation (MFN) terms:

“Although the TCA includes a revised schedule of reservations by individual EU Member States, which clarifies the current level of market access and locks it in as permanent commitments, actual market access is complicated, again because UK qualified lawyers are still subject to 27 different regulatory regimes across each EU Member State. Some States, such as Greece, maintain significant restrictions. Some jurisdictions are more permissive, such as Germany.”

The Law Society of Scotland highlighted two ways in which the TCA could be developed to support Scottish lawyers. These are:

- **Full implementation of Article 145 regarding transparency of mobility requirements for each member state to ensure members understand their obligations in each EU country** - Article 145 commits both sides to transparency around procedures and requirements for entry and temporary stay of people. Migration is reserved to EU member state national governments which means there are often different requirements for each member state. Furthermore, the fragmentation resulting from this plethora of different requirements is in itself a barrier to trade as businesses need to understand the impact on their business in each separate jurisdiction, rather than being able to rely on a uniform understanding of the rules.

A number of members and firms have expressed some concern that it is still not always clear what is and is not permissible under the current arrangements.

- **Expanding Article 126 to include legal services as a permitted activity for short term business visitors** - Article 126 commits both sides to review a number of issues including permitted activities for short term business visitors so long as it is in both sides interest. The mobility of professionals has been severely reduced as a result of withdrawal from the EU. Almost all our firms and members would welcome more flexibility for cross-border working, which has positive impacts for individuals and the economy.

There is widespread agreement from our members that adding legal services to the list of permitted activities would be beneficial for Scottish solicitors and for the UK more generally.

Related to mobility and linked to the Article 145 issue raised by the Law Society of Scotland, David Collins highlighted the need for more appropriate mobility provisions for legal practitioners including facilitating secondments in partner law firms in EU member states. In addition, he highlighted:

“Without mobility, theoretical market access rules for legal practitioners are meaningless. Legal services should accordingly be included in the permitted activities for short-term business visitors. There should further be an express acknowledgement in market access schedules, not simply of the right to meet

clients, but also to provide services and receive payment. These activities should be permitted without the need for visas, work permits, economic needs tests or other burdensome procedures which operate as barriers to services trade. Furthermore, where they are required, visa processing times must be minimized and relevant eligibility criteria should be no more onerous than necessary.”

Today’s evidence session

Today’s evidence session is an opportunity for Members to discuss with witnesses how legal services providers are operating within the context of the TCA.

Members may wish to discuss with witnesses how the provision of legal services by Scottish lawyers is operating under the TCA and how the process might be developed further in the context of the TCA review.

In particular Members may wish to discuss with the witnesses the suggestions around strengthening Articles 145 on mobility and 126 on permitted activities in the TCA to support the work of Scottish lawyers.

Iain McIver
SPICe Research



Response by the Faculty of Advocates to the Scottish Parliament's Review of the EU-UK Trade and Cooperation Agreement

8. How trade in goods and services between the EU and UK is currently working and if there are areas where it can be improved.

Please provide your response in the box provided.

The Faculty does not seek to comment on matters of policy, and our response to this question is confined to matters falling directly within the Faculty's own experience. The Faculty notes that prior to the UK's withdrawal from the EU, members of the Faculty of Advocates had rights of audience before EU courts and tribunals (and by virtue of the UK's membership of the EEA, also before the courts and tribunals of those institutions). Related to rights of audience was the ability to provide advice on EU law that was subject to legal privilege recognised by the EU courts. The UK's withdrawal from the EU, combined with the terms of the TCA, has created a trade barrier, in that UK lawyers (including members of the Faculty of Advocates) can no longer provide privileged legal advice on EU law to parties based in the EU, and can no longer engage in advocacy before EU courts and tribunals. This also affects non-EU markets, in that UK lawyers were a natural port of call for advice on EU law for international businesses based elsewhere in the world (since the EU market remains one of the world's most significant). Although the TCA does not impact on the provision of advice by UK lawyers on EU law to such clients (providing the services are provided in the UK or outside the EU), such clients now have to be advised that the advice provided by a UK lawyer may not be considered to be privileged by the CJEU or the Commission (a point of importance in relation to advice, for example, on EU competition law).

9. Whether there is an interest in developing the trading relationship further e.g., through an agreement on sanitary and phytosanitary (SPS) measures or on the opportunities for UK nationals to provide services in the EU.

SPS measures ensure that food traded is safe to eat and animals and plants are free from pests and disease.

Please provide your response in the box provided.

N/A

10. Whether EU-UK relations in the future could build on elements of the Windsor Framework to encourage flexible and simple conditions for trade.

The Windsor Framework is a legal agreement between the EU and the UK announced on 27 February 2023 and formally adopted by both parties on 24 March 2023. It is designed to ensure the smooth movement of goods between Great Britain and Northern Ireland.

Please provide your response in the box provided.

N/A

11. Any other views on the TCA you might want to share with us.

Please provide your answer in the box provided

N/A

Law Society of Scotland

Review of EU-UK Trade and Cooperation Agreement

Information about your organisation:

The Law Society of Scotland is the professional body for over 12,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

How trade in goods and services between the EU and UK is currently working and if there are areas where it can be improved.

It is worth noting from the start that whilst the EU-UK Trade and Cooperate Agreement (TCA) is helpful from a services perspective the deal is largely focused on trade in goods. Generally, the provisions on trade in services and investment could have been stronger. There are a number of helpful aspects, including a specific section on legal services not always found in a trade agreement.

The majority of the discussions surrounding the TCA review will take place during 2025 before being completed and agreed by both sides in early 2026. This presents an opportunity for the profession to raise concerns about the operation and content of the TCA. We expect the majority of the review process to focus on implementation rather than renegotiation. The process is outlined in article 776:

“The Parties shall jointly review the implementation of this Agreement and supplementing agreements and any matters related thereto five years after the entry into force of this Agreement and every five years thereafter.”

The UK Government and the EU Commission will both be able to raise issues of concern throughout this process. The main areas that have been raised by members and firms so far are:

1. Transparency and restrictions surrounding the current mobility requirements.
2. Barriers to practice for Scottish Solicitors in the EU.
3. Youth Mobility.

Whether there is an interest in developing the trading relationship further e.g., through an agreement on sanitary and phytosanitary (SPS) measures or on the opportunities for UK nationals to provide services in the EU.

We would suggest two areas that can be worked on to improve the opportunities to provide legal services in the EU.

1. Full implementation of Article 145 regarding transparency of mobility requirements for each member state to ensure members understand their obligations in each EU country. (Full text of article 145 included in annex after the final question).

Article 145 commits both sides to transparency around procedures and requirements for entry and temporary stay of people. Migration is reserved to EU member state national governments which means there are often different requirements for each member state. Furthermore, the fragmentation resulting from this plethora of different requirements is in itself a barrier to trade as businesses need to understand the impact on their business in each separate jurisdiction, rather than being able to rely on a uniform understanding of the rules

A number of members and firms have expressed some concern that it is still not always clear what is and is not permissible under the current arrangements. Whilst (as we acknowledge) some of this can be put down to the relatively new nature of the TCA there is still clearly room for improving the information provided by member states about what is allowed in each country

2. Expanding Article 126 to include legal services as a permitted activity for short term business visitors. (Full text of article 126 included in annex after the final question)

Article 126 commits both sides to review a number of issues including permitted activities for short term business visitors so long as it is in both sides interest. The mobility of professionals has been severely reduced as a result of withdrawal from the EU. Almost all our firms and members would welcome more flexibility for cross-border working, which has positive impacts for individuals and the economy.

There is widespread agreement from our members that adding legal services to the list of permitted activities would be beneficial for Scottish solicitors and for the UK more generally. It is worth noting that whilst currently other professions can still provide advice (such as parts of the finance sector) solicitors need both the right to enter a country (covered by the 90 day restriction which can be problematic in some cases), the right to practice and legal professional privilege. Competition and arbitration are both areas of practice which would benefit from this change. Whilst there may be other issues that cannot be solved by the TCA (insurance for instance) any steps to reduce the regulatory burden would be welcome

Whether EU-UK relations in the future could build on elements of the Windsor Framework to encourage flexible and simple conditions for trade

We welcome the improvement in UK-EU relations that have come about since then. We hope that relations will continue to improve over the coming years.

Any other views on the TCA you might want to share with us.

-Barriers to Practice

Our members and firms working in the EU practice across a wide range of areas covering family, banking commercial, tax, employment, dispute resolution, social welfare and climate law. Of these a majority have faced either challenges or impediments to their ability to work since Brexit. Whilst all recognise that the TCA is not going to be re-negotiated they emphasise that they have faced significant challenges in securing their continued right to practice and that they face other challenges in regard to changing rules and promotion prospects in the future.

In particular, the lack of ability to appear before EU courts was identified as a barrier to continuing their work in many cases.

It is also worth noting there have been specific issues in relation to practicing in certain countries, in particular in Luxembourg and Greece. In the case of the former the Parliament of Luxembourg has recently passed a bill to remove the existing nationality condition for UK Lawyers to work in Luxembourg bringing them in line with the TCA. Whilst we have less direct interest in the latter there has been positive conversations regarding moving to a positive conclusion.

-Youth Mobility

A number of our members expressed disappointment that they felt they would often be the last Scottish solicitors to pursue their profession in the EU due to the lack of youth mobility. Ultimately there are a number of factors here and whilst it is too early to comment in much detail on the Turing Scheme it is worth bearing in mind that a number of our future lawyers have taken advantage of programmes to broaden their horizons during their studies, which rely on reciprocal arrangements with other EU universities. The ERASMUS programme, the best-known EU student exchange programme established in 1987, had a number of participants from Scottish law schools. Following the announcement that the UK will rejoin the Horizon programme we would strongly encourage the UK to also consider re-joining ERASMUS.

Domestic Advisory Groups

We would like to express our disappointment that we were not chosen to join the Domestic Advisory Group of the TCA. The outcome was particularly surprising to us since our understanding from the published minutes of the DAG meeting (28th April 2022) was that one of the reasons for a second round of applications was to address the geographic imbalances within the current makeup of the DAG:

From the context of the UK legal services sector the jurisdiction of England and Wales is represented by the Law Society and the Bar Council but the Scottish legal sector is unrepresented after the failure of our and the Faculty of Advocate's application.

The legal services market is no less important to Scotland than the equivalent market is to England and Wales, and our experience would fill the obvious geographic gap so far as Scotland is concerned. We also understand that the DAG is to rotate between the four nations of the UK which will result in the curious situation that it will meet in the Scottish legal jurisdiction without any representative of that jurisdiction being present.

Whilst we recognise that there are other channels for stakeholders to give their views on implementation of the TCA (including consultations such as this), we consider the DAG to be the most appropriate forum for our participation and hope that this situation will be resolved in the future.

Annexe:
Article 126.

Review

1. With a view to introducing possible improvements to the provisions of this Title, and consistent with their commitments under international agreements, the Parties shall review their legal framework relating to trade in services and investment, including this Agreement, in accordance with Article 776.

2. The Parties shall endeavour, where appropriate, to review the non-conforming measures and reservations set out in Annexes 19, 20, 21 and 22 and the activities for short term business visitors set out in Annex 21, with a view to agreeing to possible improvements in their mutual interest.

3. This Article shall not apply with respect to financial services.
Article 145

Transparency

1. Each Party shall make publicly available information on relevant measures that pertain to the entry and temporary stay of natural persons of the other Party, referred to in Article 140(1)
2. The information referred to in paragraph 1 shall, to the extent possible, include the following information relevant to the entry and temporary stay of natural persons:
 - (a) categories of visa, permits or any similar type of authorisation regarding the entry and temporary stay;
 - (b) documentation required and conditions to be met;
 - (c) method of filing an application and options on where to file, such as consular offices or online;
 - (d) application fees and an indicative timeframe of the processing of an application;
 - (e) the maximum length of stay under each type of authorisation described in point (a);
 - (f) conditions for any available extension or renewal;
 - (g) rules regarding accompanying dependants;
 - (h) available review or appeal procedures; and
 - (i) relevant laws of general application pertaining to the entry and temporary stay of natural persons for business purposes
3. With respect to the information referred to in paragraphs 1 and 2, each Party shall endeavour to promptly inform the other Party of the introduction of any new requirements and procedures or of the changes in any requirements and procedures that affect the effective application for the grant of entry into,

temporary stay in and, where applicable, permission to work in the former Party.

Legal Services Provisions in the UK-EU Trade and Cooperation Agreement: Good but Incomplete

David Collins

As the UK continues to establish its own trade policy, it is vital that legal services, which provide more than £60 billion per year to the UK's economy, are paid sufficient attention in trade negotiations. UK legal expertise is high demand around the world and the service of international clients is a key source of revenue for many UK lawyers. Lawyers rely on the possibility of short-term visits to foreign jurisdictions for the purposes of providing legal advice (sometimes described as fly-in fly-out, or FIFO) as well as temporary secondment/establishment rights in a jurisdiction. While there are many lucrative, fast-growing markets in Asia, the ability for lawyers to continue to provide advice in these ways in the EU is an issue of some importance. The Lawyer's Establishment Directive ceased to apply to UK lawyers at the end of the transition period. Today UK lawyers seeking to provide legal advice in the EU must deal with 27 separate regulatory regimes.

Fortunately, the principle of home title practice was recognised in the EU-UK Trade and Cooperation Agreement (TCA), finalized at the end of last year. It should be pointed out that the inclusion of any material on legal services in a Free Trade Agreement is in itself a achievement since historically they have been ignored in international negotiations, with the Comprehensive Progressive Trans-Pacific Partnership (CPTPP) and the agreement in principle between the UK and Australia other notable exceptions. Under the home title principle, parties to the TCA agree to permit practice by lawyers of the other party under their home jurisdiction professional qualification with regards to advice on home country and public international law, as well as arbitration, conciliation and mediation. On their own these are already sizable areas of the legal services market for most UK lawyers serving clients in the EU.

There is some concern, however, that the language used in the text of the TCA appears to contemplate a restrictive interpretation of the home title rules. The relevant provision in the TCA (Article 194) expressly refers to the

categories of Contractual Services Suppliers (CSSs) and Independent Professionals but it omits other key categories of business visitors such as Intra-Corporate Transferees (ICTs) and Business Visitors for Establishment/Investment Purposes (BVEP/BVIP). Under the principle of treaty in interpretation which suggests that the express mention of a specific thing excludes other specific things which are not mentioned (*expressio unius exclusio alterius*), legal services provisions in the TCA appears only to apply to lawyers who qualify as either CSSs or IPs. This is a very small group, excluding many of the services normally supplied on the crucial fly-in-fly-out basis.

Furthermore, in terms of market access, the TCA's commitments on legal services, while better than most FTAs, do not offer much to UK lawyers compared to other non-EU lawyers dealing with the EU on WTO General Agreement on Trade in Services (GATS) Most Favoured Nation (MFN) terms. Although the TCA includes a revised schedule of reservations by individual EU Member States, which clarifies the current level of market access and locks it in as permanent commitments, actual market access is complicated, again because UK qualified lawyers are still subject to 27 different regulatory regimes across each EU Member State. Some States, such as Greece, maintain significant restrictions. Some jurisdictions are more permissive, such as Germany. Germany added solicitors among the non-EU professions that are eligible for Foreign Legal Consultant Status in Germany, meaning that UK lawyers can continue to advise clients on UK and public international law under their home title.

In negotiating enhancements of these commitments in the TCA, as well as in entirely new FTAs with other countries, the UK should seek mobility provisions which facilitate the secondment of lawyers to offices of those partner or law firms. Without mobility, theoretical market access rules for legal practitioners are meaningless. Legal services should accordingly be included in the permitted activities for short-term business visitors. There should further be an express acknowledgement in market access schedules, not simply of the right to meet clients, but also to provide services and receive payment. These activities should be permitted without the need for visas, work permits, economic needs tests or other burdensome procedures which operate as barriers to services trade. Furthermore, where they are required, visa processing times must be minimized and relevant eligibility criteria should be no more onerous than necessary.

When establishing its trade negotiation objectives for legal services, the UK government should take into consideration the way law firms are structured. Some jurisdictions may view law firm partners as employees, whereas others consider only associates fit into this category. This latter view renders the

category of Independent Professional impractical for most lawyers. Moreover, since many large and medium-sized law firms have branch offices across the world, their lawyers typically often cannot use the category of CSSs in foreign countries. Under Article 140 of the TCA, for example, a branch office in one EU member state disqualifies lawyers from using the CSS provisions in all member states.

Although the incomplete coverage of legal services (both market access and mobility) in the TCA is a cause of concern for some UK lawyers, whether it is a significant practical problem for the UK legal profession as a whole is unclear. The number of UK-qualified lawyers that had been providing advice on EU law or the laws of EU Member States was almost certainly small relative to the size of the profession and the value of transactions, even before Brexit. This aspect of client service was probably just as easily, or almost as easily, facilitated by the retaining of EU or specific Member State experts to supplement other forms of advice, a practice which remains permissible today.