HOUSE OF LORDS

Select Committee on the European Union

Sub-committee on EU Services

Corrected oral evidence: Future UK-EU relations: trade in services

Thursday 28 January 2021

10 am

Watch the meeting

Members present: Baroness Donaghy (The Chair); Lord Bruce of Bennachie; Baroness Couttie; Lord McNally; Baroness Neville-Rolfe; Baroness Prashar; Lord Sharkey; Lord Thomas of Cwmgiedd; Viscount Trenchard; Lord Vaux of Harrowden.

Evidence Session No. 3 Virtual Proceeding Questions 23 – 34

Witnesses

I: Mickaël Laurans, Head of International, Law Society of England and Wales; George Riddell, Director of Trade Strategy, EY; Neil Ross, Head of Policy, techUK; Amanda Tickel, Head of Tax Policy, Deloitte UK.

Examination of witnesses

Mickaël Laurans, George Riddell, Neil Ross and Amanda Tickel.

Q23 **The Chair:** Good morning, and welcome to the EU Services Sub-committee's public evidence session as part of our inquiry on the future of UK-EU relations on trade in services. The session is being broadcast on parliamentlive.tv, and a full transcript is being taken and will be made available to you to make any corrections shortly after the session.

I am delighted to welcome our four witnesses this morning: Mickaël Laurans who is head of the International Law Society of England and Wales; George Riddell, director of trade strategy from EY; Neil Ross, head of policy, techUK; and Amanda Tickel, international tax partner from Deloitte. You are all very welcome. As chair of the committee, I will ask you the opening question. How important is the agreement of the TCA between the UK and the EU for trade in professional business and digital services?

Mickaël Laurans: Thank you, and good morning everyone. I would say that the TCA is important, because the alternative (no deal) would have been of real concern. My main focus is on the legal services sector. I think that other witnesses will cover other sectors for us. We welcome the fact that there is a specific section on legal services, which recognised the specificities of home title practice, with the need for heavy mutual recognition procedures or the need to requalify in the host legal profession. That is an innovation in that agreement. The British Government, and even the Prime Minister, have noted that there is some interesting innovation in this agreement for lawyers, and we welcome that.

Having said that—we will come to member state restrictions in a moment—the reality of market access is to be seen in the annexes of the agreement, which means essentially that the loss of market access compared to what we had under EU membership, the EU lawyers directive, is significant and a step back. Regardless of the TCA, our members now face 27 different regulatory regimes in each member state, with different rights and obligations—whether you can be there as a UK lawyer on a temporary or permanent presence, what you can do there, and whether you need to do it on your own or jointly with local lawyers.

For the all-services sector and the portability of UK entities, such as UK limited liability partnerships, again you have to look at the country-by-country picture as to whether you can continue doing so and whether there are restrictions, for example on profit sharing or equity caps in some member states.

We will also come to mobility provisions, which are a key concern. Things will not be as simple as jumping on the Eurostar or on a plane when international travel resumes, and we will have to grasp the new reality of visas, working permits and possibly economic needs tests. There are also important elements missing from the TCA and things that are not dealt with in an optimal way. MRPQ, the mutual recognition of professional

qualifications, is one of them, and certainly for the legal services sector there is the lack of any provisions on judicial co-operation in civil and commercial matters.

George Riddell: Thank you, Chair, and thank you to the committee for having me here today.

I echo many of Mickaël's points and underline that the deal is welcomed by business, because the alternative was no deal. That said, when compared to what we had under the single market, obviously the TCA represents a huge change for many businesses across the different areas, and they will have to adapt and change as a result of that.

Picking up one of those points in particular, when you are an EU member state there is a single market for many services issues. However, unlike on the goods side where, once you get that product as a third country across the customs border and complete all the necessary procedures, it can enter into free circulation and you can sell it anywhere in the EU, it just is not the same for services, where it really does matter which member state you are looking to sell your services in. It depends which sector you are in, and that will determine the barriers you face in looking to provide your services going forward.

It is that added layer of complexity. We are not just dealing with the EU as one entity as a third country. We are, for many issues, dealing with 27 different member states and regulatory regimes that service providers will have to manage.

Neil Ross: Thank you very much, Chair, and thanks again for having me before the committee. I echo what George and Mickaël have said. I would flag that it is quite a significant achievement that after just 11 months of negotiations we have a full goods and services chapter. I remember particularly early on in the negotiations many people saying that we would not have time to do a full services chapter, but one is included, which is positive news.

The agreement excels in the digital and tech space. It goes well beyond what the EU has agreed with other trading partners, and it is a very good sign of the UK putting a good foot forward in digital trade or its ambitions for digital trade.

The biggest missed opportunity in the TCA is the lack of an implementation period. I think we are seeing, particularly on the goods side, the shock that has caused for certain supply chains in having to implement deals effectively with about six days' notice. In services, we have had an accidental grace period, because as a result of the pandemic, we are not travelling or moving around in the way we were before, but we should expect some disruption in services to occur down the line whenever we get back to life as normal.

Amanda Tickel: Thank you, Chair, and thank you, committee, for inviting me to appear today. I lead Deloitte's Brexit insights team, which

means that I am in rather a rare position in helping businesses of all types, including across this sector, to prepare for the UK's departure from the EU and am now trying to digest the implications of this agreement. I am also responsible, as part of a team, for Deloitte's own preparations, so experiencing first-hand what it means to go through these changes and to lead the organisation through those.

I echo the other speakers' comments that the fact that the agreement has been reached is very important. The very fact of it helps to lift the significant uncertainty that businesses have been facing since the referendum. We conduct a CFO survey every quarter that measures business confidence, and in the last quarter we found that two-thirds of large business CFOs said that a no deal would have had a really severe or significantly negative impact on the economy. For this very reason, it is a good thing. It has certainly lifted confidence and started 2021 in a much more stable manner. From a professional services' perspective, our businesses' activity across this sector and performance tend to track overall business confidence and economic performance. Reaching that deal gives a better outlook for the sector as a whole.

I echo what the other speakers have said about not underestimating how substantial the change is from the single market. It was always going to be. So far, this agreement looks to be pretty much in line with what was expected across the sectors. It contains some useful provisions for services businesses, such as the bridging agreement on data, long-term restrictions on data localisation, and listing the business visitor activities. But, as has been pointed out, there are substantial reservations to these provisions, and the services market was already not a full single market, as George has pointed out. That means that these provisions will result in a complex patchwork of rules, and perhaps we can discuss some of those later.

The Chair: I am grateful. Thank you very much, all of you.

Q24 **Lord Sharkey:** Good morning, everybody. We have already touched on the fact that the service provisions of the TCA are subject to a number of national reservations in the annexes and that they vary by sector. Could you tell us about the practical impacts of these national reservations, both to date and for the future in services? Can you point to any individual reservations that you identify as having particularly significant impact?

Mickaël Laurans: These reservations are significant for the legal services sector. Again, the only way to understand the market access we now have is to start with the annexes.

Having said that, these restrictions are probably more or less what we were expecting, based on our analysis of what non-EU lawyers could do in the EU. So we looked carefully at what US lawyers could or could not do, and it is more or less what we are finding in the TCA. To be fair to both sides., given the time constraints on the negotiation, there was

probably no time to discuss, negotiate or challenge what was being listed as member state restrictions.

I have already mentioned some of the practical implications, which are that even though there is a general principle in the treaty that you can practice as a UK lawyer on a temporary basis, when it comes to practising as a UK Lawyer on a permanent basis throughout the EU, you have to look at the level of each member state to see whether it is permitted or not. Some member states have said that it is not permitted in their particular jurisdiction.

It is similar with regard to the type of behind-the-border barriers that I mentioned briefly. Can you go into partnership with local lawyers? Can you share profits with them? Are there any equity caps in the local office or the local operation?

When you look very carefully at the country-by-country reservations, you see some potential change in one or two jurisdictions, which we are analysing and exploring further. There may be some good news in one or two markets — a bit more liberalisation than we were probably expecting. One I can share with the committee, which is significant, is that the provision of legal services in Germany on a fly-in, fly-out mode is, certainly on our interpretation, explicitly authorised in the agreement as opposed to being tolerated, for example, for non-EU lawyers such as US lawyers.

For us, all these reservations are new barriers to trade compared to the regime we had before. Amanda mentioned that, across the services sector, the single market still probably needed to progress further. By contrast, for the legal services sector we had a very advanced single market. We had two EU lawyers' directives, the MRPQ directive on top of that, and some general single market principles that meant that a UK law firm operating for example as a UK LLP could open offices across the EU without any difficulty. That is no longer the case. We face 27 national regimes and we need to look at what is permitted in each of these, both from the perspective of a law firm, so for an entity, and from the perspective of individual UK lawyers.

George Riddell: I will restrict my comments to the reservations regarding current measures that are set out in the agreement, rather than the future ones. Our assessment—we are still going through all the detail, because they are quite complicated and, as we say, broken down by sector and member state—is that the agreement is broadly similar to what we see in the EU's reservations for EU-Japan. There are slight variations, such as in wording and with regard to aligning more with business entities and definitions, but it is broadly similar to the EU-Japan agreement.

In terms of the restrictions, the rule of thumb that we use is that the more regulated an industry is, such as accountancy and legal, the more restrictions there are in the agreement, whereas in some of the more

unregulated service sectors, such as management consultancy, there are relatively fewer reservations set out in the agreement.

Another thing I would like to flag is that the agreement sets a baseline for market access that EU member states can provide to UK service providers. There is always the option that unilaterally they can be more liberal, and in some instances that is the case. It is not just a case of UK service providers looking at the agreement and guaranteeing that that is the level of access in a particular member state. They have to see how it is applied in practice to see whether it is more liberal or whether there are other potential barriers that could impact them, not necessarily ones that have been listed in the agreement but ones relating to how they provide their particular service and how it is applied in practice.

Unlike for goods, where zero tariffs and rules of origin are set out in the agreement, in services you really do need to look at the domestic regime in the member state, as it may be slightly different, more liberal, set out in a different manner than in the agreement.

Lord Sharkey: Thank you. That was very helpful.

Neil Ross: I echo what George says about how the more regulated the sector is, the more likely you are to face reservations, because the tech sector tends to be quite generalist. A lot of what we are looking at is how member states enforce some of the specific reservations, such as whether a particular service provided by a tech company would count as a legal service or another service that is reserved. We will be looking very closely at how that is done.

On the temporary movement of business professionals, we need to look at how business has changed, particularly over the pandemic and the fact that we have become used to the ubiquity of Zoom and Teams and various other software. That might simply change the way we provide services and give companies a natural fallback option as they look at how they deliver services in the Single Market. That will not apply to all services sectors, some will face reservations that are unavoidable, but I would be interested to see how that shifts over time. Particularly as the tech sector is perhaps the most advanced in adopting these tools. I am interested to see how flexible we are and how able we are to provide services in many different ways.

Amanda Tickel: Clearly, the previous report argued in favour of minimal reservations, and this was partly achieved, but, as the other speakers have already laid out, there are substantial reservations.

I would like to add different evidence here on the question of establishment, because this is an area that we have already been asked to help businesses to navigate. The questions are simple. Can I continue to operate my branch? Do I need to establish in that country now to be able to provide my services cross-border? These are businesses that are not regulated, such as the Law Society or auditing. This is the hub, the

bulk of our services sector, and establishment is the question that will be quite complex.

To again reinforce the points that have already been made, these reservations are not formulaic, so you need to go through by trade, by country, and work out what you are trying to do and whether there is a particular reservation. We have been starting to get specific examples in connection with establishment and other areas that I can give you, but the point is that, as a business, one needs to search and assess that information to see how easy it will be to continue or indeed to start a new trade.

Maybe I could add to some of those already given. You need to work out whether you have to have an establishment in order to provide your services. In Slovenia, for instance, you now have to have an establishment somewhere in the EU to provide accounting and bookkeeping services, where previously you did not. In Finland and Hungary, you have to have residency in the EEA to provide patent agency services. In Cyprus, you need some residency in order to be a partner or shareholder in a board of directors for a company established in Cyprus.

There are a number of requirements for establishment. There are also reservations whereby you have to have a specific legal form, and there is a blanket reservation that does not offer equal national treatment for branch situations in particular. Another example of this particular form being required is that, if you want to be an architect in France, you have to establish with a specific French legal form that is listed, whereas previously there would have been that freedom of establishment as one of the four principles.

In this case, there are a number of examples. It will take time to work out exactly what those are, not least because each country, each member state, has not quite yet worked out or transposed what has been signed up to into their international law. That is the first thing: to get the examples and to understand the rules. Until we have done that, it may impact on the confidence to trade and increase costs of cross-border activity to some extent while everybody works out what that landscape looks like.

There are some useful measures that can be taken in accordance with the transparency principles to alleviate this and to make sure that our national rules have been updated and are really clear for business to follow.

Lord Sharkey: Thank you. That was very helpful.

Q25 **Baroness Couttie:** Good morning. How optimistic are you that the qualifications will be recognised through this TCA framework? More importantly, over what timescale, and what is the expected impact of the loss of professional qualifications being recognised in the interim?

Amanda Tickel: In terms of optimism, it was made very clear in previous evidence the committee took that this was an area where a bad

deal could have been worse than no deal. Clearly there is no mutual recognition of professional qualifications at the moment. I would not say that is a good outcome, but there is now this ability for the professional bodies to agree bilaterally and then to get that approved through the Partnership Council. We just do not know the timescale for that. I would say that the professional bodies really need to start making those connections now, and be encouraged to come to an agreement and put it up to the Partnership Council. We will have to see how that works out.

I would like to point out that this is on top of the provisions in the withdrawal agreement, where there is some protection of existing qualifications that have been already utilised. It is not a blanket recognition of everybody who has a qualification today. If you are already in another country using that qualification, it will be grandfathered. But for all new activity our view is that mutual recognition of professional qualifications is for the benefit of both the EU and the UK. We hope that discussions continue, and we urge those professional bodies to start those bilateral discussions as soon as possible. There is not much precedent around the world for this working so far, and perhaps some of the other witnesses would like to add to this point.

Neil Ross: I echo the points that Amanda has made. I think the big variable here is how quick the Partnership Council can be established, and how fast and how good the UK and the EU engagement is on moving issues forward.

For us, one of the issues is making sure that this framework is flexible. There has been quite a lot of discussion about a potential future qualification in cybersecurity, and ideally, we would like to make sure that as soon as something like that can evolve it can be quickly recognised so that we can have the movement of professionals in that sector.

George Riddell: This is an area where, as part of the Professional and Business Services Sector Council here in the UK, many of the professional bodies have already flagged in meetings with both industry and government that they are gearing up to start those discussions as soon as possible, because it needs to be done profession by profession—and member state by member state.

Each profession will face unique challenges. In the engineering sector, for example, there are differing definitions of what constitutes an engineering qualification in different member states among the different types of engineers, so bottoming out some of those issues over the next little while will be important to building momentum towards mutual recognition.

I would obviously defer to Mickaël on legal services and not comment on that.

With regards to the Partnership Council and the flexibilities that are contained within it, we know that some professions are looking to move

more quickly ahead with some bilateral agreements with their counterparts in individual member states rather than seeking an EU-wide agreement as a first step, and that may be a bridging mechanism while the broader framework is utilised for each of the professions.

Mickaël Laurans: MRPQ is of concern and is not satisfactorily dealt with by the TCA. Essentially, the agreement replicates the EU-Canada CETA model, and even though that agreement came into force three years ago, no single mutual recognition agreement has been approved through that process between the EU and Canada. European and Canadian architects put a proposal to the Joint committee two years ago, and it is still to get the green light, so I am quite pessimistic about the prospect for progress on that. I think that progressing MRPQ is likely to take years.

For legal services, it may not be as significant as for other regulated professions, including the ones represented today, because the principle of home title practice has been recognised in the TCA for legal services. However, it is still significant, because, through requalification as an EU-qualified lawyer, your advice on EU law attracts legal professional privilege at EU level and you have additional rights of audience in front of the Court of Justice of the EU.

This is significant in many legal practice areas that I call, admittedly not very elegantly, EU law-heavy practice areas, such competition law, intellectual property, GDPR, all the advice to regulated sectors such as chemicals, pharmaceuticals and financial services. It has been important for some of the members to requalify as an EU-qualified lawyer before the end of the transition period in order to retain legal professional privilege and the rights afforded.

As of now, there remain two routes for requalification as an EU-qualified lawyer because a system was already in place for non-EU lawyers—so as a French lawyer and as an Irish solicitor or barrister. In all other countries, you are in effect required to go back to university, which is obviously quite a suboptimal outcome. To be fair to the UK Government, they did try to negotiate a move away from the CETA—the EU-Canada—model, but I think the EU was able to insist on that model.

Indeed, it may be years before we move to the level of recognition that we had as an EU member state, and we may not get the same coverage across the EU that we had before. The bilateral route may be the way forward. There are some sensitivities there to do with issues of EU competence and what can be done by professional bodies or competent authorities directly or not. Also, as part of that, you have to be mindful of the most favoured nation model and what you offer to EU counterparts. You may also need to have a model in place that you can offer to other third jurisdictions if you are asked by them. It is one of the disappointments in the TCA.

Amanda Tickel: I wanted to add one other point that Mickaël made me think about, which is how important and beneficial it would be for both sides to agree. Footnote 23, which we spotted in the annexe to the

agreement, talks about the guidelines for the joint recommendation and the criteria and says that the entire section on MRPQs could be superseded by a future agreement between the UK and the EU. So, in my view, this should always be on the future agenda, because full recognition would of course be so much better than this patchwork of bilateral agreements in the different sectors. It looks as though there could be an open door in the more medium term.

Baroness Couttie: That is encouraging. Thank you all very much.

Q26 **Lord Bruce of Bennachie:** Thank you very much, and good morning, everyone. I am hearing that an agreement is better than no agreement, not surprisingly, but that what you are describing is a patchwork—the word you have used; lots of different arrangements with different countries in different circumstances.

A piece in the *FT* today on small businesses trading in goods concluded that it is so difficult that they should either abandon dealing with the EU or relocate to the EU. Picking up Amanda's last point about the future agreement, is the danger that it will be too late, because companies will come to the conclusion that they need to move a significant chunk of their business out of the UK into the EU, as, for example, Barclays, Aberdeen Standard and quite a lot of financial services companies have done, and that we will see a steady trickle not just of people moving but of the jobs being recruited elsewhere than the UK?

I am not sure who will pick that question up, but that is what I am picking up from what you have said so far. How much of a barrier is the mobility issue, and to what extent do you think people can get around it quickly enough to maintain business rather than see it drift away?

George Riddell: Thank you, Lord Bruce. This is definitely a concern that I have heard in the PBS sector, particularly because, although in the popular imagination it is the EYs, the Deloittes and the KPMGs of the world that dominate the sector, in the latest statistics somewhere between 85% to 90% of the employment in the sector is in small and medium-sized firms. They, too, will have to adapt to these new rules, and in many cases they do not have the capacity to do so in the way some of the medium to larger-sized players in the market have.

This is absolutely a concern. The professional bodies and industry associations such as the Law Society, techUK and ICAEW have been doing a fantastic job to help support their members to make some of these changes that are necessary.

We need to do more. Keeping up the flow of information and support over the next 12 months, in addition to everything else that is going on, will be incredibly important in making sure that they are not forgotten. As you say, a lot of the newspaper coverage covers your product producers, those trading goods across the border, because that is where the most immediate impacts are being felt. But looking forward and making sure that we are conscious of the smaller public service providers that are also

impacted and that perhaps do not have as large a collective voice in the popular imagination is also important.

Lord Bruce of Bennachie: Thank you for those very important points.

Amanda Tickel: Thank you, Lord Bruce. George is quite right to point out that there is a difference here according to scale and size. The smaller businesses, and even the medium-sized and large businesses, are all grasping for information at the moment: "What does it mean for my business?"

The challenge is still that the change we are going through is so substantial that it is very difficult to provide general information. You have to go quite quickly into the exact specifics. The same process has to be followed whether you are a smaller or a larger business. There is a big challenge and a big role here for the trade associations. The number one thing is information. If we can get the information out in a way that is easy for businesses to digest, they will be able to trade much more easily. It is as simple as that. Getting the information is not simple, but the task is there; it is clear.

Regarding your question about the risk of relocation, I think it is a risk, but I would say a couple of things. This is not going to be an overnight shift. What the new landscape will look like is sinking in, and it may not affect some businesses at all. They will be able to continue trading their services as they did before, because a reservation does not apply. We should always have that in mind.

Secondly, the UK has its own reservations. There are EU businesses that will need to think about whether they can continue providing services in the UK market, which is the fifth biggest GDP in the world. It is a substantial market that they also want to access. If there is a change and there are more structures and dual structures, it could well happen both ways. I am not sure that we can predict yet whether this is a loss to the UK or not. It is a bit early to say.

Lord Bruce of Bennachie: Thank you. Neil, it is perhaps worth picking up on that point. Is there good co-operation or linkages between UK trade associations and organisations and the EU ones to try to find that common ground?

Neil Ross: Yes. I can speak for techUK in that we have a very good relationship with our sister trade association, DigitalEurope. My CEO sits on the management board of that group and we have been very closely involved with it throughout the negotiations. We plan to use that as a platform to try to reset the UK-EU business relationship now that the trade negotiations are over, so that we can start to build a very positive dialogue. We see that as particularly important in the digital and technology space.

I echo Amanda and George's points. It has been quite obvious from the goods side, and it will apply to the services side, that certain business

practices and business functions are just no longer economical as a result of the trade agreement. The real shame, and I go back to my point at the beginning, is the lack of an implementation period. It has meant that businesses have had to make decisions very quickly with quite limited information. It means that we are very much in the weeds of the economic shift that is happening as a result of the agreement, and we just cannot say for sure, as Amanda said, whether this will be a net loss or a net gain for the UK services industry as a whole.

Lord Bruce of Bennachie: Thank you. Mickaël, one thing that occurs to me with lawyers is that you can often do a lot of legal transactions over the phone or the internet and what have you. When it comes to being told that as a UK lawyer you cannot practise UK law on the continent, even though you may be more expert than somebody qualified elsewhere, how does all that work and how will it be policed?

Mickaël Laurans: Thank you, Lord Bruce. There are several dimensions to that question. I think we are fortunate in that the product—sorry for that word—that we advise on, English and Welsh common law, is one of the governing laws of choice for international contracts. England and Wales retain their reputation as an excellent centre for dispute resolution in legal services, be it litigation or arbitration.

Not all of that is impacted by Brexit. That means that English and Welsh common law is in demand by many companies across the world, including in the EU. Yes, the fact that we have different national and regulatory frameworks to deal with means that we might not be able to provide that advice in that part of the country either as a permanent establishment or, more rarely, as a fly in, fly out provision of these services. Obviously during the pandemic we have turned a lot more to remote advice—like all services sectors, like all professions—and probably some of it is to stay when international travel resumes.

In terms of the practical effect on the sector, the largest law firms, the ones with a network of offices across the EU, have needed to look hard at what national regulatory frameworks were to be followed. To follow on from something George said, the TCA is a baseline, but often you need to refer to national regulations beyond or regardless of what the TCA says. Obviously if you were more restrictive, you would have to liberalise, but if you were already more liberal there is no need to come back to the level of the TCA. For the largest firms, it has meant potentially restructuring your network of European offices and checking whether your UK-qualified lawyers on the ground may have needed to requalify before the end of the transition period, and looking at important issues such as profit sharing, who owes the equity, professional liability insurance, and so on.

I suppose that for smaller firms, such as national or regional-sized firms, which may not have had an office in the EU, this may be the prompt for them to take the strategic and commercial decision to open up in the EU for the first time with an office in Brussels, Dublin, or elsewhere, so as to better service their EU client base, or more effectively, following the end

of the transition period, as well as to continue providing advice under EU law, which continues to attract EU legal professional privilege.

On the mobility point and fly in, fly out, it is a massive change compared to free movement of people. At this time, most of the queries we get are about mobility, and it is of the upmost concern. As Neil pointed out, it may be a good thing that international travel is limited at the moment, and it has left more time to prepare for the new realities when international travel resumes.

Lord Bruce of Bennachie: Thank you all. That was extremely helpful and very inciteful.

Q27 **Baroness Prashar:** Good morning, everybody. How would you assess the risk of UK professional-services activity relocating to the EU as the result of the new barriers? I will start with Amanda.

Amanda Tickel: Thank you, Baroness Prashar. It is difficult to assess this risk at the moment. Just to go back to my previous point, there may well be a need for dual structures now just to make business easier, but that would be a two-way thing. We could see EU-based businesses having, needing, or wanting to establish in the UK to access this market more easily.

We might well see some changes in structure. If you operated a branch structure, or through rep offices, which is really quite easy to set up in comparison, you may now need to look at a formal subsidiary-type operation. It depends on what your sense of relocation is, but we are certainly expecting to see some restructuring. I do not think this will be an overnight switch, and we are still certainly in that stage of trying to digest.

In terms of wholesale activity, the UK still has its fundamental strengths and assets—the language, education, geography, all of that. It is still an extremely beneficial and attractive place to run your business from. For that reason, we are not expecting a large relocation of services activity, but there may, as Mickaël referred to earlier, be the need for an office or subsidiary in the EU as well.

Neil Ross: I would pretty much echo Amanda's points. The risk of relocation, or the extent to which you relocate certain functions, is more a question for the more regulated services sectors, because there are reservations that require that. Overall, the UK tech sector has been very resilient throughout this whole process, and in many ways we have been pleasantly surprised at the lack of movement of companies over to the continent. This is despite the best efforts of some EU member states to scoop up some growing UK tech companies.

I think that is a result of the core strengths of the UK in this space—the language, the ease of setting up a business, our more proportionate and risk-based approach to regulation, and our university sector, which are all core strengths. However, we are now in a much more competitive environment. Not only are we not members of the single market or the

customs union, but countries across the EU and the world are very keen to develop their own tech sectors as a strategic economic objective.

Therefore, we need to double down on the core strengths that I mentioned, but also seek to shore up our weaknesses. That means, despite the loss of freedom of movement, finding ways to ensure that we can get talent into the sector both through the skills regime domestically and through enhanced visa routes, making sure that R&D activity is targeted at economic growth and focused around the country, and that we resolve to make sure that tech companies outside London are invested in; London takes up about 70% of all investment in UK technology companies.

That needs to be rebalanced, and we need to get investment into firms that are growing across the UK. That has to be the economic prerogative of the Government now that we have left the EU single market and customs union.

George Riddell: Thank you. I agree with the previous witnesses on this question. One thing I would add is that there has to be an acknowledgement that certain business functions, particularly in the regulated sectors, will either be duplicated or moved to the EU as a result of leaving the single market and customs union. It is a reality that they will need to meet those legal requirements in the EU or stop trading. It really is a binary decision that they have to take.

However, coming to the future opportunities, this is where London, the City and the UK as a whole are extremely good at reinventing themselves. If we are looking at the shift to sustainable finance and sustainable consulting and making sure that the supply chain, buildings, everything is much more climate friendly and green, there are huge opportunities for the UK to be a market leader around the world. It is the same for fintech and tradetech. All these things that are nascent industries at the moment will be the future, and it is about making sure that we do not try to regain what has been lost but look forward to those new economic opportunities.

Baroness Prashar: That is very encouraging. Thank you.

Mickaël Laurans: I echo what the other witnesses have said. On the legal services sector, I have explained some of the drivers for the largest law firms, and maybe for the more national or regional firms, and the type of strategic decisions that they needed to take either before the end of the transition period, restructuring if they needed to, or now that we have the TCA, whether they need to open up in the EU for the first time either to provide EU law advice or to service the EU client base more effectively.

The EU law advice is an important aspect, and there are several ways to deal with it if you want to attract EU legal professional privilege and EU-qualified lawyers working for you. You can still have them in the UK, and

I suspect that EU-qualified lawyers established in the UK will become even more of a hot commodity.

However, depending on your client base, the other sectors of the economy that are impacted by the TCA, and the transition period, there may also in time be a shift of teams, maybe one partner and his or her team of five or six associates, to other offices across the network of offices in the EU. As George mentioned, some functions, such as the compliance function, GDPR compliance, that may have been based in the London office of an international law firm before the end of the transition period will have to relocate to the EU purely for compliance purposes. We have not seen huge movement, but these strategic decisions may be taken over time.

Baroness Prashar: Thank you very much for those very comprehensive answers.

Q28 **Lord Thomas of Cwmgiedd:** It was indicated to you that I would ask very general questions, but I think you have answered all of those in what you have said already, so I will ask you very much more specific questions.

The first picks up a point made by Neil. One of the effects of the pandemic on the legal profession, particularly in the international aspect, has been to move business online. This question is not addressed so much to Neil but to the others. To what extent will this very significantly mitigate for the future the impact of having to go to overseas or establish overseas to advise on the law of England and Wales and, separately, the law of Scotland?

Neil Ross: I will start with the shift to online and then leave it to Mickaël to talk about the legal aspects.

We are very early in the transition, and many companies are exploring how they can reconfigure their office space and how employees interact with each other, but they are also very significantly looking at their hiring practices now that geography is a less restricted factor for ensuring that teams can work together. We certainly do not have the answers to that yet, but it throws up a whole host of problems and potential opportunities in trade, tax, productivity and the ability of firms to recruit from all over the world.

When we speak to our members, they say principally that they are being led by their employees. You appreciate that I am talking about the tech sector here, so probably at the more advanced end of the spectrum, but the majority of employees want to have a new work-life settlement where they work maybe one or two days a week from the office when they have to, while using the flexibility for childcare and working in different locations for the rest of the time.

I think this is likely to be a very big shift, which starts in the tech sector but will likely trickle down into other parts of the economy, and it is something that we need to be thinking about and planning for.

Lord Thomas of Cwmgiedd: Thanks very much. It is already happening massively in the legal sector, so can I come to you, Mickaël?

Mickaël Laurans: Thank you, Lord Thomas. The pandemic has taught us that we can do a lot more things remotely and that there may not be the need for international travel as we have been used to. Having said that, once international travel resumes we will go back to some element of fly in, fly out. It is important to meet clients face to face and when you are negotiating deals with another side, sometimes as part of an international team of lawyers with UK-qualified lawyers, EU-qualified lawyers and maybe lawyers from other jurisdictions such as the US, China and elsewhere. The need for close contact, discussion and negotiation remains. We may not go back to the level of international travel that we had before the pandemic, but I think there is still a need for that.

To illustrate the issue, I will give you the example of Greece and shipping law advice. Thanks to the EU lawyers' directives, a number of UK law firms established in Paris and Athens to provide English shipping law advice to the Greek shipping law sector. Greece was a country of great concern for us, because non-EU lawyers could not establish in Greece and could not partner with Greek lawyers. UK LLPs were not recognised. The firms have done what they needed to do to restructure business, but the issue is about looking to the future. Does the Greek shipping sector need to come to London to get the English shipping law advice that it needs, or can it be done remotely, or we will come to a point where UK-qualified lawyers will be able to go and negotiate the contracts they need and resolve the disputes at a more face-to-face level?

As with any sector, we have been greatly influenced by the pandemic, and working methods have changed, but it is likely that a certain level of international travel will resume post-pandemic.

Lord Thomas of Cwmgiedd: I will ask Amanda next. Do you have any comments, bearing in mind the very large interest your firm has in legal services, and confining your answer to legal services?

Amanda Tickel: We have a growing legal practice. I certainly agree that we have all learned the art of the possible of what can be done remotely, but specifically to Deloitte, we run on a member firm basis. We provide services in the market from every market. We are established everywhere and we will have an inter-firm agreement, but we will use local lawyers, accountants, whichever area of our business we are working in, to deliver those services. When we have analysed the impact on our own business because of how we are structured and the sorts of legal services we engage in, we have found that we are not particularly impacted by the changes, but we welcome, for instance, the mobility provisions. They are really important for us.

There is really nothing that can replace face-to-face discussions, particularly on confidential deals. Oftentimes you need to be physically present to inspect some goods, a warehouse, a security breach or something like that. The ability to move our people around, not

necessarily just to legally provide the services, is really important, and we are always moving our people from office to office. It is extremely important for the development of our understanding of national regimes and ways of working, so we must keep moving people, but we have certainly learned that we do not necessarily always have to move people to physically or digitally provide the service.

Lord Thomas of Cwmgiedd: I will ask the same question of George, again bearing in mind that EY has such a vast legal practice.

George Riddell: I very much agree with Amanda about how we are structured on a member firm basis, and that includes our legal teams in different markets.

To pick up on a couple of points, during the pandemic and over the internet and videoconferences, we were able to maintain relationships with our existing clients, and that has been very strong where you have an existing relationship. It has been much more difficult—and this is borne out by conversations I have had with colleagues and my peers across the professional services industry—making new relationships and gaining the trust of new clients. That is materially more difficult when you are doing it over email and the phone. I agree that the nature of work will change and that we will do more things digitally going forward, but due to the fact that professional services are really two things—people and knowledge—if you cannot fully realise the people aspect and build those relationships, it is extremely difficult to provide the cutting-edge services that we want to provide.

Q29 **Lord Thomas of Cwmgiedd:** Thank you. Do I have time for one slightly different question to Mickaël? You mentioned the lack of involvement in the justice co-operation, and I add Lugano to that. Could you very briefly explain that a little more fully for us?

Mickaël Laurans: Absolutely, and thank you for the question, Lord Thomas. The TCA does not include provisions on judicial co-operation in civil and commercial matters. This was expected, to be honest, because it was not part of the negotiating mandate on both sides. At the moment, we are resorting to national rules for the execution and enforcement of UK judgments into the EU and what the specific procedure is in France, Germany, Belgium for the recognition and enforcement of non-EU judgments.

There is an off-the-shelf solution, as Lord Thomas suggested, called the Lugano Convention. It is not a single market instrument. It is in principle open to third countries, non-EU countries. It has five contracting parties at the moment: Norway, Iceland and Switzerland as well as the EU 26 and Denmark. Denmark is a separate party to the convention because of its general opt-out on EU judicial matters.

The UK Government have applied to join the Lugano Convention. Norway, Switzerland and Iceland have given their support to that application. We now need the response from the EU 26 and Denmark for UK accession to

that convention. When I said that the TCA was welcome, I was bearing in mind the other negotiations or matters for discussion or other aspects of the future relationship between the UK and the EU that are not dealt with by the TCA, and the Lugano Convention is one of them. This is especially important for SMEs, families, consumers sometimes having legal issues, legal disputes with providers in the EU or, vice versa, EU consumers in the UK. Having the Lugano Convention will make their lives a lot easier.

Lord Thomas of Cwmgiedd: Thank you very much indeed. I am very glad you mentioned families. We tend to forget that aspect.

Q30 **Lord McNally:** I want to turn to data adequacy. We played a big part in the drafting of the GDPR and moved it very quickly into our own domestic legislation. We were told at an early stage that data adequacy would be like the flick of a switch on 31 December. I wonder why the switch was not flicked. What were the problems? How important is data adequacy to frame professional business services? How do you assess the chances of a positive adequacy decision from the European Commission in the coming months? Neil was quite optimistic in his opening statement about data prospects, so would he go first?

Neil Ross: I will start off with why it has taken longer than we hoped, and then move on to why I think the general prospects of adequacy are still quite high.

There are two reasons why it took longer than we hoped. The first is principally politics. The deal was agreed very late in the day. Data adequacy was considered a very important ask for the UK. It was a unilateral decision of the EU, so it did not make sense in the negotiations to give adequacy early, and you could hold it back as part of the general running negotiations. While the two things are separate, ultimately in all these negotiations everything was very interlinked and the strong message we understood was that it was generally part of the ball game in the negotiations.

Another reason why the adequacy decision has taken so long is because this is the first adequacy decision taken since Schrems II, the ruling of the European Court of Justice that looked at transfers using standard contractual clauses and other means to third countries. That put an extra level of requirement on the EU to do the assessments. The EU is generally very worried that any adequacy decision it finds in favour of the UK or another third country is struck down in the European Court of Justice. The European Commission consistently loses cases there, so it is trying to get back on to the front foot to re-establish the stability of the EU's data transfers regime. It is very important to the EU that if an adequacy decision is reached it is strong and legally defensible.

However, I highlight that I am still quite positive that there will be an adequacy decision. There are a number of reasons for this, three of which are key. First, there is the overall trade agreement itself. The fact that there is a really strong digital trade chapter with very strong positive commitments on data flows and an agreement for high level co-operation

on personal data protection sets really good mood music for an agreement between the UK and the EU on data adequacy.

The second reason is the depth of the engagement between the UK and the EU throughout the process. Unlike the main trade negotiations, the adequacy process, which ran in parallel to the trade negotiations, was very co-operative and executed in a very collegiate way. The UK Government set out very early in the process a very transparent framework for the decision. I understand that potentially over 1,000 legal and technical questions had been asked of the UK Government.. This has been done to an extremely detailed level and rolls into that part of the fact that the Commission wants this to stand up in court. When you speak to the EU and the UK, they are both quite positive about the engagement and the potential for an adequacy decision to be reached. That is not a foregone conclusion, but the signs are good.

The third reason is that adequacy is really important to the EU itself. It underpins the security relationship with theUK, which EU member states highly prize. It is very important for EU businesses, which we understand tend to be less prepared than UK businesses and stand to be at more legal risk should adequacy not be granted and they perform an illegal transfer.

Lastly, I think the EU sees it as very important to remain connected to the UK's digital services sector. It is very keen to continue to grow the EU tech sector and, the UK having been the largest digital services in the bloc by far, it is important to maintain that access to help grow your own.

I will add a final piece on why I think adequacy is very important. If the UK were to fail to get adequacy, it would not be particularly good for the stability of the EU's international transfers regime, particularly because the UK has the exact same rules as the EU in that we still apply the GDPR. We have a trade agreement that has a high level of commitments for data protection. If the UK were deemed to be inadequate, it sets the standard incredibly high for other countries seeking data flow arrangements with the EU.

There is a risk there that the EU sets the bar too high and could be accused of double standards. I expect that if we get an adequacy decision for the UK and we see the full decision, you could probably point to a few EU member states that would fail to meet the bar that is being asked of the UK. This all blends into the EU's broader geopolitical outlook with regard to its transfers regime.

Lord McNally: Thank you very much. George, you must be very encouraged by the thought that there is a 1,000-page explanatory document coming down the track. I suspect you will have a queue of clients wanting to get advice on this. Earlier you mentioned the tech opportunities that are opening up for the UK. Do you think we will get an adequacy agreement, and how important is that box to tick?

George Riddell: Thank you, Lord McNally. I will start with that question first. Adequacy is extremely important for businesses, particularly those that are data heavy and collect or process data that is covered by the GDPR. None the less, we have been dealing with an uncertain situation for quite a long time, so companies have been spending quite a lot of money putting in a place the standard contractual clauses, the binding corporate rules that are necessary to be GDPR compliant in case we do not get the adequacy decision in four to six months' time.

An adequacy decision is important, but that is not to say that there are no changes that UK companies need to be making as a result of leaving the EU and the TCA entering into force. Appointing a new data representative in an EU member state is a requirement that many companies will have to meet. Mickaël referenced earlier the potential for moving that data compliance function, and that is one of the practical realities of the new requirements that are coming into force.

In addition to the wider background of instability that Neil mentioned with the fallout from the Schrems II ECJ court case and the ongoing consultation on how to improve standard contractual clauses, there is also the US element, whereby the adequacy privacy shield decision with the US and the trilateral dataflow between the EU, UK and the US is an incredibly important consideration for many companies that operate across those three jurisdictions.

Lord McNally: Thank you very much. I have been worried for a long time that we might get caught between a rock and a hard place between the USA and the EU. With apologies to Amanda, could we move to Mickaël because he raised the question of compliance with the GDPR and the general question of the importance of adequacy.

Mickaël Laurans: Thank you, Lord McNally. Neil and George covered a wide ground on this particular question, and there is very little that I can add.

On the issue of GDPR compliance, it may be that some large law firms add this compliance function in the London office. Often the worldwide operations or European operations for UK law firms or international law firms will be managed from London. As part of that process at the end of the transition period, some decisions needed to be taken on data compliance, and some teams may have been moved to other member states for that compliance to be effective. The other two witnesses have covered a lot. Data adequacy is an important aspect, including for law firms as businesses. We very much hope that we will get the right decision in four or six months' time.

Lord McNally: Amanda, apologies for leaving you to last, but the other three had all raised issues that I was interested in. In some ways, I am struck by the naivety with which we have gone into this. I have been involved with the data GDPR for over 10 years. Never have I heard that we were likely to be hit by a 1,000-page Explanatory Memorandum for data adequacy, and I am quite sure it will be a surprise to a lot of firms

as well. Amanda, what is your read on what we have heard so far?

Amanda Tickel: Thank you, Lord McNally. The other witnesses have laid out very clearly why data adequacy is so important. I will add that of course everything in the EU exit seems to have multiple-page explanations or guidance attached to it, and I think that is something that we will have to get used to.

On data adequacy specifically, we have unearthed situations where GDPR-type data is moving from the EU to the UK but the business did not really realise what was happening. For example, payroll services contain GDPR-type data and are often outsourced, and the processing happens outside the UK. It is really important that a business understands, first, the map of where its data moves to and from, and that is a practical challenge. Of course, everyone is hoping that there is an adequacy agreement, but if there is not it is important that we return our attention to preparations and following the guidance of the Information Commissioner's Office on standard contractual clauses, and trying to protect those data flows to maintain business as usual as far as possible.

We are hopeful. Many said that the bridging agreement could not be done and it was, so let us hope that there is some positivity as a result of reaching a deal which the adequacy agreement can build from.

Lord McNally: Do you think there is any danger of getting caught between a rock and a hard place in trying to satisfy EU requirements and American requirements on data? You deal with a lot of companies that operate in both jurisdictions.

Amanda Tickel: Yes, I do. George referred to the content of the Schrems II case. I am sure that is not the last judicial case we will have on data and transfers and protection. The hard places are not just the US with its privacy shield, but also those that we strike new free trade agreements with, which will have their own provisions on data. We have the EU and the UK FTA with different data provisions that are not quite data adequacy. I think there will be a lot more complexities country by country to look at, particularly where you as a business are transferring data across or with or in connection with multiple countries.

Lord McNally: Thank you very much.

Q31 **The Chair:** I will ask the next question. You will be only too aware that there are outstanding Commission equivalence decisions on accounting and auditing. How important are these decisions for UK accountants and auditors, and how likely is it that the EU will grant equivalence in these areas? I will start with Mickaël.

Mickaël Laurans: If you do not mind, I think it is probably more important for George, and possibly Amanda as well, to respond to that particular question on behalf of the accounting and auditing sectors. These are important decisions, but my real expertise is very much legal services, so apologies for that.

The Chair: Thank you very much. George?

George Riddell: There are three equivalence decisions related to audit and accounting under the statutory audit directive. I have no comment to make about the fact that the acronym for that is SAD and refers to accountants.

These are important equivalence decisions that we hope will be granted under the MoU that is being negotiated between the EU and the UK on the equivalence framework. It is unfortunate and disappointing that there are not the bridging mechanisms such as we have for the adequacy decision and certain equivalence decisions in other financial services sectors. It is another area where, to illustrate the levels of complexity in dealing with the new regime, you have the audit product itself, which is what the equivalence decision concerns itself with, you have the question of the qualification of the person conducting and leading the audit, which is an MRPQ question, and the question of also where is it being done from, which touches on some of the establishment issues that we talked about earlier in the session.

It is an important part of the wider process of conducting accountancy services and audit, but it is one part in a much wider landscape of complexity in the TCA that we are now grappling with and understanding.

The Chair: Thank you. May I ask Amanda Tickel to come in next?

Amanda Tickel: Yes, Chair. Thank you. George has set out the landscape very well. I would probably divide it into accounting and auditing. On the accounting side, it is about reporting standards such as the IFRS, which have been adopted in the UK and EU. They are basically carbon copies of each other. Today, that equivalence decision has less impact, because, at the moment, compliance with both frameworks is relatively easy, even if you have to explain what you have done and why and it is a bit more cumbersome.

Without equivalence in future, there are two potential impacts. The standards might drift further apart and some member states in the EU might grant some sub-groups of exemptions, which mean that things like consolidated accounts become more complicated. So it is important to have an equivalence decision, and given the similarities already—that is, it is a carbon copy—one would hope that it would be an area that could be reached.

On the auditing side, again I will not go further than George in talking about qualifications as we have discussed that, but there are two other decisions. There is the equivalence for third-country auditor registration, which we have been applying for from 1 January, in common with other UK-based auditors. That is the recognition whereby you are able to audit an entity with, say, some debt securities listed on an EU-regulated market. I think the committee is already aware of that. The licence and registration procedure is relatively straightforward, and licences have

started to be granted. However, equivalence would make everything much more straightforward here.

Then there is the adequacy ruling, which deals with regulatory co-operation, and that is about the cross-border exchange of auditors' working papers for regulatory purposes. This is not about making auditors' lives easier. It is about allowing for the more effective inspection of group audits, and hence audit quality, so it is an important driver in the debate about audit quality as a whole.

Again, the UK and the EU regimes have been very similar until now, so we hope that this is a simple ask, and it is the one that we care about most in terms of the public interest. The UK has made its equivalence decision here, but actual exchanges require both sides. An adequacy decision in Brussels would not be the end of it. We would still need 30 separate bilateral agreements otherwise between regulatory bodies such as the FRC and each EEA country, so regulatory co-operation is probably the one that should be focused on most and is the one that as an industry we care about the most.

The Chair: Thank you. Neil or Mickaël, after hearing that, are there any things that you want to add?

Neil Ross: No.

Mickaël Laurans: Nothing from me, either.

The Chair: Thank you very much. I now call Baroness Neville-Rolfe.

Q32 **Baroness Neville-Rolfe:** I want to explore the extent to which the permission of the TCA facilitates UK-EU digital trade for both the bigger and the smaller firms, both the nuts and bolts like electronic contracts, which have been mentioned, and the broader opportunities, which we have already touched, for example in the legal sector.

Neil, you may like to go first as you were quite positive about aspects of the deal and techUK does so much to support the digital sector. I was very glad, by the way, to hear that you were staying in DigitalEurope.

Neil Ross: There is always a disclaimer when we come to talk about the digital trade chapter, which has no impact on personal data, which is wholly separate and reserved in the trade agreements. These are general principles that frame the transfer of non-personal data but that also apply to business arrangements relating to personal data if you have the right transfer mechanisms themselves.

Overall, particularly for us but I would think generally, people have considered the digital trade chapter in the TCA to be where the agreement excels and goes beyond other comparable EU agreements. It is nice and very positive that both the UK and the EU have been very proud of what they have managed to achieve on the digital chapter. That speaks to the high level of ambition that both sides had in the negotiations. We were particular pleased to see that it lands.

In terms of the key highlights of the agreement, we have the strong, principled basis, which is trying to make sure that electronic contracts can be signed. There are some sectoral reservations, which I think Mickaël and others will go into. But, generally speaking, there is quite broad agreement.

There are very strong provisions against data localisation, meaning that companies in neither the UK nor the EU can compel a business partner to have the data stored within either jurisdiction. That is stronger than any other agreement that the EU has achieved.

There are commitments on open government data, which means that both sides will facilitate, or try to facilitate, access to government data where possible, and the EU has not agreed that with any other trading partner.

We also have a positive obligation for data flows in general, which is another thing that the EU has not agree with other trading partners and which sets a very strong tone for the digital sector.

However, the digital chapter is very much a living document. As well as the principled basis that we have discussed, providing access, it also commits the two sides to lots of regulatory dialogue as well as issue-specific dialogue. The last time I came before this committee, we talked about the importance of a dialogue on emerging technologies, which will be important, and that has been achieved in the deal. However, it is relatively thin on the detail of how that is activated, so the relationship between the UK and EU will be hugely important in ensuring that the agreement can continue to evolve over time and that it facilitates good, non-legal text-based interactions.

There is also a review clause in the data flows chapter itself, and the two sides have to look at it again in three years' time. The digital trade chapter is a living document, and if we want to make sure that it is still a leading digital trade chapter in three, five, 10 years' time, we will need good engagement and a good relationship between the UK and the EU as we go forward, because ultimately, if there is a negative relationship or this chapter gets drawn into tit for tat disputes between the UK and the EU, it is likely to fall away or not advance particularly far. In the field of technology, where things change constantly, this chapter needs to be kept up to date, and that is best done through good dialogue.

Baroness Neville-Rolfe: Do you think that will help with some of the teething problems that we have seen on retail or portability of TV programmes? Are you saying that if those are slow for some reason, this mechanism will allow sensible solutions to be found?

Neil Ross: Audiovisual services are completely carved out of the agreement. The digital trade chapter does not touch on them. What it generally does is set good, core, base principles that can be used to help smooth trade over time, and it can be used by companies to make sure

that they are not being penalised. It is also wrapped up in the non-discrimination clauses of the deal as well.

Baroness Neville-Rolfe: Thank you.

Amanda Tickel: I do not have anything very much to add to what Neil has said—he has laid it out very well—apart from saying that it is clearly an emerging area, and it looks as though this chapter is helpful and in line with the best precedence in other FTAs. However, we are yet to see exactly what digital trade means and we need organisations like techUK to look for opportunities and keep the dialogue going.

Baroness Neville-Rolfe: A point was made earlier about how competition in the digital space was increasing as other countries wanted to catch up with Silicon Valley and the UK and so on. I would be interested to know how you feel about this part of the deal.

George Riddell: I completely agree with Neil's assessment of the deal itself. The one thing that I would add is the importance of a supporting domestic environment here in the UK so that firms can actually use the agreement. Examples include ensuring the right access to talent and that the new points-based immigration system that is being implemented here in the UK allows for those tech firms that are looking to scale so that they can attract the right people in order to do so, and making sure that they have access to the right venture capital in order to scale their operations. All those supporting mechanisms will help companies to use the TCA as well as UK-Japan, and so on, going forward.

In addition to Neil's point about it being a living agreement, this is something that we see across the services, investment and digital chapters. Whether we are talking about the reservations, building on regulatory co-operation in the digital trade space, or future discussions on MRPQ, the built-in agenda for professional and business services and services firms more widely is huge. One of the things that we would urge the Government to do is to engage proactively on this agenda and as soon as possible in order to kick off those discussions.

Baroness Neville-Rolfe: Mickaël, briefly, if you have anything to add.

Mickaël Laurans: Yes, I have a couple of points of relevance for the legal services sector, if you do not mind.

First, the digital trade chapter includes a guarantee that neither the UK nor the EU will discriminate against some electronic signatures or electronic documents on the basis that they are in digital form. That is good news. It also ensures that contracts can be completed digitally, which again is good news in the time of a pandemic and the remote advice that we have been talking about.

There are, however, a small number of exceptions, which impact on legal services. Some of them are to be fully expected, because they concern contracts involving the Latin notarial professions in many EU member states when looking at probate or conveyancing, as well as some

contracts that would require witnessing in person. However, there is a general exception on contracts to do with legal representation services, and for us that is probably a legacy exception, something that was replicated from previous EU FTAs, and we regret that. I think it could have been avoided. They include contracts to hire a lawyer or a legal team and the ability to complete them digitally.

Baroness Neville-Rolfe: Thank you very much. It is ironic, really.

The Chair: Thank you very much, Baroness Neville-Rolfe. The final question is from Lord Vaux.

Lord Vaux of Harrowden: The next question follows up a little bit on Baroness Neville-Rolfe's question.

The Chair: I have a shocked-looking Lord Vaux and a shocked-looking Viscount Trenchard. I apologise. I have them the wrong way round. Viscount Trenchard.

Q33 **Viscount Trenchard:** My question is in two parts. First, are there any opportunities for your sectors in regulatory divergence from the EU, and in which specific areas do you think the UK might seek to diverge from the EU in coming years?

Secondly, would you identify any other opportunities for your sectors, post-Brexit, particularly as the attractions of providing services to the EU rather than to the rest of the world, because of geographic proximity, have declined as we do more virtually? Could I start, please, with you, George?

George Riddell: To the first part of your question, one thing that we keep hearing from our clients and are experiencing ourselves is that we are in a period of unprecedented change. Managing the current disruptions is taking a huge amount of effort and time away from normal business practices and providing the services that we want to provide to our clients, who quite often at the moment are in distress themselves. If there was a good, considered reason for divergence, we would certainly consider it, but divergence for divergence's sake at the moment, particularly given the wider economic challenges that we face, is perhaps not the best use of our time or effort.

In terms of future opportunities, I mentioned a couple before, particularly in the sustainability space for professional and business services. Many environmental services are professional and business services, whether it is architects and engineers advising on infrastructure projects, or lawyers advising on how to structure new green instruments, or the professional services firms that are advising on supply chain visibility and implementing those new technologies. It is a huge growth industry and it is an area that the UK can be a leader in. Also, the technology enablement of the professional and business services sector is gathering pace, whether you are talking about lawtech, fintech, or tradetech. All these things are being developed here in the UK, and that should be promoted, in my view.

Amanda Tickel: George has put that very well. In short, given the time, I would just say that we have to look at this in light of the whole UK policy agenda and the growth of each of the areas they will invest in. Certainly from the usual perspective in this sector, regulatory divergence has not been the thing that has driven our business. Alignment has been helpful, but as a broader sector in professional services we help other businesses grow and be successful, so the more growth, divergence, change there is, the more we can support those other sectors.

We are certainly seeing a lot of interest in digital and fintech and in other emerging sectors, as George has said, such as green energy, climate-based sectors, electric, battery—all those areas. When it comes to regulatory divergence, one area which the UK has been well-regarded in is the sandbox idea for fintech, which you mentioned. That area could certainly be built on as a means of attracting international business and diverging away from traditional rules there.

Viscount Trenchard: Thank you. Neil, I suppose there is less existing regulation in the tech area to diverge from.

Neil Ross: There obviously is quite a lot of regulation at the EU level, including the GDPR and various other areas. George's point about divergence for divergence's sake is very important, but equally I do not think we should align for alignment's sake. The UK's objective, particularly in the digital space, should be to understand the core principles that we think are important for the growth of our economy.

Amanda talked about sandboxes. That is a fantastic piece of innovation, and we would like to see that extrapolated across lots of different sectors, not just financial services, so that you can build better dialogues between innovative companies and the regulator to develop new products. Once we get those principles really bedded in, that is the point at which you look at each regulatory change in Europe as well as those imposed in the UK and consider how you go forward. I do not think we should expect a big bang when it comes to industry calling for regulatory divergence. It is about looking much more strategically at what is good for the UK in its growth objectives and proceeding on that basis.

Viscount Trenchard: Thank you. Lastly, Mickaël, from the point of view of legal services.

Mickaël Laurans: To qualify the question for the legal services sector, the single market for legal services organised by the EU lawyers' directive was not based on regulatory convergence. It was based on organising what free movement meant: the temporary provision of services, establishment, and working with local lawyers. So in some ways regulatory divergence, innovation was always possible within the EU, as the UK has shown this with alternative business structures, for example, so our lawyers can work with non-lawyers within the same structure.

Obviously innovation is still possible outside the EU, and on that point I would briefly like to mention the LegalTech sector; Amanda mentioned

fintech. There is lots of innovation taking place there in the UK, and, regardless of Brexit and the TCA, I think it is a sign of innovation in the legal services sector in the UK.

Q34 **Lord Vaux of Harrowden:** You have touched on some of these points as we have gone through, so there is no need to repeat, but what are the main areas that the TCA leaves open for further dialogue, negotiation or future review? In your view, what would represent a best-case resolution of those areas, and how would you recommend the Government approach them? Shall we start with Neil, since there is a review on the digital side of things?

Neil Ross: Yes. I could speak mainly about the digital chapter, but it also climbs across the wider agreement. As George says, this deal is littered with review clauses and objectives for close co-operation and various other things, and we need to think about this as the Brexit trade negotiations have ended but the future relationship has only just begun. We need a structure that supports business and civil society engagement in how we manage that relationship going forward. Ultimately if we end up in a position where the two sides identify shared goals and work constructively together, this agreement can be improved over time, allowing for the interests of both sides. However, if the Partnership Council and the other forums end up being used as a staging post for political disagreements, this deal will not last very long, and that will be a huge loss to the business community.

A very strong focus on collaboration will help businesses to invest in the deal and think of it as a framework for long-term investment, and that will help support the relationship between the two sides over time.

Lord Vaux of Harrowden: That is a very general answer. Are there any specific issues that you want to raise that are open that need dealing with or that are subject to future negotiation?

Neil Ross: The data adequacy decision is still by far the most important one for us. That is an outstanding issue, and ultimately it is one that has to be reviewed fairly regularly over time. It will be reviewed every four years, so maintaining good dialogue between the UK and the EU on high equivalence standards will be important to ensuring that that continues. If we do not have good dialogue and mistrust develops, it is very likely that the adequacy decision could be revoked at some point in the future.

George Riddell: To add to Neil's points, we would like to see a clear commitment from the Government to setting up the domestic advisory groups in which business and civil society are meant to input, and them not being just tick-box exercises but genuine, meaningful dialogue on how to take these issues forward and be incorporated in the discussions of the future services committee.

In terms of outstanding issues, we have spoken at length today about mutual recognition of professional qualifications across the sector and the

different professions. That is incredibly important for some, so I would hope that as swift progress as possible is made there.

The other area that is worth flagging in the domestic regulation articles of the agreement is that both sides have taken out quite extensive transparency provisions on signposting information relevant to the TCA and trade and services. Again, making sure that that is not hidden away somewhere on the government website but is front and centre and usable to businesses so that they can take advantage of the TCA would be worth while and important.

Amanda Tickel: George raises an excellent point about the transparency provisions. It goes back to the evidence we discussed at the outset here, which is about having information. If you are trying to run your business, export and be successful, you need to know what the rules are. Moving quickly and keeping pace with regard to understanding the provisions and principles is absolutely key.

The only area I would add that has not been mentioned in our discussion about adequacy is audit quality and recognition of each other's regulators. That is really important for the whole of audit quality, so we would definitely want to see that driven forward.

More generally on engagement, we just do not know what will happen in these committees—how engaged they will be, how many interventions they might wish to make. It is very much a new and unknown area for all business, institutions and government to get used to and to set up alongside. There is a big role here for the professional bodies to drive a lot of this forward, such as the ICAEW on accounting and RIBA on architecture, and to engage with their counterparts on these bilateral discussions.

Our firm and our peers here today are closely involved with the PBSC, so we can continue that dialogue with government. That is key. It is a new relationship, and it will take time to set in, and we have to keep engagement and effort continuing here. There is work to be done, and we cannot sit back and be relieved that there is a deal.

Mickaël Laurans: I have already mentioned MRPQ as well as the Lugano Convention, so judicial cooperation in civil and commercial matters is still to be discussed or progressed. I would echo what Amanda just said about the role of professional bodies and the need to engage with their counterparts as well as with pan-European associations for the legal services sector, such as the CCBE—the Council of Bars and Law Societies of Europe—and to explore a wide range of issues arising from Brexit and the end of the transition period, whether they are covered by the TCA or not.

We are there to support our clients in any legal matters that they are facing, and I am sure there will be quite a lot to discuss over the next few months, if not years.

The Chair: We are very grateful to you all for coming along this morning. It has been an excellent session. If you have any further thoughts about any issues that you think we may not have probed, although I think we probably did have a pretty wide range of subjects, you are very welcome to put them in writing. Mickaël Laurans, George Riddell, Neil Ross, and Amanda Tickel, thank you very much for your time.