



Subject:	Brexit considerations - Article 56 `freedom to provide services`
Date:	11th October 2018
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Restricted Reports	
Is this report restricted?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
If Yes, when will the report become unrestricted?	
After Committee Decision	<input type="checkbox"/>
After Council Decision	<input type="checkbox"/>
Some time in the future	<input type="checkbox"/>
Never	<input type="checkbox"/>

Call-in	
Is the decision eligible for Call-in?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>

1.0	Purpose of Report or Summary of main Issues
1.1	Trade in services increasingly dominates the global economy and there is recognition of the inter-connectedness of the financial, legal and professional services markets. The Committee is aware that a full understanding of the potential implications of Brexit remains uncertain while negotiations between the UK government and EU continue to determine the future relationship.
1.2	As requested by the Committee, given the importance of the services sector for the Belfast and the regional economy, this report summarises the main considerations if Article 56 `freedom to provide services` of the Treaty on the functioning of the EU does not apply to that sector following the UK's departure from the European Union.

2.0	Recommendations
2.1	The Committee is asked to note the content of this report.
3.0	Main report
3.1	<p><u>Key Issues</u></p> <p>At the initial meeting of the Brexit Committee, the Committee requested further information on the options to be considered in the event of Article 56 'freedom to provide services' of the Treaty on the functioning of the EU not applying to that sector when the current negotiations between the UK government and the EU conclude.</p>
3.2	Article 56 of the Treaty on the functioning of the EU states that restrictions on "freedom to provide services" within the Union are prohibited in respect of nationals of Member States who are established in a State other than that of the person for whom the services are intended. This paper summarises the proposals and main considerations identified in the existing policy documents.
3.3	The HM Government white paper 'The Future Relationship between the UK and EU' (July 2018) proposes that a new relationship between the UK and EU will be structured around an economic partnership, which will see the UK leave the Single Market and the Customs Union and be broader in scope than existing relationships between the EU and a third country. It notes that this will be informed by the UK and EU meeting their shared commitments to NI, by protecting the peace process and avoiding a hard border.
3.4	The white paper proposes the establishment of a free trade area for goods that would sit alongside new arrangements for services, acknowledging that 'there will be more barriers to the UKs access to the EU market than is the case today'. These proposals would allow the UK to negotiate new international trade agreements in line with its priorities and interests covering goods, services, investment etc.
3.5	<p>In terms of the services and digital sectors, the HM Government's vision for the economic partnership is outlined as:</p> <ul style="list-style-type: none"> - 'New arrangements for services and digital, providing regulatory freedom where it matters most for the UK's services-based economy ... while recognising that the UK and the EU will not have current levels of access to each other's markets; - New economic and regulatory arrangements for financial services, preserving the mutual benefits of integrated markets and protecting financial stability while

- respecting the right of the UK and the EU to control access to their own markets – noting that these arrangements will not replicate the EUs passporting regimes
- Continued co-operation on energy and transport – preserving the Single Electricity Market in NI and ROI, seeking broad co-operation on energy, developing an air transport agreement and exploring reciprocal arrangements for road hauliers and passenger transport operators;
 - a new framework that ... enables UK and EU citizens to continue to travel to each other's countries and businesses and professionals to provide services – in line with the arrangements that the UK might want to offer to other close trading partners in the future'. The report notes that the Migration Advisory Committee is due to report on patterns of EU migration and the role of migration in the wider economy in September 2018.

A copy of the white paper is attached at Appendix 1 and available at: [The Future Relationship between the UK and EU](#)

EU Directorate General Report

- 3.6 A report produced by the EU Directorate General for Internal Policies (July 2017) acknowledges the uncertainty around how Brexit will affect trade in services and outlines different scenarios for exit and future co-operation on services and establishment (attached at appendix 2 and available at [European Parliament \(DG for Internal Policies\) - Different Scenarios](#)).
- 3.7 The report notes that trade in services is growing faster than trade in goods and to facilitate the freedoms in services through Article 56, also requires the implementation of a wide range of EU secondary legislation. Trade in services on a cross-border basis requires regulation, such as common standards for licenses or diplomas. This enables the application of mutual recognition of standards or waiving supervision of trade in services (i.e. passporting).
- 3.8 The report considers a number of trade agreement options. It concludes that the option of the UK applying European Economic Area (EEA) would, in essence, allow for passporting in regulated sectors and minimise the disruption to the service industry as EEA law is largely aligned to the EU single market law. However, the UK would have to transpose single market law into domestic law and would be without representation in the European Parliament.

3.9	<p>The report notes that there are limitations with using other existing trade agreements as a blueprint for a future UK-EU agreement. Other trade agreements considered in the report are described as being more limited in scope or not providing enforceable rules and therefore less integrated in terms of setting common standards. The following trade agreements have been included:</p> <ul style="list-style-type: none"> - EU-Ukraine Association Agreement - Customs Union (EU-Turkey Customs Union) - Comprehensive Economic and Trade Agreement (EU-Canada) - Free Trade Agreement (EU-Korea) - General Agreement on Trade in Services (GATS) (World Trade Organisation)
3.10	<p>The report notes that the current alignment and integration between EU and UK law and standards creates positive ‘starting conditions’ and that cross border trade in services is likely to be affected more from differences between legal orders and a lack of right to temporary presence. It suggests that any UK-EU ‘Trade Agreement should grant market access’ and agree ‘a mechanism to ensure and monitor common standards as condition for far reaching rights to market access’. This would be considered feasible as long as standards are approximated; with the potential for the suspension of market access and mutual recognition if either party changes standards unilaterally. However, it would require the development of a mechanism to monitor the alignment of standards between the UK and EU.</p>
3.11	<p>The main issues to be considered in the negotiations for a future EU-UK Trade Agreement have been summarised as:</p> <ul style="list-style-type: none"> - A common standard setting mechanism - The importance of agreeing mutual recognition and enforcement mechanisms - Clarifying whether service providers and established persons in an EU-UK relationship can rely on ‘acquired rights’ post-Brexit
3.12	<p>The Belfast Context</p> <p>The EU and UK have recognised the economic importance of the trade in services, particularly the financial sector. Belfast is the regional economic driver, with 30% of the region’s jobs. The Belfast economy is dominated by the service sector (93% of people are employed in the services sector in Belfast; 83% in the region¹).</p>

¹ Invest NI: Belfast City Council Profile 2018

3.13	<p>The Belfast City region accounts for around 50% of the NI business base with strengths in the knowledge economy². Financial Services employs 33,000 in Northern Ireland, with 55% employed in Belfast, around one third of whom are employed by major international financial services companies with centres in the region³; technology companies employ 28,000 & is the top sector for inward investment projects (40%)⁴.</p>
3.14	<p>The NI Draft Industrial Strategy⁵ (Economy 2030) identifies the key growth sectors where Northern Ireland has world class capabilities. This includes financial, business and professional services, creative and digital technologies and life and health sciences. The City Region Industrial Strategic Framework recognises the Belfast Region's strengths in these sectors and for Belfast, financial services and related professional services such as legal services, as well as digital technologies (for example, cyber security) are high-value, high growth sectors which tend to cluster in the city. The City Growth & Regeneration Committee, have previously noted the potential for Belfast to build on these strengths in order to strengthen its role and strategic relationships with both London and Dublin.</p>
3.15	<p>It is worth noting that previous research indicates that the limited data on services sector exports for the region adds a further complexity when assessing any potential impacts (Nevin Economic Research Institute 2016). However, as previously noted by the Committee, the key interests for business in terms of considering Brexit, lie in potential changes to labour mobility and talent/workforce availability, access to supply chains, regulation and compliance, tax, customs and tariffs.</p>
3.16	<p>The Committee should note that in August 2018, HM Treasury updated their publication outlining the proposed approach to taking forward the statutory requirements for financial services, as part of the wider programme of work in preparation for the UK's exit from the EU. This states that the implementation period will be from 29 March 2019 - 31 December 2020 and gives a commitment 'to a workable legal regime being in place regardless of the current negotiation outcome'. It confirms that during the implementation period, common rules will continue to apply. The UK will continue to implement new EU law that comes into effect and the UK will continue to be treated as part of the EU's single market in financial services. Businesses will therefore be able to continue to trade on the same terms until 31</p>

² UUEPC: Belfast City Region Economic Opportunities - Draft Report July 2017

³ The City UK: Key Facts about UK-Based Financial and Related Services 2018

⁴ MATRIX: NI Digital ICT Report 2016

⁵ Department of Economy, Economy 2030

	December 2020 and comply with any new EU legislation that becomes applicable during the implementation period.
3.17	The need to provide certainty and continuity for businesses and consumers has been acknowledged. HM Treasury has expressed an intention to introduce transitional regimes for those operating cross-border and outside the passporting framework. It also notes the intention to provide the financial services regulators with a general power to phase in post-exit requirements, allowing flexibility for firms to transition to a fully domestic UK regulatory framework.
3.18	<p>Given the current position, businesses have emphasised the importance of sufficient transition arrangements to help plan, manage and maximise the potential impacts of growth, competitiveness and financial stability. An Invest NI sector-briefing note for financial services (2017) identifies the importance of a sufficient transition period and explains that impacts will depend on a number of factors:</p> <ul style="list-style-type: none"> - The nature of the withdrawal agreement between the UK and the EU; - The extent to which UK-based financial firms move operations before any agreement is concluded; - The overall resilience of the sector, through its broader global relationships and position.
3.19	As previously noted, it is vital that efforts remain focused on the city's priorities to grow the economy and build economic resilience by diversifying and strengthening the local economy, continuing to attract investment and tourism and building on the city's strengths to position the city as an internationally relevant, attractive and competitive location of choice.
3.20	<p><u>Financial & Resource Implications</u></p> <p>There are no resource implications attached to this report.</p>
3.21	<p><u>Equality or Good Relations Implications/Rural Needs Assessment</u></p> <p>None.</p>
4.0	Appendices
	<p>Appendix 1: HM Government white paper proposals on The Future Relationship between the UK and EU</p> <p>Appendix 2: European Parliament Directorate General for Internal Policies report on different scenarios for exit and future co-operation</p>

