Twitter Thread by George Riddell



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Been a lot of discussion recently around services trade in the deal between the UK and EU. Having read through the agreement over the past couple of days, my impressions■

First off, services is definitely included. Question for service providers, is will it be enough?

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My overall impression is that the EU has offered among the best in class for its FTAs similar to Canada and Japan.

But this access is a far cry from access to the Single Market and how is constructed as part of a trade agreement for the EU reflects that.

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Unlike for goods trade, once you've got a product through all the customs and regulatory procedures into the EU, it can be sold anywhere in the EU, or its "entered circulation".

For services trade, that isn't the case. Its still done on a member state by member state level.

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This is even true in the trade agreement itself where although the provisions set out in the Services and Investment chapter sounds awfully good - lots of principles about the freedom to establish and allowing the cross-border trade in services.

It's only when...

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You get to the annexes and you realise both the EU and individual member states have put entry conditions across huge areas of different services sectors both now (existing measures) & in the future. Don't worry too much about the future reservations, it's the existing ones.

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So what sort of barriers or obligations are we talking about - they can range greatly by sector, member state and how the service is provided.

Typical examples include additional licences when setting up a business, equity caps, nationality requirements for board seats.

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So you're a business, how do you manage all that going forward?

Its tough. Need to understand how you're providing the services, as well as where you're providing them in order to delve down into the additional barriers that will arise.

So let's first deal with the how.

7/n



Three basic ways you can provide services:

1. Travel to another country and do it in person.
2. Do it over the Internet.
3. Set up subsidiary or branch.

Let's start with the first one first.

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As @SamuelMarcLowe has written about recently using example of fashion models. The rules governing what you can do when travelling between the EU and UK on a business trip is changing fundamentally.

Before, you could jump on a plane without worrying if you need a work visa.

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Now, the UK-EU deal says that only certain (typically non-commecial) activities will be allowed visa free, like attending a conference or internal company meeting.

The added kicker, some member states have put down reservations against certain listed activities.

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While other members have a more Liberal system that isn't captured by the deal. And if you get caught with the wrong category, then penalties range from being refused entry and the border through to fines and challenges with future visa applications.

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This means that companies going forward will need to:

1. Track who's going where.
2. Track how long they're staying for.
3. What activities they're undertaking while there.

The how long matters because even visa free is 90 days in every 180.

12/n

And all that's before we get to the actual time and cost needed for visa applications.

But moving onto the other ways of providing services digital. Here the digital chapter is genuinely one of the most advanced in the world.

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But most of the provisions are both sides promising not to do stuff, like forcing companies to handover source code, or to keep data in a particular country. It's good, but doesn't address the question - can data flow between the UK and EU?

For that, we need adequacy

14/n

And what the deal has done is granted a free grace period where in the next four months, the European Commission will need to decide whether the UK's data privacy regime is "adequate" for protected data to continue to flow.

This isn't guaranteed but is likely.

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But companies shouldn't expect this to be stable. There have been numerous legal challenges to the international aspects of the EU's GDPR with not only agreements with the US being struck down, but also calling into question alt measures companies were recommended to take.

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So companies need to be using the next four months to:

1. Understand where your data is being stored.

2. Understand if its protected data for GDPR purposes.
3. Where is it flowing.
4. What processing is taking place and who is doing it.

17/n

Then they can explore whether or not to look into things like standard contractual clauses and binding corporate rules.

They might also need to register in a member state a local data representative. Should do so ASAP if so.

Because the fines can get quite large.

18/n

Moving onto establishing a new subsidiary or branch. Typically the restrictions here are on a sliding scale - if you're operating in an unregulated service sector then there are typically fewer hoops to jump through.

But...

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If you're in a regulated sector like financial services, accounting, audit, legal, engineering then there are higher levels of protection that member states have.

Again differs so much between member states and sectors.

20/n

Turning back to the agreement, both sides took additional commitments in legal services, maritime services, telecommunications services which were a good outcome.

But, as discussed elsewhere, not much on Financial Services and the equivalence decisions (for another time)

21/n



One major downside, that hasn't been discussed as much is the impact on the UK creative sector.

In addition to the visa issues for travelling musicians and artists. Audio-visual commitments are expressly carved out.

This is not surprising for an EU FTA but it isn't great.

22/n

The other area that was a dissapointment was on the Mutual Recognition of Professional Qualifications or MRPQ. While both sides managed to agree a framework like CETA. No actual recognition was granted.

23/n

This means, from tomorrow any individual who holds a professional qualification that hasn't already been recognised (part of the Withdrawal Agreement) will not have any recourse to have their qualification recognised.

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It also represents a huge uphill task for the different professional bodies to come together and negotiate profession by profession and member state by member state to agree on a mutual recognition agreement.

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This will have a real impact on many companies who not only face restrictions in providing their services from a immigration perspective, but also if they can legally provide the service while there.

Liability and insurance can both be impacted as a result.

26/n

So, for those companies struggling to answer the question - Can I still provide my services in the way that I want to?

There isn't a simple answer as it depends on the sector, member state and how you're delivering it.

My answer can only be maybe.

27/ends

