

# International Trade Committee

## Oral evidence: UK-EU trading relationship, HC 1206

Thursday 11 March 2021

Ordered by the House of Commons to be published on 11 March 2021.

[Watch the meeting](#)

Members present: Angus Brendan MacNeil (Chair); Mark Garnier; Anthony Mangnall; Mark Menzies; Lloyd Russell-Moyle; Martin Vickers; Mick Whitley; Craig Williams.

Questions 64 - 108

### Witnesses

**I:** John Cooke, Chairman of the Liberalisation of Trade in Services Committee, TheCityUK; Neil Ross, Head of Policy, techUK; and Sally Jones, UK Trade Strategy, and Brexit Leader, EY.



## Examination of Witnesses

Witnesses: John Cooke, Neil Ross and Sally Jones.

Q64 **Chair:** Welcome to the International Trade Committee and our second evidence session on UK-EU trading relationships. We have a 90-minute session planned today with a panel of three. We have John Cooke, Neil Ross and Sally Jones. I will let all three introduce themselves on their own terms—name, rank and serial number—starting with Sally Jones.

**Sally Jones:** First of all, thank you very much for having me. I am Sally Jones. I am a partner at EY, and I lead our trade strategy and Brexit practice.

**Neil Ross:** John, after you.

**John Cooke:** Thank you from me, too, for being invited to this session. I am John Cooke. I am the chairman of the liberalisation of trade in services committee, at TheCityUK. It is a committee of our members that looks at trade in services issues generally, horizontal ones affecting a number of different markets and trade agreements.

**Chair:** Thank you, John. Neil, I apologise. It was a bit of a chicken-and-egg situation. I didn't know who was coming first.

**Neil Ross:** Thanks very much for having us before the Committee. My name is Neil Ross. I am head of policy at techUK. If you have not encountered techUK before, we are the UK trade association for the technology sector and we represent over 800 tech companies, about 750,000 employees and about half of all tech sector workers in the UK.

Q65 **Chair:** Thank you very much. Thanks, all. Yes, techUK are frequent visitors to the Committee in various guises.

To kick off, as a scene-setter, what is your members' and clients' overall experience so far of the new UK-EU arrangements for trade in services?

**Sally Jones:** I want to share with you some work that we are in the process of doing with London First, which among other things asked exactly that question, how our clients and their members are experiencing Brexit and the fallout from that. We are still crunching the numbers. When we publish I am more than happy to send you a copy of our report, but a couple of headlines sprang to mind. The first is that something like three in every four of the 1,000 or so companies that we surveyed have experienced disruption of some kind or another, of which supply chain and customs are the most profound.

We also found that seven in 10, 71% in fact, of the businesses that we surveyed felt that they were as prepared as they could be in advance. I suspect that is a combination of businesses that thought they were prepared but had missed something or other, some stuff, or businesses that had done everything that they could under the circumstances but



were taken by surprise by some aspect or other of the deal—rules of origin, for example—or businesses that were themselves fully prepared but were let down in some way by somebody else within their supply chain or their environment or ecosystem. I suspect we are probably seeing a mixture of those three things coming out.

**Q66 Chair:** It sounds like maybe some businesses would like to blame somebody else, which is an understandable human trait, but also that quite a number maybe did not understand the full implications of what leaving the customs union and leaving the single market might mean for them.

**Sally Jones:** That is a fair assessment in some instances. This is anecdotal now rather than survey results. What we found is that, very broadly, UK businesses were more prepared than foreign businesses, for fairly obvious reasons, that large businesses had more resource to prepare than smaller businesses, which again will not come as much of a surprise, and that regulated sectors were first off the mark when it came to getting ready and therefore had something of a march on their competitors. Financial services, pharmaceuticals and life sciences, professional and business services had all done quite a bit more work at an earlier stage than some of the less regulated sectors.

**John Cooke:** I very much agree with much of what Sally Jones has said. Taking your question as referring to the Trade and Co-operation Agreement and the effects of that, rather than the effects of withdrawal from the EU altogether, there are undoubtedly effects but at this stage, when the TCA has only been in operation for two and a bit months, it is early days to say what the effects of it are. It is also very difficult to distinguish between purely transitional disruption and the long-term effects.

In TheCityUK, our members were generally pretty well prepared for whether or not there was a TCA, because in highly regulated services they had had to take measures well in advance of whether there was a deal or not in order to get the necessary permissions from regulatory authorities in other countries in the EU to set up changed operations to continue to service clients. I would say that some impacts, particularly those on related professional services, the law and accountancy, which depend a lot on mobility and travel, will only emerge once we are through the Covid crisis and it can be seen how the post-Covid mobility regime works in practice between the UK and EU member states.

**Neil Ross:** The tech sector is a bit of a different one. We are not, in a sense, a highly regulated sector. The tech sector is much more of a generalist sector. The UK tech sector is, broadly speaking, digital services applied across different sectors. You find that certain companies and certain products get impacted in different ways. However, where there was a highly regulated component around data transfers, we found that our members were generally very well prepared for a potential non-



## HOUSE OF COMMONS

adequacy outcome, which does not seem to be happening, but they were very prepared with contractual clauses in place.

Where they were not prepared was where more of their generalist knowledge rubbed against bits of the trade agreement, where there was perhaps a gap between what they expected to happen and what happened in reality. For example, we had quite a few members get in contact about the impact on payment services and a few other peripheral things that affected their business, but largely speaking they have been able to adjust to that.

John's point about the impact of Covid on services trade and the fact that we are not seeing the full extent of the disruption is an important one and potentially changes what the overall impact would have been otherwise. Because of the ubiquity of services like Zoom and Teams, and so on, there are now more regular fallback options that are less regulated or less reserved against in some of the annexes of the trade agreement, so it is a bit of a different world.

Overall, I would not necessarily describe our members' preparation across the board as very high, but I would describe their ability to cope in the circumstances that have occurred as good.

**Q67 Chair:** Neil, you said something interesting there, and I am just checking I understand you properly, that the experience of Covid helped Brexit in a way because people had already started to change and move the way they worked, so that physically going from one place to the other was not such an issue. Do I have that correct?

**Neil Ross:** Yes, and Sally and John are free to agree or disagree with me on this. I think the likely biggest impact we would have seen, had Covid not happened at the point of exit, would have been people turning up at the border for a meeting or to provide a particular service in person and then being turned away because they did not have the correct work permit or authorisation to be there. Because we have not been doing that, there has almost been a natural grace period as a result of everyone moving things online. That will allow us not only to think differently about how we provide services in the future but might also change the demand for services, whether they are in person or not. It is going to be a very different world as a result of the impact of the pandemic and the behavioural changes that has forced upon us.

**John Cooke:** I would agree with what has just been said. It is something that we have all felt in different ways. Like it or not, Covid has provided an unexpected segue into doing business in a different way, although not the way that would have been expected, or so quickly.

**Sally Jones:** I am going to add a little bit of nuance here. I hope I am not going to fall out with Neil over this one. It is true that the mobility provisions have not had as much of an impact as we would expect, because nobody is moving at the minute. But for regulated sectors there



## HOUSE OF COMMONS

are domestic regulation restrictions that nevertheless prevent you from providing your services remotely and/or where provision in person is very much preferential. For example, in unregulated sectors, you are nevertheless restricted to contract terms of 12 months.

We are already seeing situations where service providers are not able to provide their services, or are now unwanted by their clients, even if they could in theory do it remotely, because either domestic regulation prevents them and/or clients demand something different. Training services would be a prime example of that. Although I would agree on one level with Neil, I think it is too simplistic to say we have not experienced any of the downside of the services provisions in the TCA, or lack thereof.

**Chair:** Thank you. It is an interesting point that I had not considered, the impact of Covid. You all agree there has been some impact, but it is yet to fully iron out.

Q68 **Craig Williams:** Could I go straight to Sally, because you started to answer this question in your final remarks? Could you compare the scope and depth of the TCA services provisions to those in other trade agreements?

**Sally Jones:** I suspect I will start at a higher level, and then each of my fellow witnesses will drill a little deeper into their specialist areas.

The TCA, when it comes to services provisions, is not bad if you compare it to other trade agreements. If you compare it to the CETA Canada agreement, for example, then on things like mutual recognition of professional qualifications it is directly on point. We could take you through on a line-by-line basis where it is more ambitious and where it is less than other trade deals, but in total it is not too bad.

It is a very, very different thing from membership of the services single market. For services providers, of course, they do not care from an academic perspective whether it is a more or less ambitious services provision in its terms than another free-trade agreement is. What they care about is how much has changed compared to what they had before, from a business perspective. That is a fairly significant change.

You hear people say from time to time that the services single market was less liberalised than the goods single market, which is without a doubt true, but it is not true to say there was no liberalisation of services at all. If John were to give us an illustrative example from financial services, it would be very apparent that there was in fact a fairly vibrant single market that we have now largely moved away from.

**John Cooke:** The TCA, as a trade agreement, is indeed very similar to a number of other advanced free-trade agreements. It is similar in structure, it is based on a negative list, that is to say permitted market access subject to reservations.



Very often business has said that is the kind of pattern that it likes, that everything is permitted unless it is specifically excluded. The more individual jurisdictions you have within a trading partner, the more complex that simplicity tends to be. In the EU, of course, we are dealing with 27 sets of different reservations from each of the 27 member states, and that obviously leads to difficulties, whatever the apparent pattern of the agreement. Whether the pattern itself is similar to the EU-Japan CEPA, for instance, or the UK-Japan CEPA, which are about the most advanced trade agreements of their kind, very little additional market access is given for financial and regulated professional services beyond what is in the EU's WTO commitments to any third party. There are some individual preferential aspects, but not all that many.

The implication for the UK is that we in TheCityUK would wish the UK to build on the TCA where it has been helpful, for instance in the mobility of intra-corporate transferees, but generally to aim for greater coverage of financial and related professional services in future FTAs.

**Neil Ross:** I would say for the digital and tech sector this is probably the bit where the trade agreement went a bit beyond our expectations. The digital trade chapter that the UK and EU reached is pretty equivalent to the one we have with Japan, but that is notable in that the EU tends to be a less ambitious partner on digital trade. The fact this agreement was able to be struck made it the golden egg among the collection. It was one of the strongest we thought possible and, combined with the data adequacy agreement, is positive for the sector as a whole.

Q69 **Craig Williams:** John, can I come back quickly on something you said and then invite Sally and Neil to come in if they want? That is the varying between EU member states under the TCA and what challenges you think that might present, and how much, in your view. Sally, and Neil, are there differences between the EU member states under the TCA?

**John Cooke:** It is quite difficult to generalise about the various reservations that different member states have. In financial services it means moving away from the general rules of the single market for UK enterprises to market access that either depends on establishing within the EU, which is what many of our members have done, or on getting special permissions in those member states that are able to do that for, say, establishing a branch under the local jurisdictional rules.

For professional services, particularly for lawyers—though Sally may have more to say on this than me—there is an extraordinarily diverse range of reservations as regards everything from rights of audience to permitted corporate forms, whether you can be an LLP or whether you have to be some other kind of a partnership or whether you have to be a limited company. There is no uniform regime for the EU as a whole. One is delivering services to an individual member state on the basis permitted in that member state.



## HOUSE OF COMMONS

**Sally Jones:** I would absolutely agree with John. As a very broad rule of thumb when I am talking to my clients about what they need to think of when they are considering the impacts of the TCA on their business, the first question we always ask is, "Can you continue to provide your regulated service in the member states in which you wish to provide it, as a matter of domestic regulation?" That can be extraordinarily difficult for businesses to get to grips with, because oftentimes the domestic regulation is hidden away on a Government website in Bulgaria, Hungary, Estonia or wherever it might be, perhaps not translated into English. Perhaps there is a trade body or professional association that can help them navigate it, perhaps there is not.

In my world of professional services—as opposed to, at the other extreme, goods, where once an item is in free circulation that is job done—you have to look at each individual country and each of its reservations. Those reservations are not easy to unpick. Oftentimes in a free-trade agreement, for example, the reservation will simply say it is unbound, which means the country has not limited itself in any regard to what restrictions it might put in place, but you then have to work out what the practice is on the ground in that country to understand what it might mean in terms of services provisions. It is a completely different kettle of fish compared to dealing with goods or dealing with services that are regulated at an EU level, because the complexity is exponentially higher.

**Neil Ross:** I would agree with that, and it is certainly much more severe for regulated sectors. Generally speaking, the tech sector is much more generalist. I would add that we now effectively have to advise our members to look at each individual member state as an individual market not as an EU-wide level. One area where that comes up quite a lot is on data protection authorities. The EU's 27 different data protection authorities all have quite different cultures in how they deal with the data protection rules in their own country. It is much more different now that you are not operating through a collective EU network.

**Chair:** Thank you very much. Now to Anthony Mangnall, who fell foul of my oversight earlier when he wanted to come in. The stage is yours.

Q70 **Anthony Mangnall:** I will forgive you. I will not kick you out of the hencoop yet.

I want to come back on the point that Sally made at the very start, and the fact that you are doing some surveys that are discussing what your members are saying. Out of interest, and it may be too early to say, how many of the businesses you engage with are still facing repeated problems in terms of the new arrangements? Is there any idea whether you could divide it between Covid or Brexit being the main contributor to the difficulties they are facing? I am interested that John made reference to that. It is just a small clarifying point.



**Sally Jones:** We did ask businesses whether they thought the issues they were facing were short term or long term. As a very broad estimate, about 20% were saying these are long-term, structural problems, not just teething problems, they are having to face right now. On the one hand we see that as quite positive, because it means that of all the businesses being disrupted, fully 80% think these are problems and issues that they can work through. But if you are in one of those 20% buckets, you are looking at something more substantive and long term.

Could we unpick Covid? No, not easily. It was very much a case of this is how trade looks now in February 2021 compared to a pre-Covid period.

Q71 **Anthony Mangnall:** Thank you very much. I look forward to reading that.

John, how does the ease or difficulty of trading in services under the TCA vary from sector to sector?

**John Cooke:** First of all, the TCA was welcome in itself. At least it gave some certainty to the extent that it could, and it is a platform to build on in the future. The ease or difficulty of trading varies with different subsectors, business strategies and business models. This goes back in a way to what we have already been saying. For instance, if one takes financial services, the critical thing for financial services is: is the service being offered at a retail level, like banking or personal insurance, motor insurance or whatever? In that case you, as a provider, are more or less obliged to establish in the country in which you wish to do business, because you are supplying insurance under a contract and the contract is one that needs to be under local law. It doesn't have to be, but the consumer is very likely to wish that.

Where you have to establish under local law, that is reasonably clear and that is what a lot of our members have been doing. Instead of providing cross-border under the passporting regime, they have established locally so that they can branch from a local establishment and passport from a local establishment. That is the difference there.

If they are relying on providing cross-border, the position is rather more complex. There are certain provisions for allowing cross-border banking and insurance in a limited number of areas, but if those areas were to be expanded one would obviously need to look to equivalence as a way of providing for that expansion. At the moment there are no particular signs that equivalence will be extended beyond the two areas in which it operates at the moment. That is for financial services.

For related professional services there are, as has already been said, some travel provisions under the TCA, and there is also a framework for mutual recognition of qualifications, but at the moment it is only a framework, just as it is in the case of Japan or Canada. The question is whether this framework can be implemented in a way that enables regulatory authorities, either in the UK or in the EU, to mutually



recognise particular professional qualifications. The difficulties are very variable.

**Q72 Anthony Mangnall:** Am I right that the point you are trying to make here is to view the TCA as an endpoint rather than a start point—one that can now detail the future relationship, one that evolves and takes into account the values and strengths of both sides—as the approach that we need to be taking here? I do not want to put words in your mouth, but it is more that we have to look at this as to where there is opportunity, where there is mutual validity in trying to create a better relationship going forward?

**John Cooke:** That is right, it is a floor not a ceiling, and we have to build from it. The point I would also make is that there are likely to be a whole number of areas in the sectors that TheCityUK represents where the TCA may not itself provide any particular basis for building upon and one will need to build in the ways that nations always build between each other, through diplomacy, commercial diplomacy and reaching agreements on common goals where there can be fresh joint initiatives. The TCA provides frameworks for doing that in some areas like public procurement, but there are a great many other areas that are simply not covered.

**Neil Ross:** I don't have much to add to what John has said. Looking at it as a floor rather than a ceiling is absolutely correct. I would just urge that there is a huge amount of importance for getting the structures and the relationship right to allow that to emerge over time. We have to move quite quickly to having a better dialogue so that we can look at the evolution of the arrangements in the interests of both sides. Otherwise we might not get to the point of ever starting to build, and it will be a long-term process. Getting our ducks in a row is the first thing we have to do.

**Q73 Anthony Mangnall:** Can I push you a bit further on that, Neil? Where there cannot always be arrangement and agreement, that may not necessarily be a failure in itself. It is just the nature of the service or the trade, or whatever it happens to be. We must be a lot better—and I think this is a requirement for private enterprise and for politicians—at explaining that narrative in terms of international trade. Is that something you share?

**Neil Ross:** Yes, I would agree with that. There are going to be some areas where there is not scope to build a relationship because there are fundamentally different approaches to things. However, in areas where we have a strong reason to co-operate, those structures will help us develop it. I am broadly concerned that, unless we can take some of the heat out of the relationship, you will miss the opportunities to do that for a longer period of time than you otherwise would.

**Sally Jones:** I tend to break this down in my mind into at least three different levels. You have the TCA itself, where there are a couple of



dozen different places where there is a mechanism drafted into it for co-operation around forums and committees by which both sides can look at how the implementation is going. Those two dozen or so areas are themselves dynamic rather than static.

Then you have the possibility of regulator-to-regulator co-operation on matters that are outside the scope of the TCA. The architects tend to get a bit cross with me when I say this, because I know I am oversimplifying their position, but they have done a good job of all the regulators from each of the member states coming together and saying, "The laws of physics are the same for every house around Europe. There is quite a lot of commonality here, let's make sure that is recognised."

You also have the fact that the domestic regulations in each country are themselves not static. Just because you have a situation where a country has reserved to itself some restrictions on establishment or on the qualifications that it recognises, or whatever it might be, those do change over time without anybody doing anything on a negotiated bilateral basis. Inevitably, as John says, it is a floor not a ceiling. There is plenty of room to build. You do not even need to do things, necessarily, for improvements to come up, but the concept that everything can be left to business to sort out really is for the birds. They have to have some assistance from Government here to make sure the right positions are achieved at the start.

**Q74** **Anthony Mangnall:** As a new-intake MP, our view is that we have to be the problem solvers, not necessarily harking up old arguments. That means working in co-operation with business, not leaving it to itself.

**John Cooke:** The only point I want to add is based on experience long ago when I was in the delegation in Brussels that was negotiating entry into the EU. One thing to be said about that is that, of course, there is always room for influence. As Sally said, things may happen without there being any negotiation or anything else.

A lot of our work back in those days was trying to influence the EU in ways that were consistent with the business that we wanted to do with the EU. That is going to be an ongoing task, just as it is with any major trading partner, to try to influence their regime, just as they will try to influence ours, in directions that will make for better mutual relationships and commercial relationships.

**Chair:** Thank you very much. From one wing of politics to the other wing, I call on Mick Whitley.

**Q75** **Mick Whitley:** Good afternoon to all the witnesses. What is the specific impact on SMEs of the service provision of the TCA?

**Sally Jones:** I have to say I love listening to John's stories of when he was a spring chicken, because he can add so much historical context to everything we have to hear.



## HOUSE OF COMMONS

To be honest, SMEs are not my strong suit. The clients I typically advise tend to be much larger than the SME market, so I am going to limit my points to something more general where I understand the impacts on SMEs far more, which is about the complexity and fragmentation of dealing with 27 member states, 31 if you count the EEA countries as well.

It is hard enough for a large, sophisticated business to get its arms around all the various issues. For an SME it becomes even harder because they just do not have the resources available to invest the time to understand.

**John Cooke:** TheCityUK's members include members who are advising SMEs on the issues, so our members are acutely aware of the issues that face SMEs. Just as Sally said, the issues for SMEs are not so much those arising from the TCA itself as from leaving the EU. The EU for them was, after all, a large and relatively simplified home market; it has now become 27 different markets with different regimes for many things. It depends, of course, whether the SMEs in question are supplying goods or services. Again there is the problem of distinguishing transitional and long-term effects. That is going to be true of the TCA for a little while to come.

As far as our own members are concerned, we have members or the sectors we represent include businesses that are sometimes quite small. They may be small teams of experts with supporting staff, but I do not think we would say they are typical SMEs. They are sophisticated service providers on the whole. They are highly regulated, so they have had to make themselves aware of the issues well in advance of whether or not there was going to be a TCA. We can only offer a longer-term assessment of the effects of the TCA in late 2021, or indeed next year.

**Neil Ross:** There are a couple of points I would build on what has been said so far. Particularly for our members, most of the questions have come from SMEs that have found it difficult to understand or grapple with the changes that are occurring. But the digital sector is an area where the EU is pursuing quite ambitious levels of regulation, so the impacts for SMEs are likely to increase over time as there are more regulatory compliance burdens for providing digital services in the EU from this point onwards.

Another thing that has significantly impacted SMEs, particularly in the tech sector, is the change in the immigration regime. This is not to say that freedom of movement was a panacea, because it was not, but the UK has for a long time suffered a very serious digital skills crisis. SMEs found it very hard to recruit the talent they need, and if they do recruit the talent they need, they spend time training them before they tend to take a job in a larger company at a bigger salary, because there is such heavy competition for people with good digital skills. That puts SMEs in a difficult position.



## HOUSE OF COMMONS

The loss of freedom of movement makes that a bit harder. As I say, it was not a solution in the first place, because we had this problem for many years beforehand, but it does mean the Government will have to look quite ambitiously at how they adjust their future immigration regime and seek to upskill the workforce domestically in digital skills as we go forward.

**Q76 Chair:** How far are companies in your area or your members able to mitigate the impact of the new trade relationship with the EU by means of setting up subsidiaries—which seem to be a trend at the moment—in the EU to provide services remotely? Going a wee bit free-range, as it were.

**Sally Jones:** It varies enormously, is the honest answer, Chair. If I take audit, my home profession, as an illustrative example, as an audit firm I cannot set up a subsidiary in Europe. The reason is that the audit directive requires audit firms to be owned by audit partners holding recognised professional qualifications, and the UK qualification is no longer recognised, so I cannot set up a subsidiary. Can I provide my services remotely? No, not really. I can perform an audit remotely in theory, but as an audit partner I could not sign off the audit, for the same reason. My UK audit qualification would not be recognised in an EU country as a valid audit qualification as things stand. There would also be a question mark over my audit working papers and the extent to which those could be shared with an overseas partner who might ultimately themselves sign the audit report based on my work. That is also a real problem.

These are not issues that can be got around by remote working, these are not issues that can be got around by setting up a subsidiary, they are intrinsic parts of the way audit firms are regulated in the EU and domestically, and therefore they are fundamental problems. The only way around is to have an audit firm in the audit country concerned—Germany or Italy or wherever—that is controlled by EU-qualified audit partners. There is nothing that can be done around that.

Lawyers face broadly analogous issues when it comes to the provision of legal services. They are regulated at an individual level rather than a firm-wide level, but broadly the same kinds of considerations apply. Advertising is completely different, where it is not the people who create the advertising who are regulated but the adverts themselves. As long as somebody is creating an advertising campaign that meets the requirements of each of the territories in which it is being broadcast or published, it is a very different outcome for them and they can have much more flexibility over how services are provided.

We boil down again, I am afraid, to the situation where there is not a one-size-fits-all answer. You have to look at the service that is being provided, the country into which it is being provided and the mode on which that service is being applied to come to an answer.



## HOUSE OF COMMONS

**Chair:** Far from being free-range, some professions are a lot more caged than they once were.

**Sally Jones:** Their wings are clipped, yes.

**John Cooke:** I very much agree with Sally. On the question of mitigating the impact, our financial services members in particular have mitigated the impact not of the TCA but of EU withdrawal by setting up subsidiaries in EU member states. The advantage of doing that is that you bring your operation back into the aegis of the EU, you are regulated and supervised by the local regulatory authorities, you recreate for yourself in that way the advantages of the single market because you have established a business within the single market and so you benefit from the single market passporting and other rules.

But, of course, there are costs. There is the cost of transferring regulatory capital and fragmenting operations. A subsidiary has to have its own capital, you cannot just rely on the group capital back in London. There are also unresolved questions on how far a subsidiary or a commercial presence in an EU member state can delegate some of its activities back to, if you like, a back office in London, or the office in London.

This is a developing issue. On the one hand, regulators whose job it is to test the soundness of a provider ought not in principle to worry too much where certain of the operations are being carried out geographically. On the other hand, the greater the difficulty a provider might be in, for whatever reason, the more a regulator will wish to feel that as many of its operations as possible are under its direct supervision and that it is not relying on another supervisor.

Turning to related professional services, Sally has spoken of that already. The question of mutual recognition is a key question. Some law firms have realigned to adopt permitted corporate forms in other EU member states and have partnered with foreign lawyers so that there is the right degree of supervision and operation by locally qualified people, but that does not remove the degree of difficulty that Sally described in doing these things.

**Neil Ross:** For the digital and tech sector we are probably a lot closer to Sally's analogy of the advertising firm, in that as long as the product and service that is being sold meets the requirement of the individual market, you are relatively free. This is upheld by the twin pillars of the quite advanced digital trade chapter contained in the TCA and also it looks like we will have a full adequacy decision by June. That is where we sit generally.

What I would say, however, is this is a space where regulation is changing. For the Digital Services Act and the Digital Markets Act that the EU is pursuing, we are seeing regulation on how you can provide these kinds of services, like cloud services and various other areas, changing. It



is likely in the future that there will be more restrictions on how companies can operate in the EU, effectively changing the protection that the trade agreement gives you to trade freely.

**Chair:** Thank you very much. Moving on for a different bird's-eye view, in the Brighton area we have Lloyd Russell-Moyle ready to come in, unmuted on his perch.

Q77 **Lloyd Russell-Moyle:** Seagull's-eye view maybe. I want to ask about movement of labour, which is carrying on from some of this. Some of the later questions will touch in more detail on recognition. How would you evaluate the labour mobility elements of the TCA for your respective industries and the service sector generally, not the recognition of qualifications but the physical ability to go to a place and work?

**Sally Jones:** This has put the cat among the pigeons for a number of my clients, because when we are looking at the mobility provisions we have to ask ourselves two separate questions. The first is, "Can I physically get the person I want across the border to the country I want that person to be in?" That is a visa question. What the TCA permits is for a person to spend 90 days in any rolling 180-day period in the EU on a visit.

A couple of points around that word "visit". The first is it includes holidays, which has come as a nasty shock to some of my clients because now, for the first time ever, they do not just have to track the business trips that their employees are taking; they also have to track the holidays that they are taking. If you have somebody lined up, for the sake of argument, to do a project in the EU from September through to December, and they have had three weeks on the beach in France with the kids, they may not be able to do that project in the way that you want them to because they may not get that business-visit visa exemption.

**Chair:** All the more reason to tell them to go to the Outer Hebrides on their summer holidays.

**Sally Jones:** The beautiful Western Isles, indeed.

**Lloyd Russell-Moyle:** Perhaps down to sunny Brighton. We have plenty of places.

**Sally Jones:** Then there is a separate point around visits, which is whether it is even a business visit at all, because there is a very restrictive list of things that could be business visits—11 in total, I believe. They are things that are ancillary to your main activities. They are things like attending a conference, attending a training course, looking to procure items, meeting a person who is not yet a client but might in the future become one. It is not doing your day-to-day job. So even if you are within your 90-day limit, you might find you still need to have a visa to enter the country in question anyway. That is one question that you have to answer to your satisfaction.



## HOUSE OF COMMONS

The second question you have to ask is, “If I can get my person into the country, do they need a work permit to do the thing I want them to do when they are there?” That is yet again one of these situations where you need to look at the immigration provisions of the relevant countries that you want to send people to. Germany has different rules on when a work permit is required, compared to Italy, compared to Hungary, compared to Spain. You get the gist.

Again, that has come as a bit of a shock to my clients because they now have to have systems that can track not only where their people are and when but also what activities they are going to be undertaking while they are there. The overall impact is to make it more burdensome, longer to arrange and more expensive.

**Neil Ross:** I would completely agree with that. That is exactly how some of our members are looking at it, and some were particularly shocked by some of the reservations, like for Denmark, which has a very wide-ranging reservation for work permits and for services. The only thing I would say is that a lot of this will become more regularised over time, as we see how different EU countries are enforcing those provisions. But companies will have to track them and still keep abreast of it.

Generally speaking in the tech sector, there is more of a capability to start shifting things online. Any business trip that might have been nice to go on may simply be pushed online, and you may see trips restricted to those that require you to be there in person because it not only reduces complexity but it reduces, as Sally says, the allocation of the 90 days that you are spending in any particular period.

**Q78 Lloyd Russell-Moyle:** That has an interesting effect on the travel and hospitality industries of those countries that are receiving. If people are going to do fewer business trips and this is another nail in that coffin, along with Covid and Zoom, their economies might be hurt by that as much as ours.

John, is there anything you want to add? The other question I am interested in is: is there scope within the TCA or within European rules to improve on this situation so we can have a more harmonised or at least understandable system rather than country by country?

**John Cooke:** I would make two points first of all. The first is that in partnership with Sally’s firm, EY, TheCityUK produced late last year a report on mobility issues, which I would very much recommend this Committee to read because it makes some proposals on ways in which the system could be improved. Yes, we believe there are those opportunities to improve it. Whether they arise directly out of the TCA or whether they are just opportunities between the UK and the EU, I am not precisely clear, but the opportunities are clearly there.

One point I would add is that if those opportunities are to be taken, our own mobility authorities in the UK have to be equally ready to take them



in respect of inward migration into the UK. This is a game of negotiation that affects both sides. In that respect, the Home Office needs to be active as an economic Department that is either favouring or not favouring a factor of production, if you like, which is important.

**Q79** **Lloyd Russell-Moyle:** Yes, if there is going to be flexibility on the European side, there needs to be flexibility on our side.

Does the European Union have, with non-Schengen countries, any more uniform arrangements? Clearly they do with the Schengen-based countries, but are we asking for something here that would be unique to Britain because of our historical relationship or are there other non-Schengen areas that have these flexibilities that are greater than what is in the TCA?

**Sally Jones:** We have the common travel area with Ireland, but above and beyond that I would not care to speculate.

**Q80** **Lloyd Russell-Moyle:** We probably need an immigration specialist for this, but I suspect that is where we need to push.

The timeframe is pan-European but the specifics for work permits are per country. Are there any moves in the European Union to harmonise the work permit element, at least?

**Sally Jones:** I can ask one of my immigration colleagues to help me put together a written answer, but I cannot give you an answer verbally, I am sorry.

**Q81** **Lloyd Russell-Moyle:** I do not want to put you on the spot. To me that is where we need to try to push, because it seems an awful mess to have to have a different work permit for each country, which would make it almost impossible for small firms.

**John Cooke:** I cannot add to what Sally has said. I would have to consult EY in the first instance.

**Sally Jones:** Shall we put together a written response to you on that one?

**Q82** **Lloyd Russell-Moyle:** That would be good, because it would be nice to be able to give recommendations to the Government about the kind of thing that we would need to see around harmonisation and some of the examples of where it might or might not exist already that we can learn from. I always think that, if you can give those examples, it is a stronger case.

**Neil Ross:** The one thing I would say, much like with what the UK will have done with its own reservations, is that individual countries pick them for specific reasons. They may be political or economic reasons specific to them, and therefore it may be slightly more difficult to get pan-European agreement on those.



**Sally Jones:** Just to add to the whole confusion, the quid pro quo of course is that some countries' domestic regimes are more relaxed than you see in the provisions of the TCA, so the practical position on the ground is better than you would think from reading the TCA in isolation. You are right, it is a complete—

**Chair:** Mess.

**Sally Jones:** That is the word I am looking for, thank you.

Q83 **Lloyd Russell-Moyle:** If a British firm wishes to have a worker in one of the subsidiaries they have set up come to the UK to work, not for training, has the Home Office been accepting and flexible on that, or is that regime just as rigid and difficult?

**Sally Jones:** At the risk of giving you a bit of a mealy-mouthed answer, as a general observation around the world without being specific to the UK, you fairly often find mismatches between the commitments that a country has made in its free-trade agreements and what its Home Office equivalent is doing on the ground in terms of whether or not people are permitted into the country with or without work permits and for specific periods of time. The TCA permits intra-company transfers for a period of up to three years, subject to reservations, but whether that is what happens in practice—and if it is not what happens in practice, how anyone challenges it—are different, much trickier questions.

Q84 **Lloyd Russell-Moyle:** Have we had examples where the Home Office has started to be difficult about that inward trade, or is it still too early to say?

**Sally Jones:** As far as I am concerned, it is still too early to say because there just are not enough people movements in the Covid era.

**John Cooke:** I agree.

**Neil Ross:** I also agree.

**Lloyd Russell-Moyle:** We will have to keep an eye on that, thank you very much.

Q85 **Chair:** Just listening to the witnesses, it seems that there is almost a plea coming from Lloyd Russell-Moyle for some degree of harmonisation and for EU countries not to show their independence and have different rules, but for the UK to be making that plea might be quite a difficult one.

It is a bit of a chicken-and-egg situation as well with our own Home Office. We will have to be part of this harmonisation and standardisation that the other 27 in the EU enjoy. The plea is almost to go back to that movement, it would seem.

A question that was in my mind as Sally and John were speaking was, given the difficulty of visas for the 90 days and given the different work permits that UK passport holders will have, is any sort of premium being put on the common travel area in the British Isles for Irish passport



## HOUSE OF COMMONS

holders, who will be of greater flexibility for a company if they are going into the European market?

**Sally Jones:** I would put it slightly differently, again using anecdota rather than anything that has necessarily been properly crunched.

**Chair:** "Anecdota" is a good pun. I like that, thank you.

**Sally Jones:** One of the things that we see in our clients is that, when they are now selecting staff, personnel, to put on projects, if those projects are based in the EU they will often pick people who are EU nationals in the UK under the settled status scheme, because it bypasses all of this. Getting Brits into the right place to service a project at the minute is a difficult egg to crack.

**Chair:** Yes, I understand that. There are eggshells all over the place. We move now to Martin Vickers, my hen-ourable Friend.

**Martin Vickers:** I feel compelled to say, of course, that three weeks on Cleethorpes beach is far superior to a French holiday.

**Chair:** It is a compromise between the north-west and the south-east, is it not?

Q86 **Martin Vickers:** Can I look specifically at the mutual recognition of professional qualifications and ask you for your thoughts on how your sectors have been affected, and also at whether or not UK-EU negotiations through the Partnership Council could yield some revision or whether we would perhaps be better on individual negotiations with member states?

**Neil Ross:** We have a slightly different take on this one, because generally across the sector MRPQ has not been a massive issue. What we do have a concern about is that, as our sector develops, we are seeing more demand for different kinds of potential professional qualifications. A professional qualification in cybersecurity, for example, has been mooted by DCMS. There is scope in the future for professional qualifications in things like artificial intelligence. There is a question around how the system that we have established with the EU is able to recognise new qualification types as they come on stream and then harmonise those across the bloc.

In many ways our ask is about getting a system that is adaptive and responsive as we go forward, whereas I suspect that Sally and John will have issues to raise about how it is working for those qualifications that exist at the moment.

**John Cooke:** It goes without saying that mutual recognition is incredibly important if UK professionals are to work abroad or EU professionals are to work in the UK. The TCA sets out a framework for this, and it is a key priority. At the moment, as far as I know, professional bodies and regulators are working with counterparts in the EU, often at member state level, to see whether there can be bilateral recognition agreements.



## HOUSE OF COMMONS

It will be very important that they make progress and that we do not find some years on, as we have with the EU-Canada CETA, no mutual recognition has yet materialised under the framework set up in that agreement.

Sally may be able to say more from her standpoint on professional services.

**Sally Jones:** I don't hold out a huge amount of hope, if I am being absolutely brutal here. As John says, the language in this deal almost exactly, if not exactly, replicates the language in the Canada deal and nothing has come from that in six years.

We also have some experience of situations where regulators had previously got effectively self-negotiated mutual recognition in place as, for example, between the English and Irish audit professions, which has been undone as a result of leaving the single market and has not been replicated by the TCA itself. Our working hypothesis at present is that we should not anticipate that professional qualifications will be mutually recognised any time soon. We may be able to come to some form of regulator-to-regulator agreement on a faster basis, but the environment in which we currently find ourselves is essentially the game we play for the time being.

Q87 **Martin Vickers:** When you refer to six years with no movement in terms of the other agreements, has that been purely governmental intransigence or have the trade bodies, for example, been trying to push towards some sort of settlement?

**Sally Jones:** As a general rule of thumb, the trade bodies are absolutely keen to get to some form of mutual recognition. I would be lying if I said that was absolutely true across the piece, but generally speaking the trade bodies would like mutual recognition, providing they are comfortable that qualifications are of equivalent standard, which normally they are. It is because the mechanism that exists within both of these deals requires a committee to come together, and in the terms of that committee to determine whether or not qualifications are equivalent and the tests they will apply to determine if those qualifications are equivalent.

That is time-consuming and, frankly, I suspect it is not particularly high up anybody's agenda.

Q88 **Martin Vickers:** You do not see a will in our Government or on the EU side to move forward at all?

**Sally Jones:** I haven't seen anything that would suggest such a will, no.

**Chair:** We will go to Mark Garnier, who usually has a good half dozen questions in his cupboard somewhere.

Q89 **Mark Garnier:** I will do my best, Angus, thank you. John, can we focus



## HOUSE OF COMMONS

specifically on financial services and get stuck into that. We obviously spoke a little about financial services and the basis of our ability to sell into the EU on equivalence. As I understand it, equivalence can be withdrawn with just 30 days' notice. Is that still the case under the TCA?

**John Cooke:** Yes, I don't think the TCA has altered the equivalence rules at all. One would not have expected it to, because these are rules that the EU has set itself for granting equivalence. That is borne out by the fact that the joint declaration alongside the TCA envisages a memorandum of understanding so that there can be regulatory co-operation, which might in due course move to grants of equivalence. Yes, that is the starting position.

Q90 **Mark Garnier:** Is it the finishing position? There were two significant events, the first is that the Financial Conduct Authority, anticipating that there would be the risk to business, asked the City of London to open branch offices in the EU so they can continue to carry on business. Obviously we have talked about that around separate balance sheets and separate back office and middle office functions.

The interesting question is the debate that has been going on for a long time about whether or not the EU sees the City of London and its financial services industry as being a fantastic prize from Brexit. Have the Government gone far enough in negotiations to be able to protect the City of London and its ability to sell into the EU, or are we as much at risk now as a result of the TCA as we ever have been of losing our financial services sector? The dominance of our financial services sector, we will obviously always have one, but it is the world-class status of it.

**John Cooke:** I am slightly hazarding a personal view, but I would not see the TCA as really having altered that risk simply because of the very limited coverage of financial services in the TCA, which reflects the limited coverage of financial services in most trade agreements. There is a certain amount of coverage—rather little—of a few cross-border activities, but the main provision that is made is for local commercial presence. That is subsidiarisation or whatever other form of establishment there may be.

Q91 **Mark Garnier:** To be clear, if I am an investment banker, a specialist in derivatives, let's say, sitting in London, can I telephone an asset manager in Paris and sell them a product under the TCA? Is that allowed at the moment?

**John Cooke:** I think probably not but, to be frank, on these specific product-related questions I wish we had somebody from UK Finance here who would be better able to cover that degree of detail than I can.

Q92 **Mark Garnier:** I don't want to press you too hard on the minutiae of all this, but the general principle—

**John Cooke:** It is important.

**Mark Garnier:** It is important. The City and financial services are a



massive contributor to our economy and to our wealth and all the rest of it. Irrespective of what people out there think about banks, they really pay for an awful lot of hospitals, and so on, with the taxes they generate. This is clearly something we need to get right, and we need to make sure we have it. I just do not get the sense that we have this right, and the result is that we are now at quite a vulnerable position. Should, for example, Paris decide that it wants to try to seize the dominant role in global financial services from London, they could raise a complaint against the British Government that the financial services regulation is no longer compliant with the equivalence regime and the net result would be that there is increased uncertainty in London. For example, if you are Goldman Sachs, why would you put up with this uncertainty? Why would you not ultimately move into mainland Europe in order to exploit those markets?

**John Cooke:** Which is what a great number of our members have done in setting up a commercial presence.

Your question is essentially about cross-border business and how secure it is. I think the TCA does not provide for cross-border business to continue. One would have to look to equivalence provisions to enable that to happen on a larger scale. The problem with equivalence provisions is, first of all, they can be withdrawn, as you said, but also the EU's present equivalence regime is quite patchy. There are up to 40 different elements, but not all of them would confer market access into the EU in any case. Many of them are simply set terms for the recognition of some particular transaction or a particular entity.

The other thing I would say about equivalence is that, to a degree, it is a wasting asset if it is not brought into being reasonably quickly. If there is a programme for equivalence, our member businesses would rely on it and how it evolves, but if there is no programme, they will feel bound to continue to take alternative measures to safeguard the way in which they supply clients. The more equivalence is subject to uncertainties, whether uncertainties of timing, of politics or of withdrawal, the less value it will probably come to have.

Q93 **Mark Garnier:** Sally, I am interested to come to you in a minute but, John, what would TheCityUK be looking for as some sort of agreement with the EU to make things more secure for the City of London?

**John Cooke:** We would hope that the memorandum of understanding will start by setting out a regular programme under which regulators can meet, which in turn will build a relationship of trust. Building on that, over time there will be the kinds of things that you should expect from a relationship of trust between regulators, that is mutual recognition of aspects of the regime, deemed compliance, those sorts of measures that should make cross-border trade easier. None of that exists under the TCA and would take time to build, in my view. I would be interested in whether my fellow witnesses broadly agree with that.



Q94 **Mark Garnier:** Sally, that response from John is very interesting. It is based on a good relationship rather than a hard treaty, if you like. Again, if I was an investment bank in America looking to expand for the first time into Europe, would I come to London first based on this equivalence regime? Perhaps not. A more relevant one would be an investment bank in Asia, where obviously they are growing very quickly.

Beyond just a good, strong relationship, which is very difficult to hold up as a piece of paper in a court if you need to, what potentially could we get that would give our financial services industry and the City of London some sort of surety?

**Sally Jones:** If I can limit myself to a handful of observations, because John is the expert in financial services. First, and this is not just true of financial services, there are still many, many reasons why the UK is a great place to do business. Not least its incredibly low corruption indices and its wide adherence to the rule of law, English contract law, which is so widely respected, commonality of language, infrastructure, educated workforce and so on, all of those things continue to apply to the UK just as they always did. We see those cited again and again by companies looking to invest.

The second is that the City has a very strong track record of innovation—and we see that in things like LawTech and FinTech—where we have a globally leading advantage, and we should do all we can to maintain that. The City is good at reinventing itself, and has so done for 200 or 300 years, to keep itself cutting edge.

The third observation is perhaps less positive in that in my mind, when I think of the City, there is the domestic business that will always stay in the UK, because where else would it go?; there is the European business, which is largely here for historical reasons and may well in time migrate to the EU in exactly the way that John has described; and then there is that truly international business that could be anywhere. That is long-term prize over which we are fighting.

How do we keep that chunk in the UK? We do it through a number of ways, one of which is the fact that the City has a huge amount of expertise, and one of the saving graces we are seeing at the moment is that no matter what people talk about—Dublin, Frankfurt or Paris—there is no one other city that yet has anything like the gravity, the collective gravity, that the City has and the expertise it has.

The second is that the UK's ability to regulate itself has always been right at the forefront and has been a large chunk of what has made the European regulations so successful. I think that will continue because of the expertise that is here. All of that said, your observation that that ongoing trust is based on a good relationship is right, it is fragile. That trust relationship is fragile. If it were ice, it would be eggshell thin. We have to tread carefully and respectfully, recognising the things where we are genuinely globally leading and not overstepping the mark on things



that are really not our business or our remit. I hope that makes some sense.

**Q95 Mark Garnier:** It does. In a previous existence, before I was a Minister, I was on the Treasury Select Committee and we would spend an awful lot of time doing the financial services regulation and also the Banking Commission, ditto with the Banking Reform Act, and one of the great arguments we were having at the time was the depth of our regulation. It meant it was the most expensive but also the best in the world. What you hoped to achieve with that was that capital from around the world seeking the safest of safe havens would come to the City of London to be managed there, hence we would generate greater fees as a result of our ability to regulate.

I take the point, and it is an incredibly important point, that our dominance in Asia, the Americas and Africa potentially, and all the rest of it, is irrespective of the TCA, and that is something we need to do more about. That does give us that dominant hand.

Neil, do you want to add anything from the point of view of FinTech. This is obviously a developing area, and we are incredibly strong in this area.

**Neil Ross:** The advantage of coming third is that I can agree with pretty much everything everyone said before. The only thing I would add on the FinTech side is that the general rule of thumb in relation to securing market access to the EU is aligning with their rules. The UK, on the other hand, is the global leader in FinTech regulation, and therefore there is a competitive advantage in seeking to set the golden standard global rule and moving at your own pace. Therefore, I don't see the UK aligning with EU rules as a result of that. I hope that answers your question.

**Q96 Mark Garnier:** Is that a good thing or a bad thing?

**Neil Ross:** My bet would be it is a good thing, but that is not a firm view. It is something that will be borne out in time.

**Q97 Mark Garnier:** John, one of the comments that I keep hearing from the City is when it comes to regulation, which is everything. The call has been, "Align with the US or align with the EU, but don't try to do anything new. Don't try to create a new regime." Would you agree with that comment?

**John Cooke:** I have never personally seen this in quite such Manichean terms, that you have to go for one or the other, but I see the force of not doing something new certainly just for its own sake. We have to work with our partners and adhere to global standards everywhere that we can. I think I would agree with what you have heard on the whole.

**Q98 Mark Garnier:** We do not want to be a fox in the hencoop, do we? Looking forward, beyond forging a good relationship with the EU, are there areas where we should be looking to have further dialogue beyond financial services? If we are having further dialogue, what should we be looking to have to forge a more binding relationship?



**John Cooke:** Going beyond the TCA and the areas that it specifies, of which there are a number that in their way are limited, yes, we need to forge a relationship on the core challenges, notably climate change but also how to provide for aging societies, which is a common challenge to both us and the EU. There are those sorts of things.

To my mind, this can only be done on the basis of a close and friendly relationship. To try to do it through even a transactional relationship, still less a hostile one, is not possible.

**Sally Jones:** Stop me if I am teaching my grandmother to suck eggs here, but there are all sorts of parts of the TCA itself that have provisions that need work. Audit, for example, has its own equivalence decisions, half a dozen or so, that we are waiting on.

Neil has mentioned the data adequacy decision. We all hope it is going to come by June. There are positive signs from the Commission in its preliminary ruling that it will come by June, but you never know when there might be a spanner in the works. The gravity model of trade—and this is where I might be getting a little patronising, and please stop me if I am—tells us that we do more trade with countries that are close to us than with those that are far away from us. That is true for goods, true for services, true for investment—partly to do with time zones, partly to do with familiarity—and it is inevitably going to be the case that the EU will always be a significant market for UK businesses. The more we can do to keep that friendly and open, the better. It is as simple as that.

Q99 **Mark Garnier:** Are there any alternative ways of ensuring access?

**Sally Jones:** As opposed to the TCA or bilateral negotiations?

**Chair:** In a customs union or a single market, perhaps?

**Mark Garnier:** Let's not reopen that argument. No, maybe through the World Trade Organisation potentially.

**Sally Jones:** Yes.

Q100 **Mark Garnier:** One of the fundamental problems with all this is we are still not very good at governing trade in services. We do not quite have our head around this yet. The WTO is rather lacklustre in coming forward with all sorts of different things.

**Sally Jones:** Let's be clear, nobody is good at regulating trade in services. It is difficult, complicated, lumpy and varies enormously country by country. Whoever can crack that is going to the world an enormous service.

I would love to see, for example, the UK include proper services provision in its export strategy, which is in the process of being drafted. In the context of us as businesses in our own right but also us as enablers for the wider economy, service businesses enable the wider economy. We did some work with the City of London Corp on exactly that.



## HOUSE OF COMMONS

If I ruled the world, I would start with making sure that the Government's trade policy collectively took full account of services and, of course, I would say professional services in particular but not exclusively. Having got to a place where we understand exactly what we want our trade policy to be, we can start to influence others through a combination of soft diplomacy, trade agreements and bilateral negotiations. We have things like the CPTPP. The TiSA agreement, the trade in services agreement that came this close to being ratified before Trump was made President, could be dusted off quite conceivably. Then you have the WTO. The UK will have a whole new role in the WTO as a unique and independent trading nation. We could do so much good.

I am getting quite excited at this point, can you tell? We could do so much good with the environmental provisions on trade. We could join the agreements that Chile, Norway and New Zealand are coming together to create. We can lead the world in this, but we need the appetite to do it, the willingness to do it and the technical expertise to do it. We need all those three things to come together, and that starts with our Government and its officials.

**Q101 Mark Garnier:** It starts with our seizing the Global Britain opportunity and taking advantage of the fact that we are now freer to do this type of thing than we were before, is that right?

**Sally Jones:** Yes. For example, you could have digital technology agreements. I am treading on Neil's toes a little bit here, and I don't want to do that but, yes, it is difficult to see ways that technology should be regulated that is proportionate, protects consumers, does not hamper business. We have two broadly separate models evolving. There is a US-Asia pact, relatively light-touch model. There is a European much more prescriptive model. Those two are not entirely mutually exclusive but do not necessarily mesh as well as you would like.

There are so many places where we could do so much good, but we need to grasp that nettle.

**Mark Garnier:** You have demonstrated very firmly that you can't make an omelette without breaking eggs.

**Chair:** That was more than the half dozen I predicted earlier. There was a full dozen, indeed. Moving on to some more cracking questions, I am sure, Craig Williams. Is he with us? I will move on to Mick Whitley. We will put out an APB on Craig. He has flown the nest somehow.

**Q102 Mick Whitley:** What implications do the TCA's level playing field provisions have for services in digital sectors?

**Neil Ross:** It is a bit of a tricky one. Some of the requirements in and around the data adequacy decision, for example, are quite level playing field-esque in that you are required to essentially have an equivalent level of data protection. If that is not achieved, it can be removed. That aims to create some kind of level playing field.



There are then broader questions about what happens to EU regulation in the future. To be honest, on the whole, we haven't identified any major concerns that some of our members are facing on services—on goods, it is very separate—as a result of level playing field provisions.

**John Cooke:** I would echo what has just been said. It is dangerous to say that this is less an issue for services than it is for goods, because the level playing field mechanism is one that can be invoked in a large number of fields. At the same time, the way in which the TCA seems to have been written implies that this is mainly about labour, social protection, the environment and climate, those sorts of issues, rather than particularly highly regulated services of the kind that we deal with at TheCityUK.

At the moment I do not think our members view this as having major implications. That said, we are again dealing with a level playing field mechanism that has not yet come into operation in a treaty that is only a couple of months old. Everything really lies in the future as to how this could develop.

**Sally Jones:** I would agree with what John says. You can't get too worried about somebody taking something away when they haven't given you that much to start with. That is fundamentally the point here, and if rebalancing occurred there is not that much that would change for us, if truth be told. It is not one of those that keeps me awake at night.

**Chair:** We will go back to Craig Williams. I was a bit concerned that, as a Tory MP, a red fox had got hold of him, which is probably always a danger for Tory MPs. I am not certain.

**Craig Williams:** Apologies for that.

**Chair:** It happens all the time.

Q103 **Craig Williams:** From mid Wales, where foxes are well under control, can I bring us back to data adequacy? While we do not want to count our chickens before they hatch, could you tell us what you are advising your members in terms of that impending decision and its scope? Could you dig into what it means for your members? We will start with Sally, then John and Neil, in that order again.

**Sally Jones:** Could I possibly defer straight to Neil?

**Craig Williams:** Of course.

**Sally Jones:** He is much better on this than I am, so it should be him who goes first.

**Craig Williams:** Apologies. Neil, I can see you are eager to dive in.

**Neil Ross:** Yes. Data adequacy has been an issue for my association since the day after the referendum. Probably to start with the adequacy decision itself, before we had the conclusion, it is probably important to note that the UK Government and the European Union did a huge amount



## HOUSE OF COMMONS

of work on the adequacy decision. Well over 1,000 legal and technical questions were exchanged between either side, so the assessment ran to an incredible level of depth, which I think is reflected in the decision that the Commission thinks the UK provides an essentially equivalent level of data protection through its system. The decision itself is very clean. The UK, as I said, provides essentially an equivalent level of protection, and that is kind of it. We thought the decision might include a number of conditions for the UK to change some of its protection system around things like national security, but it did not include much of that because the Commission was fairly reassured that avenues for redress were an issue to be raised.

However, what the adequacy decision does is provide a number of pathways for EU member states and for individuals to raise concerns if the UK diverges to a significant extent, that it therefore does not have an essentially equivalent level of protection, so there is a possibility in future that these pathways can be used to unpick the adequacy decision over time. There is also equally the risk that there would be a legal challenge in the European Court of Justice, and this does happen in the EU. In the last five years, since the safe harbour agreement, we have had two very significant legal challenges that have effectively struck down EU data transfer mechanisms that have had global ramifications, so the UK must be aware this could happen.

What we are advising our members is that adequacy is quite likely to be delivered, mainly because the two hoops or hurdles that you have to jump over to get there is that the European Data Protection Board has to offer an opinion and the European Parliament can provide some inputs. It is still the European Council and the member states who give the final signoff, and they have always been the most in favour of granting the UK adequacy because they see a domestic economic risk to their own companies as well as the fact that they quite enjoy the security relationship, which is underpinned by the adequacy decision.

We put the chance of it being delivered by June as quite high. How long it lasts for afterwards is a very open question. What we are advising our members is to ensure that they are still preparing for the eventuality if adequacy falls down. Most of our members have done that anyway, so that is not a massive extra uplift to be done but, interestingly, a lot of our members are still including contractual measures in their contracts around data transfers anyway. That has nothing to do with the UK or the EU, but more to do with the fact that, globally, the approach to data, as Sally mentioned in some of her earlier remarks, is becoming quite fragmented. Having contractual measures to underpin how you transfer data and secure your global data flows is now just part of doing business, and likely will be so from here until there is some kind of global agreement on data, which does not look particularly close.

**Craig Williams:** Thank you, Neil. That is a very positive answer in the short and medium term. Sally or John, did you want to add anything?



## HOUSE OF COMMONS

Otherwise I will pass back to our Chairman.

**Sally Jones:** Neil is absolutely cock of the walk when it comes to data, I wouldn't dare to suggest otherwise.

**John Cooke:** I would only add that our sector has always emphasised the importance of this. We are very digitally dependent, and this is a key aspect for us too, but I bow to Neil on all the details.

**Craig Williams:** I will pass back to the Chairman on that very positive note of a new chapter in our relationship with the EU as a sovereign, independent UK.

**Chair:** Yes, I think we will be poaching Neil's lines for future reference. Can I bring in Martin Vickers?

Q104 **Martin Vickers:** Could I tease out what you think your members or clients would like to see if the UK standards or regulations were to diverge from those of the EU?

**Sally Jones:** The reality is that, when I speak to my clients or I look to my own business, I do not find many places where the regulation is disproportionate to the protection that it brings. We generally see ourselves as subject to a high level of regulation, and rightly so, by the nature of what we do.

There are a handful of places—and I do mean a handful of places—where we might seek for regulation to be loosened a little. To give you one illustrative example, one of the things that audit firms are obliged to look at when they do their audits are disclosures that our clients have made to the anti-money laundering regulators. We are ourselves obliged, if we become aware of the possibility of criminal behaviour, to make disclosures to our anti-money laundering regulators. There is no carve-out to say that we do not have to make a disclosure if the only reason we are aware of the potential for criminal activity is because somebody has already disclosed, so you get a duplication of effort and requirement there quite unnecessarily, where absolutely no additional good is done.

I will be absolutely honest with you, I struggle a little to find places where I would change the regulation in any material way. For one of my clients I was looking at the detergents directive, for example, which is a piece of EU legislation that, as you would expect, deals with soaps, handwashes and similar. When you read the legislation, all it basically says is that if you make a product that goes on people's skin or hands or hair, make sure it doesn't give them chemical burns. If you combine two such products to make a better one, make sure the combination doesn't give them chemical burns, and if you add things to make it nicer, like perfumes or coagulants, make sure that combination doesn't give them chemical burns. If you do give them chemical burns, make sure you have somebody on the hook to be responsible for that negligence.



I could not find anything in the 40 or so pages that did not make good sense to me as a consumer, who doesn't want to have chemical burns. I generally think it is quite difficult right now to find pieces of legislation that I would look at and say, "Those are ones that I wish to have removed." Whether that happens in the future is, of course, an entirely different matter, but we ought to look quite hard at our statute book, work out what doesn't work and why it doesn't work and make sure that any changes we make remain proportionate and protective rather than just assuming that there are whole swathes of legislation that could sensibly be taken out or changed.

Q105 **Martin Vickers:** Following the theme of the day, you do not want to unscramble the detergents directive?

**Sally Jones:** Afraid not, no.

**Martin Vickers:** John or Neil, would you like to comment on whether you would like to see the UK go independent on the regulations?

**John Cooke:** The first thing I would say is that I rather agree with Sally, but there are other points, too. Either side could diverge over time. Regulation changes as circumstances change and products change. We have no desire in TheCityUK for any kind of bonfire of regulation. We feel very strongly that any changes to regulation must have an evidence-based rationale; they should not be based on some kind of declaration of independence or declaration of difference. It has to be the evidence base that counts.

Among our members, different subsectors have different views. I suppose the view that has been made most public is that of the Association of British Insurers on some aspects of the Solvency II regulation of the EU governing insurance companies. On the one hand, British insurers have all adapted to it. On the other, they have always felt that it is somewhat unnecessarily onerous, particularly when it applies to personal insurance that is offered through establishments in different member states.

There is no absolute reason why. UK companies offering personal insurance in member states of the EU will continue to be governed by the EU rules. It does not follow that UK providers have to have exactly the same rules. That is the most publicised statement, and I think I could provide you with material from the ABI explaining its rationale. As Sally says, any changes must be calibrated against principles of openness, proportionality, necessity and so on. We would not disagree with that at all.

**Neil Ross:** I would agree with that. I am talking very much about the tech sector here, which again is often one of those that tends to be talked about when we think about divergence and how advantages could be gained over time. I think divergence will principally come from decisions that the EU makes. The EU has a very ambitious and wide-ranging legislative agenda for the technology sector, and there will be very



## HOUSE OF COMMONS

legitimate questions for the UK as to whether it follows the EU's approach on things such as the Digital Services Act, the Digital Markets Act or an upcoming AI regulation. In many areas, it will make sense for the UK economy to do things quite differently and we can have those conversations when they come along.

One area where I would say there is an early advantage to do things a bit better is in our approach to data transfers. As Sally was saying earlier, it is how you balance trust protection and make things proportionate and not overly burdensome. The EU's approach to data transfers tends to be a lot more prescriptive than is required. I think there is an element in which the UK can do this a bit better. We should still continue to recognise EU data protection rules. We should still maintain the GDPR effectively as it is now, but with different interpretations in different ways. There are some slight changes around the borders you can do that will make life a lot easier for companies and probably improve UK competitiveness overall.

In the round, leaving the European Union should be putting the fox among the chickens, as it were, and having the UK focus very heavily on its competitiveness. No longer is 50% of our trade covered by a market that is relatively easy to access. We are in a much more competitive global environment, and therefore targeting things such as trying to get investment into R&D and ensuring you have the right skills, having a good immigration regime and having a proportionate tax system are all now so much more important than they were before, so it does have to serve as a wake-up call to think about our economic planning.

**Chair:** Thank you very much. We are coming to our final colleague of the afternoon. He has been unusually silent, which is always a sign that Mark Menzies is hatching a plan of some sort.

Q106 **Mark Menzies:** I never hatch plans, Angus. It is getting to the end of the session and we have covered a lot of ground, but if I direct this question towards Sally Jones to begin with, what is your assessment of the support and advice that the Government have given to businesses on adjusting to the new regime for trade in services within the EU?

**Sally Jones:** If we are looking at services businesses in particular, we have not enjoyed the financial support that goods businesses have enjoyed. Fair enough, we have not had quite the same border challenges that goods businesses have had to face. That seems fair. Where I think things have been less than they could have been is on the Government guidance. There have been a couple of places that I would call out in particular, which have been very difficult for businesses.

The first is this point that a number of us have made on a number of occasions, which is that it has become a very fragmented market of 27 countries where you need to look at it member state by member state, sector by sector and each set of domestic regulation by domestic regulation. For small and medium-sized enterprises in particular, but for



everybody, that is very hard to do. We have asked the Department for Business on a number of occasions for better guidance on that. At the minute, there is a single page for each member state on doing services business in Bulgaria, Hungary, Romania, wherever it might be, but oftentimes it is limited to, "Find your local trade association and ask them what to do." That isn't granular enough. If the UK Government cannot get proper guidance up on that, how smaller businesses are supposed to manage it, I don't know. That would be one area where I think we could do much, much better.

The second is more of a historical complaint, but I think it is still an issue, in that the UK has easements, unilateral measures, that it has chosen to make in order to smooth the glide path from where we were to where we are going to end up. They are incredibly piecemeal. Some easements were announced before the 31 January 2020 deadline. They were all quietly withdrawn when the withdrawal agreement was announced. Some were replaced; some were not replaced; some were replaced in a different format. Nobody has ever properly mapped across what businesses had a legitimate expectation to believe was in place at 31 January compared to what they legitimately can expect to have in place now, nor provided a one-stop shop that demonstrates when each of those easements comes to an end, because all of them have different dates.

I have seen news headlines only this afternoon that say that some of the easements on customs duties that were due to change on 1 April are now not going to end after all, which is a unilateral decision the UK has taken. It would make a huge difference for businesses if somebody in Government could just pull together a simple list of what changes and when. I say "simple", it would not be a simple list—it would run to pages—but just a list of what is changing and when so that businesses can keep track of all those deadlines. That would make a very significant difference.

Q107 **Mark Menzies:** That is very useful, thank you. Mr Cooke, I would like to hear your thoughts on that question, but also how well do you think the Government have engaged with the trade bodies and individual businesses in the services sector on issues arising from the TCA?

**John Cooke:** Our experience has been relatively good, and that has been true both before and after the TCA, but that is subject to two qualifications. One is that our sector has generally been in a position to make its own assessment in many areas, so we haven't had the sort of experiences that have led to Sally's cri de cœur over other areas, which have obviously been much worse affected.

The other proviso, of course, is that everything is provisional and reflects the current situation as regards the TCA. We are awaiting Government guidance on mobility and mutual recognition of professional qualifications, where we see a real need for there to be help to services suppliers to navigate the changes that result from the TCA.



## HOUSE OF COMMONS

That is what I would say, but I recognise it is a limited reply in respect to the sector that is probably privileged in the amount of information it has been able to gather and use for its own purposes. That is not true of many other sectors, which are in a worse position.

**Mark Menzies:** That is very useful, thank you. To Neil Ross, that same set of questions, please.

**Neil Ross:** To be honest, I would agree with quite a lot of what Sally and John have said. Having some kind of guidance or clarity around when the dates are ending would be very effective.

One area where I can say the Government did quite well in terms of their level of preparation was on the end of the transition period for data adequacy, but that is much more to do with the fact there was already quite a clear pathway for what you needed to do in that it is set out in the GDPR, so you know what you need to do and it is just about explaining to people rather than making a policy choice.

**Mark Menzies:** That is very good. Brilliant. Chair, we have covered a lot of ground and, to be fair, we have more than done the other questions I was going to dive into. I will draw it to a close there, thanks.

Q108 **Chair:** Thank you all very much. We have had quite an exciting afternoon, with some exceptional evidence. I am very pleased with some of the things we have heard.

**John Cooke:** If you are about to bring things to a close, Chairman, the one thing I wanted to say is that I feel, on reflection, that I may have given an unduly negative answer to Mark Garnier. I will read carefully what I said. If I feel I wish to change it, I will, if I may, convey that to you in writing.

**Chair:** That would be fine. I can maybe provide excuses for giving negative answers to Mark Garnier, but I will glide away from that. I am very grateful to you for coming this Thursday afternoon to speak with us. This is our second session this week, and I am grateful to colleagues, too. We will all be due some eggs-ercise at the end of this, so thank you all, hope to see you again. Thanks for your time and expertise.