

**POLICY BRIEFING**

# EU trade negotiations and higher education

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This policy brief complements previous EUA reports on:

- Mutual Recognition Agreements
- The Comprehensive Economic and Trade Agreement with Canada (CETA)
- The EU-Japan Economic Partnership Agreement (JEEPA)
- The EU-South Korea Free Trade Agreement (EU-KOR)

All of these – and more – are available [on the EUA website](#).

They rely on the assumption that EUA members – associations and institutions – have a strategic interest in the trade in higher education services. The reports are, to use the language of trade negotiators, “defensive” and in line with the position adopted by EUA’s Board and Council in 2015<sup>2</sup>:

“Higher education benefits individuals, society and the world at large in ways that are not easily quantifiable. It is a public responsibility to which all citizens have right of access and not a commodity to be transacted by commercial interests on a for-profit basis. It should not be subject to international trade regimes.”

The autumn of 2020 – pivotal for all sorts of reasons – provides an ideal opportunity to look once more at:

- The global context and EU trade policy
- Higher education services
- Government procurement
- Recognition of professional qualifications
- Brexit

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<sup>2</sup> <https://eua.eu/resources/publications/443:eua-statement-on-ttip-and-tisa.html>

# 1. The global context and EU trade policy

1.1 The context is global, complex and volatile. COVID-19 has thrown higher education into crisis, triggering what promises to be a paradigm shift in learning and teaching methodology and, by extension, in funding and employment practices. Its full impact may not be known for many years; it would be foolish to imagine that internationalisation strategies, both national and institutional, will not be substantially inflected.

1.2 Before the pandemic, the EU Council of Ministers, together with the new European Commission and Parliament, were already in negotiation on the EU's multiannual financial framework for the period 2021-27. COVID-19 and Brexit dramatically re-wrote the script, to the point at which this month's agreement on the budget and recovery plan is regarded as key to the continuing integrity of EU27: by reinforcing cohesion, regaining economic momentum, strengthening the Single Market and energising the Green Deal. Contingent on this agreement are the eventual scope of Horizon Europe and Erasmus+ and the extent to which they will facilitate third country participation.

1.3 In EU trade policy too, there is hiatus. This, despite the fact that former Trade Commissioner Malmström's tenure of office was widely regarded as successful: she oversaw a "new generation" of trade deals (notably CETA, JEEPA and EU-Korea) and set in train a long list of negotiations with other countries.

1.4 The new political landscape prompted Commissioner Hogan to launch a Trade Policy Review. It features, among other things, the creation of a Chief Trade Enforcement Officer post at Deputy Director-General level in DG Trade, charged with monitoring how far trade partners stick to the spirit and letter of the EU's FTAs. A [public consultation](#) has been launched, with a deadline of September 15 2020. However, Commissioner Hogan has been forced to resign following breaches of Irish COVID-19 restrictions and it will take some time for him to be replaced.

1.5 Meanwhile, on July 1, the six-month Presidency of the Council of the EU passed to Germany. Its [Programme](#) promises to push hard to finalise trade agreements with Australia, Chile, Indonesia, Mexico, the Mercosur, New Zealand and Tunisia.

1.6 It also pledges sustained efforts to resuscitate the World Trade Organisation (WTO) – in crisis largely because long-standing US complaints have been magnified by its incipient trade war with China. The EU, caught between two giants of world trade, is attempting to navigate a course which preserves the ethos of rule-based multilateralism and protects its own interests – a posture it defines as "open strategic autonomy". In line with this, it lent its weight to a Canada-led 13-country [joint communiqué](#) issued in late 2018. It has also enthusiastically sponsored the [Multi-party Interim Arbitration Agreement](#) (MPIA), a device intended to work around the US-instigated paralysis of the WTO's dispute resolution system.

1.7 More directly relevant to higher education are the ongoing WTO talks on [domestic regulation disciplines](#) in the services sector. These aim for greater transparency in the recognition of professional qualifications, as well as of licences and approvals for service provision, in the framework of FTAs. They involve amplifying Article VI.4 of the General Agreement on Trade in Services (GATS). A text agreed by 59 countries (excluding the US) was due to go to the now-postponed 2020 WTO ministerial conference. It will presumably appear in time for the re-scheduled event in June 2021. It is likely to put the spotlight on the mobility of accountants, architects and lawyers.

## 2. Higher education services

2.1 The picture is complicated. In its FTAs the EU routinely states that, as per Article I of the GATS, “services supplied in the exercise of government authority” are excluded. The statement has a categorical ring, but such are the varieties of higher education funding systems and modes of institutional autonomy that it is open to different interpretations. Moreover, the EU has exclusive competence in international trade, but enjoys only complementary competence in higher education. Individual Member States, therefore, can – and do – set limits to the extent to which overarching trade agreements affect their national higher education systems.

### CANADA (CETA)

2.2 The CETA is a case in point. Fourteen Member States (i.e. one half of EU28) “took reservations”, which set conditions on any foreign venture intending to establish as a higher education provider. They involve special authorisations, economic needs tests, and nationality requirements.

2.3 It is because the CETA is based on more than one level of competence in the EU (EU institutions and Member States)<sup>2</sup> that the Commission deemed it a “mixed agreement”. Accordingly, it has to be ratified by national and regional administrations as well as at EU level. This process has not yet been completed. It is procedurally complex and, over time, vulnerable to the changing political configurations of elected bodies.

2.4 At one stage, in 2016, the Walloon government raised such forceful objections that Canada and the EU were pressured into issuing a [Joint Interpretative Instrument](#). It confirmed the right of “governments, at all levels [...] to support the provision of services that they consider public...” Moreover, it guaranteed that the CETA would not require privatisations; nor would it prevent existing privatisations from being brought back into the public sector.

2.5 Yet the CETA has still not been ratified. It has been provisionally implemented. In effect, this means partially implemented, the principal sticking point being the absence of an agreed investor-state dispute mechanism (ISDS).

2.6 All of these factors, taken together, suggest that due diligence would likely dissuade Canadian entrepreneurs from establishing higher education institutions in the EU. They might have no redress should relatively liberal governments de-liberalise their higher education markets. In any case, Canada has become increasingly successful in international student recruitment, which is where its efforts are likely to be concentrated.

2.7 The CETA has an [EU Domestic Advisory Group](#), composed of representatives of social partners and civil society. The European Trade Union Committee for Education (ETUCE), in which EUA is a partner organisation, has a seat on the DAG; it has consistently opposed the inclusion of education services.

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2 The same is true of Canada, where a range of responsibilities are devolved from the federal level to the Provinces.

## JAPAN (JEEPA)

2.8 The JEEPA's Services chapter is based on a negative listing: because it is not explicitly excluded, higher education is included. The reservations entered by EU MSs are broadly the same as in the CETA, the exceptions being some movement towards liberalisation in Czech Republic, Italy and Slovakia.

2.9 The JEEPA came into force on February 1 2019. It, too, has a [Domestic Advisory Group](#), dealing not with services specifically, but with issues of trade and sustainable development, notably labour laws and environmental policy.

2.10 Outside the framework of the JEEPA, the [EU-Japan summit](#) of April 2019 committed to the co-funding of joint research and innovation projects, as well as to the joint funding of consortium-based Master programmes.

## KOREA (EU-KOR)

2.11 Like the JEEPA, the EU-KOR Services chapter uses a negative listing, which means that higher education is covered by implication. The establishment of higher education institutions in each other's territory is therefore possible. However, over half of what was then EU28<sup>3</sup> impose super-sectoral restrictions of one sort or another on the purchase of real estate by Korean enterprises, on the nationality of personnel and on the volume of investment. Korean higher education institutions wishing to establish would have instead to finesse an arrangement with a local partner. Moreover, five MSs reserve the right to depart from the broad principles of market access and national treatment: Cyprus, Finland, Malta, Romania and Sweden.

2.12 South Korea, for its part, allows the establishment of EU private higher education providers, but imposes a nationality quota on management teams. It also excludes the provision of medical education, teacher training, postgraduate programmes in law, and online and distance education. Further restrictions exist in the Seoul Metropolitan Area.<sup>4</sup> It is worth noting that, other parties permitting, South Korea intends to allow its higher education sector to open campuses abroad.<sup>5</sup>

2.13 The EU-KOR also has a Domestic Advisory Group, but there is a dearth of documentation on the DG Trade website. The DAG is said to focus mainly on labour, environment and climate issues. EU-KOR is the first EU FTA to contain a chapter on sustainable development, but inadequate labour rights in South Korea have proved to be a stumbling block, triggering formal dispute procedures in 2019 which have yet to be concluded.

2.14 Overall, the DG's EU-KOR site is less well furnished than those of the CETA and JEEPA. Annual reports appear only up to 2017, although there is a staff working document evaluating the FTA in 2019<sup>6</sup>.

## SINGAPORE (EUSFTA)

2.15 Singapore has long been a high priority for the EU. As the strongest economy in the Association of Southeast Asian Nations (ASEAN), it is regarded as a stepping-stone into a wider regional agreement important both for trade and geo-strategic reasons – although a dispute over palm oil has stalled the momentum.

<sup>3</sup> EU-Korea FTA, Official Journal L127, 14 May 2011, Annex 7-A-2, pp.1198 et seq

<sup>4</sup> Ibid., Annex 7-A-4A, p.1277

<sup>5</sup> See <https://www.universityworldnews.com/post.php?story=20190926135137687>

<sup>6</sup> SWD(2019) 102 final, available on request from <https://ec.europa.eu/transparency/regdoc/?fuseaction=list&coteld=10102&year=2019&number=102&version=ALL&language=en>

2.16 The issues with “mixity” which haunt the CETA also feature in the decade-long negotiation of the EUSFTA. It finally came into force in November 2019, minus a free-standing Investment Protection Agreement which has still to go to national and regional parliaments for ratification. The European Parliament voted the EUSFTA through, albeit with reservations regarding labour rights in Singapore.<sup>7</sup>

2.17 Alongside the FTA sits a Framework Agreement on Partnership and Cooperation which covers an extensive range of policy lines including education and culture. This too has still to go to national and regional parliaments for ratification.

2.18 As regards higher education services, Singapore is open to all EU private providers in every field except the training of medical doctors. The EU schedule is, predictably, more differentiated. Some Member States reserve the right to depart from the overarching agreed levels of market access and national treatment and to introduce restrictions as they see fit: Austria, Bulgaria, Cyprus, Czech Republic, Finland, Greece, Malta, Romania, Slovakia, Spain, Sweden. Others insist on economic needs tests or nationality quotas on ownership, management or academic staff: Denmark, France, Italy. The remainder set no conditions. On an EU-wide basis, incoming private higher education providers are subject to “concession”, a procedure the modalities of which are enshrined in [Directive 2014/23/EU](#).

### 3. Government procurement

3.1 Higher education services can be delivered on a straight commercial basis, but also in the framework of public procurement. This can be under the umbrella of the WTO’s [Government Procurement Agreement](#) (GPA) or, if one or other Party is not a signatory to the GPA, specific arrangements can be made within an FTA. The GPA is plurilateral rather than multilateral; WTO members may join if they so choose.

3.2 Canada<sup>8</sup>, Japan, Korea and Singapore are all GPA signatories, as is the EU. Each has filed a set of [schedules](#), listing the service sectors in which they are willing to negotiate.

GPA services schedule	
<b>EU</b>	Does not cover education services, but coverage includes accounting, architectural and engineering services
<b>Canada</b>	Does not cover education services, but coverage includes accounting, legal, and some architectural and engineering services
<b>Japan</b>	Coverage includes education services (primary, secondary, higher and adult), and some architectural and engineering services
<b>Korea</b>	Does not cover education services, but coverage includes accounting, architectural and engineering services
<b>Singapore</b>	Does not cover education services, but coverage includes accounting, architectural, engineering and veterinary services

<sup>7</sup> In the 2020 overview by The Economist Intelligence Unit’s Democracy Index, Singapore is rated as a ‘flawed democracy’.

<sup>8</sup> The Commission has published an informative guide to [How EU businesses can take advantage of public procurement opportunities under the CETA](#). Universities are listed among the Canadian procuring entities.

3.3 There are other countries with which the EU is currently negotiating FTAs. Some are party to the GPA: Australia, New Zealand, USA; others, such as Chile, India, Indonesia, the Mercosur, Mexico, Tunisia, Vietnam, are not. The German Presidency speaks of the opening up of procurement markets with all third countries as a wide-ranging policy initiative.

GPA services schedule	
<b>Australia</b>	Has a negative list: covers all services, except four named sectors, including health and welfare, research and development
<b>New Zealand</b>	Has a negative list: covers all services, except certain named sectors, including health and welfare, research and development, and education.
<b>USA</b>	Has a negative list: covers all services, except named sectors which include research and development

3.4 FTAs negotiated between GPA partners must hold to the commitments they have made, but by agreement they can open up procurement opportunities which go further than their GPA schedules. The position in each of the four “new generation” FTAs is boxed below:

Public procurement provisions	
<b>EU-Canada</b>	Canada’s commitments are more open than in the GPA schedule; this brings it into line with the EU and establishes reciprocity of access. Both sides maintain the exclusion of education services. However, if certain Member States wish to offer access, they must do so by ‘concession’.
<b>EU-Japan</b>	The FTA leaves unchanged the asymmetry already visible in the GPA schedules. Overall, although the market opening (to 54 cities) is less extensive than in the CETA, the EU-Japan summit of April 2019 committed both parties to enlarging it. In education, the EU has access to the Japanese procurement market, but not vice versa.
<b>EU-Korea</b>	The FTA aims to expand government procurement in both directions and has a Working Group to monitor developments. By 2018 there had been little movement and a Commission working document noted that ‘Korea’s integration into the global government procurement market remains very limited.’ <sup>9</sup> The WG, meeting in 2019, suggested that reliable data on the levels of procurement was lacking.
<b>EU-Singapore</b>	The FTA does not go beyond the provisions of the GPA schedules. There is nevertheless an intention on the EU side to further develop procurement access.

9 SWD/2019/102, Evaluation of EU-Korea FTA, p.31



## 4. Mutual recognition of professional qualifications

### CANADA

4.1 The CETA was the first of the EU's "new generation" FTAs to set out in detail the methodology of mutual

1. "*Verification of equivalency*": this step looks for congruence in the scope of professional qualification and practice.
2. "*Evaluation of substantial differences*": these might show up in "essential knowledge", in the content or duration of basic training, and in the configuration of component disciplines.
3. "*Compensatory measures*": adaptation periods or aptitude tests, mirroring the interventions allowable in the General System of [EU Directive 2005/36/EC](#).
4. "*Identification of the conditions for recognition*": a summary of the above steps, setting out precisely what they represent for the profession concerned.

recognition. Annex 11-A provides non-binding guidelines which propose four steps:

The text was agreed prior to the revision of the Directive in 2013, which probably explains why course duration still qualifies as a substantial difference in the CETA, but no longer in the Directive.

4.2 Mutual recognition is in place once the CETA's Mutual Recognition Committee decides that all the necessary conditions have been met. The Committee has sat only once so far – in April 2019. It reviewed a proposal submitted jointly by the [Architects Council of Europe](#) (ACE) and [Canadian Architectural Licensing Authorities](#) (CALA), declaring it to be legitimate and inviting the two bodies to engage on the steps boxed above. Although the Committee has not yet met for a second time, the hope is that the MRA will be implemented in 2021.

4.3 The architects have long been the front-runners. When the Commission asked in 2018 for suggested topics for a Regulatory Cooperation Forum, [Canadian and European geologists](#) expressed an interest in an MRA. So, too, did the [Spanish body of civil engineers](#).

### JAPAN

4.4 The JEEPA welcomes mutual recognition. Its Committee on Trade and Services filters the submissions according to the degree of convergence of professional standards, as well as the potential economic value of an MRA.

### KOREA

4.5 EU-KOR has a Working Group on MRAs, but none of its documentation has been posted on the DG Trade website. As was reported in EUA's 2018 Update, architects and engineers lead the field, but without any concrete results so far.

## SINGAPORE

4.6 Article 8.16 of the EUSFTA allows professional bodies to explore the possibilities for MRAs, with due consideration to economic need and to the broad compatibility of professional profiles. The expectation is that accountants, architects, engineers and lawyers will get special encouragement.

4.7 The EUSFTA is managed by a Trade Committee scheduled to meet every two years. No record of a first meeting has been posted on DG Trade's website. Decision on MRAs rests with one of the specialised committees reporting to it, the Committee on Trade in Services, Investment and Government Procurement. This, too, will meet biennially.

# 5. Brexit

## THE SITUATION IN SEPTEMBER 2020

5.1 What is now known for certain is that the UK did not apply for an extension of the transition period; the deadline has passed. Both the UK and the EU, therefore, have public postures facing in two directions: preparing for a no-deal outcome; and professing readiness to engage in concerted negotiations throughout September, in order to allow time for the ratification<sup>10</sup> of a trade deal from October onwards. Both roadmaps end on December 31 2020. Thereafter, England, Scotland and Wales will have left the Single Market and the Customs Union<sup>11</sup> and, in terms of EU law, the UK will have become what the Commission calls a "non-Schengen third country", further removed from the EU than Iceland, Liechtenstein, Norway and Switzerland.

5.2 In the intervening months, the German Presidency will play a key role:

We are driven by the vision of an ambitious, comprehensive partnership between the EU and the United Kingdom which does justice to the depth and breadth of our relations. [...] In this context it goes without saying that our future partnership has to find a good balance between rights and obligations as well as fair conditions for competition. This requires parallel progress in the negotiations in all areas. At the same time, full implementation of the Withdrawal Agreement remains a key objective.

Without going into detail, the German Programme effectively consolidates the EU's negotiating position: no 'cherry-picking', no sectoral agreements, a level playing field straddling a range of policy issues (state aid, environment, climate change, labour law, taxation, governance), a tight focus on Northern Ireland and on fisheries. Thus far, the EU position is solid.

5.3 By contrast, the UK finds itself obliged to conduct a strategic cost-benefit analysis of the merits and demerits of the two divergent regulatory universes to which it might belong – the EU and the US. Internally, there is no political consensus, which means that its negotiating position with both parties is weaker than it might be.

5.4 Moreover, the UK is currently engaged in trade negotiations with the Australia, the EU, Iceland, Japan, New Zealand, Norway and the US, with a relatively inexperienced body of negotiators. The UK is eager to complete as many of these as possible and as soon as possible, more for their domestic political impact than for their economic benefit.

<sup>10</sup> Certainly by the EU institutions; whether ratification in the UK will be by statutory instrument (i.e. governmental) or by Parliamentary approval is still uncertain.

<sup>11</sup> Northern Ireland will remain a de facto participant in the Single Market, in a complex arrangement, the legal and logistical details of which are a long way from being agreed.

## HIGHER EDUCATION SERVICES

5.5 Brexit does not significantly alter the EU's general attitude to HE service delivery. For the UK, however, the picture will change. Not only might the legal status of its existing operations in the EU – primarily but not only in Greece – be brought into question, but its recruitment of students and staff from the EU will reduce in volume. The British (for England), Welsh and Scottish governments have announced that incoming EU students will from 2021 onwards no longer be considered as “home” students and will be charged “international” fees. Northern Ireland has yet to decide.

5.6 It is likely that the UK will want to become more “offensive” in a sector in which it regards itself as a world-class provider. But it is not clear what the outcomes will be. After all, the UK is already wide open to foreign providers of higher education services and has little to offer by way of enhanced market access.

5.7 One clue is to be found in the UK's parallel strategic approaches to FTAs with [Australia](#) and [New Zealand](#). The export of higher education services is not mentioned, but considerable emphasis is placed on digital services, within which the higher education and related publishing sectors clearly have scope to expand. One imponderable concerns the level of digital privacy which the UK will favour – the approach taken by EU, by the US or some compromise formulation?

5.8 Little is known about the progress of the UK's negotiations with the US. The UK's [strategic approach](#), published in March, is defensive in healthcare, but eloquently non-committal in education. The US [negotiating objectives](#) take a broad and very hard line on services in general: no discrimination against US providers; no restrictions on volume; no insistence on local establishment; plus “specialized sectoral disciplines, including rules to help level the playing field for U.S. delivery services suppliers in the UK”. If the British higher education public sector shrinks in the wake of the pandemic, American private enterprise will have the opportunity to move in.

5.9 However, the published negotiating positions pre-date the onset of the pandemic. Both the UK and the US now appear to agree that a trade deal before the end of the year is very unlikely. The delays caused by Brexit and COVID19 have played a part in this, but so too do tensions over agriculture and the increasing uncertainty about the outcome of the US presidential election.

5.10 What of the UK's trading relationships with EU27? Several UK higher education institutions have for many years run locally validated programmes or franchises, notably in Greece, but also in Germany and elsewhere. Even if such courses continue to function, it is likely that their legal status will change, given that they will have originated in a third country.

5.11 An EU-UK FTA will in all likelihood feature reservations mirroring those taken by some MSs and documented in section 2 above. If there is to be no FTA, bilateral treaties may be necessary. These could be laborious to construct, with no guarantee of consistency between them. (On the last occasion when the UK contemplated bilateral treaties with its then EU partners – in an attempt to re-coup expatriate student loans from national tax authorities – the exercise was rapidly abandoned.) Moreover, in federal administrations, such as Germany, the UK will have to contend with regional authorities.

5.12 *What are the difficulties that might arise in each of EU27?*

EUA would greatly appreciate feedback through the autumn, as the contours of the future EU-UK higher education landscape begin to emerge. So, too, would UniversitiesUK international (UUKi, the British rectors' association), which has already asked its members' partners in EU27 for comment. If readers have experiences

they would like to share, please email [empl@eua.eu](mailto:empl@eua.eu) and [Eduardo.ramos@international.ac.uk](mailto:Eduardo.ramos@international.ac.uk) UUKi has lobbied intensively since the Brexit referendum in 2016. The demands it makes of the UK government regarding a future EU-UK FTA are set out in its recent submission to a [House of Lords sub-committee](#).

## GOVERNMENT PROCUREMENT

5.13 Thus far in the EU-UK negotiations the UK has refrained from tabling a text on government procurement. It is not clear whether the UK's membership of GPA has been disaggregated from the EU's membership – although the UK's vision of deals with Australia, New Zealand and the US strike a confident note in this regard. In each case, it intends to push for access in areas which go beyond the GPA schedules, including, by implication, education. But the overall picture remains hazy, not least because of doubts whether the UK's devolved nations (Scotland, Wales, Northern Ireland) will agree on procurement policy.

## RECOGNITION OF PROFESSIONAL QUALIFICATIONS

5.14 Recognition, which was easy to negotiate for the transition period, is proving to be a policy field in which baseline positions are irreconcilable and compromise a distant prospect.

5.15 Article 5.14 of the EU's [draft agreement](#), published in March, transcribes from the CETA the mechanisms for the conclusion of MRAs. Chapter 13 of the UK's [draft negotiating document](#), while apparently conceding the point that automatic recognition will no longer be possible, instead proposes that all requests for recognition should effectively fall within the scope of an arrangement mirroring that of the Directive's General System<sup>12</sup>. Recognition would then depend on the absence of substantial differences and on the possibility of aptitude tests acting as compensation mechanisms. The UK presumably assumes that, after decades of automatic recognition in the sectoral professions, such differences are unlikely to arise and that, in practice, the pre-Brexit situation will continue as before, at least in the short term.

5.16 Indeed, in the DG GROW Stakeholder online meeting on the EU-UK agreement (July 14 2020), Commission speakers spoke of recognition as an area in which the UK wanted to perpetuate the rights which it enjoyed as an EU Member State.

5.17 Qualifications in the legal profession are a case in point – legal services being a field in which the UK has historically been very active in the Single Market. The Financial Times<sup>13</sup> reports that, rather than request access for its lawyers from individual Member States, as would be the normal practice for third countries, the UK seeks EU-wide automatic recognition with a carve-out for dissenting MSs.<sup>14</sup>

5.18 In answer to a question posed by EUA, the Commission insisted in the stakeholder meeting that while recognition was negotiable, any agreements would be along the lines of the MRAs already set down in other recent FTAs. Insofar as the Commission regards incursions by the UK as a threat to the integrity of the Single Market, its position is effectively a red line – as evidenced by the advice it gives to professionals in its [preparedness notices](#).

5.19 Still, some civil society stakeholders are unhappy with this position, including big-hitters like [Business Europe](#). Among the sectoral professions, the Standing Committee of European Doctors (CPME), in a [collective letter to Michel Barnier](#) with six other medical bodies, has urged the EU to take up the UK's proposal.

<sup>12</sup> Title 3, Chapter 1, of Directive 2005/36/EC on the Recognition of Professional Qualifications

<sup>13</sup> July 13, 2020, behind the FT pay-wall at <https://www.ft.com/content/f089cf11-26e0-4354-9acf-caa2bf2e885f?desktop=true&segmentId=7c8f09b9-9b61-4fbb-9430-9208a9e233c8#myft:notification:daily-email:content>

<sup>14</sup> Lawyers are not covered by Directive 2005/36/EC, but by much older Directives 77/249/EEC and 98/5/EC.

5.20 However, the EU’s red line is backed by the strength of its negotiating position. The demand for mobile qualified healthcare workers is greater in the UK than in the EU. British-born and British-trained professionals are always prey to the temptation to migrate to Australia and the US..

5.21 Meanwhile, the supply of British-trained professionals born in EU27 seems bound to decline with the imposition (by England, Wales and Scotland) of international tuition fees on EU students. Cross-border patient mobility from the UK into EU27 will also fall. Clinical trials and other research activities in which the UK has always been prominent can be addressed both by a standard FTA and by an agreement on UK access to Horizon Europe. The EU, for its part, will undoubtedly work hard to consolidate its own integrated healthcare workforce.

5.22 Logic suggests that the EU holds all the cards. If it ultimately opts to cross its own red line, it could be at the cost to the UK of a major concession in another negotiated discipline – fisheries, perhaps, or equivalence in financial services or data flows? Only time will tell.

5.23 There is no doubt that the UK is anxious to secure MRAs in its first generation of post-Brexit FTAs. Pressure to curb immigration was a key factor in the vote to leave the EU. Hence the UK’s new [points-based immigration system](#), which makes no distinction between EU and non-EU applicants. Tellingly, it avoids any mention of MRAs – precisely because these can provide a way of fast-tracking or even by-passing the new system, pragmatically rendering the importation of high-skilled foreign labour less visible to those elements of the government’s constituencies so hostile to immigration.

5.24 Which professions does the UK regard as priority in its FTA negotiations?

Country	Professions
<b>Australia</b>	None specified, but strong focus on financial services, professional and business services, transport services
<b>Japan</b>	Accountancy and legal professions
<b>New Zealand</b>	Accountancy, audit, architecture, engineering and legal professions
<b>USA</b>	Accountancy and legal professions

5.25 In addition, the FTAs will be able to subsume MRAs already agreed – for example that between the [Institute of Chartered Accountants of Scotland](#) (ICAS) and two US accountancy bodies.

5.26 Typically, the final stage of an FTA negotiation is the “horse-trading” stage, in which sectoral issues are used as bargaining chips for securing quite unrelated objectives. EUA will endeavour to keep interested readers informed.

**Post-script** On August 1, the EU-Vietnam FTA came into force. EUA will report on this in due course.

Comments and corrections are welcome:  
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