

# EU-UK Trade and Cooperation Agreement (TCA): Services and Investment, Digital Trade and Intellectual Property, Energy and Level-Playing Field

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Four years after the Brexit referendum, the EU and the United Kingdom have reached an agreement on the [EU-UK Trade and Cooperation Agreement](#) (TCA), which follows the [Brexit Withdrawal Agreement](#). BLOMSTEIN presents the key contents of the new trade agreement in a briefing series. In [Part 1](#), we have looked at the implementation and substantial changes in the EU-UK relationship. [Part 2](#) focused on the trade in goods. Part 3 looks at a variety of areas from services and investments to digital commerce, energy and the level playing field.

## Services and investments

The expiry of the transitional period on January 1, 2021 meant the loss of the freedom to provide services, the freedom of establishment and, in general, the free movement of persons for UK citizens and economic operators. As a result, it is no longer unrestrictedly accessible for them to provide services in the territory of the European Union. Of particular importance here is that providers of services from the United Kingdom will no longer benefit from the state of origin principle (also known as “**passporting**”). The new cooperation agreement does contain provisions on the extensive opening of the service markets of the contracting parties and an anti-discrimination requirement (Art. SERVIN.2.1. ff. EU-UK-FTA-E). However, service providers will from now on have to comply with the regulatory requirements of the up to 27 different member countries in which they want to provide their services.

The loss of passporting rights in the context of financial services is of particular relevance in this context, as has been highlighted several times in recent years by [the British media](#) in particular with regard to the financial metropolis of London. The EU passporting system for banks and other financial service providers licensed in one EU member state enables them to provide financial services in any other member state largely without any problems. However, non-EU service providers face regulatory hurdles and are generally limited in the number of financial services they can provide. Under the Cooperation Agreement, UK financial service providers are now treated in the same way as similar companies from other non-EU countries. From now on, an establishment in an EU

member state will be required for the provision of all previously possible services. According to the European Commission, a memorandum is to be agreed by March 2021 in which a common framework for future cooperation is to be developed. In this regard, the [Economist](#) recently ran the headline: “*The City of London does not yet know what Brexit will mean*”.

The **recognition of professional qualifications** has also become more complicated since January 1, 2021. Until now, it has been fairly easy for British citizens to have professional qualifications recognized within the framework of a Europe-wide regulatory regime. In some cases – for example, in the case of doctors, nurses, and midwives – professional qualifications are automatically recognized or it is possible to apply for a European Professional Card. However, since January 1, 2021, British citizens can only apply for recognition of their qualifications according to the general rules for non-EU citizens in the respective member state. This also applies to EU citizens who have acquired their qualifications in the United Kingdom.

New regulations also apply to the transfer of Group employees to the territory of the other contracting party. Whereas the employees concerned previously benefited from unrestricted freedom of movement, intra-Group transfers are now limited to a maximum of three years (Art. SERVIN.4.2. Nr. 2 EU-UK-FTA-E). One piece of positive news for service providers is the inclusion of a “*most-favored nation*” clause (Art. SERVIN.2.4. EU-UK-FTA-E; Art. SERVIN.3.5. EU-UK-FTA-E). This means that both contracting parties can claim for themselves all rights relating to services and investments granted by the other third country. However, financial services are excluded from this provision.

## Digital commerce and intellectual property

According to [the European Commission](#), the agreement contains various simplifications of digital trade while taking into account high data protection standards. With regard to the protection of intellectual property, the agreement goes further than international agreements in this area. This applies in particular to copyright and copyright protection, but also to trademark and design rights as well as patents and the protection of trade secrets. On the basis of the withdrawal agreement, protected designations of origin (“*Thüringer Rostbratwurst*”), which were entered in the EU quality register until December 2020, will also continue to be protected (Art. 54 Abs. 2 WA).

## Energy

On January 1, 2021, the United Kingdom will also leave the single European energy market and the European Atomic Energy Community (EURATOM). Only Northern Ireland will continue to have a single electricity market with the Republic of Ireland on the basis of the Withdrawal Agreement (Art. ENER.2 Nr. 1 lit. (f) EU-UK-FTA-E). Upon withdrawal, the United Kingdom will no longer be subject to European climate protection regulations

and will therefore no longer participate in the European Emissions Trading Scheme (“EU ETS”).

The cooperation agreement contains far-reaching mutual assurances and agreements in the areas of energy, climate protection and – partly in a [separate agreement](#) – the peaceful and secure use of nuclear energy. It also includes numerous provisions to ensure a level playing field in the energy sector, including regulations on state aid, a ban on export restrictions and dual pricing for energy goods (Art. ENER.5, Art. ENER.6 Nr. 1, Art. ENER.7, Art. ENER 27 EU-UK-FTA-E). Despite the fact that the United Kingdom's commitment to European climate protection regulations and targets is now coming to an end, both sides are also committed to meeting ambitious targets in this area (Art. 8.5 EU-UK-FTA-E). Thus, violations of the Paris Climate Agreement by the respective other contracting party authorize the partial or complete suspension of the cooperation agreement (Art. INST.35 Nr. 4 i.V.m. Art. COMPROV.12 EU-UK-FTA-E).

## **“Level Playing Field” for open and free competition and sustainable development**

In addition to the negotiations on fishing rights, those on regulatory adjustments and a level playing field have also been conducted with [particular controversy](#) in recent months. Some [voices](#) on the island had called for the United Kingdom to develop into a “Singapore of the North”, which did not go down well with the negotiating partners in Brussels. From the EU's point of view, the danger of distortions of competition is particularly evident due to the intention to continue interlocking the two economic areas – in particular by not levying tariffs and waiving quantitative import restrictions. The Cooperation Agreement is therefore intended to ensure that neither party gains a competitive advantage for itself or its economic operators by lowering labor, environmental or consumer protection standards or through the granting of state subsidies.

Since the United Kingdom is leaving the European regulatory area and subsequently rejected a link to European standards, a compromise solution was worked out. For example, the minimum legal standards in the areas of labor and social law, as well as climate protection and environmental protection law, which applied prior to the UK's withdrawal, may not be lowered if this would be likely to affect trade between the contracting parties (so-called “**non-regression**”) (Art. 6.2 Nr. 2 EU-UK-FTA-E). In addition, further agreements were reached regarding minimum standards in these areas of law, such as the introduction of an effective system for the pricing of greenhouse gases (Art. 7.3 (Nr. 1) EU-UK-FTA-E). Furthermore, state aid is to be subject to requirements that prevent distortion of competition (Art. 4.1 ff. EU-UK-FTA-E). The same applies to anti-competitive practices or discriminatory and abusive behavior by state-owned companies.

BLOMSTEIN is monitoring the foreign trade law implications of the new free trade agreement with the United Kingdom and their impact on companies. [Dr. Roland M. Stein](#) and [Dr. Leonard von Rummel](#) are available for this purpose at any time.