

HOUSE OF LORDS

European Union Committee

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13th Report of Session 2019–21

# **The future UK- EU relationship on professional and business services**

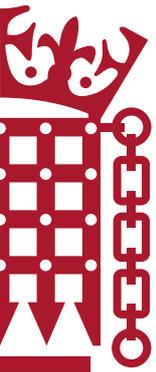
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Evidence is published online at <https://committees.parliament.uk/work/305/the-future-ukeu-relationship-on-professional-and-business-services/> and available for inspection at the Parliamentary Archives (020 7219 3074).

Q in footnotes refers to a question in oral evidence.

## SUMMARY

Professional and business services provided £225 billion gross value added to the UK economy in 2019 and employed 13% of the UK workforce, yet these dynamic and highly successful sectors have been overlooked in the UK-EU future relationship negotiations. It is the UK's leading services export, valued at £96 billion, which is over three times the value of the UK's leading goods export (cars). The EU is the largest market for the UK's professional and business services, amounting to 37% of exports (£35 billion).

These services provide specialised support to businesses and the public sector, including advertising, legal services, market research, accountancy, architecture, engineering, design, management consulting, and audit. While London is a global centre of excellence for professional and business services, two-thirds of these companies are based outside of London and the South East and most are small and medium-sized; they are also of significant importance to Northern Ireland, Scotland and Wales. They are closely linked to the financial services sector and the creative industries, both of which face some of the same vulnerabilities and threats raised in this report.

Compared to goods or financial services, the needs of this industry have been overlooked in the ongoing UK-EU future relationship negotiations. A free trade agreement on services is no silver bullet, but there are a number of areas that both sides need to get right to limit potential barriers to trade.

In this report we set out the key priorities for a UK-EU free trade agreement. We address a number of the cross-cutting issues facing professional and business services companies. This report comments on the UK and EU draft agreements and builds on our 2017 report, *Brexit: trade in non-financial services*.

### Priorities for the agreement

We are deeply concerned about the potential for any **national reservations to the agreement** to undermine services trade liberalisation by imposing restrictions at the national level. We have received evidence that national reservations to the agreement such as economic needs tests and rules on local presence could be catastrophic for the UK's professional and business services sectors. The UK must work with the EU and Member States to reduce and, if possible, remove any barriers put in place through national reservations. The FTA should also explicitly commit not to tie market access to local establishment or residency.

Professional and business services companies rely on being able to travel between the UK and EU to deliver their services: any significant barriers to UK-EU **business mobility** risk a loss of competitiveness and innovation. While freedom of movement will end at the end of the transition period, we urge the Government to ensure that temporary mobility is covered by an agreement with the EU, and that arrangements on the duration and nature of permitted business travel are as ambitious and comprehensive as possible.

The mutual **recognition of professional qualifications** is one area where a bad deal could be worse than no deal. In many sectors, qualifications must be recognised for professionals to be able to deliver their services. We support the UK's position that mutual recognition should be the default position. We are concerned about the EU's proposal which mirrors CETA under which no

agreement on mutual recognition has been reached. The agreement should specifically allow for bilateral agreements between the UK and Member States on mutual recognition.

Proposals on **intellectual property** will be fundamental to promoting innovation and creativity and we set out recommendations on the recognition of registered and unregistered designs. We believe it essential that a UK-EU agreement protects the existing UK intellectual property framework and provides effective enforcement of intellectual property rights for the UK's creative and intellectual property rich sectors. We also consider how future **regulatory cooperation** can be structured to prevent regulatory barriers emerging,

Separate to the future relationship negotiations, we are alarmed about the lack of an EU decision on the **data adequacy** of the UK framework and the absence of most decisions on financial services equivalence and audit adequacy. We call on the Government to push for these assessments to be concluded as soon as possible, to give businesses in the UK and EU legal certainty and time to prepare.

We have seen how these sectors can be agile and adapt to changing environments, and many are keen to embrace new opportunities. Evidence to our inquiry has shown that many professional and business services businesses, especially smaller and medium-sized businesses, are not well prepared for the end of the transition period, not least because they are not sure what to prepare for.

Although our focus has been on the priorities for a UK-EU agreement, it is clear how serious a 'no deal' outcome would be. The absence of a UK-EU free trade agreement that promotes trade in services would pose a real risk to UK jobs and revenue.

# The future UK-EU relationship on professional and business services

## CHAPTER 1: INTRODUCTION: PROFESSIONAL AND BUSINESS SERVICES IN THE UK

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### The UK's professional and business services sectors

1. Professional and business services are an important part of the UK economy. Defined by the Department for Business, Energy and Industrial Strategy (BEIS) as “a range of diverse knowledge-intensive industries and support functions ... which provide specialised support to businesses and the public sector”,<sup>1</sup> they include (but are not limited to):

“Advertising, legal services, market research, accountancy, architecture, engineering, management consulting, call centres, event/exhibition organisers, credit services, operational leasing and HR/recruitment”.<sup>2</sup>
2. The professional and business services within this definition accounted for almost 12% (£224.8 billion) of the UK economy's gross value added (GVA), 13% of the workforce (4.6 million jobs), and 23% of all registered businesses in 2019.<sup>3</sup>
3. These service sectors are closely linked to the UK's financial services sector. While we do not consider financial services in this report, the two industries are closely interconnected and interdependent, as Shanker Singham, Chief Executive Officer, Competere, noted: “The ecosystem for financial services is not just banks and investment houses; it is also lawyers, accountants and related professionals.”<sup>4</sup>
4. This is not just an industry of big firms. Sally Jones, Partner, EY, and Chair of the Professional and Business Services Council's (PBSC) Trade Technical Group,<sup>5</sup> told us that in the “more than 600,000” professional and business services providers in the UK, “the average number of employees is fewer than four”.<sup>6</sup> While London is a hub for the industry, it is also spread across the UK. Sally Jones told us that “more than two-thirds of people operating in professional and business services are not found in London and the South East”.<sup>7</sup> In 2019, the sector accounted for around 25% of all businesses in Scotland, and 17% of total employment and 12% of turnover.<sup>8</sup> Around 15% of Wales' total workforce were employed in financial and professional

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1 Department for Business, Energy and Industrial Strategy, *Professional & Business Services sector: creating further demand and growth outside London*, February 2020: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/866329/professional-business-services-sector-growth-outside-london.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/866329/professional-business-services-sector-growth-outside-london.pdf) [accessed 2 September 2020]

2 Written evidence from BEIS ([PBS0024](#))

3 *Ibid.*

4 [Q 1](#)

5 The PBSC is a business-led partnership between the UK's various professional and business services sectors and the Department for Business, Energy & Industrial Strategy. The Council is comprised of representatives from the professional and business services sector and is co-chaired by a BEIS minister.

6 [Q 1](#)

7 [Q 2](#)

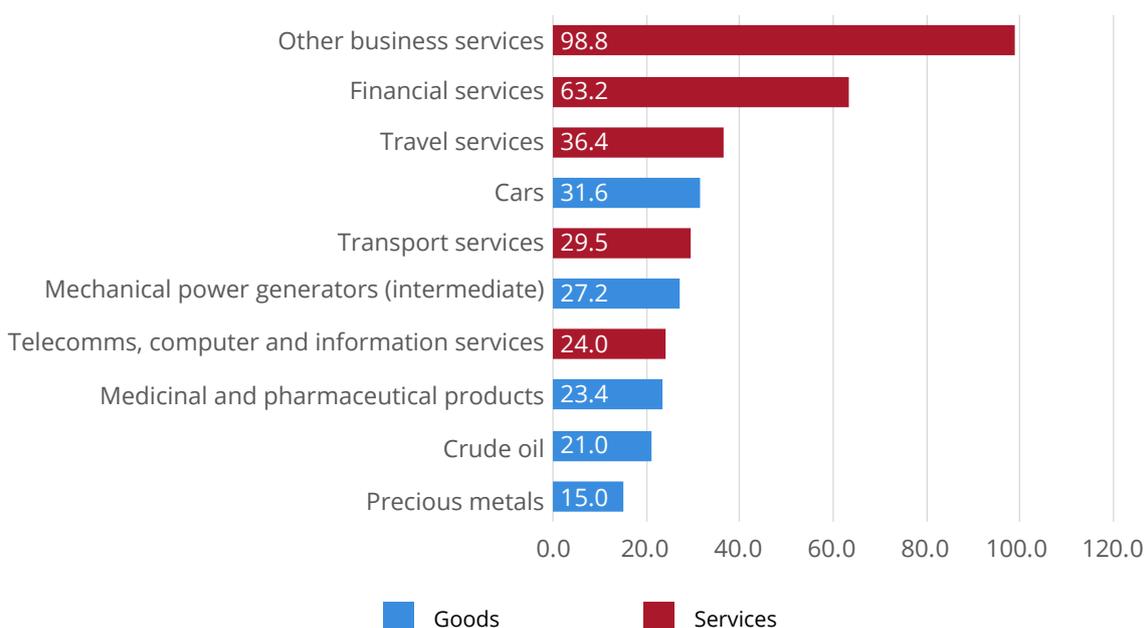
8 Written evidence from the Scottish Government([PBS0047](#))

services in 2019.<sup>9</sup> In Northern Ireland, the broader services sector accounts for 75% of GVA and 80% of employment, which demonstrates the significant importance for the Northern Irish economy of arrangements on the island of Ireland that facilitate UK-EU trade in services.<sup>10</sup>

### Trade in professional and business services

5. Professional and business services are the UK's leading services export and the PBSC told us that the UK is "second only to the US on the world stage" for trade in this area.<sup>11</sup> UK exports of these services amounts to over three times the leading goods export (cars).

**Figure 1: UK top five goods and services exports (£billions)<sup>12</sup>**



Source: Department for International Trade, *UK Trade in Numbers*, February 2020: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/868378/200227\\_UK\\_trade\\_in\\_Numbers\\_full\\_web\\_version\\_final.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/868378/200227_UK_trade_in_Numbers_full_web_version_final.pdf) [accessed 5 October 2020]

6. In total, professional and business services account for 32% (£96 billion) of the UK's service exports and 15% of all UK exports.<sup>13</sup> Table 1 provides sector-by-sector data on international trade in professional and business services.<sup>14</sup> Table 2 show UK-EU trade in professional and business services.

9 Written evidence from the Welsh Government ([PBS0033](#))

10 Written evidence from the Northern Ireland Executive Department for the Economy ([PBS0056](#))

11 Written evidence from the PBSC ([PBS0007](#))

12 The goods data is from 2019 and the services data is from 2018.

13 Written evidence from BEIS ([PBS0024](#))

14 *Ibid.*

**Table 1: PBS International Trade<sup>15</sup>**

|   | <b>UK Exports</b> | <b>Share of PBS exports</b> | <b>UK Imports</b> | <b>Share of PBS imports</b> |
|---|-------------------|-----------------------------|-------------------|-----------------------------|
| Other business services, not included elsewhere <sup>16</sup> | £34bn             | 36%                         | £35bn             | 55%                         |
| Business management and management consulting                 | £21bn             | 22%                         | £1bn              | 2%                          |
| Research and development                                      | £10bn             | 10%                         | £4bn              | 7%                          |
| Advertising and market research                               | £8bn              | 9%                          | £8bn              | 13%                         |
| Legal services  | £8bn              | 8%                          | £1bn              | 2%                          |
| Engineering   | £8bn              | 8%                          | £3bn              | 5%                          |
| Accountancy   | £2bn              | 2%                          | £1bn              | 2%                          |
| Recruitment   | £2bn              | 2%                          | £1bn              | 1%                          |
| Scientific and other technical services                       | £2bn              | 2%                          | £7bn              | 11%                         |
| Architectural   | £1bn              | 1%                          | £0bn              | 0%                          |
| Operational leasing services                                  | £0bn              | 0%                          | £1bn              | 1%                          |
| <b>Total PBS</b>  | <b>£96bn</b>      |                             | <b>£63bn</b>      |                             |

Source: ONS *The Pink Book 2019*

**Table 2: UK-EU Trade in PBS**

| <b>Service</b>  | <b>UK exports to EU, 2018</b> | <b>EU Share of UK worldwide exports</b> | <b>UK imports from EU, 2018</b> | <b>EU Share of UK worldwide imports</b> |
|---|-------------------------------|---|---------------------------------|---|
| Legal, accounting, management consulting and public relations | £15,131m                      | 42%                                     | £6,628m                         | 48%                                     |
| Other business services not included elsewhere                | £9,913m                       | 35%                                     | £10,890m                        | 33%                                     |

<sup>15</sup> *Ibid.*

<sup>16</sup> This is made up predominantly of services between affiliated enterprises (£17bn) and intragroup fee and cost recharge receipts (£10bn), as well as commercial real estate; travel agencies; operating call centres; specialist design services and others.

| Service   | UK exports to EU, 2018 | EU Share of UK worldwide exports | UK imports from EU, 2018 | EU Share of UK worldwide imports |
|---|------------------------|----------------------------------|--------------------------|----------------------------------|
| Advertising, market research and public opinion polling             | £5,278m                | 57%                              | £3,491m                  | 64%                              |
| Research and development services                                   | £2,931m                | 29%                              | £2,785m                  | 37%                              |
| Architectural, engineering, scientific and other technical services | £2,245m                | 21%                              | £2,509m                  | 61%                              |
| Operating leasing services  | £89m                   | 33%                              | £354m                    | 52%                              |
| <b>PBS Total</b>  | <b>£37,841m</b>        | <b>38%</b>                       | <b>£27,476m</b>          | <b>41%</b>                       |

Source: ONS Trade in Services, January 2020.<sup>17</sup>

7. Trade in these sectors, including with the EU, is successful and growing. The PBSC said that “export growth for the sector has remained consistently high, with £99 billion of exports and a trade surplus of £33 billion, 30% of the UK’s trade in services surplus overall”.<sup>18</sup> Nick Owen, Chairman, Deloitte, and industry co-chair of the PBSC, said that the UK was a “strong and growing market” for the provision of professional and business services exports to the EU, and delivered “about €33.5 billion-worth of advice” to EU clients in the first three quarters of 2019.<sup>19</sup>
8. The EU is the UK’s largest market for exports in professional and business services, accounting for 37% of professional and business services exports,<sup>20</sup> and the sector ran a trade surplus of £12.4 billion with the EU in 2019.<sup>21</sup> In comparison, the United States accounted for 28% of UK trade in professional and business services in 2019,<sup>22</sup> and the UK has a trade surplus with the US of £10.6 billion.<sup>23</sup> In 2019, the UK’s trade surplus in the professional and business services sectors with the rest of the world amounted to £31.8 billion.<sup>24</sup> The UK imported £23.8 billion of these services from the EU in 2018, accounting for 25.7% of EU-UK services imports.<sup>25</sup> Asked which professional and business services sectors were particularly reliant on the EU market, Sally Jones highlighted audit, accountancy, legal services and management consulting.<sup>26</sup> In addition to those services, it became clear

17 Values for 2018. The PBS total is based on the total for Other business services. Note that official UK trade statistics at the bilateral level are only available at this more aggregated breakdown.

18 Written evidence from the PBSC ([PBS0007](#))

19 [Q 31](#)

20 Written evidence from BEIS ([PBS0024](#))

21 [Q 1](#) (Sally Jones)

22 Written evidence from BEIS ([PBS0024](#))

23 [Q 1](#)

24 *Ibid.*

25 House of Commons Library, Statistics on UK-EU trade, Library Note, [CBP-7851](#), 17 June 2020

26 [Q 3](#)

that the shape of the UK-EU future relationship will also have a significant impact on the creative industries.

9. The value of these sectors to the UK goes far beyond these figures. The PBSC described a “symbiotic relationship with the growth of the UK economy, playing a crucial role for businesses of every size and in every location across the UK, to grow, become more productive and competitive”.<sup>27</sup> TheCityUK described professional and business services, along with financial services, as the “face of British business across the globe”.<sup>28</sup>
10. Sam Lowe, Senior Research Fellow, Centre for European Reform, emphasised the relationship between these sectors and manufacturing exports, saying that:
 

“ a lot of smaller SMEs do not think they are linked to the broader global market, but they are. A lot of them service local manufacturers, and because they are servicing local manufacturers their value is, I suppose, generated ultimately through a manufacturing export. The value added from services embodied in manufacturing exports is significant “.<sup>29</sup>
11. The SMEs addressed in this report are the small and medium-sized professional and business service providers, such as small legal and accountancy firms. In discussions on the future relationship, these smaller services firms tend to be overlooked relative to small goods manufacturers.
12. Throughout this report we consider a number of the cross-cutting issues facing professional and business services companies including the provision of services on a cross-border basis (Chapter 3), rights of establishment (Chapter 4), business mobility (Chapter 5), the recognition of professional qualifications (Chapter 6), intellectual property (Chapter 7), equivalence and regulatory cooperation (Chapter 8) and data flows and digital trade (Chapter 9).

### The future relationship negotiations

13. This brief overview underlines just how much is at stake in the negotiations on the future UK-EU relationship. Both sides entered the negotiations in March with high ambition. The Political Declaration on the Future Relationship, agreed in October 2019, had set the tone, calling for “ambitious, comprehensive and balanced arrangements on trade in services”.<sup>30</sup> The EU’s negotiating mandate called on the two sides to seek to liberalise trade in services beyond their commitments as parties to the World Trade Organization, and the Government identified professional and business services in particular as a “key interest”, calling for both sides to confer “most favoured nation” status on the other with respect to services trade.<sup>31</sup>

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27 Written evidence from the PBSC ([PBS0007](#))

28 Written evidence from TheCityUK ([PBS0023](#))

29 [Q 3](#)

30 HM Government, *Political Declaration setting out the framework for the future relationship between the European Union and the United Kingdom*, 19 October 2019: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/840656/Political\\_Declaration\\_setting\\_out\\_the\\_framework\\_for\\_the\\_future\\_relationship\\_between\\_the\\_European\\_Union\\_and\\_the\\_United\\_Kingdom.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/840656/Political_Declaration_setting_out_the_framework_for_the_future_relationship_between_the_European_Union_and_the_United_Kingdom.pdf) [accessed 5 October 2020]

31 See European Union Committee, *Report pursuant to section 29 of the European Union (Withdrawal Agreement) Act 2020: Council Decision authorising the opening of negotiations with the United Kingdom of Great Britain and Northern Ireland for a new partnership agreement* (8th Report, Session 2019–20, HL Paper 32), para 61

14. But significant complexities underlie these ambitious objectives. Free trade in services involves people moving across borders, either to deliver or consume services. It requires rights of establishment, so that businesses in one territory can set up offices in another. It needs to be supported by the mutual recognition of standards and qualifications. It requires regulatory cooperation, so that the decisions of regulators in one jurisdiction are recognised as ‘equivalent’ in other jurisdictions, thereby reducing bureaucratic overheads for business. Trade in these services requires that data can move freely across national borders.
15. An added complication is the fact that many of these issues fall outside the exclusive competence of the European Union. For instance, each Member State is responsible for determining the conditions under which nationals of third countries (now including the United Kingdom) are entitled to enter and settle in their territory. The result is that any UK-EU agreement could be subject to numerous ‘national reservations’, which are typically used by Member States to protect particular sectors from foreign competition.
16. Given these manifold complexities, and despite the economic importance of the professional and business services sector, its interests are often overlooked. The former EU Internal Market Sub-Committee, outlined the key issues for non-financial services in a 2017 report.<sup>32</sup> But while the financial services sector has continued to make its presence felt in the negotiations, the diversity of the professional and business services sector, and the preponderance of small businesses, mean that it has not been given such prominence in the negotiations.
17. The inquiry that led to this report, which we have agreed as the negotiations between the UK and the EU approach their conclusion, was in part an attempt to rectify this situation. It was evidence-led, and we sought to hear from witnesses across professional and business services sectors. We are grateful to them for their assistance.
18. Our focus has throughout been on the options that would be available as part of a UK-EU agreement: the report does not explore the implications of ‘no deal’. However, in outlining the priorities for the negotiations it is clear how serious a ‘no deal’ outcome would be for professional and business services. We continue to hope that a positive outcome will be achieved in the coming days and weeks.
19. **Professional and business services accounted for almost 12% (£224.8 billion) of the UK economy’s gross value added, 13% of the workforce (4.6 million jobs), and 23% of all registered businesses in 2019. But the disparateness and manifold complexity of the sector mean that its interests are often overlooked.**
20. **Of the more than 600,000 professional and business services providers in the UK, the average number of employees is fewer than four. While London is a hub for the industry, it is also spread across the UK with two thirds of those working in professional and business services based outside of London and the South East.**

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32 European Union Committee, *Brexit: trade in non-financial services* (18th Report, Session 2016–17, HL Paper 135)

21. **In total, professional and business services provide 32% (£96 billion) of the UK's service exports and 15% of all UK exports. 6.7. The EU is the UK's largest market for exports these services, accounting for 37% of professional and business services exports. The UK had a trade surplus of £12.4 billion with the EU on professional and business services in 2019.**
22. **We make this report for debate.**

## CHAPTER 2: FRAMEWORKS FOR TRADE IN PROFESSIONAL AND BUSINESS SERVICES

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### The EU's Single Market for services

23. The free movement of services is one of the 'four freedoms' provided for under the Treaty of Rome of 1957 and subsequent EU treaties. In practice, though, the EU internal market for services is less developed than that for goods. Although the provision of services is facilitated through the free movement of people and the freedom of establishment, the previous Government, in its Balance of Competences report on trade in services, described free movement of services as having been in the post-war years "the poor cousin to the other freedoms".<sup>33</sup> It was only in 2006 that the Services Directive sought to liberalise the EU's services markets, by identifying and prohibiting certain restrictions on the freedom of establishment and on the freedom to temporarily provide and receive services.<sup>34</sup> The Services Directive was a compromise, reached after difficult and protracted negotiations, and liberalisation of the EU internal market in services remains a work in progress, with significant national reservations in many Member States.
24. Nonetheless, EU law has played an important role in removing certain barriers to access to some regulated professions. For example, the Mutual Recognition of Professional Qualifications Directive enables certain professionals to have their professional titles automatically recognised across the EU, and provides a pathway for the recognition of other qualifications.<sup>35</sup>

### World Trade Organization (WTO) framework

25. Cross-border services trade is currently regulated at an international level by the WTO General Agreement on Trade in Services (GATS), to which all WTO members are party, including the UK. The WTO GATS is guided by four basic obligations binding its members:
- Most favoured nation treatment: all trading partners should be treated equally without discrimination. If, however, two or more countries enter into a comprehensive trade agreement, they are entitled to grant each other more favourable treatment without engaging this principle;
  - National treatment: foreign service providers should not be discriminated against in favour of national ones;
  - Transparency: all rules and regulations that apply to service providers should be in the public domain; and
  - National regulations must be objective and reasonable.<sup>36</sup>

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33 HM Government, *Review of the Balance of Competences between the United Kingdom and the European Union—The Single Market: Free Movement of Services* (2014), para 1.3: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/332668/bis-14-987-free-movement-of-services-balance-of-competencies-report.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/332668/bis-14-987-free-movement-of-services-balance-of-competencies-report.pdf) [accessed 22 September 2020]

34 Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market, *OJ L 376/36*, 12 December 2006

35 Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications, *OJ L 255/22*, 7 September 2005

36 World Trade Organization, 'The General Agreement on Trade in Services (GATS): objectives, coverage and disciplines': [https://www.wto.org/english/tratop\\_e/serv\\_e/gatsqa\\_e.htm](https://www.wto.org/english/tratop_e/serv_e/gatsqa_e.htm) [accessed 7 September 2020]

26. GATS members may impose limitations on the degree of market access granted to foreign service providers, which are listed in their schedules of commitments under the GATS. In practice, however, it is often the case that a country's GATS schedules are more restrictive than its actual legislation on market access by foreign service suppliers: this policy space enables governments to adjust levels of liberalisation based on their trade and economic policy objectives.
27. The WTO GATS details four modes of supplying services; these are summarised in Box 1. This report focuses in particular on barriers to modes one, three and four.

### **Box 1: WTO GATS Modes of Supply**

1. **Cross-border supply:** services flows from the territory of one member into the territory of another member (e.g. banking or architectural services transmitted via telecommunications or mail);
2. **Consumption abroad:** situations where a service consumer (e.g. tourist or patient) moves into another member's territory to obtain a service;
3. **Commercial presence:** a service supplier of one member establishes a territorial presence, including through ownership or lease of premises, in another member's territory to provide a service (e.g. domestic subsidiaries of foreign insurance companies or hotel chains); and
4. **Presence of natural persons:** persons of one member entering the territory of another member to supply a service (e.g. accountants, doctors or teachers). The Annex on Movement of Natural Persons specifies, however, that members remain free to operate measures regarding citizenship, residence or access to the employment market on a permanent basis.

Source: World Trade Organization, 'The General Agreement on Trade in Services (GATS): objectives, coverage and disciplines': [https://www.wto.org/english/tratop\\_e/serv\\_e/gatsqa\\_e.htm](https://www.wto.org/english/tratop_e/serv_e/gatsqa_e.htm) [accessed 7 September 2020]

28. The WTO GATS, which came into force in 1995, was described by the PBSC as "out of date today".<sup>37</sup> Negotiations on a new WTO agreement—the Trade in Services Agreement (TiSA)—which would have accounted for 80% of world trade in services,<sup>38</sup> stalled in 2016.

#### **Free trade agreements (FTAs)**

29. Some comprehensive FTAs seek to liberalise trade in services by providing a degree of preferential market access. Witnesses impressed on us that FTAs operate differently for goods and services. Sam Lowe noted that FTAs on trade in goods generally addressed tariffs, agreements on trade in services addressed "regulation, very often local regulation and qualifications", and were therefore "much more convoluted and complex".<sup>39</sup> As the PBSC put it:

"Traditionally, services provisions in FTAs have not provided a similar degree of liberalisation compared with goods trade. This is reflective of the fact that barriers to services trade are often more complicated and exist behind the border as part of the domestic regulatory environment."<sup>40</sup>

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37 Written evidence from the PBSC ([PBS0007](#))

38 Written evidence from the Advertising Association ([PBS0016](#))

39 [Q 4](#)

40 Written evidence from the PBSC ([PBS0007](#))

30. As a result, few FTAs go much beyond the existing WTO framework for trade in services. Drawing on the example of the EU-Canada Comprehensive Economic and Trade Agreement (CETA), Simon Davis, President, Law Society of England and Wales, warned that “the European Commission itself has acknowledged that CETA’s provisions on services generally ‘merely reflect the current state of openness applied (but not guaranteed) to all World Trade Organization members’.”<sup>41</sup>
31. Sam Lowe therefore warned that “a good free trade agreement at the end of this year is preferable to not having one, but it is not going to save the services sector. It is not that different from trading without one, except in a few specific areas.”<sup>42</sup> The UK Trade Policy Observatory (UKTPO) agreed, stating that the benefits of an FTA for businesses “arise mainly from a reduction in the uncertainty around the market conditions that domestic businesses could face when exporting services”.<sup>43</sup>

#### *Most favoured nation clauses*

32. FTAs can also include so-called ‘Most Favoured Nation’ clauses. Sam Lowe identified these as “provisions in a trade agreement that if, in future, the other partner country offers greater access to its market in a trade agreement with another country, we get that too”.<sup>44</sup> He said that there was a live question as to whether the ‘Most Favoured Nation’ clauses on services and investment in the EU’s trade deals with Canada, South Korea, Japan, the Caribbean Forum, Vietnam and Mexico would mean that if the EU granted “more ambitious services provisions to the UK, it will automatically also have to offer them to Japan, for example”. He added, though that there were “quite a lot of caveats to the provision”.<sup>45</sup>

#### *Status of professional and business services in the negotiations*

33. Nick Owen’s “overriding concern” for the continuing UK-EU negotiations was that professional and business services were “generally the invisible sector”.<sup>46</sup> Dr Dimitrios Syrrakos, Senior Research Associate, Manchester Metropolitan University, agreed, noting that despite the early focus of the negotiations being on trade in goods, “roughly twice as many people” were employed in professional and business services as in manufacturing.<sup>47</sup>

#### **Business preparedness**

34. We received evidence that many large international firms took steps to mitigate the potential effects of Brexit in advance of the previous so-called ‘no deal’ deadlines in 2019. Shanker Singham described how larger firms had been setting up or strengthening operations in EU Member States in order to continue trading at the end of the transition period.<sup>48</sup>

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41 [Q 19](#)

42 [Q 6](#)

43 Written evidence from UKTPO ([PBS0021](#))

44 The specific use of the term ‘most favoured nation’ described here should not be confused with the general WTO ‘most favoured nation’ principle, which provides that WTO members cannot discriminate between other WTO trading partners, unless they enter into a free trade agreement or customs union.

45 [Q 10](#)

46 [Q 45](#)

47 Written evidence from Dr Dimitrios Syrrakos ([PBS0005](#))

48 [Q 8](#)

35. Sally Jones raised concerns, however, about SMEs that have “an international presence but not so much resource to handle it” as they are “the most likely to run into problems.”<sup>49</sup> The lack of clarity about the future UK-EU relationship so close to the end of the transition period leaves SMEs with little time to prepare for changes which may have an impact on their business. Moreover, throughout 2020 the focus of many professional and business services companies has been on navigating the impact of the COVID-19 crisis and operating while meeting social distancing requirements. As the Recruitment and Employment Confederation (REC) put it, “The COVID-19 crisis has left our members with very little bandwidth for other matters, many have simply had to focus all their efforts on staying in business.”<sup>50</sup>
36. There is therefore a real concern in the sector about ambiguity over the future UK-EU relationship. Andrew Forth, Head of Policy and Public Affairs, Royal Institute of British Architects (RIBA), said that RIBA had asked their members “about what preparations they have been making, and the overwhelming response was that they were not quite sure what they were supposed to be preparing for”.<sup>51</sup> techUK added that “to convince senior management to expend resources on preparation, country managers and Brexit planners need official guidance to back up their requests for funding”.<sup>52</sup>
37. The Federation of Small Businesses did, on the other hand, highlight that members had expressed “tremendous interest” in reaching out to new markets at the end of the transition period, particularly the United States, Germany, France, Ireland, Canada and Australia.<sup>53</sup>

### Consequences of ‘no deal’

38. If no agreement is concluded by the end of the transition period on 31 December 2020, the UK will trade with the EU on the basis of WTO rules. As we concluded in our report, *Brexit: trade in non-financial services*:
- “A deal which did not provide market access for all services sectors, or no deal at all, would result in the UK trading services with the EU on the basis of WTO rules, which would provide less favourable trading conditions than membership of the Single Market or an FTA. WTO terms would require the UK and the EU to comply with the ‘Most Favoured Nation’ principle: the UK would not be able to trade on more preferential terms with the EU, unless it applied those same terms to all other WTO member countries (and vice versa).”<sup>54</sup>
39. FTAs that include services provisions are mostly focussed on addressing regulatory barriers to trade. Therefore, the effects of a ‘no-deal’ scenario on trade in services are not as clear-cut as they are for trade in goods. However, witnesses impressed on us that the absence of a UK-EU FTA would create additional barriers to trade in professional and business services. The atmosphere around a ‘no deal’ scenario could also have an effect on services trade, as Farzana Baduel, Chief Executive Officer, Curzon PR, described:

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49 [Q 14](#)

50 Written evidence from REC ([PBS0022](#))

51 [Q 55](#)

52 Written evidence from techUK ([PBS0050](#))

53 Written evidence from the FSB ([PBS0051](#))

54 *European Union Committee, Brexit: trade in non-financial services*, (18th Report, Session 2016–17, HL Paper 135) para 81

“On the optics, if the UK leaves without a deal, we are concerned that there may be a global perception of the UK not having sufficient co-operation with the EU, and therefore a perception that the UK is no longer a landing pad for brands to come to the UK first, establish themselves as a lead market, and springboard into EU markets.”<sup>55</sup>

## CHAPTER 3: PROVIDING SERVICES ON A CROSS-BORDER BASIS

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40. This chapter focuses on the terms that will underpin future access to the EU market for UK professional and business services firms: in particular, the ability to provide services to the EU as a UK entity on a cross-border basis (known in WTO terms as ‘mode one’).
41. The ability to sell services on a cross-border basis is of significant importance to UK professional and business service companies. In their joint submission, Professor Jun Du, Dr Oleksandr Shepotylo, Dr Mustapha Douch and Uzoamaka Nduka noted that all UK trade in professional and business services involves an element of cross-border supply.<sup>56</sup> This seems to be particularly true of smaller operators. REC noted that, of all the SMEs that constitute the “overwhelming majority” of UK recruitment firms, “most have been conducting business within the EU without establishing an office [in the EU]”.<sup>57</sup> According to RIBA, the same applies to smaller architectural practices<sup>58</sup> and, according to the Bar Council, to members of the independent Bar.<sup>59</sup>
42. The Minister, Nadhim Zahawi MP, told us on 16 July 2020 that barriers to UK-EU services trade would largely affect regulated industries:
- “Any additional EU restrictions on cross-border supply of services from third countries are likely to be limited to highly regulated industries. What does that mean? It means that not heavily regulated sectors, such as management consultancy and computing services, are unlikely to face such barriers.”<sup>60</sup>
43. Sam Lowe agreed that regulated sectors were affected more than non-regulated activities, but qualified this by saying that “as a rule of thumb” the EU “makes cross-border trade” from outside the Single Market “quite difficult”.<sup>61</sup> Other evidence also suggested a nuanced picture, with barriers to cross-border supply also being a risk to non-regulated industries.

### Potential barriers

44. As we have noted, some barriers to cross-border supply at the Member State level are entrenched through national reservations for existing and future measures, and we heard general concern that a future UK-EU agreement might contain such reservations, which Sally Jones described as “pretty catastrophic” for professional and business services.<sup>62</sup> The following paragraphs provide more detail on such barriers to cross-border supply.

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56 Written evidence from Professor Jun Du, Dr Oleksandr Shepotylo, Dr Mustapha Douch and Uzoamaka Nduka, Aston University ([PBS0027](#))

57 Written evidence from REC ([PBS0022](#))

58 Written evidence from RIBA ([PBS0010](#))

59 Written evidence from the Bar Council ([PBS0052](#))

60 [Q 76](#)

61 [Q 5](#)

62 [Q 6](#)

*Local presence requirements*

45. National reservations that place requirements on local presence generally tie market access to residency or the existence of a commercial presence in a Member State's territory.
46. Sam Lowe told us, for example, that most EU Member States—including Austria, France, Germany and Ireland—“make commercial presence or establishment a condition of access” for third country lawyers.<sup>63</sup> Simon Davis warned against any reservations to a future UK-EU agreement that might allow Member States to require the “physical presence of foreign lawyers on a temporary or permanent basis”, as well as “nationality requirements” and “some residency qualifications”.<sup>64</sup>
47. Helen Brennan, Director, KPMG UK, told us that some Member States “have a reservation requiring an establishment to provide accountancy and bookkeeping services”. While this may not affect large entities such as KPMG, it could be “more of an issue for small and medium-sized firms that are not part” of a network of professional firms.<sup>65</sup>
48. The potential for local presence requirements also appears to be a concern for some non-regulated industries. The Advertising Association feared that, after the transition period, advertising production professionals could become subject to residency requirements in some Member States.<sup>66</sup> The Scottish Government drew attention to the reservations on real estate services under CETA, which allow Denmark, Portugal, Slovenia and Cyprus to require “EU Member State/[European Economic Area] residency approval ... to practice as a real estate agent”.<sup>67</sup> Universities UK shared a telling example of how loss of EU/European Economic Area (EEA) residency was already affecting UK providers of transnational education services:

“The University of Roehampton and University of Derby accredit degrees taught at the EU Business School in Munich, Bavaria. In a letter dated 30 November 2019, the Bavarian State Ministry for Education, Science, Culture and Arts (Germany) stated that ... when EU legislation no longer applies, the Bavarian State Ministry intends to revoke the decision declaring that the British universities are entitled to carry out study programmes in Bavaria as one of the requirements of the decision is no longer met (in this case: the place of business of the university in question is not in an EU or EEA member state).”<sup>68</sup>

49. Similar provisions apply to the Audio Visual sector under the Audio Visual Media Services Directive (2010/13/EU), which sets residency requirements for audio-visual material. Such material includes traditional television services (referred to as ‘linear’) and on-demand (‘non-linear’) TV services.<sup>69</sup> We wrote to the Secretary of State for Culture, Media and Sport on 3 August 2020 to highlight the impact that these residency requirements could have

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63 [Q 5](#)

64 [Q 19](#)

65 [Q 35](#)

66 Written evidence from the Advertising Association ([PBS0016](#))

67 Written evidence from the Scottish Government ([PBS0047](#))

68 Written evidence from Universities UK ([PBS0020](#))

69 For further information see European Union Committee, *Brexit: trade in non-financial services* (18th Report, Session 2016–17, HL Paper 135).

on the UK's leading audio-visual sector (see paragraph 112 for further information).

### *Economic needs tests*

50. Economic needs tests place requirements limiting the use of third country service providers (or personnel) to situations where the specific demand cannot be met domestically. They are not defined in the WTO GATS.<sup>70</sup>
51. Economic needs tests can create significant barriers to trade, and witnesses were clear that they were among the barriers that a future UK-EU agreement should seek to avoid.<sup>71</sup> The Chartered Institute of Public Relations (CIPR) explained that such tests were not easily satisfied: “It may be hard for a German client to show that, for example, a UK-based PR firm is best placed to handle a particular business for them, rather than a German one.”<sup>72</sup> The Advertising Association added that “SMEs may find dealing with economic needs tests ... more difficult than larger firms”.<sup>73</sup>

### **Public procurement**

52. We asked witnesses about the importance of retained access to EU public procurement markets on a cross-border basis. Paul Bainsfair, Director General, Institute of Practitioners in Advertising, told us that public procurement contracts in areas such as “tourism, inward investment, education, promotion of government” represented “a lot of business” for the UK advertising industry.<sup>74</sup> Simon Conington, Managing Director, BPS World, agreed that “any barriers on public procurement with the EU” would be a concern for larger and more international players in the UK recruitment sector.<sup>75</sup>
53. A different picture emerged for other professional and business services sectors. Andrew Forth explained that, while there was “significant investment” by UK architectural practices in big EU projects such as art galleries, museums, rail stations and airports, many procurement contracts were “not big enough to merit cross border if you are not already in that country”.<sup>76</sup> Martin Darbyshire, Chief Executive Officer of design firm tangerine, added that one of the reasons why most UK designers do not bid for “large publicly pitched projects” was that “doing so is incredibly complex and the cost of sale way outweighs the benefits that we get from working on them”.<sup>77</sup>
54. In the absence of a bespoke UK-EU agreement, access by UK service providers to EU public procurement contracts will come under the terms

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70 World Trade Organization, Council for Trade in Services Special Session: *Economic Needs Tests*, (30 November 2001): <https://docsonline.wto.org/dol2fe/Pages/SS/DirectDoc.aspx?filename=t%3A%2Fs%2Fc%2Fw118.doc&#:~:text=The%20term%20%22economic%20needs%20test,not%20defined%20in%20the%20GATS.&text=The%20context%20of%20Article%20XVI%20shows%20that%20this%20provision%20serves,which%20it%20undertakes%20the%20commitment> [accessed 25 August 2020]

71 Written evidence from the PBSC (PBS0007), the Advertising Association (PBS0016), the Law Society of England and Wales (PBS0019), Universities UK (PBS0020), TheCityUK (PBS0023) and the CIPR (PBS0035)

72 Written evidence from CIPR (PBS0035)

73 Written evidence from the Advertising Association (PBS0016)

74 Q 68

75 *Ibid.*

76 Q 51

77 *Ibid.*

of the WTO Agreement on Government Procurement (GPA).<sup>78</sup> After the end of the transition period, the Government intends to join the GPA as an independent signatory, with its own schedules of commitments.

55. Views differed on whether the GPA would meet the requirements of the UK's professional and business services sectors. Andrew Forth felt that the GPA would provide adequate coverage for UK architectural firms, but was concerned that it would have less bite than a bespoke “agreement that commits both the UK and the EU to playing fairly on procurement”.<sup>79</sup>

### UK and EU negotiating positions

56. The draft future relationship legal texts published by the Government and Commission both contain provisions on the cross-border supply of services.<sup>80</sup> They set out commitments on market access, including an undertaking not to impose limitations on the number of service suppliers or service operations, for example through economic needs tests. They also include an article on national treatment that would commit both Parties to treat service providers from the other Party no less favourably than local providers.<sup>81</sup>
57. Unlike the Commission, the Government is also proposing that the Parties should explicitly commit to prohibiting any arrangements which make market access by the other Party's service providers conditional upon residency or the establishment of a commercial presence. The Minister told us that this proposal was intended “to mitigate any pull towards establishment in the EU generally”.<sup>82</sup>
58. On the face of it, the Government's draft provisions appear to address our witnesses' concerns regarding national reservations. We are, though, mindful of Sally Jones' warning that, until the Parties' reservations on cross-border supply and other modes of supply are disclosed, it is “very difficult to understand exactly where in the detail the devil might reside”.<sup>83</sup> The Minister told us on 16 July 2020 that there had been “initial discussions” between UK

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78 World Trade Organization, ‘Agreement on Government Procurement 2020’: [https://www.wto.org/english/tratop\\_e/gproc\\_e/gp\\_gpa\\_e.htm](https://www.wto.org/english/tratop_e/gproc_e/gp_gpa_e.htm) [accessed 26 August 2020]. The GPA, together with its predecessor 1994 Agreement on Government Procurement, was laid before Parliament on 18 February 2019 for scrutiny under the Constitutional Reform and Governance Act (CRAG) 2010. We considered both agreements on 12 March 2019 and reported them for information: European Union Committee, *Scrutiny of international agreements: Treaties considered on 12 March 2019* (33rd Report, Session 2017–19, HL Paper 315).

79 [Q 51](#)

80 HM Government, Task Force for Relations with the United Kingdom, *Draft working text for a comprehensive Free Trade Agreement between the United Kingdom and the European Union*, 18 March 2020, Chapter 9: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/886010/DRAFT\\_UK-EU\\_Comprehensive\\_Free\\_Trade\\_Agreement.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/886010/DRAFT_UK-EU_Comprehensive_Free_Trade_Agreement.pdf) [accessed 26 August 2020] and European Commission, Task Force for Relations with the United Kingdom, *Draft text of the Agreement on the New Partnership with the United Kingdom*, Chapter 3, Title VI, Part 2 (18 March 2020): <https://ec.europa.eu/info/sites/info/files/200318-draft-agreement-gen.pdf> [accessed 26 August 2020]

81 HM Government, Task Force for Relations with the United Kingdom, *Draft working text for a comprehensive Free Trade Agreement between the United Kingdom and the European Union*, Chapter 9, Article 9.5: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/886010/DRAFT\\_UK-EU\\_Comprehensive\\_Free\\_Trade\\_Agreement.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/886010/DRAFT_UK-EU_Comprehensive_Free_Trade_Agreement.pdf) [accessed 26 August 2020] and European Commission, Task Force for Relations with the United Kingdom, *Draft text of the Agreement on the New Partnership with the United Kingdom*, Article SERVIN-3.3: (18 March 2020): <https://ec.europa.eu/info/sites/info/files/200318-draft-agreement-gen.pdf> [accessed 26 August 2020]

82 [Q 76](#)

83 [Q 8](#)

and EU negotiators “on respective levels of ambition on schedules with the EU”.<sup>84</sup> Chris Holey, Director for Trade and Investment Services at BEIS, added that the Government and Commission would have to “conclude [negotiations across chapters] in short order to move into negotiations on the schedule and the reservation”.<sup>85</sup>

59. We note that, in line with the Council’s negotiating directives of 25 February 2020, the Commission is proposing the exclusion of audio-visual services from the scope of any future UK-EU agreement—which could leave the sector particularly vulnerable.<sup>86</sup> Professor Sarah Hall, Senior Fellow, UK in a Changing Europe, told us that this was a common feature of EU trade agreements.<sup>87</sup>
60. While the EU’s negotiating directives of 25 February 2020 propose that any future UK-EU agreement should build on the Parties’ commitments under the GPA,<sup>88</sup> neither the Government’s Command Paper *The Future Relationship with the EU: The UK’s Approach to Negotiations* nor its draft legal text make reference to public procurement.<sup>89</sup> The Minister said that the Government had “decided against negotiating a chapter on public procurement for the future UK-EU relationship”, arguing that the UK’s accession to the GPA would “provide UK and the EU suppliers with that certainty required to continue to bid for public contracts in key areas of procurement”.<sup>90</sup>
61. **Future UK-EU arrangements for the cross-border supply of services will significantly affect the UK’s professional and business service sector, particularly smaller operators, who may not to have a commercial presence in the EU.**
62. **Through national reservations, EU Member States can impose various regulatory barriers to cross-border imports of professional and business services from non-EU/EEA countries at a national level. These include economic needs tests requiring some proof that demand cannot be met by existing local providers, and requirements making market access conditional upon local presence.**
63. **We are concerned that barriers to the provision of services on a cross-border basis could lead to a drift of economic activity away from the UK. Given that it is possible to move the delivery of services overseas, this drift of activity could have a detrimental effect on the UK’s**

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84 [Q 75](#)

85 *Ibid.*

86 See para 18 of the Council of the European Union’s negotiating directives, *Annex to Council decision authorising the opening of negotiations with the United Kingdom of Great Britain and Northern Ireland for a new partnership agreement*, [5870/20 ADD 1 REV 3](#), 25 February 2020.

87 Written evidence from Professor Sarah Hall and Martin Heneghan, University of Nottingham ([PBS0015](#))

88 Council of the European Union, *Annex to Council Decision authorising the opening of negotiations with the United Kingdom of Great Britain and Northern Ireland for a new partnership agreement*, [5870/20 ADD 1 REV 3](#), 25 February 2020

89 HM Government, *The Future Relationship with the EU: the UK’s Approach to Negotiations*, CP 211, February 2020: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/868874/The\\_Future\\_Relationship\\_with\\_the\\_EU.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/868874/The_Future_Relationship_with_the_EU.pdf) [accessed 26 August 2020], and HM Government, Task Force for Relations with the United Kingdom, *Draft working text for a comprehensive Free Trade Agreement between the United Kingdom and the European Union*, (18 March 2020): [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/886010/DRAFT\\_UK-EU\\_Comprehensive\\_Free\\_Trade\\_Agreement.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/886010/DRAFT_UK-EU_Comprehensive_Free_Trade_Agreement.pdf) [accessed 26 August 2020]

90 [Q 84](#)

**professional and business services sectors in the long term. While this will apply to firms both large and small, we are particularly concerned that requirements of this type could place a disproportionate burden on UK SMEs.<sup>91</sup>**

- 64. To mitigate these risks, a UK-EU agreement should contain robust commitments on cross-border supply, addressing the full range of potential barriers. We welcome the Government's proposal that the UK and EU should explicitly commit not to tie market access to local establishment or residency, and urge the Government to press for inclusion of such a commitment in an agreement with the EU.**
- 65. Although the UK and EU draft legal texts are broadly aligned on cross-border supply of services, there is little room for complacency until clarity emerges on any national reservations to a UK-EU agreement. The example of the EU's trade agreement with Canada shows that these reservations can be wide-ranging and affect a number of professional and business services sectors.**
- 66. When we spoke to the Minister on 16 July 2020, there had been little UK-EU discussion on potential national reservations. This is a source of serious concern. The Government should publish comprehensive explanatory material on any national reservations on services attached to the agreement to enable proper parliamentary scrutiny and give professional and business service providers—in particular SMEs—clear guidance on the position across Member States.**
- 67. The Government should continue to engage with the EU and individual Member States to reduce, and if possible, remove any barriers to cross-border supply through national reservations to the agreement.**
- 68. The Government has not sought bespoke UK-EU arrangements on public procurement. The Minister was confident that the EU's schedules of commitments under the WTO GPA would give UK professional and business service providers sufficient access to Member States' public procurement markets. However, we received evidence that this might not be the case in all sectors. We urge the Government to work with like-minded signatories to the WTO GPA to broaden the scope of the agreement.**

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91 See paragraph 10 for a definition of SMEs.

## CHAPTER 4: RIGHTS OF ESTABLISHMENT

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### The importance of rights of establishment

69. Industry witnesses emphasised the importance of securing a UK-EU agreement that preserves the ability for professional and business service providers to operate via a commercial presence in the EU—the ‘right of establishment’.
70. The ongoing COVID-19 pandemic is likely to have a significant impact on businesses’ approach to delivering services abroad, including establishing offices overseas and the mobility of professionals. The evidence for this inquiry was collected throughout June and July 2020 and the effects of changing working patterns are yet to become clear.
71. As with cross-border supply, our witnesses’ main concern was that in the absence of a UK-EU agreement that locks in sufficient liberalisation, UK professional and business service providers could face a wide range of national requirements. As Professor Sarah Hall and Martin Heneghan put it:
- “In addition to it being more difficult to establish branches in the EU from a third country, at the end of the transition period, UK businesses will also have to address the fact that what they are permitted or required to do in one EU member state may not be the same in another.”<sup>92</sup>
72. The PBSC provided various examples of such barriers to establishment including:
- Caps on the amount of equity held by foreign investors;
  - Requirements on the establishment of joint ventures with local partners;
  - Restrictions relating to the corporate form of a service suppliers;
  - Residency and nationality requirements for certain business personnel; and
  - Economic needs tests.<sup>93</sup>

Such constraints could have a particular impact upon the legal and audit sectors.

### Legal sector

73. In the absence of bespoke UK-EU arrangements, UK legal professionals and firms would stand exposed to a range of establishment and investment barriers across the EU and EEA. The PBSC and TheCityUK noted, for example, that Member State lawyers are prohibited from partnering with third country lawyers in France, Spain and Sweden.<sup>94</sup> Under Danish law, Professor Sarah Hall explained that 90% of the shares of a law firm “must be owned by lawyers with a Danish licence, lawyers qualified in a member-state of the European Union and registered in Denmark, or law firms registered in Denmark”.<sup>95</sup>

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92 Written evidence from Professor Sarah Hall and Martin Heneghan ([PBS0015](#))

93 Written evidence from the PBSC ([PBS0007](#))

94 Written evidence from the PBSC ([PBS0007](#)) and TheCityUK ([PBS0023](#))

95 Written evidence from Professor Sarah Hall and Martin Heneghan ([PBS0015](#))

74. Without a UK-EU agreement, UK lawyers may become unable to operate in the EU under UK-specific corporate structures, in particular Limited Liability Partnerships (LLP). One of the countries where LLPs could no longer be recognised is Austria. Edward Braham, Senior Partner at law firm Freshfields Bruckhaus Deringer LLP, noted that his firm’s “Austrian lawyers [would] not be able to operate under the English LLP, which is effectively the holding partnership of the group”.<sup>96</sup> Professor Sarah Hall also pointed to the example of Germany, where “third country law firms are not able to establish as LLPs”.<sup>97</sup>
75. The Law Society of Scotland highlighted that “availability of different forms of practice, particularly recognising limited liability ... is an important issue”.<sup>98</sup> TheCityUK pointed to the “great operational, regulatory and tax advantages” associated with the use of LLPs.<sup>99</sup>
76. The Law Society of England and Wales explained that the continued use of LLPs across the EU would require bespoke UK-EU arrangements on “recognition of legal forms in force in the UK”, which should also preserve the ability for UK law firms to “employ local lawyers” and “continue using their usual name”.<sup>100</sup>

### Audit sector

77. TheCityUK indicated that “in the absence of an agreement on corporate forms ... joint UK-EU ownership of audit firms will no longer be permitted” in certain Member States.<sup>101</sup> Agreement would also be required on “the equivalence of professional qualification[s] leading to statutory audit rights”—which is governed, within the Single Market, by the EU Statutory Audit Directive.<sup>102</sup> Dr Ilias Basioudis, Senior Lecturer, Aston University Business School, concurred:

“A UK professional audit firm that wishes to own part of, or be part of the management body of, an EU firm will no longer be recognised among the required majority of EU qualified owners or managers.”

Similarly, “only [EU] owners or managers with equivalent qualifications recognised in the UK will count towards the majority of appropriately qualified owners or managers of a UK professional audit firm”.<sup>103</sup>

### UK and EU negotiating positions

78. The negotiating parties’ proposals on establishment and cross-border investment are outlined in Chapter 10 of the Government’s draft legal text and Chapter 2, Title VI, Part Two, of the Commission’s draft partnership agreement.
79. Simon Davis described the parties’ published positions as “positive”, noting: “both have broadly put in provisions that would prohibit restrictions on the limit of foreign capital, restrictions on shareholding requirements and

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96 Q 20

97 Written evidence from Professor Sarah Hall and Martin Heneghan (PBS0015)

98 Written evidence from the Law Society of Scotland (PBS0039)

99 Written evidence from the TheCityUK (PBS0023)

100 Written evidence from the Law Society of England and Wales (PBS0019)

101 Written evidence from the TheCityUK (PBS0023)

102 *Ibid.*

103 Written evidence from the Dr Ilias Basioudis, Aston University (PBS0031)

restrictions on legal form”.<sup>104</sup> The Minister confirmed in July that there was “broad convergence” between the UK and EU in these areas.<sup>105</sup> Nonetheless, as noted above, there is a risk that Member States might request carve-outs through their national reservations—indeed, CETA contains reservations on corporate forms, which the Bar Council described as “limiting”.<sup>106</sup>

80. The Government indicated that it was proposing a novel solution regarding the “ownership, management and voting rights” of audit firms.<sup>107</sup> The Minister told us: “The proposal requires regulators in the EU and the UK to treat one another’s auditors and firms equally when deciding whether an audit firm is approved to practise.” He argued that this would be mutually advantageous, as it would avoid “disruption to firms in both the UK and the EU, which may otherwise need to restructure their management or reallocate voting rights”.<sup>108</sup> He noted, however, that the Commission’s initial reaction had not been encouraging.
81. The Government is also proposing that “UK law firms [should] have the right to establish branch offices in the EU to advise on the law of their home jurisdiction and international law under their home title”.<sup>109</sup>
82. **Without a UK-EU agreement ‘locking in’ adequate liberalisation, UK professional and business service providers would become subject to a broad range of restrictions, including caps on the amount of capital they may hold in an EU company, requirements to partner with a local investor or service provider, and restrictions on the types of corporate forms that they may use when establishing a commercial presence in the EU. We urge the Government to ensure that an agreement with the EU minimises these barriers. Member States may also seek carve-outs from any liberalisation commitments agreed between the UK and EU through national reservations. This further underlines the importance of engagement with the EU and individual Member States to minimise such reservations.**
83. **Restrictions on corporate form would particularly affect the legal and audit sectors in the UK. We strongly encourage the Government to continue to seek an agreement that removes the potential for limitations on corporate forms, such as LLPs.**

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104 [Q 20](#)

105 [Q 76](#)

106 Written evidence from the Bar Council ([PBS0052](#))

107 Written evidence from BEIS ([PBS0024](#))

108 [Q 77](#)

109 Written evidence from BEIS ([PBS0024](#))

## CHAPTER 5: BUSINESS MOBILITY

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### The importance of business mobility

84. Witnesses impressed upon us how integral temporary mobility (GATS ‘mode four’) is to working practices and competitiveness across the UK’s professional and business services industries.
85. The Chartered Institute of Public Relations (CIPR) told us that “teams have to form and reform quickly to adapt to clients’ changing needs”, arguing that the “ability to pull together teams of professionals from different disciplines to meet those needs quickly and effectively” was a key factor behind the UK public relations industry’s global success.<sup>110</sup>
86. Paul Bainsfair described a similar situation for the advertising industry: “You need to move very quickly and have people on the ground in different markets very quickly to answer different briefs.”<sup>111</sup> Pact, a trade body for the filming and digital media production sectors, also noted that “independent producers often need quick access to countries for last minute filming, meetings, or attending international markets”.<sup>112</sup>
87. Neil Ross, Policy Manager, techUK, focused on the engineering sector: “Often you get a very short space of notice in which to go and do immediate repairs. That would require an engineer hearing of a problem and being able to fly out the next day.”<sup>113</sup> TheCityUK stated that, like accountants and consultants, “Lawyers ... need to be able to travel to other jurisdictions in order to advise clients, often at very short notice.”<sup>114</sup>
88. The Minister recognised the importance of business mobility for service suppliers, “with EU and UK professionals, such as lawyers and engineers, readily crossing the border for meetings or training, among other activities”. The Government was seeking to “build on precedent” in this area, for example by “taking reciprocal commitments on short-term business visitors for the first time”. He emphasised the mutual benefits of a “good deal” on entry and temporary stay of professionals.<sup>115</sup>
89. **Professional and business services sectors rely on the ease of business travel between the UK and EU, and firms’ ability to redeploy staff flexibly to their offices across Europe. Any significant barriers to UK-EU business mobility, therefore, risk a loss of competitiveness and innovation. We urge the Government to ensure that temporary mobility is covered by an agreement with the EU, and that arrangements in this area are as ambitious and comprehensive as possible.**

### Business mobility under a UK-EU agreement

90. Based on the evidence we received, positive arrangements on business mobility will depend on a number of factors, which we consider in the following paragraphs.

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110 Written evidence from the CIPR ([PBS0035](#))

111 [Q 61](#)

112 Written evidence from Pact ([PBS0044](#))

113 [Q 61](#)

114 Written evidence from TheCityUK ([PBS0023](#))

115 [Q 78](#)

*Categories of professionals*

91. The PBSC and several other witnesses argued that any future UK-EU deal should contain a “broad definition” of business visitors,<sup>116</sup> with the Law Society of England and Wales highlighting the need for “clear provisions and commitments” on the different categories of “natural persons” who may spend periods of time in the other Party’s territory for business purposes.<sup>117</sup>
92. The draft legal texts published by the two sides identify, and provide definitions for, several categories of professionals,<sup>118</sup> notably:
- Independent professionals—self-employed individuals who have entered into a contract to supply a service to a consumer in the other Party;
  - Contractual services suppliers—personnel of a company of either Party that has a contract to supply a service to a consumer in the other Party;
  - Intra-corporate transferees—employees of a company based in one of the Parties who are transferred to the company’s subsidiary, branch or head office in the other Party on a time-limited basis (including graduate trainees); and
  - Business visitors for establishment purposes—professionals from one Party travelling to the other Party’s territory to set up an enterprise.

In addition, both draft legal texts propose arrangements for ‘short-term business visitors’, although neither defines the term.

93. Unlike the Commission, the Government also proposes to include a definition of ‘investor’: “an executive of an enterprise headquartered in a Party who ... will be responsible for the entire or a substantial part of the enterprise’s operations in the other Party”. The PBSC described this as a “welcome addition” to the Government’s offering on business mobility.<sup>119</sup>
94. Our witnesses’ general plea was that commitments on temporary stays for business purposes should be as liberal as possible. The Law Society of England and Wales highlighted, in particular, the need to remove any “requirement for the economic needs test” for mobility on a temporary basis.<sup>120</sup> We note that both the Government’s and EU’s draft legal texts contain provisions to that effect, alongside national treatment arrangements that would prevent either Party from discriminating against business visitors and secondees. Member States, however, may request reservations to any business mobility commitments agreed at UK-EU level. TheCityUK observed that CETA allows EU countries “to impose reservations on short term business visitors”,<sup>121</sup> and Audley Sheppard QC, Chair, London Court of International Arbitration, told us that Hungary had availed itself of this option.<sup>122</sup>

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116 See for example written evidence from the PBSC ([PBS0007](#)), the Advertising Association ([PBS0016](#)), REC ([PBS0022](#)) and TheCityUK ([PBS0023](#)).

117 Written evidence from PBSC ([PBS0007](#)) and Law Society of England and Wales ([PBS0019](#))

118 Written evidence from PBSC ([PBS0007](#))

119 *Ibid.*

120 Written evidence from the Law Society of England and Wales ([PBS0019](#))

121 Written evidence from TheCityUK ([PBS0023](#))

122 [Q 22](#)

*Permitted activities*

95. Sally Jones highlighted arrangements on short-term business visitors as an area where professional and business service providers “desperately need” clarity before they “can truly understand how generous or otherwise the mobility offers are from both sides”.<sup>123</sup> A key part of those arrangements would be a list of activities that UK short-term business visitors would be allowed to undertake while in the EU (and vice versa), but this had “been left blank” in the UK proposal.<sup>124</sup> The PBSC agreed, adding that the EU’s proposed “list of covered activities” was also unknown, warning that precedent suggested that it could be “extremely limited”. It concluded that the Government “should be seeking to negotiate as ambitious provisions as possible with regards to short term business visitors, including a wider scope of covered activities”.<sup>125</sup>
96. The Minister provided little about the UK-EU negotiations on the list of permitted activities for short-term business visitors, but noted that the Government was seeking to “build on best precedent” in this area.<sup>126</sup>

*Visa and administrative requirements*

97. Witnesses raised concerns about the potential administrative burden caused by any future visa requirements. REC noted that the “time delay in applying for a visa to the EU would limit members’ ability to travel throughout the EU at short notice”.<sup>127</sup> The PBSC wanted short-term professional and business travel to be “visa-free” or subject to “very little administrative burden”.<sup>128</sup>
98. Both the UK and EU texts propose that short-term business visitors from one Party should be able to enter the other Party’s territory “without the requirement of a work permit, economic needs test or other prior approval procedures of similar intent”.<sup>129</sup>
99. The Government stated that any mode four commitments entered into as part of a UK-EU trade agreement would “be consistent with the UK’s future points-based immigration system”.<sup>130</sup> The Minister did not directly confirm whether the UK was seeking visa-free travel for short-term business visitors, but said that the Government was “willing to take comprehensive commitments on procedural facilitations and transparency measures relating to business mobility”. He cited as examples proposals that “all applications for entry and temporary stay should be processed within 90 days”, and that both Parties should ensure “there is a single portal for accessing all application forms, guidance documents and related information”.<sup>131</sup> We note

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123 [QQ 7–8](#)

124 [Q 7](#)

125 Written evidence from the PBSC ([PBS0007](#))

126 [Q 78](#)

127 Written evidence from the REC ([PBS0022](#))

128 Written evidence from the PBSC ([PBS0007](#))

129 HM Government, Task Force for Relations with the United Kingdom, *Draft working text for a comprehensive Free Trade Agreement between the United Kingdom and the European Union*, 18 March 2020, Chapter 11, Article 11.11: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/886010/DRAFT\\_UK-EU\\_Comprehensive\\_Free\\_Trade\\_Agreement.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/886010/DRAFT_UK-EU_Comprehensive_Free_Trade_Agreement.pdf) [accessed 28 September 2020] European Commission, Task Force for Relations with the United Kingdom, *Draft text of the Agreement on the New Partnership with the United Kingdom*, Article SERVIN 4.3 (18 March 2020): <https://ec.europa.eu/info/sites/info/files/200318-draft-agreement-gen.pdf> [accessed 28 September 2020]

130 Written evidence from BEIS ([PBS0024](#))

131 [Q 79](#)

that this would not alleviate the concerns raised by witnesses, which have described above (see paragraph 97).

*Maximum lengths of stay*

100. Both published negotiating positions set caps on the amount of time that short-term business visitors and independent professionals from either Party may spend in the other Party's territory. While the Government's draft legal text seeks a maximum permissible stay of 90 days in any six-month period for short-term business visitors (as in CETA), the EU's draft only offers a maximum of 90 days in any 12-month period. As for independent professionals, the EU's text proposes "a cumulative period of up to 12 months, or for the duration of the contract, whichever is less". The Government proposes a more liberal "12 months in any 24 month period or for the duration of the contract, whichever is less", with an option for either Party to extend this length of stay up to 24 months.
101. The Institution of Mechanical Engineers felt that the EU's proposals on maximum stays for short-term business visitors would "likely be restrictive on longer term ... projects".<sup>132</sup> The Federation of Small Businesses agreed that "at least up to 90 days in any six-month period" would be required,<sup>133</sup> while Universities UK argued that even that that would be "insufficient" for the requirements of the education sector.<sup>134</sup> On the other hand, Nick Owen described the Government's proposals as "quite ambitious",<sup>135</sup> with Simon Hart, Partner, International, RSM UK, also noting that "90 days in a six-month period would be more than adequate" for his firm's needs.<sup>136</sup>
102. In oral evidence, the Minister confirmed that the maximum permissible length of stay for short-term business visitors remained a point of difference between the UK and EU.<sup>137</sup>

*Intra-corporate transferees*

103. The maximum length of stays for intra-corporate transferees (other than graduate trainees) is another area of difference. Nick Owen and others noted that the UK draft legal text speaks of a maximum of five years. The Commission's proposal is three years,<sup>138</sup> which, Sam Lowe described as "the normal EU proposal".<sup>139</sup> We received no evidence, however, to suggest that the EU's proposed cap would be problematic for UK professional and business service providers.
104. The Government has also proposed a definition of 'key personnel', including intra-corporate transferees, investors and business visitors for establishment purposes. Universities UK noted that, as currently defined, this category could exclude early career academics. It argued that, to address this issue, "discretion should be permitted in the determination of seniority and minimum time of employment".<sup>140</sup>

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132 Written evidence from the Institution of Mechanical Engineers ([PBS0006](#))

133 Written evidence from the Federation of Small Businesses ([PBS0051](#))

134 Written evidence from Universities UK ([PBS0020](#))

135 [Q 32](#)

136 [Q 34](#)

137 [Q 78](#)

138 [Q 34](#)

139 [Q 7](#)

140 Written evidence from Universities UK ([PBS0020](#))

*Contractual service suppliers*

105. Universities UK argued that the maximum permissible stay for contractual service suppliers proposed in both texts would be “insufficient” for the UK’s higher education sector, suggesting that it should be increased to 36 months, which is “the time necessary to teach an undergraduate degree to a full cohort”. In addition, Universities UK proposed that the ability for intra-corporate transferees to be accompanied by their partners and dependent children “should be adopted and expanded to contractual service suppliers”.<sup>141</sup>
106. **We strongly support the Government’s efforts to secure a maximum length of stay of 90 days in any six-month period for short-term business visitors, compared to the 90 days in 12 months offered by the EU.**
107. **The efficacy of any UK-EU arrangements on short-term business visitors will ultimately depend on the type of activities that these visitors will be allowed to carry out when visiting their clients. The negotiating parties have not yet disclosed their proposals in this area. We urge the Government to press for minimal restrictions, particularly the inclusion of paid work in any list of permitted activities under a UK-EU agreement. As in a number of other areas, we are concerned about the potential for national reservations to the agreement that could create additional barriers to the delivery of services, such as economic needs tests for mobility on a temporary basis.**
108. **While we recognise that free movement between the UK and EU will end, and that the UK will pursue its own independent immigration policy, it is in the UK’s economic interest to agree comprehensive business travel facilitations with the EU as part of a future relationship agreement. Several witnesses advocated visa-free travel for short-term business travel, covering short-term business visitors and independent professionals. Any new administrative arrangements should ensure that these sectors can maintain their agility. We ask the Government to clarify whether this is part of its offering to the EU and, if it is not, to explain its reasoning.**

*Access to talent*

109. Although the UK’s future immigration system was outside the scope of our inquiry, several witnesses highlighted access to talent after the transition period as a key concern for the UK’s professional and business services sectors. Sam Lowe felt that these industries owe much of their success to the ability to attract “the best and brightest” from Europe and further afield. He believed that relying on professionals who “are able to operate in [other] countries because they know the language and the local context” had been a key driver behind UK exports of professional and business services.<sup>142</sup>
110. TheCityUK expressed concern that “existing skills shortages” could be “exacerbated following the end of freedom of movement”, and called for the Government’s policies on “access to skills and talent, including the UK’s points-based immigration system”, to reflect the “future and current

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141 Written evidence from Universities UK ([PBS0020](#))

142 [Q 2](#)

skills needs” of the UK’s professional services sectors.<sup>143</sup> Similar views were expressed by Neil Ross, who drew attention to the UK’s “severe digital skills gap” and described the uncertainty around the UK’s future immigration system as “one of the biggest issues for the technology sector as a whole”, particularly SMEs.<sup>144</sup> Andrew Forth also feared a situation where specialised architects, whose numbers are already “quite low” worldwide, could not “easily come and work in the UK”. The PBSC told us that it had offered the Government a series of “ambitious recommendations” on how the UK’s future immigration system could meet the industry’s requirements, including on “the remodelling of the temporary short-term scheme”.<sup>145</sup>

111. Pact sought clarity on the future of the Temporary Worker—Creative and Sporting visa (Tier 5), and asked that this route “remain as flexible as possible”. It also suggested a “creative industries exemption ... for workers being brought in under co-production treaties such as the European Convention on Cinematographic Co-Production”.<sup>146</sup>
112. Given the importance of the creative industries, the EU Services Sub-Committee wrote to the Secretary of State for Culture, Media and Sport on 3 August 2020 to seek further information on the Government’s progress in this area.<sup>147</sup> We were disappointed with the Government’s response, which lacked detail on some key issues, such as the application of ‘European works’ status to UK creative products. The Minister also confirmed that the Government was not pursuing a ‘touring visa’ for the creative industries. We are deeply concerned about the Government’s inattention to these areas, and we therefore replied to the Minister on 25 September 2020, reiterating our concerns.<sup>148</sup>
113. **Access to talent from the EU is and will remain important to the UK’s professional and business service sectors. We encourage the Government to work with businesses, including through the Professional and Business Services Council, to understand how the UK’s future immigration system can best support their needs.**

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143 Written evidence from TheCityUK ([PBS0023](#))

144 [Q 61](#)

145 Written evidence from PBSC ([PBS0007](#))

146 Written evidence from PACT ([PBS0044](#))

147 Letter from Baroness Donaghy, Chair, EU Services Sub-Committee, to Rt Hon. Olive Dowden CBE MP, 3 August 2020: <https://committees.parliament.uk/publications/2254/documents/20988/default/> [accessed 28 September 2020]

148 Letter from Baroness Donaghy, Chair, EU Services Sub-Committee, to Rt Hon. Oliver Dowden CBE MP, Secretary of State for Digital, Culture, Media and Sport, 25 September 2020: <https://committees.parliament.uk/publications/2765/documents/27329/default/> [accessed 29 September 2020]

## CHAPTER 6: RECOGNITION OF PROFESSIONAL QUALIFICATIONS

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### Introduction

114. Some professional and business service providers require recognition of their qualifications to be able to work in, or export their services to, another country. The Government cited “legal, engineering and accounting services” as examples of “the top professions conducting trade which potentially rel[y] on recognition”.<sup>149</sup>
115. In our March 2017 report *Brexit: trade in non-financial services* we noted that the recognition of professional qualifications between EU Member States was facilitated by the Mutual Recognition of Professional Qualifications Directive.<sup>150</sup> The Directive is complemented by sector-specific measures such as the Statutory Audit Directive,<sup>151</sup> which sets out specific provisions for the recognition of auditors’ qualifications, and the Lawyers’ Services and Lawyers’ Establishment Directives, which enable EU lawyers to work in any Member State under their home state title on a temporary or longer-term basis.<sup>152</sup> We urged the Government to ensure that any future UK-EU agreement “includes provisions on the mutual recognition of professional qualifications”—a point echoed by several witnesses to this inquiry.<sup>153</sup>
116. Article 27 of the Withdrawal Agreement provides a partial solution, setting out that recognition decisions granted before the end of the transition period under EU law shall “maintain [their] effects in the respective State”.<sup>154</sup> Dr Dimitrios Syrrakos, Senior Research Associate, Manchester Metropolitan University, told us that the provisions of Article 27 meant that the “overwhelming majority of professional qualifications” would continue to be recognised.<sup>155</sup> But Article 27 does not cover all existing forms of mutual recognition. Giulio Marini, a lawyer qualified in several European jurisdictions, observed for example that it would not enable UK lawyers to continue providing legal advice under their home state title (and vice versa) on a temporary basis.<sup>156</sup>

### Why is recognition of qualifications important?

117. In its joint submission with the UKTPO and City-REDI, the Managing Partners’ Forum reported the results of a poll it carried out on 12 June 2020

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149 Written evidence from BEIS (PBS0024)

150 European Union Committee, *Brexit: trade in non-financial services* (18th Report, Session 2016–17, HL Paper 135), Box 6

151 Directive 2014/56/EU of the European Parliament and of the Council of 16 April 2014 amending Directive 2006/43/EC on statutory audits of annual accounts and consolidated accounts, OJ L158/196, 16 April 2014, and Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market, OJ L 376/36, 12 December 2006

152 Law Society, ‘Communities, How to practice in the EU’: <https://communities.lawsociety.org.uk/brussels-old-old-old/how-to-practise-in-the-eu> [accessed 1 September 2020]

153 European Union Committee, *Brexit: trade in non-financial services* (18th Report, Session 2016–17, HL Paper 135), para 120

154 HM Government, Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, 19 October 2019, Article 27: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/840655/Agreement\\_on\\_the\\_withdrawal\\_of\\_the\\_United\\_Kingdom\\_of\\_Great\\_Britain\\_and\\_Northern\\_Ireland\\_from\\_the\\_European\\_Union\\_and\\_the\\_European\\_Atomic\\_Energy\\_Community.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/840655/Agreement_on_the_withdrawal_of_the_United_Kingdom_of_Great_Britain_and_Northern_Ireland_from_the_European_Union_and_the_European_Atomic_Energy_Community.pdf) [accessed 1 September 2020]

155 Written evidence from Dr Dimitrios Syrrakos (PBS0005)

156 Written evidence from Giulio Marini (PBS0001)

among senior executives and managing partners of UK professional services firms:

“Nearly 80% of respondents indicated that the recognition of their qualifications was either ‘important’ (32%), ‘essential’ (32%) or even a ‘pre-requisite’ (15%) when providing services to clients outside of the UK.”<sup>157</sup>

118. Underlining this conclusion, the Chartered Institute of Management Accountants (CIMA) felt that the “recognition of qualifications” was the industry’s “biggest concern”, characterising it as the area of the future UK-EU relationship which “will have the most impact for the accountancy sector”.<sup>158</sup> Similarly, RIBA described it as a “priority for architects”. It further noted that the “benefits of an ongoing agreement” on recognition of qualifications lie not only in facilitating trade but also “in ensuring that those offering the services of an architect are able to be monitored by our own regulatory body”.<sup>159</sup>
119. The legal profession is also directly affected. David Joseph QC, Vice Chair, Commercial Bar Association, explained that recognition of qualifications enabled UK lawyers “to be part of a team” advising, for example, “on complex cross-border insolvency or EU provisions in relation to competition”. To his mind, leading international law firms “have a presence in London precisely because they want to be able to advise on these valuable cross-border transactions”.<sup>160</sup> Audley Sheppard agreed, telling us that “mutual recognition is very useful in arbitration”, where “a lawyer who is expert in construction and engineering is more important than someone of that particular legal system”.<sup>161</sup> We discuss this further in Chapter 6.
120. Any obstacles to the recognition of UK-issued qualifications could also have knock-on effects on non-regulated service sectors that have strong links with regulated sectors. The Recruitment and Employment Confederation (REC) noted, for example, that “losing the mutual recognition of professional qualifications with the EU” would “have a negative impact on recruitment agencies”, by making it more difficult to hire UK regulated professionals for jobs in the EU and vice versa.<sup>162</sup>
121. Witnesses emphasised that a good UK-EU agreement on recognition of qualifications would be mutually beneficial. Nick Owen observed that “in the 20 years up to until 2019, 142,000 people had their professional qualifications recognised and were able to move from the EU to the UK, whereas only 27,000 went in the opposite direction”.<sup>163</sup> RIBA felt that the reciprocal benefits of an agreement in this area are “understood” by “both the UK and EU architecture sector”. It cited as evidence a 2018 motion by the Architects Council of Europe—a pan-European confederation of architectural professional bodies—“in support of an ongoing agreement”.<sup>164</sup> Andrew

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157 Written evidence from the UK Trade Policy Observatory (UKTPO), The Managing Partners’ Forum and CityREDI ([PBS0025](#))

158 Written evidence from CIMA ([PBS0036](#))

159 Written evidence from RIBA ([PBS0010](#))

160 [Q 21](#)

161 *Ibid.*

162 Written evidence from the REC ([PBS0022](#))

163 [Q 34](#)

164 Written evidence from RIBA ([PBS0010](#))

Forth said that even in the absence of a broader UK-EU arrangement, there would be “eagerness in Europe to make a good offer to British architects”.<sup>165</sup>

122. **In some professional and business services sectors, the recognition of qualifications by third country authorities is crucial to enabling cross-border trade. We reiterate the recommendation in our March 2017 report, *Brexit: trade in non-financial services*, that an agreement reached with the EU should include provisions facilitating the continued recognition of UK professional qualifications in the EU, and vice versa.**

### **The industry’s requirements**

123. One of our witnesses’ principal requests was that any future UK-EU agreement on the recognition of professional qualifications should allow for the conclusion of supplementary bilateral arrangements between the UK and Member States. As the PBSC put it, “it would be important to provide a clear route for ... bilateral mutual recognition agreements (between one or several EU states and the UK)”.<sup>166</sup> Sally Jones warned against the risk that an overarching UK-EU arrangement on recognition of qualifications might be construed as lifting “the level of regulatory co-operation ... to Commission level without allowing Member States to come to their own bilateral negotiations”. She saw this as one of the “very few” examples where a bad deal [would be] worse than no deal.<sup>167</sup> The Law Society of England and Wales advocated “provisions that leave the possibility for national regulators to enter into mutual recognition agreements ... with equivalent regulators of their choosing”.<sup>168</sup> The Bar Council highlighted the “long-standing practice” of bilateral arrangements between EU and non-EU bars and regulators, which “are not considered incompatible with either EU law or international trade rules”.<sup>169</sup>
124. techUK identified a risk that a UK-EU agreement might be “partial in coverage”, arguing that “the two sides should set out detailed information on which sectors are covered by the agreement, similar to a positive list approach”. At the same time, it highlighted the need to leave the door open for bringing new qualifications in scope of the agreement, in response to technological developments.<sup>170</sup>

### *Legal sector*

125. The need for flexible arrangements is well illustrated by the legal sector. The Law Society of England and Wales told us that a “‘one-size-fits-all’ approach to mutual recognition of qualifications [would have] difficulties taking into account the diversity of the legal services sectors and the justice systems”. They identified two forms of recognition as most relevant to the legal professions: recognition of a lawyer’s “home state title”; and recognition of “(part of) existing qualifications and academic experience for the purposes of requalification into the host state profession”.<sup>171</sup>

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165 [Q 49](#)

166 Written evidence from the PBSC ([PBS0007](#))

167 [Q 7](#)

168 Written evidence from the Law Society of England and Wales ([PBS0019](#))

169 Written evidence from the Bar Council ([PBS0052](#))

170 Written evidence from techUK ([PBS0050](#))

171 Written evidence from the Law Society of England and Wales ([PBS0019](#))

126. The Bar Council agreed that any future recognition framework should allow for both “reciprocal market access under home State title, i.e. without the need for acquisition of the host State title”, and for “a clear path to requalification into the host State’s legal profession”.<sup>172</sup>
127. The Law Society of England and Wales explained that requalification in a EU jurisdiction carries “important rights”, including the “ability to advise on EU law” and the “protection of lawyer-client communications by legal professional privilege”.<sup>173</sup> The Law Society of Scotland also stressed the importance of continued protection of legal professional privilege for UK lawyers operating in the EU, and vice versa, to ensure that “confidential communications between companies or individuals and their legal advisers” may not be “disclosed in legal proceedings or to regulators or other third parties”.<sup>174</sup>
128. The Bar Council proposed that any future UK-EU agreement on recognition of qualifications should also allow for “less than full requalification”, including a ‘limited licence’ enabling “the holder to practise under the host title in the host State in matter of international law”. It noted that there is precedent for this in the WTO/GATS regime.<sup>175</sup>
129. The Law Society of England and Wales warned that, in some EU jurisdictions, EEA nationality was a prerequisite for requalifying into the host state profession.<sup>176</sup> This suggests that, in the absence of robust national treatment provisions, a UK-EU arrangement on recognition of qualifications may not in itself confer full requalification rights on UK lawyers.

*Recognition and rights of audience*

130. Lawyers have raised concerns about the impact of nationality restrictions on rights of audience before EU courts, including the CJEU, and potentially national courts within Member States on the UK’s legal sector. The Bar Council suggested that there would be scope for preserving some rights of audience as part of UK-EU mutual recognition arrangements, by including a mechanism known as ‘temporary call’. This would enable lawyers to appear “in a single case or series of related hearings” noting that this option “is already available for third country lawyers in the UK jurisdictions”.<sup>177</sup>
131. In addition, the Chartered Institute of Trade Mark Attorneys (CITMA) raised a particular concern about UK Chartered Trade Mark Attorneys losing their right to represent clients at the European Union Intellectual Property Office (EUIPO)—estimating the cost at “between £789 million and £1.7 billion per year”.<sup>178</sup> The Intellectual Property Office (IPO), an executive agency of BEIS, told us that rights of audience before EU courts did not, in themselves, form part of the Government’s negotiating requests, as they were

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172 Written evidence from the Bar Council ([PBS0052](#))

173 Written evidence from the Law Society of England and Wales ([PBS0019](#))

174 Written evidence from the Law Society of Scotland ([PBS0039](#))

175 Written evidence from the Bar Council ([PBS0052](#))

176 Written evidence from the Law Society of England and Wales ([PBS0019](#))

177 Written evidence from the Bar Council ([PBS0052](#))

178 The European Union Intellectual Property Office (EUIPO), known as OHIM until March 2016, is a decentralised EU agency offering Intellectual Property rights protection, registration of the EU trade mark and the registered community design to businesses operating across the EU’s Single Market.

“the preserve of the Single Market”.<sup>179</sup> CITMA described the Government’s stance as “hugely disappointing”.<sup>180</sup>

132. CITMA also noted that EU/EEA trade mark attorneys were likely to retain the right to appear before the UK IPO, and urged the Government to “act immediately and introduce statutory instruments to amend current legislation and correct this imbalance that favours EEA practitioners over British ones”.<sup>181</sup> The IPO undertook a consultation on this matter, which closed on 14 August. A Statutory Instrument will be brought to Parliament in November to prevent EEA lawyers from appearing before the UK IPO after the end of the transition period.
133. **Bespoke arrangements, in addition to an FTA, are likely to be required in some professional and business services sectors. This is one area where a bad deal, which prevents the agreement of bilateral supplementary agreements on mutual recognition, could be worse than a no deal. We urge the Government to ensure that an agreement explicitly allows for the conclusion of supplementary bilateral arrangements on the mutual recognition of professional qualifications, including at the Member State level.**

#### *Lugano convention*

134. Several witnesses to the inquiry made representations regarding the impact on the legal sector of the UK joining the 2007 Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters—known as the ‘Lugano Convention’.<sup>182</sup> This international treaty was concluded between the EU (on behalf of its Member States), Iceland, Norway and Switzerland. Its purpose is two-fold: to determine jurisdiction over a civil or commercial dispute—in other words, establish which country’s courts should deal with that dispute; and to ensure recognition of the resulting judgment.<sup>183</sup>
135. We note that the EU Security and Justice Sub-Committee has considered this matter in significant detail in recent weeks, including taking evidence from the then Advocate General for Scotland, Lord Keen of Elie QC, on 15 September.<sup>184</sup>

#### **UK and EU negotiating positions**

136. The EU’s approach, outlined in Article 5.14 of its draft ‘Regulatory Framework’ Chapter, is closely modelled on Chapter 11 of CETA, and would establish a framework for professional bodies from both Parties to consult with each other and, where deemed appropriate, recommend the conclusion of a (pre-negotiated) mutual recognition agreement to a Partnership Council. Based on their experience with CETA, our witnesses doubted the

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179 Written evidence from the UK Intellectual Property Office ([PBS0055](#))

180 Written evidence from CITMA ([PBS0049](#))

181 *Ibid.*

182 Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, [OJ L 339/3](#), 21 December 2007

183 Ministry of Justice, ‘Support for the UK’s intent to accede to the Lugano Convention 2007’, 28 January 2020: <https://www.gov.uk/government/news/support-for-the-uks-intent-to-accede-to-the-lugano-convention-2007> [accessed 8 September 2020]. See also European Union Committee, *Brexit: justice for families, individuals and businesses?* (17th Report, Session 2016–17, HL Paper 134), Box 14

184 Oral evidence taken before the EU Security and Justice Sub-Committee, 15 September 2020 (Session 2019–21) [Q 1-15](#) (Rt Hon. Lord Keen of Elie QC)

effectiveness of such a mechanism. Simon Davis told us: “All CETA does is say that it would be a good thing to have some kind of mutual recognition ... but nothing has happened.”<sup>185</sup> The PBSC agreed that while CETA “sets out an admirable framework”, it “has yet to achieve a single Mutual Recognition Agreement”.<sup>186</sup>

137. The Government’s proposals on recognition of qualifications, set out in Chapter 13 of the Government’s draft legal text, depart from precedent. In Sam Lowe’s words: “The UK is proposing a framework in which, the moment a UK-registered professional applies for their qualification to be recognised in an EU member state, the default is that that recognition is granted, subject to an aptitude test.”<sup>187</sup> BEIS explained that the Government’s approach would have the advantage of giving professionals “access to pathways to gain recognition of their qualifications in the other party’s jurisdiction from the date the agreement comes into force”.<sup>188</sup> The Minister clarified that this would not be tantamount to “automatic recognition” of qualifications, describing suggestions from the Commission that the Government may be seeking to ‘cherry pick’ elements of the Single Market as a “mischaracterisation”.<sup>189</sup>
138. On the question of supplementary bilateral arrangements, the Minister told us that he saw no reason “why the UK or EU proposals would make such bilateral or multilateral arrangements impossible”, as “many regulatory authorities have independent powers to make such arrangements”. He emphasised the Government’s commitment to preserving “the independence of professional bodies to agree independent bilateral or multilateral arrangements”.<sup>190</sup>
139. Several witnesses praised the level of ambition shown by the Government. Shanker Singham suggested that the Government may have taken as a model the mutual recognition arrangements in place between Australia and New Zealand, which he described as “the most advanced ... anywhere in the world”.<sup>191</sup> Nick Owen agreed that the Government’s approach would be “an improvement” on the framework offered by the EU.<sup>192</sup>
140. The Minister also indicated that the Government was seeking to lock in “some form of home title rights” as part of the future relationship agreement. Under these proposals, “UK or EU lawyers who practise the law of their home jurisdiction or international law in each other’s markets should be able to do so using their home professional title”.<sup>193</sup> Asked about the rights of audience, the Minister said that “rights of representation before individual member state courts are determined by the regulatory rules” in individual Member States.<sup>194</sup>
141. **The mutual recognition of professional qualifications is one area where the Parties’ negotiating stances differ fundamentally. The Government has proposed that mutual recognition should be the default position. The Commission’s proposal allows UK and EU-wide**

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185 [Q 21](#)

186 Written evidence from the PBSC ([PBS0007](#))

187 [Q 7](#)

188 Written evidence from BEIS ([PBS0024](#))

189 [Q 77](#)

190 [Q 80](#)

191 [Q 9](#)

192 [Q 32](#)

193 [Q 77](#)

194 [Q 81](#)

**professional bodies to negotiate sector-specific mutual recognition agreements which would have to be approved by a Partnership Council, as under CETA. Our witnesses were unanimous that CETA's mutual recognition provisions have been ineffective so far, having failed to produce a single mutual recognition agreement. We welcome the Government's efforts to secure inclusion of its more ambitious proposals in any final UK-EU agreement.**

142. **With the UK's exit from the Single Market, UK legal professionals will lose some of their existing rights, such as the ability to advise on EU law under their home state title and represent clients before EU courts and institutions. It may not be feasible, in our view, to preserve these rights as part of the current negotiations. Nevertheless, the Government's efforts to secure some form of recognition of legal qualifications is welcome. We urge both negotiating parties to come to an understanding on this matter, given the potential reciprocal benefits for UK and EU legal professionals, businesses and citizens.**

## CHAPTER 7: INTELLECTUAL PROPERTY

### Introduction

143. The UK’s intellectual property regime was described by Anti-Copying In Design to be “one of the best developed and best applied” in the world.<sup>195</sup> Shanker Singham added that “service providers particularly benefit from strong intellectual property provisions—across the board”.<sup>196</sup> This framework includes protection of both registered and unregistered design rights.

#### Box 2: Trade marks, registered design rights and unregistered design rights in the EU

An EU **trade mark** can consist of any signs, in particular words, designs, letters, numerals, colours, the shape of goods, or of the packaging of goods or sounds. To be eligible for registration with the EU IPO the trade mark must be distinctive, and these tend to be logos for companies or services.

An EU **registered community design** protects the design of the whole or part of a product and may arise from the lines, contours, colours, shape, texture, material or ornamentation of the product. Plain or stylised word marks cannot form a registered community design but can form a trade mark. These are registered at the EU IPO and are covered for up to 25 years.

The EU’s **unregistered community design** regime provides protection for a range of design features, including two- and three-dimensional aspects such as lines, colours, texture, materials surface decoration and product shape. Rights are protected for three years after they are disclosed to the public, without any requirement for registration at the EU IPO.

144. The Intellectual Property Office (IPO), the official UK government body responsible for intellectual property rights including patents, designs, trade marks and copyright, told us that the UK was “looking to negotiate a chapter that secured mutual assurances to provide high standards of protection” for both registered and unregistered design rights. The Minister outlined the Government’s aspirations in this area:

“[Intellectual property] is crucial to our innovative and creative industries. The UK’s regimes are consistently rated as some of the best in the world. Leaving the EU will not change that. We are confident that we can negotiate strong IP chapters without compromising the UK’s domestic framework or what we are looking to agree with the EU.”<sup>197</sup>

Sam Lowe did not anticipate significant issues in reaching a positive agreement this area as the UK and EU approaches were “broadly aligned”.<sup>198</sup>

### Registered design rights

145. The Design Council highlighted a long-term decrease in the number of design registrations by UK businesses, with registrations “more than halving since 2000”. The reasons for this decline were unclear, but it “could indicate fewer design led or influenced UK exports outside of the EU”.

195 Written evidence from Anti Copying In Design ([PBS0048](#))

196 [Q 12](#)

197 [Q 83](#)

198 [Q 12](#) (Sam Lowe)

146. Within the EU, on the other hand, the EU's Regulation on Community Designs (6/2002/EC) established a one-off procedure for registering designs with the EU IPO.<sup>199</sup> This registered design right gives creators exclusive rights to the use of those designs across the EU for up to 25 years, but the Design Council was concerned that in the absence of an agreement EU registrations could also decline in future: "Unless UK-EU arrangements are in place on intellectual property for all sectors, there could be significant negative effect on trade of design led professional and business services with the EU."<sup>200</sup>

#### *UK and EU negotiating positions*

147. From 1 January 2021 EU trade marks issued by the EU IPO will no longer protect trade-marked goods or services in the UK. Instead, Article 56 of the European Union (Withdrawal Agreement) Act 2020 mandates the UK IPO to create a comparable UK trade mark for all right holders with an existing EU trade mark at no extra cost.<sup>201</sup>
148. After the transition period, to receive protection in both the UK and EU new trade mark applications will need to be made to both the UK IPO and the EU IPO. Dr Luke McDonagh, said that this was a "doubling of cost problem feared by UK SMEs".<sup>202</sup> He suggested that a discount from the UK IPO for SMEs who intend to apply to both the UK and EU could help reduce these additional costs.<sup>203</sup>
149. **While current EU trade marks will be transferred onto the UK register at no extra cost, we are concerned that at the end of the transition period UK companies could face additional charges if, next year, they are required to register new trade marks at both the UK IPO and EU IPO.**

#### *Unregistered design rights*

150. Companies and individuals in professional and business services sectors and the creative industries in the UK have been able to seek intellectual property protection through Unregistered Community Designs, which are provided for under the EU's Regulation on Community Designs (6/2002/EC).<sup>204</sup> Unregistered Community Designs provide protection for a range of design features for three years after they are disclosed to the public, without any requirement for registration.<sup>205</sup>
151. Martin Darbyshire said that unregistered design rights were particularly useful, because they allowed businesses "to explore designs and determine which are commercially viable successful and decide whether to invest in registering them".<sup>206</sup>

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199 Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs, [OJ L 0003](#), 12 December 2001

200 Written evidence from the Design Council ([PBS0034](#))

201 Intellectual Property Office and Government Digital Service, 'Guidance: EU trade mark protection and comparable UK trade marks from 1 January 2021', 30 January 2020: <https://www.gov.uk/guidance/eu-trademark-protection-and-comparable-uk-trademarks#opting-out-of-the-comparable-uk-trade-mark> [accessed 8 September 2020]

202 Written evidence from Dr Luke McDonagh ([PBS0008](#))

203 *Ibid.*

204 Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs, [OJ L 0003](#), 12 December 2001

205 Written evidence from Anti Copying In Design ([PBS0048](#))

206 [Q 50](#)

152. Witnesses warned that losing unregistered design rights in the EU could have a significant impact on UK design businesses. In a survey of their members, Anti-Copying In Design found that 99% were concerned about the loss of unregistered design rights.<sup>207</sup> Martin Darbyshire said that without an agreement on unregistered design rights it would be “very challenging for companies”, as they would need to determine whether to register each product brought to the market, before understanding whether it would be successful or not.<sup>208</sup> Anti-Copying In Design said that the effects could “potentially be calamitous”.<sup>209</sup>

*UK and EU negotiating positions*

153. Under Article 57 of the Withdrawal Agreement, any designs that are protected under the EU unregistered design rights regime before the end of the transition period will remain protected and enforceable in the UK for the remainder of their three-year lifespan as a ‘continuing unregistered design’.<sup>210</sup>
154. After the end of the transition period, new EU unregistered design rights will no longer have protection in the UK.
155. From 1 January 2021, an equivalent right will be available in the UK known as a ‘supplementary unregistered design’. This is a purely domestic measure which will replace the EU’s unregistered design right for any design first disclosed in the UK. Protection under the UK’s supplementary unregistered design’ will not extend to designs originating in the EU.
156. In addition, in its draft legal text, the Government proposed a reciprocal regime, whereby a design could be disclosed in either the UK or EU and still be eligible for the EU’s unregistered design right which is usually subject to the provision that it must be a ‘novel’ design disclosed within the EU.<sup>211</sup> The EU, however, has not reciprocated this provision in its draft legal text.<sup>212</sup> Instead, the EU proposal is that the parties can confer and enforce unregistered design rights only within their respective territories.
157. **The Government has proposed that unregistered designs presented in the UK should receive protection in the UK and throughout the EU27, and vice versa. We urge the Commission to give the UK’s proposal serious consideration.**

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207 Written evidence from Anti Copying In Design ([PBS0048](#))

208 [Q 50](#)

209 Written evidence from Anti Copying In Design ([PBS0048](#))

210 Intellectual Property Office and Government Digital Service, ‘Changes to unregistered designs from 1 January 2021’, 30 January 2020: <https://www.gov.uk/guidance/changes-to-unregistered-designs-after-the-transition-period> [accessed 23 September 2020]

211 HM Government, Task Force for Relations with the United Kingdom, *Draft working text for a comprehensive Free Trade Agreement between the United Kingdom and the European Union*, March 2020, Article 24.28: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/886010/DRAFT\\_UK-EU\\_Comprehensive\\_Free\\_Trade\\_Agreement.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/886010/DRAFT_UK-EU_Comprehensive_Free_Trade_Agreement.pdf) [accessed 28 September 2020]

212 European Commission, Task Force for Relations with the United Kingdom, *Draft text of the Agreement on the New Partnership with the United Kingdom*, Article IP.28 (18 March 2020): <https://ec.europa.eu/info/sites/info/files/200318-draft-agreement-gen.pdf> [accessed 26 August 2020]

## CHAPTER 8: EQUIVALENCE AND REGULATORY COOPERATION

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### Equivalence and the audit sector

158. The main barriers to trade in professional and business services are regulatory, so managing both regulatory alignment and potential regulatory divergence will be critical in overcoming barriers to trade.
159. In over 40 specific areas of financial services and audit, this is managed through an equivalence framework, whereby one Party assesses another's regulatory, supervisory and enforcement regime, and determines whether it is equivalent to their own. This process is separate from the negotiations on the FTA. The result of a mutual positive equivalence determination is that each side's competent authorities can rely on decisions of equivalent entities in ensuring compliance with the appropriate standards.
160. But equivalence is not a static, one-off decision. Even if the UK and EU agree reciprocal equivalence arrangements, future regulatory divergence remains likely. In such circumstances, equivalence needs to be underpinned by structured regulatory dialogue and cooperation, to manage potential divergence. Ideally, there would also be an agreed framework for orderly withdrawal of equivalence. As we concluded almost four years ago:
- “While the UK might be deemed equivalent at the point of withdrawal, there is no guarantee that it will remain so. Regulation must adapt to changes in the financial services system, raising the risk of regulatory divergence ... The Government should encourage direct regulatory cooperation between UK and EU authorities and ... should seek UK input to EU regulation-setting upstream.”<sup>213</sup>
161. In the Political Declaration the UK and EU agreed that they should assess each other for equivalence by the end of June 2020.<sup>214</sup> Given the interdependence between the professional and business services sectors and the financial services sector, there is a risk, as Nick Owen told us, that any “lack of confidence in the UK as a place of financial services” could have a “knock on” effect for professional and business services.<sup>215</sup> Simon Hart agreed, telling us that it was “vital that this is dealt with, because it will have an impact across the complete spectrum of business”.<sup>216</sup> In the following paragraphs we illustrate this potential impact, focusing on the audit sector.
162. While the UK remains in the Single Market, as Sally Jones told us, “audit working papers prepared by a firm in one country can be relied on by a firm in another country without adverse regulatory impacts”.<sup>217</sup> From 2021 onwards, as Helen Brennan explained, UK auditors will have to “go through a registration process with the oversight body” of each Member State to ensure recognition of their audit reports of UK companies listed on EU markets. Helen Brennan noted that this “has structural importance, because

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213 European Union Committee, *Brexit: financial services* (9th Report, Session 2016–17, HL Paper 81), para 59

214 So far, the EU has only granted a time-limited equivalence decision for the United Kingdom for central clearing counterparties (CCPs) of derivatives

215 [Q 38](#)

216 *Ibid.*

217 [Q 9](#)

we are talking here about companies that have chosen to list debt and equity on recognised markets in other countries”.<sup>218</sup>

163. The Commission (or, failing that, individual Member States) may adopt a decision recognising the equivalence of a third country’s audit oversight framework.<sup>219</sup> This decision means, as the Minister put it, that “two jurisdictions achieve comparable outcomes in audit regulation”. The Government had “responded to the Commission’s questionnaire on audit equivalence ... in early June” and was awaiting a response. Equivalence applies in both directions, and the Minister added that the Government was also “assessing the EU for equivalence and audit adequacy in parallel”.<sup>220</sup>
164. The Statutory Audit Directive also allows for adequacy decisions in respect of third countries’ oversight bodies—in the UK, the Financial Reporting Council (FRC). The Minister explained that adequacy “enables audit regulators to share sensitive working papers”.<sup>221</sup> Again, he confirmed that the UK had provided the necessary information to the Commission in early June.
165. TheCityUK stated that a positive equivalence determination on audit would “remove the requirement for UK audit firms to register with EU regulators and be subject to regulatory inspections and potentially overlapping regulations in cases of cross-border listings between the EU and the UK”.<sup>222</sup> In contrast, if there is no positive equivalence determination for audit oversight, Helen Brennan warned that there would be “grit in the wheel” for UK auditors and that it “could contribute to a gradual erosion of trust in the audit itself”.<sup>223</sup>
166. The EU’s decisions on equivalence of the UK’s audit framework and adequacy of the FRC are not part of the trade negotiations: they will be unilateral decisions. The same holds true of the Government’s deliberations in respect of the EU. Nevertheless, as with other technical areas, there is a risk that the current tensions in the future relationship negotiations could spill over into the technical process of assessing equivalence. In a letter to the Chancellor of the Exchequer dated 27 March 2020, the EU Financial Affairs Sub-Committee raised the concern that while the UK is currently fully aligned with the UK, so in a technical sense granting equivalence should not be controversial, there is a risk that these decisions could be “politicised, influenced by the broader negotiations on the UK-EU relationship and a desire on the part of EU Member States to attract business”.<sup>224</sup>
167. In response, John Glen MP, the Economic Secretary to the Treasury, said that the Government was seeking “clear and coherent structures in place in the event that equivalence is withdrawn by either party”, adding that “the

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218 [Q 33](#)

219 Directive 2014/56/EU of the European Parliament and of the Council of 16 April 2014 amending Directive 2006/43/EC on statutory audits of annual accounts and consolidated accounts, [OJ L 158/196](#), 16 April 2014

220 [Q 77](#)

221 *Ibid.*

222 Written evidence from the TheCityUK ([PBS0023](#))

223 [Q 38](#)

224 Letter from Lord Sharkey, Chair of the EU Financial Affairs Sub-Committee, to the Rt Hon. Rishi Sunak MP, Chancellor of the Exchequer, 27 March 2020: <https://committees.parliament.uk/download/file/?url=/publications/476/documents/1873&slug=chairtochancelloroftheexchequer200327pdf> [accessed 8 September 2020]

UK will seek to ensure the transparency and stability of an equivalence-based relationship while not compromising its autonomous nature”.<sup>225</sup>

168. Subsequently, on 16 July, the Minister, Nadhim Zahawi MP, told us:

“Reciprocal equivalence and adequacy decisions, we very passionately believe, would reduce regulatory overlap and cost to regulators, to firms and, ultimately, to their clients and the economy. They will also enable continued regulatory co-operation between us and the EU. This will support really effective enforcement and supervision, which, if you break all this down, is ultimately at the heart of this, because it is in the public interest.”<sup>226</sup>

169. However, in a footnote to a Communication on Brexit readiness on 9 July 2020, the Commission had added decisions under the Statutory Audit Directive to the list of equivalence/adequacy determinations that the “Commission will not adopt an equivalence decision on in the short or medium term”.<sup>227</sup>

170. Subsequently, in a letter dated 21 September, the Economic Secretary to the Treasury told us that while these assessments should be “straightforward”, the EU had “decided to make, at most, limited equivalence decisions with respect of the UK”. The Minister stated that the “Government is considering next steps”.<sup>228</sup> This remains a significant concern, given that businesses across the financial and non-financial services sectors have been clear that they will need certainty on equivalence in good time to prepare for the end of the transition period.

### Divergence and withdrawal of equivalence

171. The PBSC raised the concern that “continued regulatory cooperation is needed to avoid any unintended removal of mutual market access in cases of regulatory divergence”.<sup>229</sup> The PBSC was concerned that equivalence decisions could be “revoked with little warning”, as under EU rules some can be withdrawn with as little as 40 days’ notice.<sup>230</sup> We have previously raised similar concerns, including in our March letter to the Chancellor:

“There should be regular and structured regulatory dialogue to provide a forum for discussion and resolving any possible disagreements. There should be a phased approach to any withdrawal of equivalence decisions, with clear timelines and consultation with the industry.”<sup>231</sup>

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225 Letter from John Glen MP, Economic Secretary to the Treasury, to Lord Sharkey, Chair of the EU Financial Affairs Sub-Committee, 27 May 2020: <https://committees.parliament.uk/publications/1436/documents/13130/default/> [accessed 8 September 2020]

226 Q 77

227 Communication from the commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Getting ready for changes Communication on readiness at the end of the transition period between the European Union and the United Kingdom, COM(2020) 324, July 2020.

228 Letter from John Glen MP, Economic Secretary to HM Treasury, to Baroness Donaghy, Chair of EU Services Sub-Committee, 21 September 2020: <https://committees.parliament.uk/publications/2892/documents/28013/default/> [accessed 8 October 2020]

229 Written evidence from the PBSC (PBS0007)

230 *Ibid.*

231 Letter from Lord Sharkey, Chair of the EU Financial Affairs Sub-Committee, to the Rt Hon. Rishi Sunak MP, Chancellor of the Exchequer, 27 March 2020: <https://committees.parliament.uk/download/file/?url=/publications/476/documents/1873&slug=chairtochancelloroftheexchequer200327pdf> [accessed 8 September 2020]

172. Such concerns were in fact anticipated in the October 2019 Political Declaration, which, sketched out a holistic approach to equivalence, calling for “transparency and appropriate consultation in the process of adoption, suspension and withdrawal of equivalence decisions” (paragraph 37). In the current inquiry, the PBSC similarly recommended “intra-institutional architecture to be established between the UK and the EU to ensure that the impact of any divergence is understood and intentional.”<sup>232</sup> But as the European Union Select Committee noted in its March 2020 report comparing the UK and EU negotiating positions, the EU’s position on structured cooperation had already weakened, while the Government continued to advocate “structured withdrawal of equivalence findings”.<sup>233</sup> In response to our letter, John Glen MP, the Economic Secretary to the Treasury, reiterated that the Government was seeking “clear and coherent structures in place in the event that equivalence is withdrawn by either party”.<sup>234</sup> That remained essentially the position when the Minister, Nadhim Zahawi MP, updated us in July 2020.<sup>235</sup>
173. **We encourage both Parties to adopt decisions on the equivalence of each other’s audit frameworks and adequacy of competent authorities well ahead of the deadline of 31 December 2020, irrespective of developments in the broader negotiations, to avoid unnecessary complexity and uncertainty, particularly for auditors and their clients.**
174. **The UK and EU should come to an agreement on a structured process for any regulatory divergence in areas covered by the equivalence and adequacy regimes, including under the Statutory Audit Directive. Both sides should also agree a dispute resolution mechanism for the structured withdrawal of equivalence with suitable notice periods.**

### Structuring regulatory cooperation

175. Witnesses across professional and business services sectors also highlighted the need for continued structured regulatory cooperation between the relevant UK, EU and Member State authorities and regulatory bodies. Given that trade in services is largely dependent on regulatory harmonisation, witnesses highlighted the importance of cooperation between regulators to ease trade in services.
176. TheCityUK set out the key priorities for continued structured regulatory cooperation:

“The framework for the future relationship should be based on structured cooperation which: ensures autonomy of decision making of both the UK and EU; aligns closely with international standards to reduce fragmentation; and, supports economic growth and investment

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232 Written evidence from the PBSC (PBS0007)

233 European Union Committee, *Report pursuant to section 29 of the European Union (Withdrawal Agreement) Act 2020: Council Decision authorising the opening of negotiations with the United Kingdom of Great Britain and Northern Ireland for a new partnership agreement* (8th Report, Session 2019–20, HL Paper 32), para 70

234 Letter from John Glen MP, Economic Secretary to the Treasury, to Lord Sharkey, Chair of the EU Financial Affairs Sub-Committee, 27 May 2020: <https://committees.parliament.uk/publications/1436/documents/13130/default/> [accessed 8 September 2020]

235 Q 77

in the UK and EU, minimising disruption and the social and economic consequences of the changed relationship.”<sup>236</sup>

The objectives of regulatory cooperation thus include the avoidance of barriers to trade, enhancing the efficacy of regulation, preventing sudden shocks due to short-notice changes of regulation, and enabling innovation in regulatory practices.

177. Regulatory cooperation will look different for each sector within professional and business services. For accounting and audit, CIMA told us that both the UK and EU “have a shared interest in ensuring a high global standard of accounting and audit practices” through cooperation between the relevant regulatory bodies.<sup>237</sup> The legal sector will be heavily reliant upon regulatory cooperation on the mutual recognition of professional qualifications (see Chapter 6). The architectural and engineering sectors will require continued dialogue between regulators on technical specifications. The Advertising Standards Authority, on the other hand, will remain a member of the European Advertising Standards following the end of the transition period, as the body is separate from the EU.<sup>238</sup>
178. The Scottish Government emphasised that an agreement on regulatory cooperation should include “meaningful engagement and input from the devolved administrations, given so much of regulation is devolved”, and also bearing in mind “the divergence between Scottish Government and UK Government position in some areas of regulation”.<sup>239</sup>

#### *UK and EU negotiating positions*

179. The Government’s written evidence stated: “The UK is seeking to agree commitments which provide the opportunity for both Parties and their Competent Authorities to discuss their respective approaches to regulating services and investment.”<sup>240</sup> The Government cited the example of the Architects Registration Board’s work with the European Network of Architects Competent Authorities, which “developed a mutually acceptable standard for the format of their authorities’ certificates”.<sup>241</sup>
180. In relation to services regulation, both the UK and EU texts call for any technical standards to be developed through “open and transparent processes”.<sup>242</sup> The UK text also sets out a framework for regulatory dialogue to “promote further services liberalisation,” through: “(a) discussing regulatory

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236 Written evidence from TheCityUK (PBS0023)

237 Written evidence from CIMA (PBS0036)

238 Written evidence from the Advertising Association (PBS0016)

239 Written evidence from the Scottish Government (PBS0047)

240 Written evidence from BEIS (PBS0024)

241 *Ibid.*

242 HM Government, Task Force for Relations with the United Kingdom, *Draft working text for a comprehensive Free Trade Agreement between the United Kingdom and the European Union*, Chapter 12, Article 12.3: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/886010/DRAFT\\_UK-EU\\_Comprehensive\\_Free\\_Trade\\_Agreement.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/886010/DRAFT_UK-EU_Comprehensive_Free_Trade_Agreement.pdf) [accessed 28 September 2020] European Commission, Task Force for Relations with the United Kingdom, *Draft text of the Agreement on the New Partnership with the United Kingdom*, Article SERVIN 5.10 (18 March 2020): <https://ec.europa.eu/info/sites/info/files/200318-draft-agreement-gen.pdf> [accessed 26 August 2020]

approaches; (b) sharing best-practice and expertise; (c) participating in international dialogues; and (d) sharing trade-related information”.<sup>243</sup>

181. The UK draft legal text includes provision for each Party to submit comments on any new regulatory measures. The stated aim of such a mechanism is to “allow the other Party to assess whether and how their interests might be significantly affected”.<sup>244</sup> The UK has also proposed several committees—including on services and qualifications—to promote regulatory dialogue between the UK and EU.<sup>245</sup> The Law Society of England and Wales suggested a dedicated committee or sub-committee on professional and business services, which could “help foster a better dialogue between the parties”.<sup>246</sup> The Government’s proposals, if adopted, could go some way to meet such concerns within the sector. The EU’s draft legal text does not go into as much detail on the structure of governance arrangements for managing regulatory cooperation. The Law Society of England and Wales suggested a dedicated committee or sub-committee on professional and business services which could “help foster a better dialogue between the parties”.
182. Shanker Singham said that these draft texts were “quite encouraging”, as both sides were “committed to good regulatory practices, which is a term of art in trade negotiations”.<sup>247</sup> The Law Society of England and Wales also called the UK’s proposals on regulatory cooperation in services “encouraging”.<sup>248</sup>
183. **Given that trade in professional and business services is dependent on good regulatory practices, we welcome both sides’ commitment to ensuring continued regulatory dialogue. This will help to provide certainty to businesses and ensure best practice is shared.**
184. **The governance arrangements for regulatory dialogue should include a dedicated UK-EU committee on professional and business services, which could help to ensure that these sectors are not overlooked.**

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243 HM Government, Task Force for Relations with the United Kingdom, *Draft working text for a comprehensive Free Trade Agreement between the United Kingdom and the European Union*, Article 12.3: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/886010/DRAFT\\_UK-EU\\_Comprehensive\\_Free\\_Trade\\_Agreement.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/886010/DRAFT_UK-EU_Comprehensive_Free_Trade_Agreement.pdf) [accessed 28 September 2020]

244 *Ibid.*, Article 12.11

245 *Ibid.*, (Article 30.3)

246 Written evidence from the Law Society of England and Wales ([PBS0019](#))

247 [Q 7](#)

248 Written evidence from the Law Society of England and Wales ([PBS0019](#))

## CHAPTER 9: DIGITAL TRADE AND DATA FLOWS

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### The need for data transfers

185. Witnesses impressed upon us the importance of digital trade—defined by techUK as the “cross-border transfer of data, products, or services by electronic means”—both for their day-to-day business operations and to drive innovation in their sectors.<sup>249</sup>
186. This applies across the professional and business services landscape. For instance:
- Farzana Baduel felt that a situation where UK public relations firms did not “have access to data in a timely fashion from the EU” would “impact [their] ability to be the first port of call for global clients who are looking for PR agencies with access to global data”.<sup>250</sup>
  - REC said that “data management has always been a fundamental element of recruitment”, adding that in recent years there had “been an increase in the amount of recruitment businesses using new technology that relies on big data and software that operates on the cloud”.<sup>251</sup>
  - Paul Bainsfair described data flows as “absolutely critical” for the advertising and market research industries.<sup>252</sup>

Similar remarks were made by Simon Hart in relation to management consulting and accountancy, and by the Law Society of Scotland on legal services.<sup>253</sup>

187. From the end of 2020 the ease of UK-EU data transfers will depend to a large extent on whether, as envisaged in the October 2019 Political Declaration on future UK-EU relations, the two sides have taken the necessary steps, in accordance with their respective data protection regimes, to facilitate transfers between them of personal data.<sup>254</sup> As part of the trade negotiations, the Government and EU are also seeking to agree commitments to reduce barriers to data flows for business purposes.

### Data adequacy

188. In the EU, the handling of personal data by individuals and organisations, and data transfers to a third country, are governed by the 2016 General Data Protection Regulation (GDPR).<sup>255</sup> Under the GDPR, the Commission may issue an ‘adequacy’ decision confirming that a third country provides a level of data protection comparable to that in EU law. As we explained in our July

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249 Written evidence from techUK ([PBS0050](#))

250 [Q 64](#)

251 Written evidence from the REC ([PBS0022](#))

252 [Q 63](#)

253 [Q 40](#); written evidence from the Law Society of Scotland ([PBS0039](#))

254 HM Government, *Political Declaration setting out the framework for the future relationship between the European Union and the United Kingdom*, paragraph 9: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/840656/Political\\_Declaration\\_setting\\_out\\_the\\_framework\\_for\\_the\\_future\\_relationship\\_between\\_the\\_European\\_Union\\_and\\_the\\_United\\_Kingdom.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/840656/Political_Declaration_setting_out_the_framework_for_the_future_relationship_between_the_European_Union_and_the_United_Kingdom.pdf) [accessed 22 September 2020]

255 Regulation (EU) of 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), [OJ L 119/1](#), 27 April 2016

2017 report *Brexit: the EU data protection package*, “the practical effect of an adequacy decision is that cross-border data transfers” to the relevant third country “can take place without any further safeguards”.<sup>256</sup>

189. Discussions between the Commission and the Government on the EU’s assessment of the UK’s data adequacy formally started on 11 March 2020.<sup>257</sup> On 13 March the Government published a suite of explanatory documents on the UK’s data protection framework, aimed to aid the Commission’s assessment.<sup>258</sup>
190. The PBSC and the Advertising Association underlined the importance of data adequacy, with the PBSC calling on the Government to “continue to push” for an adequacy decision under any scenario.<sup>259</sup> Professor John Bryson said a lack of data adequacy would be a “major stumbling block” for professional and business service providers.<sup>260</sup>
191. As the PBSC told us, the data adequacy process is “separate from the bilateral trade negotiations”.<sup>261</sup> This means that, in principle, the UK could receive a positive data adequacy decision (and could grant such a decision in respect of the EU) even if the Government and EU failed to conclude a trade agreement. But as with equivalence decisions, techUK saw a risk that “political disruption spilling over from the main FTA negotiations or from the wider political sphere in the UK or the EU” could make a positive adequacy decision “challenging”.<sup>262</sup>
192. A key risk is that the Commission might refuse to grant data adequacy due to tensions between the UK’s surveillance framework and EU data protection rules. Sally Jones told us:
- “The real question is whether the UK’s legislative framework in the round, not just GDPR but as a collection, ensures that EU citizens have the same level of protection over their personal data post the UK leaving as they do [now]. The answer in the round is that, arguably—I am not making any kind of political point—no, it does not.”<sup>263</sup>
193. Oliver Patel, Research Associate and Manager, UCL, drew attention to the potential implications for the UK’s data adequacy assessment of the Schrems II case. This, he explained, questioned the legality of the EU-US data-sharing arrangement known as ‘Privacy Shield’, due to a “clash between U.S. national security and surveillance laws and EU data protection standards and fundamental rights”. He argued that the CJEU’s judgement “could render it virtually impossible for the Commission to grant the UK an adequacy decision”.<sup>264</sup> We note that, on 16 July 2020, the CJEU rendered its judgment

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256 European Union Committee, *Brexit: the EU data protection package* (3rd Report, Session 2017–19, HL Paper 7)

257 Written evidence from BEIS ([PBS0024](#))

258 HM Government, *Explanatory framework for adequacy discussions, 13 March 2020*: <https://www.gov.uk/government/publications/explanatory-framework-for-adequacy-discussions> [accessed 22 September 2020]

259 Written evidence from the PBSC ([PBS0007](#)) and from the Advertising Association ([PBS0016](#))

260 Written evidence from Professor John Bryson([PBS0017](#))

261 Written evidence from the PBSC ([PBS0007](#))

262 Written evidence from techUK ([PBS0050](#))

263 [Q 13](#)

264 Written evidence from Oliver Patel ([PBS0029](#))

in the Schrems II case, striking down Privacy Shield.<sup>265</sup> We also note the views expressed that recent decisions of the CJEU may further increase the risk that the Commission does not grant the UK a data adequacy decision.<sup>266</sup> At the time of writing, the knock-on effects on the UK's data adequacy process (if any) remained unclear, but it is important to underline, as our former Home Affairs Sub-Committee concluded in 2017, that as a third country the UK will no longer benefit from the national security exemption afforded to Member States under the Treaty on the Functioning of the European Union. The UK could thus “find itself held to a higher standard as a third country than as a Member State”.<sup>267</sup>

### *The loss of adequacy*

194. Oliver Patel was clear that a lack of data adequacy would not put a stop to UK-EU data transfers or UK-EU digital trade. Firms would, however, need to put in place “ad hoc legal mechanisms” to meet the requirements of the GDPR. techUK clarified that “every business in the UK and the EU that exchanges personal data” would become subject to these obligations.<sup>268</sup>
195. The GDPR provides several mechanisms for enabling data transfers to a third country in the absence of an adequacy decision.<sup>269</sup> Based on the evidence we received, the most relevant to professional and business service providers are:
  - Standard contractual clauses—Oliver Patel described these as “template contracts, created by the European Commission, which both parties engaging in an EU-third country data transfer must sign”;<sup>270</sup> and
  - Binding corporate rules—serve to facilitate data transfers within a company or group of companies. Oliver Patel explained that binding corporate rules require “approval from the relevant EU data protection authority”,<sup>271</sup> which, according to Nick Owen “can take many months, or even years, to achieve”.<sup>272</sup>
196. The Law Society of England and Wales said that these alternative mechanisms had “serious shortcomings, as compared with data adequacy”, for example that businesses would be “subject to regulatory responsibilities (and associated costs)” and exposed to “sanctions and fines” in case of non-compliance.<sup>273</sup> Oliver Patel note that such sanctions would have reputational as well as financial implications for businesses.<sup>274</sup>

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265 *Data Protection Commissioner v Facebook Ireland Limited and Maximilian Schrems*, Judgement of the Court (Grand Chamber), 16 July 2020, [C-311/18](#)

266 *La Quadrature du Net, French Data Network, Federation des fournisseurs d'accès à internet associatifs, Iqwan.net v Premier ministre, Garde des Sceaux, ministre de la Justice, Ministre de l'Intérieur, Ministre des Armées, interveners: Privacy International, Center for Democracy and Technology* (6 October 2020) [ECLI:EU:C:2020:791](#) and *Privacy International v Secretary of State for Foreign and Commonwealth Affairs, Secretary of State for the Home Department, Government Communications Headquarters, Security Service, Secret Intelligence Service* (6 October 2020) [C-263/17](#)

267 European Union Committee, *Brexit: the EU data protection package* (3rd Report, Session 2017–19, HL Paper 7), para 165

268 Written evidence from techUK ([PBS0050](#))

269 Written evidence from the PBSC ([PBS0007](#))

270 Written evidence from Oliver Patel ([PBS0029](#))

271 *Ibid.*

272 [Q 40](#)

273 Written evidence from the Law Society of England and Wales ([PBS0019](#))

274 Written evidence from Oliver Patel ([PBS0029](#))

197. SMEs could be hit particularly hard. Neil Ross, Policy Manager, techUK, warned that SMEs “do not have the time or necessarily the expertise to put [the GDPR] provisions in place”.<sup>275</sup> Research by the Federation of Small Businesses confirms that “only a small proportion of small businesses are aware of [standard contractual clauses] as a legal means to transfer data internationally”.<sup>276</sup> Such concerns bear out the conclusion in our 2017 report: “Although there are alternative mechanisms to allow data to flow out of the EU for commercial purposes, these are sub-optimal compared to an adequacy decision.”<sup>277</sup>
198. More broadly, Neil Ross, Policy Manager, techUK, was concerned that UK businesses could be “viewed as less competitive”, given the “extra burdens” associated with data transfers.<sup>278</sup> Oliver Patel also felt that a lack of data adequacy could lead to a reduction in UK-EU digital trade, with EU firms choosing EU-based service providers over UK competitors and the prices of services sold from the EU to the UK increasing.<sup>279</sup> The Chartered Institute of Public Relations believed that a failure to secure an adequacy decision could “undermine trust” in the UK’s data protection framework, and in “UK business in general”.<sup>280</sup>

#### *Data adequacy in UK law*

199. Regulations made in 2019 have replicated the data adequacy process in UK law, granting the power to adopt ‘adequacy regulations’ (decisions) to the Secretary of State for Culture, Media and Sport. The Regulations also recognised the data adequacy of EU and other EEA countries on a transitional basis—thus ensuring the uninterrupted free flow of data from the UK to these countries.<sup>281</sup> The Minister told us that the Government would “keep our transitional adequacy arrangements under review and complete these reviews within four years of the arrangement coming in to effect”.<sup>282</sup>

#### *The Government’s position*

200. The Government acknowledged that a data adequacy decision from the Commission was “of key importance in day-to-day business operations of data heavy sectors”. At the same time, it felt that “for most organisations—including SMEs”, the implementation of Standard Contractual Clauses in the event of no adequacy decision “should not be excessively costly”.<sup>283</sup> Carl Creswell, Director, Professional Business Services, BEIS added that the UK’s Information Commissioner’s Office (ICO) had “produced quite a lot of guidance for businesses, which they can draw on”.<sup>284</sup> Similarly, the ICO referenced the “extensive guidance” already available to businesses “on the various alternative transfer mechanisms available in the event of no

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275 European Union Committee, *Brexit: the EU data protection package* (3rd Report, Session 2017–19, HL Paper 7)

276 Written evidence from the FSB ([PBS0051](#))

277 European Union Committee, *Brexit: the EU data protection package*, para 115

278 [Q 64](#)

279 Written evidence from Oliver Patel ([PBS0029](#))

280 Written evidence from the CIPR ([PBS0035](#))

281 The Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019, ([SI 2019/419](#))

282 [Q 77](#)

283 Written evidence from BEIS ([PBS0024](#))

284 [Q 82](#) (Carl Creswell)

adequacy decision”, including an “interactive web tool” for creating standard contractual clauses.<sup>285</sup>

201. Asked about progress in the Commission’s adequacy assessment of the UK, the Minister declined to speculate.<sup>286</sup> He was nonetheless “confident that an adequacy agreement [could] be reached with the EU by the end of the transition period”,<sup>287</sup> and hoped that the issue would “not be politicised”.<sup>288</sup>
202. **The free flow of data between the UK and EU is vital to professional and business service providers. Reciprocal UK and EU data adequacy assessments would be the most effective way to support such data flows. While their absence would not pose an absolute barrier, the alternative arrangements prescribed by the GDPR, in particular Standard Contractual Clauses, can be cumbersome to implement and would expose businesses to the risk of sanctions and fines. All of this could add complexity to, and potentially reduce, UK-EU digital trade in professional and business services. We reiterate the conclusion in our July 2017 report *Brexit: the data protection package* that the reciprocal granting of adequacy decisions is by far the preferred mechanism to support continuing UK-EU data transfers.**
203. **We are concerned that there is a possibility that the Commission may not grant the UK a data adequacy decision. We call on the Government to push for the assessment to be concluded as soon as possible, to give businesses in the UK and EU legal certainty and time to prepare. We note that the UK has granted the EU data adequacy on a transitional basis.**
204. **Smaller operators in the UK remain unprepared for the possibility of no adequacy decision, with some unaware of the potential requirement for standard contractual clauses. We welcome the work already done by the ICO to inform businesses, including SMEs, about the implications if no decision to grant adequacy is forthcoming, but call on the Government and ICO to step up their engagement efforts in coming weeks.**

#### **Data flows under a UK-EU agreement**

205. The Government and EU are separately negotiating, as part of the wider discussions on the future UK-EU relationship, provisions aimed at reducing barriers to transfers of personal and non-personal information for business purposes.
206. A key benefit of such an agreement would be a prohibition on the imposition of data localisation rules, requiring companies from one Party exporting to the other Party to store data in the latter’s territory. Simon Conington argued that such rules posed “a barrier against working smarter and against digitalisation”, and could “cause difficulties” to UK service exporters.<sup>289</sup> Similarly, the Law Society of Scotland described data localisation requirements as a potential “barrier to trade”.<sup>290</sup>

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285 Written evidence from the ICO ([PBS0053](#))

286 [Q 88](#)

287 [Q 82](#)

288 [Q 88](#)

289 [Q 64](#)

290 Written evidence from the Law Society of Scotland ([PBS0039](#))

207. Neil Ross reassured us that both the EU's and UK's proposals would prevent signatories to the agreement from imposing data localisation requirements "unless in very extreme circumstances".<sup>291</sup> techUK, on the other hand, identified some differences between the Government's and EU's proposals on data flows. In particular, while the Government had put forward a "positive obligation to allow cross-border data transfers for business purposes", the EU was taking a "more precautionary approach with a much greater focus on personal data protection".
208. According to techUK, the Government's proposed commitments on data flows were much more akin to arrangements in the United States-Mexico-Canada Agreement, US-Japan Digital Trade Agreement and the Comprehensive and Progressive Agreement for Trans-Pacific Partnership, than to those in the EU's current trade agreements.<sup>292</sup> Neil Ross reflected on the implications for UK trade policy of such differences, warning that any commitments made by the Government in future trade agreements with third countries, for example "to transferring personal data as part of business contracts without additional checks or safeguards on personal data", could "have a very large impact" on a UK-EU agreement, as well as on data adequacy arrangements.<sup>293</sup>
209. **Separate to the data adequacy process, the Government and EU are negotiating provisions aimed to reduce barriers to data transfers for business purposes as part of a future relationship agreement. We welcome the fact that both Parties are seeking a commitment not to impose data localisation requirements, which were highlighted in evidence as a potential barrier to trade and innovation in the professional and business services sectors.**

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291 [Q 64](#)

292 Written evidence from techUK ([PBS0050](#))

293 [Q 65](#)

## **SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS**

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1. Professional and business services accounted for almost 12% (£224.8 billion) of the UK economy's gross value added, 13% of the workforce (4.6 million jobs), and 23% of all registered businesses in 2019. But the disparateness and manifold complexity of the sector mean that its interests are often overlooked. (Paragraph 18)
2. Of the more than 600,000 professional and business services providers in the UK, the average number of employees is fewer than four. While London is a hub for the industry, it is also spread across the UK with two thirds of those working in professional and business services based outside of London and the South East. (Paragraph 19)
3. In total, professional and business services provide 32% (£96 billion) of the UK's service exports and 15% of all UK exports. 6.7. The EU is the UK's largest market for exports these services, accounting for 37% of professional and business services exports. The UK had a trade surplus of £12.4 billion with the EU on professional and business services in 2019. (Paragraph 20)

### **Cross-border supply of services**

4. Future UK-EU arrangements for the cross-border supply of services will significantly affect the UK's professional and business service sector, particularly smaller operators, who may not to have a commercial presence in the EU. (Paragraph 61)
5. Through national reservations, EU Member States can impose various regulatory barriers to cross-border imports of professional and business services from non-EU/EEA countries at a national level. These include economic needs tests requiring some proof that demand cannot be met by existing local providers, and requirements making market access conditional upon local presence. (Paragraph 62)
6. We are concerned that barriers to the provision of services on a cross-border basis could lead to a drift of economic activity away from the UK. Given that it is possible to move the delivery of services overseas, this drift of activity could have a detrimental effect on the UK's professional and business services sectors in the long term. While this will apply to firms both large and small, we are particularly concerned that requirements of this type could place a disproportionate burden on UK SMEs. (Paragraph 63)
7. To mitigate these risks, a UK-EU agreement should contain robust commitments on cross-border supply, addressing the full range of potential barriers. We welcome the Government's proposal that the UK and EU should explicitly commit not to tie market access to local establishment or residency, and urge the Government to press for inclusion of such a commitment in an agreement with the EU. (Paragraph 64)
8. Although the UK and EU draft legal texts are broadly aligned on cross-border supply of services, there is little room for complacency until clarity emerges on any national reservations to a UK-EU agreement. The example of the EU's trade agreement with Canada shows that these reservations can be wide-ranging and affect a number of professional and business services sectors. (Paragraph 65)

9. When we spoke to the Minister on 16 July 2020, there had been little UK-EU discussion on potential national reservations. This is a source of serious concern. The Government should publish comprehensive explanatory material on any national reservations on services attached to the agreement to enable proper parliamentary scrutiny and give professional and business service providers—in particular SMEs—clear guidance on the position across Member States. (Paragraph 66)
10. The Government should continue to engage with the EU and individual Member States to reduce, and if possible, remove any barriers to cross-border supply through national reservations to the agreement. (Paragraph 67)
11. The Government has not sought bespoke UK-EU arrangements on public procurement. The Minister was confident that the EU's schedules of commitments under the WTO GPA would give UK professional and business service providers sufficient access to Member States' public procurement markets. However, we received evidence that this might not be the case in all sectors. We urge the Government to work with like-minded signatories to the WTO GPA to broaden the scope of the agreement. (Paragraph 68)

### **Rights of establishment**

12. Without a UK-EU agreement 'locking in' adequate liberalisation, UK professional and business service providers would become subject to a broad range of restrictions, including caps on the amount of capital they may hold in an EU company, requirements to partner with a local investor or service provider, and restrictions on the types of corporate forms that they may use when establishing a commercial presence in the EU. We urge the Government to ensure that an agreement with the EU minimises these barriers. Member States may also seek carve-outs from any liberalisation commitments agreed between the UK and EU through national reservations. This further underlines the importance of engagement with the EU and individual Member States to minimise such reservations. (Paragraph 82)
13. Restrictions on corporate form would particularly affect the legal and audit sectors in the UK. We strongly encourage the Government to continue to seek an agreement that removes the potential for limitations on corporate forms, such as LLPs. (Paragraph 83)

### **Business mobility**

14. Professional and business services sectors rely on the ease of business travel between the UK and EU, and firms' ability to redeploy staff flexibly to their offices across Europe. Any significant barriers to UK-EU business mobility, therefore, risk a loss of competitiveness and innovation. We urge the Government to ensure that temporary mobility is covered by an agreement with the EU, and that arrangements in this area are as ambitious and comprehensive as possible. (Paragraph 89)
15. We strongly support the Government's efforts to secure a maximum length of stay of 90 days in any six-month period for short-term business visitors, compared to the 90 days in 12 months offered by the EU. (Paragraph 106)
16. The efficacy of any UK-EU arrangements on short-term business visitors will ultimately depend on the type of activities that these visitors will be allowed to carry out when visiting their clients. The negotiating parties have not yet disclosed their proposals in this area. We urge the Government to

press for minimal restrictions, particularly the inclusion of paid work in any list of permitted activities under a UK-EU agreement. As in a number of other areas, we are concerned about the potential for national reservations to the agreement that could create additional barriers to the delivery of services, such as economic needs tests for mobility on a temporary basis. (Paragraph 107)

17. While we recognise that free movement between the UK and EU will end, and that the UK will pursue its own independent immigration policy, it is in the UK's economic interest to agree comprehensive business travel facilitations with the EU as part of a future relationship agreement. Several witnesses advocated visa-free travel for short-term business travel, covering short-term business visitors and independent professionals. Any new administrative arrangements should ensure that these sectors can maintain their agility. We ask the Government to clarify whether this is part of its offering to the EU and, if it is not, to explain its reasoning. (Paragraph 108)
18. Access to talent from the EU is and will remain important to the UK's professional and business service sectors. We encourage the Government to work with businesses, including through the Professional and Business Services Council, to understand how the UK's future immigration system can best support their needs. (Paragraph 113)

### **Recognition of professional qualifications**

19. In some professional and business services sectors, the recognition of qualifications by third country authorities is crucial to enabling cross-border trade. We reiterate the recommendation in our March 2017 report, *Brexit: trade in non-financial services*, that an agreement reached with the EU should include provisions facilitating the continued recognition of UK professional qualifications in the EU, and vice versa. (Paragraph 122)
20. Bespoke arrangements, in addition to an FTA, are likely to be required in some professional and business services sectors. This is one area where a bad deal, which prevents the agreement of bilateral supplementary agreements on mutual recognition, could be worse than a no deal. We urge the Government to ensure that an agreement explicitly allows for the conclusion of supplementary bilateral arrangements on the mutual recognition of professional qualifications, including at the Member State level. (Paragraph 133)
21. The mutual recognition of professional qualifications is one area where the Parties' negotiating stances differ fundamentally. The Government has proposed that mutual recognition should be the default position. The Commission's proposal allows UK and EU-wide professional bodies to negotiate sector-specific mutual recognition agreements which would have to be approved by a Partnership Council, as under CETA. Our witnesses were unanimous that CETA's mutual recognition provisions have been ineffective so far, having failed to produce a single mutual recognition agreement. We welcome the Government's efforts to secure inclusion of its more ambitious proposals in any final UK-EU agreement. (Paragraph 141)
22. With the UK's exit from the Single Market, UK legal professionals will lose some of their existing rights, such as the ability to advise on EU law under their home state title and represent clients before EU courts and institutions. It may not be feasible, in our view, to preserve these rights as part of the

current negotiations. Nevertheless, the Government's efforts to secure some form of recognition of legal qualifications is welcome. We urge both negotiating parties to come to an understanding on this matter, given the potential reciprocal benefits for UK and EU legal professionals, businesses and citizens. (Paragraph 142)

### **Intellectual property**

23. While current EU trade marks will be transferred onto the UK register at no extra cost, we are concerned that at the end of the transition period UK companies could face additional charges if, next year, they are required to register new trade marks at both the UK IPO and EU IPO. (Paragraph 149)
24. The Government has proposed that unregistered designs presented in the UK should receive protection in the UK and throughout the EU27, and vice versa. We urge the Commission to give the UK's proposal serious consideration. (Paragraph 157)

### **Equivalence and regulatory cooperation**

25. We encourage both Parties to adopt decisions on the equivalence of each other's audit frameworks and adequacy of competent authorities well ahead of the deadline of 31 December 2020, irrespective of developments in the broader negotiations, to avoid unnecessary complexity and uncertainty, particularly for auditors and their clients. (Paragraph 173)
26. The UK and EU should come to an agreement on a structured process for any regulatory divergence in areas covered by the equivalence and adequacy regimes, including under the Statutory Audit Directive. Both sides should also agree a dispute resolution mechanism for the structured withdrawal of equivalence with suitable notice periods. (Paragraph 174)
27. Given that trade in professional and business services is dependent on good regulatory practices, we welcome both sides' commitment to ensuring continued regulatory dialogue. This will help to provide certainty to businesses and ensure best practice is shared. (Paragraph 183)
28. The governance arrangements for regulatory dialogue should include a dedicated UK-EU committee on professional and business services, which could help to ensure that these sectors are not overlooked. (Paragraph 184)

### **Data flows and digital trade**

29. The free flow of data between the UK and EU is vital to professional and business service providers. Reciprocal UK and EU data adequacy assessments would be the most effective way to support such data flows. While their absence would not pose an absolute barrier, the alternative arrangements prescribed by the GDPR, in particular Standard Contractual Clauses, can be cumbersome to implement and would expose businesses to the risk of sanctions and fines. All of this could add complexity to, and potentially reduce, UK-EU digital trade in professional and business services. We reiterate the conclusion in our July 2017 report *Brexit: the data protection package* that the reciprocal granting of adequacy decisions is by far the preferred mechanism to support continuing UK-EU data transfers. (Paragraph 202)
30. We are concerned that there is a possibility that the Commission may not grant the UK a data adequacy decision. We call on the Government to push

for the assessment to be concluded as soon as possible, to give businesses in the UK and EU legal certainty and time to prepare. We note that the UK has granted the EU data adequacy on a transitional basis. (Paragraph 203)

31. Smaller operators in the UK remain unprepared for the possibility of no adequacy decision, with some unaware of the potential requirement for standard contractual clauses. We welcome the work already done by the ICO to inform businesses, including SMEs, about the implications if no decision to grant adequacy is forthcoming, but call on the Government and ICO to step up their engagement efforts in coming weeks. (Paragraph 204)
32. Separate to the data adequacy process, the Government and EU are negotiating provisions aimed to reduce barriers to data transfers for business purposes as part of a future relationship agreement. We welcome the fact that both Parties are seeking a commitment not to impose data localisation requirements, which were highlighted in evidence as a potential barrier to trade and innovation in the professional and business services sectors. (Paragraph 209)

## APPENDIX 1: LIST OF MEMBERS AND DECLARATIONS OF INTEREST

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### Members

Lord Bruce of Bennachie  
 Lord Cavendish of Furness  
 Baroness Couttie  
 Lord Davies of Stamford  
 Baroness Donaghy (Chair)  
 Lord McNally  
 Baroness Neville-Rolfe  
 Baroness Prashar  
 Lord Sharkey  
 Lord Thomas of Cwmgiedd  
 Viscount Trenchard  
 Lord Vaux of Harrowden

### Declarations of interest

Lord Bruce of Bennachie  
*Corporate advisor to DAI Europe (UK based division of DAI Global international development contractors)*

Lord Cavendish of Furness  
*Category 1: Directorships*  
*Category 2: Remunerated employment, office, profession etc.*  
*Holker Woodlands (timber)*  
*Income received from book sales*  
*Category 3: Person with significant control of a company (PSC)*  
*Holbeck Homes Limited*  
*Burlington Slate Limited*  
*Holker Estates Co Limited*  
*Holker Holdings Limited*  
*Cartmel Steeplechases (Holker) Limited*  
*Vitagrass Farms (Holker) Limited*  
*Guides over the Kent and Levens Sands Limited*  
*Category 4: Shareholdings (b)*  
*Holker Holdings Limited*  
*Cartmel Steeplechases (Holker) Limited*  
*Holker Estates Co Limited*  
*Vitagrass Farms (Holker) Limited*  
*Category 5: Land and property*  
*Beneficiary of a Family Trust which owns land in South Cumbria, including residential and business property*  
*Woodlands based in South Cumbria*  
*Flat in London SW1 from which rental income is received*  
*Category 10: Non-financial interests (a)*  
*Director, Holker Holdings Limited*  
*Director, Holker Estates Company Limited*  
*Director, Cartmel Steeplechases Limited*  
*Director, Cartmel Steeplechases (Holker) Limited*

*Chairman, Guides over the Kent and Levens Sands Limited*  
*Director, South Cumbria Rivers Trust Limited*  
*Director, Vitagrass Farms (Holker) Limited*  
*Category 10: Non-financial interests (e)*  
*President, Cartmel Cricket Club*  
*President, Cumbria Gardens Trust*  
*President, Dry Stone Walling Association*  
*Trustee, Flookburgh Church Building Trust*  
*Trustee, Guide over the Sands Trust*  
*Vice President, Lakeland Housing Trust*  
*Chairman, Leven Angling Association*  
*President, Grange & District Wildfowlers Association*

**Baroness Couttie**

*Non-executive Director, Mitie plc*  
*Commissioner, Guernsey Financial Services Commission*  
*Special Advisor, Heyman AI Ltd*

**Lord Davies of Stamford**

*No relevant interests to declare*

**Baroness Donaghy**

*Former President, TUC*  
*Former member, European TUC Executive*

**Lord McNally**

*Fellow, Chartered Institute of Public Relations and Public Relations Companies Association*  
*Non-executive Chairman and non-executive Director, Entertainments App Ltd, providing online services to the property market at home and abroad*

**Baroness Neville-Rolfe**

*Chair, UK ASEAN Business Council*  
*Non-executive Director, Capita plc*  
*Non-executive Director, Secure Trust Bank plc*  
*Trustee, Thomson Reuters Founders Share Company*  
*Non-executive Director, Health Data Research UK*  
*Chartered Secretary*  
*Fellow of ICSA, The Chartered Governance Institute.*

**Baroness Prashar**

*Chairman, Cumberland Lodge*  
*Adviser, Nationwide*  
*Trustee, Nationwide Foundation*  
*UK Chairman, Federation Of Indian Chambers Of Commerce And Industry*  
*Member of Advisory Board, IE Business School Madrid, Spain*  
*Member of Advisory Board, Aspide*  
*Patron, National Literacy Trust*  
*Former Deputy Chairman, British Council and President of UKCISA*

**Lord Sharkey**

*Member of Council, UCL*  
*Chair, Association of Medical Research Charities*  
*Chair, Specialised Healthcare Alliance*  
*Chair, New City Agenda (financial services think tank)*  
*Director, Full Fact (independent fact checking organisation)*

*Director, Turn2us Ltd (care home and poverty relief charity)*

Lord Thomas of Cwmgiedd

*Chairman, London Financial Markets Law Committee*

*First Vice-President, European Law Institute (secretariat based in Vienna)*

*Joint Chair of the American Law Institute/European Law Institute Project on Principles for the Data Economy*

*Door Tenant, Essex Court Chambers, as an arbitrator*

*Bencher, Gray's Inn*

*Member, First Minister of Wales' European Advisory Group*

*Chancellor, Aberystwyth University*

Viscount Trenchard

*Director, Adamas Finance Asia Limited*

*Chairman and Director, Stratton Street PCC Limited*

*Consultant, Japan Bank for International Cooperation*

*Consultant, Simon Robertson Associates LLP*

*Trustee, Fonthill Estate, Wiltshire*

*Senior Adviser to HMG on Japanese Financial Services*

Lord Vaux of Harrowden

*Member, Institute of Chartered Accountants in England & Wales (non-practising)*

*Shareholdings:*

*Fidelity National Information Services Inc (computer software)*

*Non-registrable interests*

*Shareholdings:*

*Tampopo Limited (restaurants)*

*Investec plc*

*Prudential Plc*

*TP ICAP*

*CME Group*

*HSBC Holdings Plc*

*Legal & General Group*

*Vodafone Group*

The following Members of the European Union Select Committee attended the meeting at which the report was approved:

The Earl of Kinnoull (Chair)

Lord Cavendish of Furness

Baroness Donaghy

Lord Faulkner of Worcester

Baroness Hamwee

Lord Kerr of Kinlochard

Baroness Neville-Rolfe

Lord Oates

Lord Ricketts

Lord Sharkey

Lord Thomas of Cwmgiedd

Lord Wood of Anfield

During consideration of the report the following Members declared an interest:

Lord Faulkner of Worcester

*Lord Alderney Gambling Control Commission*

Baroness Hamwee

*Liberal Democrat Lords Spokesperson on Immigration*

The Earl of Kinnoull

*Shareholdings in Hiscox Ltd and Schroders plc*

Lord Oates

*Chair, Advisory Board Weber Shandwick UK*

*Non-Executive Director, Centre for Countering Digital Hate*

A full list of Members' interests can be found in the Register of Lords' interests:

<https://www.parliament.uk/mps-lords-and-offices/standards-and-interests/register-of-lords-interests/>

## APPENDIX 2: LIST OF WITNESSES

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Evidence is published online at <https://committees.parliament.uk/work/305/the-future-ukeu-relationship-on-professional-and-business-services/> and available for inspection at the Parliamentary Archives (020 7219 3074).

Evidence received by the Committee is listed below in chronological order of oral evidence session and in alphabetical order. Those witnesses marked with \*\* gave both oral and written evidence. Those marked with \* gave oral evidence and did not submit any written evidence. All other witnesses submitted written evidence only.

### Oral evidence in chronological order

|    |   |                          |
|----|---|--------------------------|
| *  | Sally Jones, Partner, Trade Strategy, EY LLP  | <a href="#">QQ 1–17</a>  |
| *  | Sam Lowe, Senior Research Fellow at Centre for European Reform                                      | <a href="#">QQ 1–17</a>  |
| *  | Shanker Singham, Chief Executive Officer , Competere  | <a href="#">QQ 1–17</a>  |
| *  | Edward Braham, Senior Partner, Freshfields Bruckhaus Deringer LLP                                   | <a href="#">QQ 18–30</a> |
| *  | Simon Davis, President, Law Society, and Partner, Clifford Chance                                   | <a href="#">QQ 18–30</a> |
| ** | David Joseph QC, Vice Chair, Commercial Bar Association   | <a href="#">QQ 18–30</a> |
| *  | Audley Sheppard QC, Chair, London Court of International Arbitration                                | <a href="#">QQ 18–30</a> |
| ** | Helen Brennan, Director, KPMG UK  | <a href="#">QQ 31–45</a> |
| ** | Simon Hart, Partner, International, RSM UK  | <a href="#">QQ 31–45</a> |
| *  | Nick Owen, Chairman, Deloitte UK  | <a href="#">QQ 31–45</a> |
| *  | Martin Darbyshire, Chief Executive Officer, tangerine   | <a href="#">QQ 46–59</a> |
| ** | Andrew Forth, Head of Policy and Public Affairs, Royal Institute of British Architects              | <a href="#">QQ 46–59</a> |
| *  | Mark Naysmith, Chief Executive Officer, WSP UK  | <a href="#">QQ 46–59</a> |
| *  | Benedict Zucchi, Principal, Building DesignPartnership.   | <a href="#">QQ 46–59</a> |
| *  | Farzana Baduel, Chief Executive Officer, Curzon PR  | <a href="#">QQ 60–73</a> |
| *  | Paul Bainsfair, DirectorGeneral, Institute of Practitioners in Advertising                          | <a href="#">QQ 60–73</a> |
| *  | Simon Conington, Managing Director, BPS World   | <a href="#">QQ 60–73</a> |
| ** | Neil Ross, Policy Manager, techUK   | <a href="#">QQ 60–73</a> |
| ** | Nadhim Zahawi MP, Parliamentary Under-Secretary of State, Minister for Business and Industry (BEIS) | <a href="#">QQ 74–88</a> |
| ** | Carl Creswell, Director, Professional Business Services, BEIS                                       | <a href="#">QQ 74–88</a> |

- \*\* Chris Hobley, Director, Trade and Investment in Services, BEIS [QQ 74–88](#)

### Alphabetical list of all witnesses

- Advertising Association [PSB0016](#)
- Anti-Copying In Design [PSB0048](#)
- \* Farzana Baduel, Chief Executive Officer, Curzon PR ([QQ 60–73](#))
- \* Paul Bainsfair, Director General, Institute of Practitioners in Advertising ([QQ 60–73](#))
- The Bar Council [PBS0052](#)
- Dr Ilias Basioudis, Aston University [PBS0031](#)
- \* Edward Braham, Senior Partner, Freshfields Bruckhaus Deringer LLP ([QQ 18–30](#))
- \*\* Helen Brennan, Director, KPMG UK ([QQ 31–45](#)) [PBS0040](#)
- British Chamber of Commerce EU/Belgium [PBS0043](#)
- Professor John Bryson, University of Birmingham [PBS0017](#)
- Centre for Cities [PBS0045](#)
- Chancery Bar Association [PBS0054](#)
- Chartered Institute of Management Accountants (CIMA) [PBS0036](#)
- Chartered Institute of Public Relations (CIPR) [PBS0035](#)
- Chartered Institute of Trade Mark Attorneys (CITMA) [PBS0049](#)
- City of London Corporation [PBS0046](#)
- City-REDI [PBS0025](#)
- Professor David Collins, University of London [PBS0003](#)
- \* Simon Conington, Managing Director, BPS World ([QQ 60–73](#))
- \*\* Carl Creswell, Director, Professional Business Services, BEIS ([QQ 74–88](#)) [PBS0056](#)
- Dr Nigel Culkin, University of Hertfordshire [PBS0018](#)
- \* Martin Darbyshire, Chief Executive Officer, tangerine ([QQ 46–59](#))
- \* Simon Davis, President, Law Society, and Partner, Clifford Chance ([QQ 18–30](#))
- Design Council [PBS0034](#)
- Professor Jun Du, Aston University [PBS0027](#)
- Dr Mustapha Douch, Aston University [PBS0027](#)
- Dr Michael Edenborough QC [PBS0004](#)

|    |  |                         |
|----|--|-------------------------|
|    | Federation of Small Businesses   | <a href="#">PBS0051</a> |
| ** | Andrew Forth, Head of Policy and Public Affairs,<br>Royal Institute of British Architects ( <a href="#">QQ 46–59</a> ) | <a href="#">PBS0010</a> |
|    | Professor Pervez N. Ghauri, University of Birmingham   | <a href="#">PBS0014</a> |
|    | Dr Belén Olmos Giupponi, Kingston University<br>London   | <a href="#">PBS0030</a> |
|    | Professor Sarah Hall, Senior Fellow, UK in a<br>Changing Europe and University of Nottingham                           | <a href="#">PBS0015</a> |
| ** | Simon Hart, Partner, International, RSM UK ( <a href="#">QQ 31–<br/>45</a> )   | <a href="#">PBS0032</a> |
|    | Martin Heneghan, University of Nottingham  | <a href="#">PBS0015</a> |
| ** | Chris Hobley, Director, Trade and Investment in<br>Services, BEIS ( <a href="#">QQ 74–88</a> )                         | <a href="#">PBS0056</a> |
|    | Information Commissioner’s Office  | <a href="#">PBS0053</a> |
|    | Institution of Mechanical Engineers  | <a href="#">PBS0006</a> |
|    | Nasser Jamalkhan   | <a href="#">PBS0028</a> |
|    | Professor Phillip Johnson, Cardiff University  | <a href="#">PBS0013</a> |
| *  | Sally Jones, Partner, Trade Strategy, EY LLP<br>( <a href="#">QQ 1–17</a> )  |                         |
| ** | David Joseph QC, Vice Chair, Commercial Bar<br>Association ( <a href="#">QQ 18–30</a> )                                | <a href="#">PBS0009</a> |
|    | Dr Chamu Kuppaswamy, University of Hertfordshire   | <a href="#">PBS0018</a> |
|    | Law Society of England and Wales   | <a href="#">PBS0019</a> |
|    | Law Society of Scotland  | <a href="#">PBS0039</a> |
|    | Linklaters LLP   | <a href="#">PBS0026</a> |
| *  | Sam Lowe, Senior Research Fellow at Centre for<br>European Reform ( <a href="#">QQ 1–17</a> )                          |                         |
|    | The Managing Partners’ Forum   | <a href="#">PBS0025</a> |
|    | Giulio Marini  | <a href="#">PBS0001</a> |
|    | Dr Luke McDonagh, London School of Economics   | <a href="#">PBS0008</a> |
|    | NASSCOM  | <a href="#">PBS0041</a> |
| *  | Mark Naysmith, Chief Executive Officer, WSP UK<br>( <a href="#">QQ 46–59</a> )   |                         |
|    | Uzoamaka Nduka, Aston University   | <a href="#">PBS0027</a> |
|    | Department for the Economy Northern Ireland  | <a href="#">PBS0056</a> |
|    | Professor Ursula F. Ott, Nottingham Trent University   | <a href="#">PBS0014</a> |
| *  | Nick Owen, Chairman, Deloitte UK ( <a href="#">QQ 31–45</a> )  |                         |
|    | PACT   | <a href="#">PBS0044</a> |
|    | Oliver Patel, UCL European Institute   | <a href="#">PBS0029</a> |

|    |  |  |
|----|--|--|
|    | Professional and Business Services Council (PBSC)  | <a href="#"><u>PBS0007</u></a>                                   |
|    | Recruitment & Employment Confederation (REC)   | <a href="#"><u>PBS0022</u></a>                                   |
| ** | Neil Ross, Policy Manager, techUK ( <a href="#"><u>QQ 60–73</u></a> )  | <a href="#"><u>PBS0050</u></a>                                   |
|    | Scottish Arbitration Centre  | <a href="#"><u>PBS0038</u></a>                                   |
|    | Scottish Government  | <a href="#"><u>PBS0047</u></a>                                   |
|    | Dr Oleksandr Shepotylo, Aston University   | <a href="#"><u>PBS0027</u></a>                                   |
|    | Richard Simmons, University of Hertfordshire   | <a href="#"><u>PBS0018</u></a>                                   |
| *  | Shanker Singham, Chief Executive Officer ,<br>Competere ( <a href="#"><u>QQ 1–17</u></a> )   |  |
| *  | Audley Sheppard QC, Chair, London Court of<br>International Arbitration ( <a href="#"><u>QQ 18–30</u></a> )                                  |  |
|    | Solicitors Regulation Authority  | <a href="#"><u>PBS0037</u></a>                                   |
|    | Dr Dimitrios Syrrakos, Manchester Metropolitan<br>University   | <a href="#"><u>PBS0005</u></a>                                   |
|    | TheCityUK  | <a href="#"><u>PBS0023</u></a>                                   |
|    | UK Finance   | <a href="#"><u>PBS0042</u></a>                                   |
|    | UK Intellectual Property Office  | <a href="#"><u>PBS0055</u></a>                                   |
|    | UK Trade Policy Organisation (UKTPO)   | <a href="#"><u>PBS0021</u></a><br><a href="#"><u>PBS0025</u></a> |
|    | Universities UK  | <a href="#"><u>PBS0020</u></a>                                   |
|    | Welsh Government   | <a href="#"><u>PBS0033</u></a>                                   |
| ** | Nadhim Zahawi MP, Parliamentary Under-Secretary<br>of State, Minister for Business and Industry, BEIS<br>( <a href="#"><u>QQ 74–88</u></a> ) | <a href="#"><u>PBS0056</u></a>                                   |
| *  | Benedict Zucchi, Principal, Building Design<br>Partnership. ( <a href="#"><u>QQ 46–59</u></a> )  |  |

### APPENDIX 3: CALL FOR EVIDENCE

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The House of Lords EU Services Sub-Committee, chaired by Baroness Donaghy, has launched an inquiry into the future UK-EU relationship on professional and business services. The inquiry will consider the new EU-UK trading arrangements on professional and business services that are under negotiation. It will also look at other conditions that need to be put in place to support UK-EU trade in these services after the end of the transition period, in particular in relation to data adequacy. The inquiry will build on the work undertaken on professional and business services by the former EU Internal Market Sub-Committee, as part of a broader inquiry on trade in non-financial services in 2016–17 and again 2017–18.

The Committee invites interested individuals and organisations to submit evidence to this inquiry. The Committee is particularly keen to hear from practitioners and small businesses across the UK, including the regions and devolved nations. Written evidence is sought by 28 June 2020 at the latest, although the Committee would welcome submissions in advance of the deadline. Public hearings are expected to take place throughout June and July and the Committee aims to report to the House in autumn.

Diversity comes in many forms, and hearing a range of different perspectives means that Committees are better informed and can more effectively scrutinise public policy and legislation. Committees can undertake their role most effectively when they hear from a wide range of individuals, sectors or groups in society affected by a particular policy or piece of legislation. We encourage anyone with experience or expertise of an issue under investigation by a select committee to share their views with the committee, with the full knowledge that their views have value and are welcome.

#### Background

Professional and business services comprise a diverse range of knowledge-intensive activities and support functions that provide specialised support to businesses, government and other stakeholders. A non-exhaustive list of relevant professional and business services sectors includes: legal services, accountancy, auditing, architecture and engineering, advertising and market research, and recruitment and placement services. In some of these sectors, access to the profession is subject to specific legal requirements; this is the case, for example, for lawyers and accountants. In others, such as advertising, access is unregulated.

Taken together, professional and business services account for significant shares of the UK's economy and trade in services with the EU as an important market. In addition, many professional and business services firms rely on skilled workforce from EU Member States.

While the UK has already left the EU, it remains part of the Single Market for the transition period. During this time, UK professional and business services providers can continue to operate in the EU as before, relying on the free movement of persons and services under the EU Treaties, the ability to exchange personal data freely, as well as a range of other EU measures which aim to reduce barriers to services trade among Member States.

The Government is currently negotiating the terms of the UK's future trading relationship with the EU. Consideration is being given to new arrangements on trade in services, including professional and business services. These arrangements should cover (amongst other things): market access rights;

temporary stays for business purposes; intra-corporate transfers of employees; foreign direct investment; the mutual recognition of professional qualifications. Both sides of the negotiations have published draft legal texts which outline their respective proposals in these areas: the Commission did so on 18 March and the Government's texts were published on 19 May.

Should the UK and EU be unable to reach an agreement including PBS by the end of the year, UK-EU trade in professional and business services will come under the terms of the WTO General Agreement on Trade in Services.

### The inquiry

The Committee seeks evidence on the following questions in particular:

- How important are the different UK professional and business services sectors to the UK's economy and trade in services? Please include data where possible.
- What are the UK's different professional and business services sectors' key priorities for the future UK-EU relationship? What are the key priorities of smaller professional and business services providers and providers from the UK's regions and devolved nations in particular?
- What preparations (if any) have UK professional and business services providers made, or planned to make, ahead of the end of the transition period?
- What provisions should the Government seek to negotiate to minimise potential barriers to trade, particularly for smaller professional and business services providers? What steps should the Government take to preserve the competitiveness and innovation capacity of the UK's different professional and business services sectors?
- What type of arrangements should the Government seek to negotiate with the EU for the mobility of professionals?
- How important are arrangements on the mutual recognition of professional qualifications to professional and business services providers in the UK and EU? How could a future UK-EU agreement best allow for this?
- What provisions should the Government seek to agree with the EU on cross-border investment and rights of establishment?
- Should there be regulatory cooperation between the UK and the EU on professional and business services? If so, what form should such cooperation take?
- What lessons, if any, can be learnt from the EU's existing trade agreements with other third countries including services, or negotiations on trade in services?
- To what extent could UK-EU trade in professional and business services continue in the absence of a UK-EU agreement covering services? How effective would the WTO General Agreement on Trade in Services be in supporting such trade, and what arrangements (if any) could be put in place to go beyond the WTO framework?
- If there were no reciprocal data adequacy arrangements in place between the EU and UK by the end of the transition period, what would the implications be for professional and business services providers?

- What opportunities (if any) could the UK's withdrawal from the EU offer to the UK's professional and business services providers?

You do not need to answer all of these questions.