

## Written submission from the Law Society

We've been comparing the texts of the UK-EU Trade and Cooperation Agreement (TCA) to the same sections of the agreement with Iceland, Liechtenstein and Norway. Generally the texts are fairly similar, with a few small tweaks to improve as well as a few cases where there is worse market access. Of course, as with the TCA, the free trade agreement comes nowhere close to replicating the level of market access members had under the Directives prior to Brexit.

Like the TCA, the EFTA agreement separates legal services into designated (home jurisdiction and international law) vs non-designated. This is a useful distinction that recognises that allowing a foreign lawyer to provide legal services in foreign and international law is different from allowing a foreign lawyer to provide legal services in domestic law. This distinction should be carried on in future trade negotiations. However, as with the TCA, the general principle of permitting provision of designated legal services can, and often is, considerably diluted or completely overridden by the reservations listed by each member state.

The language on legal services is very similar, though designated legal services in the EFTA agreement does not specifically exclude EU law (though Liechtenstein reserves EU law in the Annexes)

- TCA: "designated legal services means legal services in relation to home jurisdiction law and public international law, excluding Union law"
- EFTA: "designated legal services means legal services in relation to home jurisdiction law and international law"

The EFTA text also specifically prohibits requirement of registration in order to provide FIFO legal services. This would exclude France-type FLC registration even for fly-in-fly-out provision (FIFO).

- "A Party (the host jurisdiction) shall not adopt or maintain measures that impose any requirement that a lawyer of the other Party, as a condition for supplying designated legal services, must: (a) register with the relevant competent authority or professional body responsible for the regulation of legal services in the host jurisdiction; or (b) be a member of a professional body in the host jurisdiction".

On MRPQ the EFTA agreement is much stronger than the TCA. The EFTA agreement assumes MRPQ and that the host jurisdiction shall accord treatment no less favourable than it does to its own regulated professions. It does allow that where there is a substantial difference between the qualification in one jurisdiction and the knowledge and skills required to practise that regulated profession in the host jurisdiction then the host country's authorities can require an aptitude test or an adaptation period. But any compensatory measures should be proportionate to the difference they seek to address. The authorities can also require demonstration of language skills where necessary to the practice of the relevant profession, but again any language tests should be proportionate to the activity to be pursued.

Mobility is a mixed bag of some small improvements compared to the TCA as well as some areas that are worse:

- **Short Term Business Visitors (STBV)** —As opposed to the TCA, where length of stay commitments are up front, subject to reservations, in the EFTA agreement the commitments are in the Annexes, also with reservations.
  - In the TCA STBV can stay 90 days in any six-month period in the Schengen zone or any individual non-Schengen member state. In EFTA, Liechtenstein and Norway have similar length of stay restrictions, but Iceland only permits 90 days per year.
  - Iceland requires advance notification for ALL STBV activities.
  - Liechtenstein has a reservation specifying that STBV may not supply any service or sell any goods. Liechtenstein requires advanced notification to attend trade fairs or for sales/marketing visits.
  
- **Business Visitors for Establishment Purposes (BVEP)** —Both agreements have very similar language, but in the TCA the BVEP must be working for the company that is establishing a branch while the EFTA is a little bit looser in allowing “setting up an enterprise of the *same group*”. Norway and Liechtenstein allow 90 days/six months, which is the same as the TCA, while Iceland only allows BVEP to be in country for 90 days in a year.
  
- **Contractual Service Suppliers (CSS)** —In the TCA this category is almost unusable for most firms as it is not available to employees of a company that has a branch anywhere in the EU, even when the contract for service provision is in a different member state. In the EFTA agreement this only applies where there is a branch in the “Party granting entry”. While the TCA specifically requires that the person applying for the visa have worked providing the same type of services as an employee of the company for at least one year and have at least three years of professional experience in the activity and a university degree or qualification, the EFTA agreement has no minimum previous employment or experience requirements up front, though there are some in the reservations in the Annexes at the national level that require demonstrating specialised skills or qualifications.
  - The TCA allows CSS for 12 months or the length of the contract, whichever is less (subject to reservations by member states). In EFTA the time limits are in the Annexes as commitments at the national level.
    - Iceland only allows 6 months.
    - Norway only allows 6 months per 12 months or the duration of the contract, whichever is less, but also specifies that the CSS will not be granted a second time to provide the same service to the same recipient.
    - Liechtenstein only allows stays of a cumulative eight days per ninety day period.
  
- **Independent Professionals (IP)** —Again, the TCA requires at least six years of professional experience, and a university degree or qualification. The EFTA agreement again does not have experience or qualification requirements up front, though the countries do have some requirements in the Annex. Iceland and Norway are fairly vague in only requiring some evidence of specialised skills necessary to perform the service. But

Liechtenstein requires, “professional qualifications to exercise an activity within the scope of authorisation from the United Kingdom”.

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  - Liechtenstein only allows stays of a cumulative eight days per ninety day period.
- **Intra Corporate Transferees (ICT)**—Both the TCA and the EFTA agreement have fairly similar, though not identical language on who qualifies for ICT. Both require that manager or specialist transferees have been employed by the company for at least one year prior. The TCA only requires six months for trainees, whereas the EFTA agreement requires a year as well.
  - One area of improvement in the EFTA agreement is a specific commitment to allow partners and dependent children of ICT managers and specialists to accompany and to work or be self-employed. The TCA does not specify this and it would be up to the immigration rules of each member state whether spouses and children can accompany and work.
  - The TCA allows ICT managers and specialists to remain for 3 years and trainees for one year. In EFTA the time limits are in the Annexes as commitments at the national level.
    - Iceland allows managers and specialists to remain for 12 months, extendable by an additional 12 months. Trainees can only remain six months.
    - Liechtenstein and Norway allow managers and specialists to remain for 3 years and trainees for 12 months.

On mobility, one area that is improved is that while the TCA has a commitment only to transparency in visa application requirements, the EFTA agreement goes further in committing parties to ensuring that immigration procedures are not unduly complicated. There is a commitment to inform applicants of decisions within 90 days of application, etc.

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