

Committee on the Future Relationship with the European Union

Oral evidence: Progress of the negotiations on the UK's future relationship with the EU, HC 203

Wednesday 21 October 2020

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Members present: Hilary Benn (Chair); Mr Peter Bone; Joanna Cherry; Sally-Ann Hart; Antony Higginbotham; Dr Rupa Huq; Mr Barry Sheerman; Dr Philippa Whitford.

Questions 877 - 922

Witnesses

I: Conor Lawlor, Director, Brexit—Capital Markets and Wholesale, UK Finance; Andrew Gray, Global Head of Brexit, Financial Services, PwC; and Neil Ross, Policy Manager, Digital Economy, techUK.

Examination of Witnesses

Witnesses: Conor Lawlor, Andrew Gray and Neil Ross.

Q877 **Chair:** Good morning. I begin by welcoming our three witnesses to this meeting of the Select Committee on the Future Relationship with the European Union. We are very grateful to all three of you for giving up your valuable time to assist us in our work today. Could I begin by asking each of you to introduce yourselves, name and organisation, for the record?

Conor Lawlor: Good morning. Thank you for having us here this morning. My name is Conor Lawlor. I work for UK Finance. We are a banking, finance and payments organisation, representing 250-plus members, based in the UK, the EU and all over the world.

Andrew Gray: Good morning. I am Andrew Gray, PricewaterhouseCoopers, representing the UK firm, but I also represent our firm on Brexit globally.

Neil Ross: My name is Neil Ross, from techUK, which represents 850 technology companies across the United Kingdom.

Q878 **Chair:** You are all very welcome. Can I begin with a very quick question? It is reported that there was a call between the Prime Minister, the Chancellor of the Duchy of Lancaster and quite a large number of business representatives yesterday or the day before. Were any of the organisations you represent present on that call?

Conor Lawlor: Yes.

Andrew Gray: Yes.

Q879 **Chair:** You were. I do not know whether you feel able to say how it went.

Conor Lawlor: I do not have a full detailed readout of that call yet. I understand we had a representative on it, but I feel like I would not be able to give you the detail you require to answer the question.

Q880 **Chair:** That is fine. I was only asking if any of you were actually on the call.

Andrew Gray: Yes, I was on the call. I listened in. Broadly speaking, I think there was an expectation that it might provide some insight into the state of the negotiation. Clearly, that was not the case. The broad message to businesses was to prepare. I do not recall there being anything specific in regard to financial services or professional services.

Q881 **Chair:** That is very helpful. Thank you. Can I first turn to the question of labour mobility and mutual recognition of professional qualifications? If there were to be no agreement at all, and we hope that is not the case, what impact would that have on your sectors?



Andrew Gray: The current Covid environment has a major impact anyway, but one assumes that we will return to a more normal working environment. Most of this sector is fully used to the idea of a fairly high level of mobility for movement of employment but also for business travel. That is also quite a critical component of the situation. At the moment, from a UK perspective, we can freely hire EU nationals. Going forward, that would be subject to the same visa requirements that exist for the rest of the world, which means that employers would need to be sponsoring organisations, the individual would need to qualify under what criteria are specified and there would be financial costs and delays due to the time required to process visa applications. Generally speaking, it would be seen as an impediment.

At the moment, as a sector, around 7% to 8% of our employees across both financial services and business and professional services are EU nationals. About 15% are rest of world, but we see that talent that comes from Europe as being a very important part of our overall business.

Q882 **Chair:** When it comes to the ability of your staff to carry out their work in the other EU member states, what would the absence of an agreement on labour mobility and mutual recognition of qualifications mean for that part of your activities?

Andrew Gray: The ability to go and freely work is an important part of our service at PwC. As a percentage of our business, it is relatively small, but it is an important part of our business because we work collaboratively with many European colleagues. For financial services, it is an even more important part. Up to 36% of our financial services are exported to Europe, so it is a very important part.

The restrictions will apply on a country-by-country basis. Not only will it change the individual's ability to go and perform services, but those services will be country specific. The business travel requirements are going to be a complex burden on individuals' ability to go and do work.

Conor Lawlor: I would reiterate and support what Andrew has said. The statistics are interesting. About 6% to 8% of the workforce in financial services in the UK are EU nationals and 15% to 16% are non-UK, non-EU. Although the EU national figure is smaller, they play a lot of key roles across our member organisations.

While mobility, the ability to travel to a client, corporate business or customer in France, Germany, the Netherlands or Spain, is very important, what these individuals are providing are regulated services in themselves. You not only have to fix the labour mobility issue. Given that these individuals might be providing investment services or investment advice, what they are providing themselves is equally regulated, so it is a bit of a two-pronged sword.

For our members, it is incredibly important to be able to engage with the corporates and clients across the EU. It has been challenging with Covid



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and we do not know the environment we will be in next year or the year after. Things like visas and intracompany transfers are incredibly important. They can be addressed not only inside an FTA but outside it. It is a priority for us.

Q883 Chair: What about the tech sector?

Neil Ross: I would echo the points made by Conor and Andrew. I think the Government recognise there is quite a significant skills gap in the tech sector. They estimate it potentially costs the UK about £100 billion if it is not filled. That existed when we were a member of the European Union, so freedom of movement does not solve that problem, but it makes it much more challenging. Our members need to move around the continent for all the similar reasons to Andrew's and Conor's comments, either to do repairs fairly quickly or to service contracts quite quickly.

Achieving mobility in an FTA is really important. Even if we get agreements on data and digital, and continue to meet them as we do now, mobility of labour cannot fully be replaced. Particularly for longer-term postings, the ability for intra-corporate transferees to bring families with them will be hugely important to allow companies to move staff around to maximise their productivity across the various different jurisdictions they operate in.

Q884 Chair: That is very clear. Can I turn now to the question of equivalence? For financial services, is it your anticipation that equivalence will be granted for some activities even if there is no agreement? What are you expecting?

Andrew Gray: The European Commission has already indicated that it will grant equivalence for CCPs on a temporary basis. We see that as incredibly important for financial stability. It is also indicated in the political declaration that it would consider equivalence by 30 June. That has not resulted in equivalence being granted. A recent announcement by the Commission suggested that equivalence would not be granted, other than CCPs, in the immediate and short term. We have seen, and certainly it has been suggested in my discussions with various regulators across Europe, that this is conditional upon a wider political agreement around the trade agreement. At this stage, it is not our expectation that further equivalence determinations are made until we see movement on the broader trade agreement.

Conor Lawlor: I would support what Andrew has said. To put some structure around equivalence, it is incredibly important to our sector. Although it was not built with the idea of market access and trading services in mind, it is still a tool that relieves some of the pressure of leaving 40 years of laws and regulations next year.

If we could put equivalence into three buckets, the first bucket has the equivalence determinations that the European Commission has deemed important for financial stability and therefore in its interests. We have



already seen an example of that over the last couple of weeks, with the short-term or temporary equivalence measure for CCPs and clearing. That is really important and I think both sides would support that. We will probably see something on central securities depositories in the next couple of weeks. Outside those equivalence determinations, we are unlikely to see any more come to fruition.

The second bucket of equivalence measures has those we think are connected to the successful negotiation of the free trade agreement. That is things like share trading obligations, derivative trading obligations and the ability for an EU corporate to access liquidity and capital in the UK and not fragment their markets, which would make things slower and more expensive. That is the middle bucket. We think that is 50/50. Our intelligence suggests a successful FTA might lead to successful equivalence determinations in that regard.

The final, third bucket has those equivalence measures that we think lead to direct market access, so the ability to remain in the UK when it is a third country and provide an investment service cross-border, under, for example, MiFIR article 47. Not to get too detailed about it, it enables an investment company or bank in the UK to service its customer base for a specific set of products and services in the EU. We do not think, deal or no deal, the Commission would allow any equivalence determinations in that regard, enabling a UK-based corporate or bank to service a customer in the EU.

Q885 Chair: How serious would it be for the financial services industry if there was no agreement and, therefore, equivalence was not granted in all the areas you have just highlighted? How worried are you about that?

Conor Lawlor: This sector has been preparing incredibly hard since 2016. I have seen it first hand. They have put incredible effort into making sure that clients and customers can continue to be serviced in some way, shape or form. Once we leave the single marketing and passporting, our members will be dependent on a patchwork approach of different measures in the EU. For example, once you leave the single market and become a third country, and you are based out of the United Kingdom, each European member state has its own national licensing regimes. You might be able to provide a corporate lending facility into a corporate in Germany, but you may not necessarily be able to provide that same product into a corporate in France. You end up navigating a very complex and overlapping regulatory regime in Europe.

Equivalence, to some extent, would help alleviate the other pressures that would come down on top of that. To go back to my example of the middle bucket of equivalence, if we did not have an agreement around a share trading obligation, that would lead to fragmented liquidity in capital markets, and challenges and difficulties for corporates in the EU, for example, to access listing authorities and subsequent capital and liquidity from the EU. In the absence of any further equivalence determinations, it



increases the burden on the ability for UK-based institutions to function effectively.

Andrew Gray: I have a couple of clarifying points. Based on the surveys we have done, between 5% and 25% of the business that internationally active banks do is with EU clients. Some of that will be possible going forward. Much of it would not be without some form of equivalence. That is a broad indication of the scale of impact for some of the firms. To Conor's point, it is not just the providers of financial services that are impacted. It is also the consumers of those financial services, including many organisations across Europe.

Q886 **Mr Sheerman:** A lot of respected commentators tell us that, basically, London as a financial capital is going to hell in a handcart. Is that right? Can it be salvaged? How much can be salvaged?

Andrew Gray: London at the moment is, with New York, one of the two global financial centres, and has been for many years. It is more internationally active and integrated than any other financial centre in Europe. While Europe is an important part of the business that London and the wider UK services, significant amounts of business are attracted from either the US or Asia.

Because of its integrated nature—it provides services across insurance, banking, securities trading and a lot of the wealth of infrastructure that supports it—as well as other significant benefits, such as English law, we do not see any immediate threat from any other European location to dismantle London from its leading role. Nevertheless, the loss of access and the loss of London's ability to be, effectively, the capital markets centre for Europe as a whole will have an eroding effect. We do not see it as being massively detrimental, but we certainly do not see it as being anything other than a negative headwind.

Conor Lawlor: It is an interesting opportunity for the United Kingdom. One thing the United Kingdom does very well is services and financial services. We have already seen the Government release a review of financial regulation, frameworks and legislation that underpin financial services in the United Kingdom. It is incredibly important that we maintain and retain the high standards we have set. The United Kingdom has been instrumental in the current EU rulebook that we see today. It was a driving force of that. Once we become a third country, from January, engaging with global regulators, such as IOSCO and the FSB, and maintaining regulatory and supervisory dialogue and co-operation mechanisms with the EU and other international jurisdictions, is incredibly important.

Solutions for financial services are not necessarily bucketed into a successful free trade agreement. We think an FTA is incredibly important, but there is an incredible amount you can do for financial services in a global ecosystem by regulatory diplomacy, and by Governments empowering their regulators to engage with each other and defer to each



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other's global standards to share a level of market access beyond what we see at a basic WTO level.

Q887 Mr Sheerman: You are all being very nice and polite about the situation we are in. I have been to Ireland recently on a number of occasions and have seen the preparations for Ireland being able to take advantage of what is happening as the UK has a more difficult relationship on financial services. I do not underrate the long-term ambitions of Germany and France in the financial services market. Is it not the truth that they will be working extremely hard to diminish London's role?

Andrew Gray: That is absolutely right, but the scale needs to be put into context. In Frankfurt, 70,000 people work in financial services. The UK has more than a million people working in financial services, and another million people working in related professional services. It has more than 85% of the euro-denominated swaps market in London, much of which is not traded with European counterparts; it is traded internationally. While I do not dismiss the fact that this is a significant event that creates issues for many firms and undermines profitability and long-term sustainability in a couple of cases, nevertheless, London's position as a global financial centre at the moment is very strong. There are risks and it needs to make sure it remains internationally attractive.

Q888 Mr Sheerman: What would be your three priorities? Here we are; we know what is going to happen on 1 January. I hear what you say about the real strength and, of course, we have this enormous strength that is a very important part of our national wealth. We are going to leave on 1 January. What are your priorities to ensure we keep London as a healthy financial sector leader?

Conor Lawlor: What unites the sectors on both sides of the channel is a commitment to ensuring continuity in client service. Underpinning that, one priority is market access where at all possible, cross-border between the UK and the EU. That does not have to be addressed within an FTA. You can have ancillary agreements that are outside an FTA to make that possible.

As important are regulatory and supervisory co-operation, dialogue and regulatory diplomacy. They are incredibly important for a highly regulated industry like financial services. The third priority, through the lens of the UK-EU negotiations, is equivalence on all accounts, where appropriate, for the particular financial services sector. That is incredibly important. We do not underestimate the politicisation of the equivalence assessments, but we think they are incredibly important and would like to see them wrapped up before the end of the year.

Andrew Gray: It is difficult to pick just three. One is making sure the UK is seen as an internationally attractive place to do business, attracting the best talent in the world but also making sure that business can be conducted safely and predictably. That means having strong but not excessively onerous regulatory standards. The rule of English law is also



particularly important. I agree that a collaborative approach with Europe on equivalence is really important, as is ensuring the UK is collaborative with the rest of world. We saw yesterday an important announcement with the CFTC in the US and the Bank of England regarding collaboration on supervision of CCPs. Going forward, that international collaboration is going to be even more important.

Q889 Mr Sheerman: I have one last quick question to the team. Given we are where we are, are you getting the right backing? At this pivotal time in our country's history, are you getting the right support in planning and getting ready for this great change, from the Bank of England, the Treasury, the civil service and the leading regulators in our country? Are you getting sufficient support, help and information from them?

Conor Lawlor: The Bank of England, the FCA and our Government counterpart, HM Treasury, have done an extraordinary job, given what has been asked of them over the past couple of years. To give you an example, the Treasury and other Government Departments have lifted and shifted a substantial amount of EU law to put it into a UK rulebook and make it fit for purpose, effectively having a regulatory safety net ready to go from January. That is an unprecedented level of legislative work.

The FCA has created a temporary permissions regime, which enables UK-based branches of EEA or EU financial service companies to continue to do business in the United Kingdom for up to three years. After the three years, that European institution can apply for a full licence to continue to do business. That is unprecedented across other European member states. The regulatory authority has also built in temporary transition powers to enable forbearance measures to alleviate the additional administrative burdens on firms from next year.

They have listened. The regulatory authorities have understood the acute issues relating to financial services from leaving 40 years of laws and regulation in the European Union.

Andrew Gray: I have nothing really to add to Conor's response. From a UK perspective, the response has been significant, as outlined. Of course, you have to recognise that many of these firms are international and are now grappling with challenges from the UK regulators but also from their future EU regulators as well.

Q890 Mr Sheerman: You gentlemen are being terribly supportive of the Government. You seem to have more faith in our civil service and the Treasury than the Prime Minister, who seems to be constantly undermining their ability and capacity to help. You think they are wonderful, do you?

Neil Ross: On the tech side, the civil servants and the Government are asking the right questions, but we need action fairly soon. We have seen some very ambitious packages and industrial strategies on the European



side and around the world that could have an impact on UK competitiveness. While the discussion is very good at the UK level, we need to see action fairly soon or else we could risk being left behind.

Mr Sheerman: I am glad you are so optimistic and upbeat. Thank you.

Q891 **Joanna Cherry:** Good morning, gentlemen. I am interested in support services for financial services like lawyers, accountants and related professionals. I am particularly interested in this because it is such a huge part of the business sector in Scotland. In my constituency of Edinburgh South West, it is a big employer. Can you set out for us to what extent the priorities of the UK's financial services sector, as regards the future relationship with the EU, differ from the UK's professional and business services sector?

Andrew Gray: The priorities are very aligned, in that we absolutely see it as important. Personally, coming from professional business-related services, the ability to continue to support our clients across Europe is a very important part of our role and important for the UK economy as well. There are significant issues about mutual recognition of professional qualifications. There are issues about the ability to continue to do business work across Europe. Neither of those issues has been addressed at this point in time. There are some real challenges. To a certain extent, the real challenge is that this is not in the gift of the UK to solve. This is a European issue to address.

The other challenge, which I referred to earlier, is that, in many cases, a lot of these requirements are national requirements, not European-wide requirements. The burden on businesses that historically have been able to freely support clients across Europe means that you now have to think about how you support clients in 27 different jurisdictions, each with their own unique requirements.

Conor Lawlor: I agree with that. The issue for recognition of professional services is less acute for financial services and more predominant for lawyers and accountants. Given the connected ecosystem and how well those different service sectors work together as one holistic unit to provide an integrated service to a range of clients, it is incredibly important. Any impact on the professional and related business services is going to have an ancillary or related impact on financial services, albeit the direct effect is less severe for financial services.

Neil Ross: I would echo those points for the tech sector. In a number of areas, particularly in advancing sectors like cybersecurity, DCMS and a few other comparable Government Departments have looked at professional qualifications. Where new professional qualifications emerge in new sectors, we would need flexibility to see those recognised fairly quickly, so we could continue to have the market access we have at the moment.

Q892 **Joanna Cherry:** Conor and Andrew have indicated that mutual



recognition of professional qualifications is perhaps more of an issue for the legal and accountancy sectors than it is for financial services, but that financial services rely, to a fair extent, on that back-up support. Can you give us an indication of how much of the future success of the UK financial services sector depends on the current negotiations satisfying the priorities of the United Kingdom's related professional and business services, such as legal and accountancy?

Andrew Gray: It is difficult to be precise on that. The use of English law across many financial contracts in Europe is really important. The ability of many large international law firms to provide legal opinions across Europe is really important to their clients. Without restructuring their practices, some of that is more difficult. It comes back to the comment that the UK is a very integrated financial, professional and business services environment. Each time you take a bit of that out, it provides some negative headwinds for the whole. We need to keep a very close eye on this. It is a really important component of the future relationship with the EU that we achieve that recognition.

Q893 Joanna Cherry: The Law Society of England and Wales has told us in its evidence that mutual recognition of qualifications is very important to its members. It is usually excluded or not covered in free trade agreements, except perhaps enabling provisions that allow for subsequent agreements between relevant competent authorities. You have already touched on this. The issue of mutual recognition of qualifications is very much a matter for the individual nations of the EU. It would not normally be covered by a free trade agreement, would it?

Andrew Gray: That is correct. Free trade agreements normally cover movement of goods and some other provisions, such as security requirements. There is no trade agreement that exists at this point in time that covers these topics. The relationship the UK has had with the EU historically is much deeper, more integrated and more aligned on regulatory standards than would have been the case in any other free trade negotiation.

Q894 Joanna Cherry: The Law Society in its most recent evidence said to us, "Any of the plausible outcomes from the negotiations will still represent a significant loss in market access for the legal sector. It will negatively impact the UK legal sector's sizeable trade surplus, and may have an adverse effect on EU clients who have come to rely on UK legal service providers they have had a longstanding business relationship with". Would you agree or disagree with the statement that any of the plausible outcomes from the negotiations will represent a significant loss in market access for the legal sector?

Andrew Gray: Yes, that fairly reflects the situation. Because we will revert to national provisions on the whole, the requirement to either qualify or relocate and qualify to provide services into a country is a significant challenge for many firms. Then you have employment requirements as well. It effectively provides for the fragmentation of



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services and is a disruption to the current ease of doing business. There can only be downside.

Conor Lawlor: As a general comment, we have to remember that we are leaving an incredibly intertwined relationship with the European Union. We have had access to the single market and the use of passporting, where recognition in one regime applies across individual member states. That really is unique to the single market.

To reiterate Andrew's point, the draft free trade agreement, the ambitions of which we have seen from both sides, is very far away from what the single market and membership of the European Union or the EEA gives third countries. There will naturally be consequences for all sectors because we are not synthesising or replicating a single market relationship. An FTA relationship, based on the one we have seen described, would be very different from the world we are living in right now.

Q895 **Dr Huq:** I want to follow up on some of the questions that Barry Sheerman was asking. I am a London MP. I represent lots of people who work in financial services, which, as we know, is much bigger than fisheries and some of the other more emotional things that people understand about this. Do we see any kind of financial passporting in the bare bones agreement we are expecting? Whenever I have asked Michael Gove this question, he has said, "It will be all right on the night. This is coming." What do the three of you predict is going to happen there?

Conor Lawlor: What we understand sits within the current FTA text between both sides is absolutely not passporting or anything like it. There is nothing in there that currently synthesises or looks remotely close to passporting, so we can answer that quite directly. There are currently minimal provisions in there that you would see in very basic free trade agreements for financial services, so potentially the establishment rights of a branch in another jurisdiction. While you may be able to establish a branch in Germany, the Netherlands or France, unless you fully subsidise there you do not have passporting within the European Union. You have additional frictional costs, because you are applying two different regimes, and increased costs of capital and liquidity. Those costs have to fall somewhere in the form of increased product and service charges or elsewhere.

The test of success for financial services will not always be within a free trade agreement. It is important that, deal or no deal, we empower regulatory authorities to continue to have that regulatory diplomacy and to continue to engage with their EU and international counterparts. There is an incredible amount you can do between MOU agreements and sharing of information between regulators that can enable recognition and market access, albeit without a free trade agreement there may well be a loss of political and economic goodwill that could have otherwise been deployed in, for example, tying up any final equivalence determinations. On the face of it, what is currently in the free trade



agreement is incredibly minimalistic, directly speaking for financial services.

Andrew Gray: Coming back to an earlier reference to what the UK has done, the UK has sought to ensure that inbound financial services are effectively protected through either MOUs or the temporary permissions regime. Inbound financial services are typically in one of two areas: where an EEA-headquartered bank has a branch in London; or where through asset management arrangements there is delegation of asset management activity into asset managers in London. That protection enables the UK to continue to provide a level of support and service into Europe, but it is not the same as servicing EU clients, for which we lose the passport.

Q896 **Dr Huq:** How ready do you think the UK financial services sector is for the end of passporting? It is quite a big bang compared to what has happened in previous decades.

Conor Lawlor: To reiterate my earlier points, our members in the financial services industry have been preparing incredibly hard since 2016. They are as prepared as they can be by a mixture of understanding what national laws are in the European Union, setting up branches and getting new regulatory authorisation across the EU to continue to service their clients. It is incredibly difficult to figure out and articulate how leaving 40 years of laws and regulation will manifest itself. I do not think you can ever be fully inoculated from leaving the single market. We may well see some operational disruption next year. We may see some light market dipping, but we do not know what that will look like in practice or to what degree.

The regulatory authorities in the United Kingdom have done an incredible amount to soften that exit and to enable UK-based firms to transition into a new regime relatively safely. It goes back to what Andrew said a moment ago about a temporary permissions regime for branches of EU firms still currently operating in the United Kingdom, as well as having temporary transition to alleviate the administrative burden on UK firms continuing to operate within the EU.

In summary, yes, it is an incredibly big change and the world from January next year will be very different to the one we are in now, deal or no deal, for financial services. The regulatory tools that are in place should alleviate and soften the blow to some extent.

Q897 **Dr Huq:** Lastly, do you think the effects will be spread evenly across the sector, or will some parts fare better than others? Neil, you have not answered one yet.

Neil Ross: I have to defer to Conor and Andrew on these points.

Andrew Gray: If you break the sectors down, asset management is very internationally active. International banking is. Retail banking is actually quite domestic. Much of insurance is more domestic, with the exception



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of some international wholesale business and reinsurance. It is those international sectors that are going to be most impacted.

If you take a large, internationally active bank, it will have spent the last three or four years, or since almost the moment the referendum results came in, thinking about how to readjust its business model. It will have spent more than £100 million in doing so. It will need to establish or build out a subsidiary in another European location. It will broadly be ready. Will it be 100% ready? Will there be slight wrinkles, problems and bumps for some clients and some of its people? Yes. Is it going to represent a systemic risk? That is unlikely.

Q898 Dr Whitford: Could we now turn to the exchange and sharing of data? That is another underlying tool, not just for the financial sector, obviously, but for many sectors, but particularly for yours. How confident are we that there will be a data adequacy agreement? We heard earlier in the year that particularly the larger UK companies were more prepared to mitigate the lack of this or to prepare for change than smaller companies, but that companies in the EU were not really preparing at all. Does that help us get a data adequacy agreement?

Neil Ross: I am not sure if that helps us get a data adequacy agreement. Those points all still stand. When we have surveyed our members, it seems the larger businesses are better prepared. When I most recently spoke with the Government, and they had done their own analysis of preparation across the sector, they thought that awareness of the issue was very high among small businesses but that action to implement the alternative transfer mechanisms was very low.

Preparation in the EU is extremely low. I have spoken to some very worried business representation organisations from across the EU that are very concerned about levels of preparedness there. In fact, many EU data protection authorities do not have the alternate transfer guidance on their websites, so it is very difficult even to get information across a number of member states.

Even though that is an incentive to grant adequacy, adequacy is still a very uncertain prospect. It will be fairly contingent on the outcome of the FTA negotiations. We have to remember that usually, when a data adequacy assessment is done, the Commission contracts out the assessment of the third country's regime to a university or private company to do a full assessment. It is actually being done in house by the Commission this time by DG JUST, and DG JUST is also intimately involved in the FTA negotiations, particularly on judicial and policing co-operation and on security. It is likely that the two will be strongly linked. If we have an FTA with a judicial and security co-operation partnership embedded in it, the UK's chances of adequacy rise significantly, but it is still very uncertain.

Q899 Dr Whitford: Earlier, when we have discussed this topic, the impression was that data adequacy was being kept quite separate from the FTA



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discussions so that failure or disagreement there would not affect it. Clearly, this is mutually beneficial. Do you think that has changed over time and they are now completely tied in together?

Neil Ross: I do not think they were connected throughout the negotiation. Unlike things like financial equivalency, the deadline for data adequacy was always set at the very end. There was no trading throughout the negotiations. Ultimately, when we come to the end state, these things are all being weighed up around what can be used to elicit a compromise here or a compromise there. We know that, at the moment, the bulk of the assessment on data adequacy is now done and the UK Government are waiting for the Commission to come back with further questions.

There is quite a good moment to praise the efforts of the UK Government here. They have been very transparent on data adequacy. Particularly the release of the framework for data adequacy assessment documents on gov.uk was treated as a very positive step by the Commission throughout this process.

Q900 Dr Whitford: In other sectors, earlier today we heard it is often that the big companies are prepared but the small ones are not. Is that because again, a bit like goods, they are not quite sure what to prepare for, or is there something intrinsic?

In October, the Prime Minister talked about the UK's ability to do different things with data and make money or gain from UK data. Does that kind of language undermine the chances of getting data adequacy?

Neil Ross: On the first point of what you need to prepare for, it is hugely varied. Many businesses will transfer personal data without even realising it, so there will be a significant uplift to map your data flows, understand what contracts involve exchanging personal data and then to put contracts in place. Even in the instance that we do not get data adequacy, because of the huge volume of data flows that go between the UK and the EU, there will almost be a natural grace period.

With the fall of the privacy shield, we have seen that EU regulators have soft-balled the application of strict rules just because of the volume of exchanges between the EU and the US. Those are multiplied by hundreds of times for the UK and the EU. There would be time, but companies would need to move quickly to start putting those clauses in place.

The ICO has done quite good work producing model clauses on its website. We have tested these with our members and asked, "Are these of good quality? Are they rigorous?" Our understanding is that they are and would suffice if they were put in place, so that advice is very welcome.

On the language of the Prime Minister, and particularly the stuff in the national data strategy around innovation, this is a very political negotiation. It is very high stakes. Any discussion of divergence or non-



alignment is taken as saying, "The UK is going to go a completely different way and not have a similar rule base." We see that as largely unfounded. The adequacy assessment is based on equivalent levels of protection, not aligned levels of protection. To reinforce that point, the industry as a whole does not want to see data protection standards reduced. In fact, the global trajectory is to increase data standards.

We would like to see slightly more innovative approaches to the application of what is called in the national data strategy a UK GDPR. That is looking at rebalancing the importance put on the six legal bases in the GDPR, and at how exactly we do risk-based approaches, but not a fundamental change. Ultimately, if you create a product to a very high data protection standard, it is likely to have lots of support and be able to be used in markets across the world. If you have a low data protection standard product, it could face barriers to entry into different markets around the world. High standards come along with high market access, which is what we encourage.

Q901 Dr Whitford: Are we likely to reach a global standard as opposed to EU, US, et cetera, and therefore the UK can aspire to that standard?

Neil Ross: I do not think it works in the sense that we will flip from one standard to the other. We want to see interoperability of standards around the world and a core philosophy that allows private companies, civil society and Government institutions to transfer data around the world where they need to, based on a set of shared principles. The EU has a very specific philosophy on data protection and tends to be the odd one out in a global setting. One advantage of the UK following a UK GDPR approach, one that is quite aligned with the EU but with an eye to the rest of the world, is that we can act as a bridging mechanism to try to build that global standard. We see that as a very positive role for the UK post-transition.

Q902 Dr Whitford: Conor and Andrew, is there anything additional from your sectors regarding data exchange?

Conor Lawlor: Neil has covered that very well in an incredible amount of detail. Data adequacy matters. Data is incredibly important. The UK Government have fixed one side of the fence, which is effectively allowing data to move from the UK to the EU, but the vice versa has not been fixed.

Neil's point about the different degrees of preparation across corporates and customers is very evident. That is incredibly important. While large companies might have large resources and sophisticated clients, you would imagine that the ability to get them ready with standard contractual clauses or other contingency plans, in the absence of adequacy, is probably high. The more you come down to differing or smaller firms with less resource, there is almost certainly, as Neil said, still a bit of work to do to make sure they are prepared in the absence of



adequacy. Getting adequacy between now and the end of the year is incredibly important.

Q903 **Dr Whitford:** Does the development of fintech make this even more critical within financial services? That is quite an important one in Edinburgh, within the Scottish sector.

Conor Lawlor: I think so, yes. It is incredibly important. To give you an example, there could be tweaks to assist artificial intelligence and big data development, such as the detail and rules on data retention. We are seeing a huge movement in new forms of technology within the capital markets and international sector, akin to what we have seen in the retail side. Data underpins that technology, so allowing it to move freely but correctly is incredibly important for the progression of financial services and where it is going, from very stagnant business models to those underpinned by fast-moving new and innovative technology. They go hand in hand.

Andrew Gray: Because of what we have gone through with coronavirus in the last nine months, the adoption of digital for many businesses as a more routine way of doing business has been phenomenal. That has also included the use of data on a cross-border basis. Even though it is a very important issue, it has simply become a lot more important and a lot more critical now than it would have been a year ago.

Q904 **Mr Bone:** Perhaps I should first make a declaration of interest. I am a fellow of the Institute of Chartered Accountants in England and Wales. Conor, having listened to the discussion, I am not quite clear on one point. In the current negotiations, what is the difference between deal and no deal for the financial services sector? Could you be very precise? Is there a difference, and what is it?

Conor Lawlor: On the face of it, the ability to continue to trade cross-border, to remain in the United Kingdom and provide a service into the EU, is not enabled from the current form of the free trade agreement. It looks very different to passporting or the single market. When we talk about the difference of deal or no deal for financial services, a deal is incredibly important for the customers of our banks and financial services entities.

Equally, we think a successful free trade agreement would lead to political and economic goodwill that could be deployed in other ancillary agreements, namely financial services equivalence determinations, which we think are incredibly important. They are not part of or packaged within an FTA. They sit alongside it. Directly speaking, there is no great new provision for financial services within the free trade agreement. Generally, the ability to conduct services cross-border is achieved through regulatory and supervisory diplomacy and dialogue. In the absence of an FTA, or even with an FTA, we think empowering regulatory authorities to continue to communicate together in some form of



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institutionalised manner, in both the UK and the EU, and equally at an international level, is incredibly important.

Q905 **Mr Bone:** Yes, I thought that was the situation. You make the very fair point that the difference between no deal and a deal is probably about political goodwill. If you get political goodwill, the ancillary agreements will come more quickly and be better. I would be amazed if there is a single financial services company that does any major business with the European Union that is not now completely prepared for any outcome. In that case, they can deal with a deal or no deal because they will be prepared for it. Perhaps what they really want is certainty so that they can get on and finalise those arrangements.

Conor Lawlor: That is right. Certainty is incredibly important, particularly with these institutions that build business models over five, 10 or 15 years. You can imagine the boards of these companies having conversations about their strategy for 10 to 15 years. If you were a foreign bank in London, you would be building your strategy on the ability of having certainty over how you would do business and service your customers and clients across the EU. In that regard, absolutely, yes, certainty is incredibly important.

Q906 **Mr Bone:** Andrew, I am going to pose the same question, but your answer might be slightly different for professional services.

Andrew Gray: In professional services, on the whole we are ready, in as much as we can only take certain levels of preparation that we can be ready for. For example, we have an existing network of firms across Europe that are locally regulated, are locally registered and therefore are already in each of the European locations where they need to be. To a certain extent, that part of our business is not impacted in the same way because we are not providing cross-border services.

Certain bits are specifically impacted for us, and this applies even more for law firms. First, we do a lot of business travel. We used to, and we expect to do so going forward. The ability to travel and do business is an important part of our business. We can be ready for that, but it creates an overhead and certain restrictions on the way we do our business. In a small number of cases, we need to be registered as a third-country auditor in specific countries to enable us to perform a group-wide audit. Those third-country registrations are in process, but some of them cannot be granted until we end the transition period.

Then there are simply impediments to us providing certain services, so it is not a matter of being ready. We simply will need to stop doing certain activities.

Q907 **Mr Bone:** Would I be right in thinking PwC effectively has companies in each major European country? You have your own separate corporate business there anyway that would effectively take on the business if there were any hindrance.



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Andrew Gray: On the whole, yes. We have a network of partnership firms that are individually registered within each of the European 27 countries and provide services locally. In that regard, we have a natural level of resilience to any of the changes that would come because of the end of the transition period. We have, nevertheless, skills and capabilities in certain locations that are not widely available. We would therefore need to think about how we can manage to deliver certain services to the level we do at the moment. On the whole, that is not a significant impact on our business.

Q908 **Mr Bone:** Even on that part, you will have made contingency plans for whatever the outcome, I am sure. I guess you would now like certainty of what is going to happen. When I was in business, we really wanted certainty: "Tell us the rules and we will work to those rules, but please tell us what the rules are." Would that be a fair comment?

Andrew Gray: It is always easier to operate when you know what you are dealing with, yes. Businesses generally want certainty. They want predictability. They want to be able to plan, knowing that they can assess the impact of the decisions they are making.

Q909 **Mr Bone:** Your company is global and does not deal with just the European Union. In fact, I guess possibly more of your business is outside the European Union. Presumably you have to deal with regulators in America and other major countries, and you just get on and do it, but you know what the rules are. Is that right?

Andrew Gray: Yes, we are represented in over 100 countries. We have local presence. We have to deal with local regulations and laws in each of those countries. Yes, while Europe is a really important part of our business, equally North America and Asia are very important.

Q910 **Mr Bone:** Neil, can I pose the same question about the difference between no deal and deal for your sector?

Neil Ross: It is true that the gap between EU membership and a deal is a lot larger than the gap between the FTA we are likely to get and no deal. However, particularly on your points around certainty, no deal does not provide us with any kind of certainty. The core element of certainty will come from an FTA, particularly over the next six to 12 months.

The chances are, in the event of a no-deal outcome, you would see a number of both known unknowns and unknown unknowns emerge. That would result in a serious degree of problems that would occur between regulators. The lack of political goodwill would likely mean that solutions do not come thick and fast. That is particularly why my association, techUK, along with 70 other trade associations wrote to the Government and to the EU, calling for an FTA to provide the certainty, so that we can get on and do the things we want to do. Most of that comes through a free trade agreement, rather than a no-deal outcome, which would likely see uncertainty spill on for another six to 12 months.



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A big thing for us in a deal, though, would be a digital trade chapter. That provides a large amount of market access for non-personal data, because the EU does not do personal data in that way. There are two very positive benefits for the global trading system of the UK reaching a digital trade chapter with the EU. First, the EU does not do digital trade chapters, so this would be the first one the EU has struck with a third country, meaning that we could open up that avenue of trade from the EU to other global partners as well.

Secondly, the UK has put forward a very novel chapter on a dialogue on emerging technologies. This is a really interesting and new principle in global trade that would mean there is continued regulatory dialogue on the development of technologies like artificial intelligence, quantum computing and various others. These are products that are being built in the UK. Having good regulatory dialogue throughout the process, not just with the EU but in other FTAs, means that products built in the UK would have a large degree of market access fairly quickly. If you want to fulfil the Government's ambitions of being a science and innovation superpower, that is a really good principle to start embedding in trade agreements, starting with the EU and Japan.

Q911 **Mr Bone:** I take your point that a good trade deal has many benefits outside of just the deal. It is the political goodwill, of course. You say there would be challenges, but in this country we are pretty good at turning challenges into opportunities. I would suggest we are probably better. I think it may have been you who said that we are more prepared in this country than they are in the EU. Actually, there might be some really good opportunities for us to take as well.

Neil Ross: I absolutely agree with you. Challenge presents opportunity. We would not want to overload on challenges, though. We are currently faced with the coronavirus and a no-deal outcome, so while that saying is true I would be concerned about the cumulative impact of these various factors.

Q912 **Sally-Ann Hart:** Good morning to our witnesses. I just wanted to look a bit beyond the financial sector for the UK and the EU. Conor and Andrew, how would you expect the status of the EU's financial sector to change in the coming years? Will it need to become more open or more flexible to make itself more attractive to the global financial sector? Andrew or Conor mentioned that the EU will need to maximise its involvement in the regulation of global markets. I cannot remember which one of you said that, but, ideologically, do you think the EU could do that?

Conor Lawlor: It is a really interesting question. We can point to a number of things that indicate that the European Commission does see value in being open, international and global. It has tried to reboot its capital markets union plan, which tries to rebalance the use of banks as opposed to wholesale and capital markets, for innovation and growth. At the same time, we have seen less flexibility from the EU to enable cross-



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border trade and market access, and to allow capital and liquidity to continue to flow between the United Kingdom and Europe.

Those slightly contradictory points are very interesting. On the one hand, there is a policy initiative and a regulatory initiative in the EU to be open and global, but history has taught us that, if you are not open to allow capital to flow cross-border, to allow it to reach businesses, to allow pension funds to reinvest in SMEs and growth funds, overall regional and local growth is quite challenging and tricky. The EU has quite a big decision to make. You have on your doorstep one of the best, deepest and most liquid capital markets in the world. If you want to enhance your economies and growth for your SME businesses, you would look to utilise that capital.

There is intelligence to suggest that a form of partnership, even beyond equivalence, is a pretty rational thing for both sides to look to. Given the recent politicisation of things like equivalence, we can see how challenging that will actually be. On one hand, the EU is building up its capital markets might but, at the same time, on the outside it looks to be a little more protectionist in closing its borders to allow services to flow between the UK and the EU.

Andrew Gray: I broadly agree with that. Because of the current crisis, the need for funds is more important and the markets operate globally. At the same time, the challenge for a number of European centres is the effort to make sure they can supervise their activities. Supervision regulation and international markets do not always have the same objectives. That is part of the challenge that we are seeing at the moment.

Q913 **Sally-Ann Hart:** To what extent has the EU's financial sector depended and will depend on the success of the UK's? I read in our briefing that Elisa Martinuzzi from Bloomberg had said that the EU is desperate to chip away at British dominance. Is it? Is it able to?

Conor Lawlor: The EU will probably want to make sure that it is not overly dependent on a country that is operating outside its single rulebook. On the face of it, that is pretty rational and we have already seen evidence to suggest that. The European Commission has enabled a temporary equivalence determination for clearing and CCPs to allow those contracts that are cleared in the UK to be safely moved and transitioned to European-domiciled clearing houses over the next 18 months or two years. I cannot recall the exact time limit on the agreement. They are very keen to transition risk, supervision and operations back to the European Union.

Being solely self-dependent and generating your own capital markets and liquidity will take an incredible amount of time. It is not something that will happen in 2021. London is here in terms of capital markets might; then you have Paris and Frankfurt. We have no doubt that that would rebalance over time as they begin to build up their own resources. Our



ask is that the European Union looks to the United Kingdom for help and support with its goals, because there is a capital markets and liquidity hub, and a very integrated financial services system, that, if you wanted to grow your economies, local and regional, you would utilise. Over time, we will begin to see Europe wanting to be self-dependent on entities in jurisdictions or member states within its own remit.

Andrew Gray: The global capital market is an incredibly integrated marketplace. The largest pools of liquidity are London, Asia and North America. To a certain extent, they work collaboratively. There is almost by definition no single place in which foreign exchange, for example, ought to sit. Even if you have dollar-euro foreign exchange, there are still two currencies involved. Therefore, the marketplace with the greatest liquidity is the most efficient place to both do business and manage risk. Those aspects of risk management and the ability to most efficiently transact financial services still attract you to the places where you can get the best liquidity.

European financial services has a challenge, in that it is still a mixture of Ireland, France, Germany, the Netherlands and a number of other locations, whereas a lot of the liquidity geographically, as far as Europe is concerned, sits in London, which is a single location that provides comprehensive financial services. There are some structural ongoing challenges, which will prevent a migration of business in the short term from London into any other European location.

Q914 **Sally-Ann Hart:** When you are looking at how long it would take for Europe to prove its structural efficiency in the financial sector, are you looking at 10 or 15 years for it to be in the same position as London, if ever?

Andrew Gray: I would still question whether it can ever be in the same position as London, because of the global nature of London. It is certainly going to take many years, more than five and possibly 10, for any significant shift to occur.

Q915 **Sally-Ann Hart:** Looking at some of the regulations the EU has put in at EU level that are considered excessive, protectionist and costly, such as the Markets in Financial Instruments Directive II or the Capital Requirements Directive IV, has the EU's regulatory framework held back the UK's financial sector?

Andrew Gray: It is fair to say that some specific pieces of regulation are seen as excessively burdensome and costly, without commensurate benefit to the safety and soundness of financial services. We have seen the Commission indicate relatively recently that there is going to be a MiFID II review and a Solvency II review. It is quite right that these regulations need to be reviewed on an ongoing basis. Let us not forget that the US also has some fairly onerous regulatory standards. If you do business in the US, it is a different environment and the way you do



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business in the US is going to be slightly different. Nevertheless, there are significant regulatory hurdles to pass by transacting in the US.

Broadly, the industry would see that strong and robust regulation is a benefit, to preserve the financial stability, safety and soundness of the system. Unnecessarily bureaucratic regulation is bad. Therefore, that should be minimised. You cannot point to any particular jurisdiction and say it has the perfect regulatory environment. It is also fair to say that the UK has gold-plated a number of pieces of EU regulation in the past. As has often been cited, there is no appetite to burn a lot of regulation. We want the UK to be seen as a robust and safe place to do business, but we also want to make sure that future regulatory standards do not drive us in ways that are not helpful.

Conor Lawlor: Andrew has summed that up pretty well. The UK has been a driving force in some of the regulations in the EU that we see today. It is one of the UK's specialisms. It is fair to say that the EU is now looking at some of those regulations to review and make them better, more efficient and fit for purpose in the current environment. That is very fair. At the same time, the UK will be doing the same thing. The strategic question is how different these regulations will be and to what extent that may impact future market access. Who knows? That will depend on the future regulatory regime underpinning both jurisdictions.

There is an opportunity here for the United Kingdom. One criteria of our members is to make sure that the United Kingdom maintains its high regulatory standards, which its industry has got used to, but there is room to innovate and adapt more proportional regulation that is fit for the purpose of the UK, once it is a third country outside the European Union. It is enhancing an environment conducive for fintechs to stay and grow, winning the hearts and minds of founders to use UK capital markets to continue to grow in the United Kingdom.

The UK has a unique set of financial institutions called building societies. Maybe we adjust the capital requirement in those building societies, to make it proportional to the actual size of the business and to better use that capital to deploy for investment and economic growth. Reviewing and looking at financial services regulation should not be conflated with a bonfire of regulation. It is about maintaining high standards. At the same time, making sure that the UK is an environment that is competitive and conducive to growth and innovation is incredibly important.

Q916 Sally-Ann Hart: Looking at the EU's future regulatory framework, if it evolves in such a way that it has excessive regulation, would that have a detrimental effect on the UK financial sector? Does Brexit give us an opportunity to go our own way, so that whatever happens in the EU would not have such an impact on us, or is it global regulation that we all need to get involved with?

Conor Lawlor: Global regulation is incredibly important. Starting there, at a global level, and working down is probably a sensible thing for the



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US, the UK and the EU to do. Given that we will now be writing our own rulebook, or evolving and innovating our rulebook, a consequence of that over time is divergence in some way, shape or form. The question for us is to what extent and how much regimes diverge, and the consequence of divergence for your ability to recognise other people's regimes as the same as yours, and to conduct market access and trade cross-border. That is a broader strategic question for the United Kingdom and the EU.

There is a direct relationship between market access and recognition, and legal and regulatory autonomy. As you have more legal and regulatory autonomy and develop your own rulebook, there is almost always a consequence for your ability to look similar to your counterpart and therefore have the reward, if we can call it that, of market access and recognition.

Andrew Gray: For an individual firm that operates internationally in both the UK and the EU, having to deal with two different regulatory standards is more complicated than having to deal with common standards. In theory, the Financial Stability Board and the Basel Committee on Banking Supervision provide some of that global framework, but often the actual implementation of international laws or regulatory standards can be quite different. Firms would, on the whole, prefer a level of alignment, but not to be overly bureaucratic where there are opportunities not to be.

Q917 **Antony Higginbotham:** I start by referring to my entry in the register of interests, having worked for a large UK bank before I came here.

Conor, this is probably for you to start with. Because I am towards the end, can I turn to something we have not really discussed yet, personal banking customers of UK banks who are resident overseas? We have seen reports in the news that customers of some banks are going to be unbanked and asked to leave. This is a particularly pertinent issue if you are on the island of Ireland. You might live in the Republic of Ireland and work in Northern Ireland, so you want a UK bank account because you are paid in sterling. That might mean you want a mortgage in sterling, but you live on the other side of the border.

Do you have any idea of the scale of that problem? How many banks are looking to unbank customers? How many banks are taking a decision to leave it as it is? What is the driving force behind it?

Conor Lawlor: That is a very good question. Banks have been working very, very hard, in the circumstances that have been put upon them, namely leaving the European Union, to serve their customer base, primarily their customer base across the EU and the EEA. Where banks and financial services sector industries and businesses can, they will continue to service their customers based on, usually, the national regimes of where the customer is now domiciled or any potential equivalence determinations that are yet to come to fruition.

Where a bank sees there is a risk that it will not be able to service its customers because of the regulatory regime of the jurisdiction they are



living in, that bank will give those customers enough notice and off-board them, because it will not be able to provide that service going forward. A good illustrative example would be somebody who was living in the United Kingdom and had a credit card or a current account and is now living and working in France, Germany or Ireland. It is not generally a commercial decision by a bank. The bank will look at its operating model, but more so at the laws where that individual is living.

Generally speaking, they are less permissive for retail services. It is not about providing new services, but if you have a bank account or credit card, and the laws of where you are living do not allow your bank to continue to provide that service, the bank will give you enough notice to find alternative solutions. That could be another UK-based current account, an online e-money bank or a bank and current account within the jurisdiction where that individual is currently living.

Q918 Antony Higginbotham: Does it not come down to banks' interpretation of what a UK customer is? You could easily make a case that someone who lives in France but maintains a property in the UK, and so wants a UK current account with an overdraft facility because that is how they pay their mortgage, remains a UK customer even though they might be resident in France, so it would be more appropriate to maintain the banking facility.

Conor Lawlor: In some cases, retail customers will be able to maintain their facilities. We have seen some banks not take that decision, but that is primarily because of the operating model and the regulatory licence and authorisation that those banks have in a particular jurisdiction.

The overarching thing is what the domestic regulators within the EEA or the EU member state where these customers are living will allow. We have seen over the last 18 months specific letters sent from national competent authorities to our members demanding that they take necessary steps to make sure that they do not breach any laws or regulations of EU member states. While our banks will strive up until the final hour to service their customers in any way they can, they cannot take the risk of breaching European or national laws of member states. It is balancing and navigating those legal regimes and customer risk that our banks are undertaking.

Q919 Antony Higginbotham: That is very helpful. Does the situation exist in the reverse, or do the temporary permissions regime and things like that, which you referred to earlier, fix the problem in the reverse, so it is more an issue of what regimes are in place domestically across other EU member states?

Conor Lawlor: Yes, to a lesser extent the issue does apply here. You are absolutely spot on. It is primarily addressed by the use of the temporary permissions regime in the United Kingdom.

Q920 Chair: I have a couple of final questions. Neil, what impact do you think



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the recent Schrems II and Privacy International judgments are going to have on the EU's approach to giving us a data adequacy decision?

Neil Ross: Interestingly, after the Privacy International ruling came out, I thought it was going to be quite a big game-changer. When catching up with people involved in the process, it turned out not to be the case. That is because it was expected and the ruling is specifically on member states, which the UK will not be. Schrems II, however, is a different ballgame and has created a significant upset to the process.

The two rulings build up sufficient case law that means a legal challenge to the UK's adequacy assessment is more threatening than it was before. It is very likely, if not certain, that the UK's adequacy decision will be challenged effectively on day one. However, the UK Government have been preparing for that with the Commission from day one as well. They have sought to provide the Commission with enough evidence from the UK side to stand up a UK adequacy decision in court.

How this plays into the overall dynamic is that the Commission now has ample evidence if it wanted to find a reason to refuse the UK adequacy on precautionary grounds. We have to remember that the adequacy system is very flexible. Japan has an adequacy decision with the EU while being a member of the CPTPP agreement, which includes data provisions. It has a digital trade agreement with the US and a free trade agreement with the EU, yet still maintains data adequacy. New Zealand similarly is a member of the CPTPP agreement, which has digital trade provisions, is a member of Five Eyes and has an adequacy decision with the EU. The system is flexible, but certainly these rulings make it much more challenging and provide an excuse should the EU wish not to grant the UK adequacy.

Q921 **Chair:** If a data adequacy decision is not issued, after the grace period you were referring to earlier, has anyone done an assessment of the cost to businesses in the tech sector of having to prepare and implement standard contractual clauses? Is that a complex or costly process for firms that have never had to use them before? Do they know where to get advice from? How will that work out?

Neil Ross: No one has done an analysis of the cost, and I cannot provide you a pounds figure. It would be very onerous. I know that a university and a think tank are doing work to try to understand exactly what that compliance cost is. Hopefully, we will have some figures on that in a few weeks' time. The principal impact will be on competitiveness. The EU entity is the one that faces the regulatory risk of transferring data to the EU in the circumstance of non-adequacy, because, in the way the Government have constructed this, transferring data from the UK to the EU is considered automatically adequate if no decision is made.

UK-based firms will have to be A+++ on the health and safety standard for data transfers, or else they will be seen as a less safe partner with which to engage in transfers, relative to a competitor company in another



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European country. Really, the risk is on competitiveness. All things being equal, you could see, say, a German company that wants to contract with a UK firm pick a French company instead because of the lack of a data adequacy agreement.

Q922 Chair: Is it possible to legally challenge the nature of standard contractual clauses that allow for data transfer in the absence of a data adequacy decision?

Neil Ross: Yes, that process is effectively ongoing in the European Union at the moment. Because of the Schrems II ruling, the Irish data protection authority has taken a dim view of SCCs being used for transfers to the US. Because the EU has a very highly litigated and quite legally unstable approach to international data transfers, we could see the use of SCCs for the EU become unviable for certain markets. That will have a very negative impact on the UK, but equally has a very negative impact on the EU, as it restricts the ability to move data in and out of the bloc. That is effectively a decision or a problem for the EU to solve. It is not a UK issue. It is one we will just have to live with, depending on what happens.

Chair: That brings our session to a conclusion. On behalf of all the members of the Committee, can I express our collective and profound thanks to our three witnesses today? It has been a very useful and information session. We are, as ever, grateful to you for sparing us the time to give us the benefit of your insight, knowledge and wisdom. We wish you all the best.