

COMPARATIVE DEAL ANALYSIS - ANNELI HOWARD, MONCKTON CHAMBERS 18.10.2019

Issue	Lisbon Treaty	May Deal	BJ Deal
Close relationship	Binding Duties of mutual trust and sincere cooperation to achieve EU aims and objectives and promote democracy, equality and the internal market	Non binding commitments to cooperate in areas of mutual interest, including on regional and global issues. Strong relationship between the Parties, based on cooperation and regulatory alignment	Loose commitment for “civil society dialogue” to discuss strategic direction and opportunities for cooperation. More distant, based on fact that the UK and EU will be distinct markets and distinct legal orders
Fundamentals Rights, Free Movement and Citizenship	Strong protection based on citizenship, free movement and Charter of Fundamental Rights. EU adheres to the ECHR and those rights are upheld as part of EU law.	<p>No citizenship, Charter or free movement. Rights of EU citizens in the UK are protected for their and their descendants lifetime</p> <p>No guarantees for British Citizens in other Member States</p>	<p>No citizenship, Charter or free movement. Rights of EU citizens currently in the UK are protected for their and their descendants lifetime</p> <p>No guarantees for British Citizens in other Member States – based on reciprocal travel arrangements and non-discrimination.</p> <p>Short term leisure travel permitted on payment of visa and insurance. Short term business travel subject to host State rules.</p> <p>No commitment to regulatory alignment so retained rights from EU law in the UK may change or not keep up with new EU standards</p>

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Goods	<p>Free and frictionless movement within 31 EEA States under Single market and customs union –no tariffs, customs duties or tax barriers.</p> <p>Products lawfully sold in one Member State are free to be sold in other Member States unless public interest reason needs controls.</p> <p>Common rule book on standards and phytosanitary/product safety so no need for checks</p> <p>Agriculture and fish subject to CAP and CFP – mutual cooperation and EU subsidies</p>	<p>Limited movement of goods subject to alignment and customs cooperation</p> <p>Unique trading relationship on goods that is as close as possible, creating a free trade area, combining deep regulatory and customs cooperation, underpinned by provisions ensuring a level playing field for open and fair competition</p> <p>No Single Market</p> <p>Creation of single customs territory</p> <p>Regulatory alignment</p>	<p>Facilitated movement of goods but not frictionless.</p> <p>Trading relationship at a distance on basis of an ordinary Free Trade Agreement (like Canada or Japan)</p> <p>No Customs union</p> <p>No Single market</p> <p>No regulatory alignment</p> <p>No tariffs or customs duties but customs checks, to be facilitated by technology and trusted schemes if possible.</p> <p>Non Tariff barriers may arise due to technical barriers to trade [(TBT)] and sanitary and phytosanitary measures – will increase if regulatory divergence on product standards and safety requirements</p>

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Establishment /Services/Capital	<p>Companies have the right to set up in any Member State – regulated by their home state of HQ</p> <p>Full passporting and mutual recognition. EU citizens and companies have right to deliver and receive services in 31 EEA States – including over internet. Governed by EU frameworks or rules of home state so no need for compliance with 31 sets of rules.</p>	<p>No freedom of establishment, services or capital</p> <p>Based on WTO/GATS – some additions from EU FTAs with third states</p> <p>No passporting for services so providers have to comply with different sets of host rules and only protected against discrimination</p> <p>Many UK companies will have to move their HQ to other States to benefit from passporting arrangements.</p> <p>Individuals will have to move or requalify elsewhere.</p> <p>May be arrangements for professional qualifications where in mutual interest</p>	
Free Trade Agreements with rest of the world	<p>UK benefits from 40 different FTAs that EU has concluded with over 70 countries. More in pipeline.</p> <p>UK can sell goods to third states on tariff free basis and protections from non tariff barriers and standards</p>	<p>UK will lose benefit for all EU FTAs and has to negotiate its own deals with third states.</p> <p>Not clear that third states will permit UK to roll-over the terms negotiated with EU or benefit from same tariffs. Likely to take between 3-7 years. In the meantime, UK importers will have to pay tariffs and pass on in higher prices for consumers.</p> <p>UK exports may face charges and non tariff barriers.</p> <p>Most FTAs do not cover services or limited access and protections</p>	

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<p>Regulatory frameworks <i>(e.g. Medicines, transport, energy, chemicals, scientific research, nuclear, telecoms and broadband and aviation)</i></p>	<p>Common harmonised frameworks to create level playing field across regulated industries. Aim to deliver lower prices and better service/safety for citizens and security of supply.</p> <p>UK companies can trade in 31 States</p> <p>Full participation and cooperation in regulatory networks and agencies. UK has full role in policy formation and rule making by regulators, including authorisations and enforcement</p> <p>UK also has access to EU funding e.g. broadband and transport infrastructure</p>		<p>Parties to agree disciplines for national rules and horizontal provisions such as on licensing procedures</p> <p>Voluntary cooperation between enforcement bodies - not binding; no duty of sincere cooperation</p> <p>Most regulation done through administrative decisions rather than EU legislation. No participation in rule making or regulatory decisions; UK will be observer and rule taker</p> <p><u>Financial Services</u>: UK preserves regulatory and decision-making autonomy but seeks equivalence framework as third state. No right to passporting. Close cooperation on regulatory and supervisory matters with EU and in international bodies.</p> <p>Desire to explore cooperation in medicines, chemicals and air safety but rule taker with observer status not full participation</p> <p><u>Telecoms</u>: provisions to ensure mutual access to networks</p> <p><u>Transport</u>: open access for road freight and maritime cargo, no mention of rail networks only cross border programmes. No mention of involvement in Open Skies for aviation –separate Comprehensive Air Transport Agreement (CATA). Limited Cooperation as a third country</p> <p><u>Nuclear</u>: Limited Cooperation within Euratom as third country – not full participant</p>

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Employment and social policy	<p>Binding Treaty rules on equality and protection from discrimination on sex, race, age, religion, sexual orientation or disability.</p> <p>Common rules on working conditions, training, equality in pay, pensions and access to benefits. EU Social Funding</p>	Close alignment	<p>UK free to diverge – no regulatory alignment commitment but non binding commitment to uphold high standards</p> <p>Cooperate in international fora, such as the G7 and the G20, where it is in their mutual interest</p>
Health	<p>High level of health protection is key EU policy – EU policies for cooperation in public health and mental health., drug safety and phytosanitary requirements.</p> <p>UK is party to EHIC scheme so UK citizens can benefit from healthcare in EU states</p> <p>UK party to regulatory frameworks and has access to funding.</p>	Close alignment	<p>UK free to diverge – no regulatory alignment commitment but non binding commitment to uphold high standards</p> <p>Cooperate in international fora, such as the G7 and the G20, where it is in their mutual interest</p>
Education	<p>Right to education guaranteed in Charter. Access to Erasmus scheme and Horizon 20/20 funding. Common rules on vocational training</p>	<p>Lose commitment to student schemes and training</p> <p>Loss of 20/20 funding and EU research programmes</p>	

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Environment	<p>High level of environmental protection is key EU policy Binding Treaty rules on environmental protection and sustainable development. Binding environmental principles. Many schemes set out in Directives</p> <p>Binding rules on animal welfare</p>	<p>Close alignment</p>	<p>UK free to diverge – no regulatory alignment commitment but non binding commitment to uphold high standards</p> <p>Cooperate in international fora, such as the G7 and the G20, where it is in their mutual interest. Commitment to uphold Paris Agreement and UN standards</p>
Consumer protection	<p>High level of consumer protection is key EU policy. Binding consumer protection rules in Treaty and Directives</p>	<p>Close alignment</p>	<p>UK free to diverge – no regulatory alignment commitment but non binding commitment to uphold high standards</p> <p>Cooperate in international fora, such as the G7 and the G20, where it is in their mutual interest</p>
Broadcasting, digital services and data protection and intellectual property	<p>Binding rules on data protection and treatment of personal data</p> <p>Binding rules for trademarks, copyright, EU patents and design rights</p>	<p>Parties should establish provisions to facilitate electronic commerce and ensure data flows</p> <p>No mention of rule of origin in AVD2 for broadcasting, social media platforms and programming industries – large sector of UK economy</p> <p>FTA to provide for high level of protection going beyond WTO TRIPS and cooperation and information exchange. Not clear if UK will adhere to unified Patent.</p>	

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		UK commits to high level adequate protection of personal data in regulatory and law enforcement	
Competition and state aid	<p>Binding rules on anticompetitive practices and right to damages for individuals on back of Commission decisions</p> <p>Binding rules prevent unfair state subsidies and advantages</p>	<p>UK to adhere to rules on competition and state aid to preserve level playing field. – Cannot pursue deregulated model</p> <p>Individual rights to sue and enforce may still be affected.</p>	
Public procurement	<p>Binding rules on award of government and public contracts and concessions, based on best value for money.</p> <p>UK companies have right to take part in tenders in other Member States. Right to challenge unlawful awards.</p>	Lower standard of protection. UK to adhere to WTO GPA and ensure enforcement mechanisms against arbitrary awards	
Defence/Security	<p>Common foreign and security policy for peacekeeping, humanitarian relief and conflict prevention or resolution</p> <p>Exchange of information and cooperation</p>	Broad, comprehensive and balanced security partnership	

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Criminal procedure	<p>Common area of freedom, security and justice – common rules for cross border crimes such as trafficking, drugs, organised crime</p> <p>UK party to European Arrest Warrant, Eurojust and Europol</p>	<p>Law enforcement and judicial cooperation in criminal matters, foreign policy, security and defence, as well as thematic cooperation in areas of common interest.</p> <p>Extent of cooperation and obligations will depend on the closeness and depth of EU/UK relationship – depends on FTA negotiations</p>	
Civil procedure and recognition of judgments across EU	<p>Common policy on asylum and immigration – Common framework for issuing civil claims in member States courts and allocating jurisdiction. Recognition and enforcement of judgments across EU states in civil and matrimonial matters. Judicial cooperation regarding access to justice</p>		<p>No mention of civil justice arrangements.</p> <p>No mention of Brussels or Rome Regulations for civil jurisdiction</p> <p>Commitment to maintain judicial cooperation for matrimonial matters</p>
Private Enforcement Dispute resolution	<p>National regulators apply EU law with appeals to UK courts. Direct right of action for individuals before UK courts against the UK Government or companies/individuals</p> <p>Right to sue in other Member States courts on EU law</p> <p>Binding rulings from CJEU in disputes between UK and other Member States or EU institutions.</p>	<p>EUWA removes direct effect of EU law in the UK and the right to bring proceedings against UK Government for breach of EU law or Francovich damages from State</p> <p>UK nationals not able to enforce EU rights against other Member States</p> <p>Disputes between States resolved through political conciliation, mediation and Joint Committee or Arbitral Tribunal. Possibility of sanctions or financial compensation or loss of market access if UK or EU Member State reneges on commitments in FTA.</p> <p>Still possibility for binding references to the EU Court of Justice where dispute raises question of EU law.</p>	