



Brexit: UK/EU finalize agreement, some employment provisions

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The United Kingdom (UK) and the European Union (EU) finalized the Trade and Cooperation Agreement (TCA) on 24 Dec 2020, prior to the UK's departure from the EU's Single Market and Customs Union on 1 Jan 2021. The TCA is an umbrella agreement, setting out broad provisions for regulating the relationship between the EU and the UK, and awaits approval by the European Parliament in early 2021.

The TCA comprises 430 pages, with a further 844 pages of annexes and protocols containing important details that often further qualify the provisions set out in the TCA (for example, provisions for short-term business trips between the UK and the EU).

Highlights

Data protection

The EU's General Data Protection Regulation will apply to personal data transfers from the EU to the UK. For now, the UK is treated temporarily as an EU member state for the purpose of transferring personal data because the TCA does not include an adequacy decision covering personal data transfers from the UK. The EU aims to publish its decision on the adequacy of UK personal data law within four months, with the possibility to extend for up to six months. In the future, certain organizations will be subject to both the UK and EU data protection laws, depending on their data processing activities.

End of free movement between EU and UK, with exceptions

The free movement of persons between the EU and the UK ended on 1 Jan 2021, and all movement is now subject to the EU and the UK's immigration legislation applicable to third country nationals. However, certain types of short-term business trips (the TCA refers to these as "mode 4") and visits for other purposes (such as intra-company transfers of up to three years' duration) will be allowed. The EU and the UK have agreed that short-term visits of up to 90 days in any 180-day period do not require

visas. The TCA lists the permitted purposes for short-term business trips but individual EU member states also can impose their own restrictions. This means that a business trip purpose permitted by one member state might not be allowed by another member state. UK nationals intending to stay for any purpose in an EU member state for periods exceeding 90 days must comply with the entry conditions imposed by that member state.

Social security coordination

The coordination of the majority of social security benefits will continue for temporary visits, avoiding the imposition of two sets of social security contributions. Individuals will not lose accrued benefits if they work in both the EU and the UK. The current provisions for necessary or emergency healthcare will “in principle” continue to apply for temporary stays in the UK and the EU. National laws could impose additional requirements for longer stays.

UK workers who are posted to work in the EU, or vice versa, for purposes other than short-term visits, usually will have to pay social security contributions in the host country, but will be subject to that country’s legislation. However, member states could request continuation of the EU’s arrangements for the posting of workers for a period of up to 15 years.

Mutual recognition of professional qualifications

The mutual recognition of professional qualifications ended on 31 Dec 2020, although the TCA foresees a possible mechanism to allow for mutual recognition on a case-by-case basis, and for specific professions. Member states and the UK also can agree to bilateral recognition provisions.

EU law in UK, labor and social standards

The TCA allows the UK to change employment law derived from EU law, but it imposes “a binding and enforceable commitment” to the nonregression of labor standards by the UK in force as of 31 Dec 2020. The UK parliament could change UK employment laws in the future, but any changes must meet the TCA’s standards. The TCA says that upholding labor and social provisions is key to preventing trade and investment distortions between the UK and the EU.

The TCA details the labor and social standards that the UK must uphold, which include fundamental rights at work, occupational safety and health standards, fair working conditions and employment standards, information and consultation rights at company level, and the restructuring of undertakings. Also relevant to employment standards, the EU and UK agreed to implement relevant internationally agreed to principles, such as ILO Conventions and the Council of Europe’s European Social Charter. The UK also will respect the rights set out in the European Convention on Human Rights.

The TCA foresees administrative and judicial proceedings, and dispute settlement mechanisms to enforce labor, social and personal data protection standards, and to oversee the agreement’s implementation. The TCA also allows unilateral “rebalancing measures” to be used if the “significant divergences in the areas of labor and social” protection were to occur, to ensure “the future-proofing of

level playing field provisions to maintain open and fair competition over time.”

Related resources

- [Trade and Cooperation Agreement](#) (European Union, 31 Dec 2020)
- [FAQs](#) (European Union, 24 Dec 2020)

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