



Department for
International Trade



Department for
Business, Energy
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Baroness Donaghy
Chair, EU Services Sub-Committee
House of Lords
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7 December 2020

Dear Baroness Donaghy,

Thank you for your report, *The future UK-EU relationship on professional and business services*, published on 13 October 2020. It contains valuable analysis across a broad spectrum of UK professions, and I welcome both your Committee's and the sector's endorsement of our approach to negotiations in many areas throughout.

I know you will understand that until the outcome of the negotiations is determined, the Government is unable to offer a definitive response to the recommendations contained within this report. Pursuant to your request for a response at this time, I enclose a formal interim response to these recommendations and commit to updating the Committee in due course, when sufficient clarity about our new trading relationship with the EU emerges.

Regardless of whether we negotiate an agreement with the EU, the PBS sector will face changes to its trading arrangements at the end of the transition period. We have signposted businesses to GOV.UK guidance throughout this response to help them prepare for these changes. In any scenario, the PBS sector will continue to be a crucial part of the UK economy, with a major role to play in helping businesses bounce back better following the C-19 pandemic. The Government remains committed to providing this important sector with the certainty and support that they need to continue trading profitably with our EU partners, while maintaining the UK's right to regulate in the best interests of our domestic services industry.

I would like to thank your Committee again for its work on this subject. The Committee's experience and scrutiny is a welcome contribution to this debate, and the Government remains committed to engaging on this topic as we transition to our new trading relationship with the EU.

Yours sincerely,

Lord Grimstone of Boscobel, Kt
Minister for Investment
Department for International Trade
Department for Business, Energy & Industrial Strategy

Response – The Future UK-EU relationship on professional and business Services (2019-2020)

The conclusions and recommendations in *The Future UK-EU relationship on professional and business services* report have been grouped together where appropriate and are in the numbered paragraphs below, in bold italics, followed by the Government's response.

Overarching

1. ***Professional and business services accounted for almost 12% (£224.8 billion) of the UK economy's gross value added, ¹13% of the workforce (4.6 million jobs),² and 23% of all registered businesses in 2018.³ But the disparateness and manifold complexity of the sector mean that its interests are often overlooked. (Paragraph 18)***
2. ***Of the more than 600,000 professional and business services providers in the UK, the average number of employees is fewer than four. While London is a hub for the industry, it is also spread across the UK with two thirds of those working in professional and business services based outside of London and the South East. (Paragraph 19)***
3. ***In total, professional and business services provide 32% (£96 billion) of the UK's service exports and 15% of all UK exports. The EU is the UK's largest market for exports these services, accounting for 37% of professional and business services exports. The UK had a trade surplus of £12.4 billion with the EU on professional and business services in 2018. (Paragraph 20)***

The Government agrees that the Professional and Business Services (PBS) sector adds significant value to the UK economy through both its domestic and international activities. PBS professions have a unique ability to unlock economic potential in an array of non-PBS sectors and, when combined with the UK's open and attractive environment for foreign service providers and investors, this trait has made PBS a highly competitive and fast-growing sector with an excellent international reputation.⁴

The UK's clusters, also known as "hubs", of PBS businesses in London, the Midlands and the North of England, as well as the rapidly growing industries in Scotland, Wales and Northern Ireland, play a significant role in shaping the UK's domestic commercial landscape.⁵ Nearly two thirds of the £484bn total demand for PBS comes from local UK businesses,⁶ with some of the largest customers being

¹ ONS GDP(O) Low Level Aggregates (current prices), 2019.

² ONS Workforce Jobs, 2019.

³ ONS Business Population Estimate, October

⁴ Since 1998 the output of the UK PBS sector has grown by 70%, an annual rate of growth of 4.6%, twice that of other areas of the economy. Source: ONS GDP(O) Low Level Aggregates 2019, valid for 2018

⁵ [HS2, Getting the best out of the Professional Business and Financial Services Sector](#), 2017

⁶ ONS Supply and Use tables (2020), values for 2018.

financial services (£46bn demand for PBS), Information and communication (£26bn) and manufacturing (£24bn).⁷

In practice this means that the proficiency of UK engineers, for example, results in compound benefits in our manufacturing sector. It also means that consultancy has been, and will continue to be, vital in helping all businesses across the country adapt and recover from the impacts of COVID-19. And, as noted in the report, the “ecosystem for financial services” – another area where the UK has a world-beating reputation – depends on the sector’s lawyers, accountants and related professionals.

PBS also have an excellent international reputation and are the nation’s most traded services globally.⁸

- We host the largest market for **legal services** and dispute resolution in Europe, second only to the US globally. Our legal services trade surplus has more than doubled over the past 10 years to £6.5bn in 2018, and our market upholds an established international reputation elsewhere abroad, with English common law forming the basis of 27% of the world’s jurisdictions.⁹
- The UK professional bodies for **accountants** have more than a million members and students across the world, reinforcing the UK's position as a home of high-quality professional qualifications.¹⁰
- We attract and retain the world’s best **architectural talent** as home to 3 of the top 10 universities for architecture in the world.¹¹
- A recent report from the Advertising Association suggests that our balance of payments surplus for **advertising** in recent years was the biggest in Europe (at £3.8 bn), demonstrating the growing value that the rest of the world places on UK advertising’s creativity and innovation.¹²
- Our Institution for **Chemical Engineering** is the world’s leading professional qualifying body for chemical, biochemical and process engineers, providing a powerful network for 35,000 members in more than 100 countries.¹³
- Our Institution of **Mechanical Engineers** supports 120,000 members in over 140 countries, offering the largest network of mechanical engineering, knowledge and opportunities in the world.¹⁴

⁷ ONS Supply and Use tables (2020), values for 2018.

⁸ Trade figures for PBS are proxied by trade in Other Business Services (OBS) which includes other services not included under PBS such as trade related services and services incidental to agriculture, forestry, fishing and mining.

⁹ **Source:** The CityUK (2018), Legal Excellence, Internationally Renowned: UK Legal Services 2018.

¹⁰ <https://www.frc.org.uk/document-library/professional-oversight/2018/key-facts-and-trends-in-the-accountancy-profession>

¹¹ Top Architecture Schools in 2020 – QS World Rankings by Subject (2020).

<https://www.topuniversities.com/university-rankings-articles/university-subject-rankings/top-architecture-schools-2020>

¹² Advertising Association (2019), UK Advertising Exports Report 2019.

¹³ Institution of Chemical Engineers, Annual Review 2019

¹⁴ <https://www.imeche.org/about-us/our-vision>

The breadth and depth of expertise that the sector encompasses is what makes it so complex. But this complexity is also its strength, and the Government is committed to ensuring that any changes that result from our departure from the EU will not erode the sector's domestic and international reputation for excellence, as showcased above. We strive to maintain and develop the UK's status as a global hub for PBS and a launching pad for brands.

This is why the sector was identified as one of our priorities in the UK Government's policy paper, *The Future Relationship with the EU* (February 2020). Throughout negotiations, we have prioritised the PBS sector's continued ability to provide services and to freely establish businesses in the EU. We are seeking to lock in core commitments in services and investment chapters and negotiate tailored solutions for legal professionals that go beyond EU precedent to date, the detail of which can be found throughout this response.

More broadly, moving forward the Government recognises that each PBS subsector will have different requirements and that a one-size-fits-all approach will not suffice. We therefore continue to provide a tailored programme of support to PBS businesses to help them prepare for changes that will apply once the transition period ends. This includes posting business readiness bulletins and hosting webinars with key updates and advice for the sector, as well as providing regular ministerial engagement for its representative organisations, including the Professional and Business Services Council (PBSC), to ensure that its diverse interests are not overlooked.

The PBS Council recognises the unique role the sector can play in supporting millions of companies across the UK and has committed to develop an action plan to increase SMEs' access to PBS services, working through the local Growth Hub network to help businesses start up, scale up and create more jobs. There are a number of working groups which sit under the PBS Council focussed on areas such as international trade, skills and inclusion, the importance of place and delivering net zero. Through these working groups, the government are working together with the sector to drive forwards initiatives that will benefit the UK economy as a whole.

Cross-border supply of services and investment

4. ***Future UK-EU arrangements for the cross-border supply of services will significantly affect the UK's professional and business service sector, particularly smaller operators, who may not to have a commercial presence in the EU. (Paragraph 61)***
5. ***Through national reservations, EU Member States can impose various regulatory barriers to cross-border imports of professional and business services from non-EU/EEA countries at a national level. These include economic needs tests requiring some proof that***

demand cannot be met by existing local providers, and requirements making market access conditional upon local presence. (Paragraph 62)

6. ***We are concerned that barriers to the provision of services on a cross-border basis could lead to a drift of economic activity away from the UK. Given that it is possible to move the delivery of services overseas, this drift of activity could have a detrimental effect on the UK's professional and business services sectors in the long term. While this will apply to firms both large and small, we are particularly concerned that requirements of this type could place a disproportionate burden on UK SMEs. (Paragraph 63)***

7. ***To mitigate these risks, a UK-EU agreement should contain robust commitments on cross-border supply, addressing the full range of potential barriers. We welcome the Government's proposal that the UK and EU should explicitly commit not to tie market access to local establishment or residency, and urge the Government to press for inclusion of such a commitment in an agreement with the EU. (Paragraph 64)***

We agree that provisions for the cross-border supply of services are important to PBS professionals and that the Comprehensive Free Trade Agreement should provide them with certainty and transparency about their future operating environment. As laid out in *The Future Relationship with the EU (Feb 2020)*, we are therefore seeking to agree provisions for:

- Market Access, to ensure service suppliers do not face quantitative limitations such as economic needs tests, or joint-venture requirements;
- National Treatment, to provide for non-discriminatory treatment between UK and EU service suppliers;
- Local Presence, to ensure that cross-border trade is not inhibited by residency or establishment requirements; and
- Most Favoured Nation treatment, which binds existing levels of favourable treatment, whilst also future-proofing the Agreement to ensure that the UK keeps pace with market liberalisation across the globe

If agreed, these provisions will help services suppliers and investors effectively navigate our new trading relationship with the EU. It will also mean that in most services sectors, such as Management Consultancy and Computing Services, operators are unlikely to face any significant new barriers because to date the EU has not taken reservations in these sectors, which represents a commitment to their openness.

The Government acknowledges the sector's valid concerns that barriers to CBTS could lead to a drift of economic activity away from the UK. As noted by Minister

Zahawi in his oral evidence session with the Committee in July 2020, this is why we are seeking to negotiate the inclusion of a “Local Presence” obligation in the agreement. If agreed, this obligation would mean that the UK and EU must specifically reserve (i.e. carve out of the commitments in the agreement) areas where they require a local presence to supply services and therefore provide our businesses with the clarity and transparency they need to navigate diverse Member State regimes.

We are also seeking to mitigate any drift of economic activity away from the UK into the EU through unprecedented proposals designed to support key highly regulated industries. For example, if agreed, our legal services proposals would guarantee the right of UK solicitors, barristers and advocates to provide legal services in the EU using their UK title in UK and public international law, across all modes of supply. UK firms would also be permitted to establish a branch in an EU member state from which UK solicitors, barristers and advocates can provide legal services in UK and public international law, under their UK title. This proposal would require EU Member States to clearly set out in reservations where they intend to prohibit or restrict such practice, which would bring important transparency and certainty to the sector as we adapt to our new trading relationship.

- 8. *Although the UK and EU draft legal texts are broadly aligned on cross-border supply of services, there is little room for complacency until clarity emerges on any national reservations to a UK-EU agreement. The example of the EU’s trade agreement with Canada shows that these reservations can be wide-ranging and affect a number of professional and business services sectors. (Paragraph 65)***
- 9. *When we spoke to the Minister on 16 July 2020, there had been little UK-EU discussion on potential national reservations. This is a source of serious concern. The Government should publish comprehensive explanatory material on any national reservations on services attached to the agreement to enable proper parliamentary scrutiny and give professional and business service providers—in particular SMEs—clear guidance on the position across Member States. (Paragraph 66)***
- 10. *The Government should continue to engage with the EU and individual Member States to reduce, and if possible, remove any barriers to cross-border supply through national reservations to the agreement. (Paragraph 67)***

We agree that the UK and EU’s national reservations are of notable importance to the value of the services and investment agreement. These reservations are located in annexes, sometimes called ‘schedules’, to the main trade agreement and they determine the level of market access that UK and EU services suppliers will enjoy in

practice. For example, within legal services, some countries use schedules to impose nationality or residency requirements before allowing third-country nationals access to the local profession. Schedules apply across all modes of services supply, including cross-border trade and investment (Modes I-III) and the temporary movement of people for business purposes (Mode IV).

As stated in *The Future Relationship with the EU* (February 2020), and as Minister Zahawi reiterated in his oral evidence session with the Committee in July 2020, the UK is seeking to negotiate schedules based on the principle that “the baseline [...] should be both parties' best offer to date.” This refers to the best offer either party has made in comparable preferential trade agreements, such as the FTAs with Canada and Japan. The Minister highlighted professional and business services, in line with the *Future Relationship* document, as an area where we wished to negotiate on beyond this baseline.¹⁵

If an agreement is reached, we will publish guidance on GOV.UK on navigating these national reservations. In either scenario we advise businesses to check local regulations and requirements for providing services to the EU and to seek professional advice if unsure of what changes they will need to make to their business model. Our approach is under constant review and we are committed to taking the actions necessary to protect this vital sector after EU exit.

- 11. *The Government has not sought bespoke UK-EU arrangements on public procurement. The Minister was confident that the EU's schedules of commitments under the WTO GPA would give UK professional and business service providers sufficient access to Member States' public procurement markets. However, we received evidence that this might not be the case in all sectors. We urge the Government to work with like-minded signatories to the WTO GPA to broaden the scope of the agreement. (Paragraph 68)***

As Minister Zahawi acknowledged in his oral evidence session to the Committee in July 2020, UK businesses that rely on procurement will enjoy a high level of access to the professional and business services sectors in the EU once the UK has joined the WTO GPA as an independent member. This is expected to be at the beginning of next year (2021).

The market access offer for services that we have made to the WTO is the same as the current coverage that our services suppliers have under the EU's GPA schedules and reciprocal coverage will continue once the UK is a GPA party. As a result, opportunities in major professional and business services sectors, whether it is management consultancy, accounting, advertising, engineering or market research, will continue to be advertised and open to UK service providers.

¹⁵ See <https://www.gov.uk/government/publications/our-approach-to-the-future-relationship-with-the-eu>

Once the UK is an independent member of the WTO Government Procurement Agreement (GPA) in 2021, we will look to expand our membership on terms that suit the unique needs of our services economy. GPA accession provides an effective tool for dismantling the preferential and discriminatory procurement practices in valuable markets, ultimately leading to new and varied exporting opportunities for UK businesses. It is an exciting time to join, with WTO members who are not already GPA members recently showing a great amount of interest in the agreement. For example, Australia joined in 2019 and there are ongoing accession negotiations with Brazil, China, Kazakhstan, the Kyrgyz Republic, North Macedonia, Russia and Tajikistan.

Rights of establishment

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

Provisions for investment liberalisation will be most beneficial to PBS professionals if they complement and extend commitments in the CBTS chapter to investment in goods facilities and avoid barriers that prevent businesses from freely establishing in the EU. In line with *The Future Relationship with the EU* (February 2020) policy paper, we are therefore seeking to agree provisions for:

- Market Access, to ensure service suppliers and investors do not face limitations such as economic needs tests, restrictions on corporate form and foreign equity caps;
- National Treatment, to provide for non-discriminatory treatment between UK and EU service suppliers and investors;
- Local Presence, to ensure that cross-border trade is not inhibited by residency or establishment requirements;

- Prohibition of performance requirements, to ensure investments are not subject to conditions such as domestic content requirements or export restrictions;
- Senior management and boards of directors, to prevent restrictions on nationality for senior personnel; and
- Most Favoured Nation treatment, which binds existing levels of favourable treatment, whilst also future-proofing the Agreement to ensure that the UK keeps pace with market liberalisation across the globe.

If agreed, these measures will support new and continued investment between the UK and EU Member States. We are also seeking to ensure that both sides schedule their reservations against these obligations in a way that provides a clear and predictable basis upon which EU businesses can invest in the UK, and UK businesses can realise investment opportunities in the EU.

We acknowledge the importance of avoiding restrictions on corporate form and as, mentioned above, are seeking to negotiate provisions within the agreement that address this issue. However, FTAs do not usually allow for the recognition of foreign corporate forms that are not recognised by the host government. When the UK was a member of the EU and the Single Market, this allowed for the LLP corporate structure to be accepted everywhere in the EU, but now the UK is outside of that structure there is no such obligation on member states to accept it. Some EU member states are reluctant to recognise LLPs and therefore, regardless of whether we reach an agreement with the EU, firms will need to consider whether they can continue operating in an EU member state. For instance, law firms may need to examine whether they will need to restructure their corporate form or enter into joint partnership with EU lawyers in order to do so. We have already advised UK lawyers to speak to local regulators and understand that many UK firms have already conducted such restructuring.

More broadly, the government continues to take steps to make the UK an attractive destination for investment and innovation in PBS businesses. We continue to work to promote English Law, UK legal services and London as a global hub for dispute resolution. This includes the Legal Services are GREAT campaign, which launched in October 2017 to promote the UK's outstanding legal services worldwide. It has already been promoted in numerous countries with trade missions including China, Chile and Nigeria. Additionally, the Ministry of Justice is working with the Law Society of England & Wales to promote English Law and the legal services sector through their 'Global Legal Centre' campaign.

Business mobility

- 14. Professional and business services sectors rely on the ease of business travel between the UK and EU, and firms' ability to redeploy staff flexibly to their offices across Europe. Any significant barriers**

to UK-EU business mobility, therefore, risk a loss of competitiveness and innovation. We urge the Government to ensure that temporary mobility is covered by an agreement with the EU, and that arrangements in this area are as ambitious and comprehensive as possible. (Paragraph 89)

- 15. We strongly support the Government's efforts to secure a maximum length of stay of 90 days in any six-month period for short-term business visitors, compared to the 90 days in 12 months offered by the EU. (Paragraph 106)***
- 16. The efficacy of any UK-EU arrangements on short-term business visitors will ultimately depend on the type of activities that these visitors will be allowed to carry out when visiting their clients. The negotiating parties have not yet disclosed their proposals in this area. We urge the Government to press for minimal restrictions, particularly the inclusion of paid work in any list of permitted activities under a UK-EU agreement. As in a number of other areas, we are concerned about the potential for national reservations to the agreement that could create additional barriers to the delivery of services, such as economic needs tests for mobility on a temporary basis. (Paragraph 107)***
- 17. While we recognise that free movement between the UK and EU will end, and that the UK will pursue its own independent immigration policy, it is in the UK's economic interest to agree comprehensive business travel facilitations with the EU as part of a future relationship agreement. Several witnesses advocated visa-free travel for short-term business travel, covering short-term business visitors and independent professionals. Any new administrative arrangements should ensure that these sectors can maintain their agility. We ask the Government to clarify whether this is part of its offering to the EU and, if it is not, to explain its reasoning. (Paragraph 108)***
- 18. Access to talent from the EU is and will remain important to the UK's professional and business service sectors. We encourage the Government to work with businesses, including through the Professional and Business Services Council, to understand how the UK's future immigration system can best support their needs. (Paragraph 113)***

We recognise that the sector prioritises the entry and temporary stay of natural persons for business purposes (Mode IV). As set out in *The Future Relationship with the EU* policy paper (February 2020), we are therefore seeking a text that includes measures for most major categories of temporary movement. These categories include short-term business visitors, business visitors for establishment

purposes, intra-company transferees, contractual service suppliers, and self-employed professionals.

As Minister Zahawi remarked in his oral evidence session with the Committee in July 2020, the UK is proposing to build on precedent in this area by taking reciprocal commitments on short-term business visitors for the first time and are, on the whole, seeking a balanced deal, similar to that agreed between the EU and Japan. If agreed, these provisions will provide firms in the PBS sector and others with the legal certainty and administrative clarity they need to continue meeting, exchanging and delivering services, with as few barriers to trade as possible.

In support of recommendations 14 and 15, we continue to seek provisions that will enable short term business visitors to visit each other's jurisdictions for up to 90 days in a 6-month period without the need for work permits. Related to these provisions, and in line with Minister Zahawi's comments to the Committee in July 2020, we are exploring provisions that will enable both the UK and EU to build on the list of permitted activities for these visitors relative to EU precedent. Finally, regarding potential risks to our competitiveness, we are seeking to mitigate these risks through comprehensive national treatment protections that will ensure UK nationals can provide services in person between the EU and the UK without fear of discrimination.

As outlined in our legal text proposals, we are also seeking a reciprocal length of stay for contractual service suppliers (CSS) and independent professionals (IP) of up to 12 months, including strong market access commitments for a broad range of sectors. Again, this is similar to the terms found in the EU's deals with Japan and Canada and, if agreed, will provide UK and EU businesses valuable assurances for longer-term projects.

In response to the Committee's question on visa-waivers, it is important to note that this facilitation is not typically part of Free Trade Agreements with the EU and the EU has never agreed a visa-waiver as part of a Mode IV Chapter with previous trading partners. This is why our legal text proposals, published in February 2020, do not include this facilitation. They are based largely on EU precedent, including transparency and administrative facilitations related to visas and work permits.

Any provisions agreed between the UK and the EU are nevertheless underpinned by the UK's domestic, business friendly policy on temporary movement. The UK's future Points-Based System operates independently of whether we negotiate a trade agreement with the EU and, in many places, can offer more than standard FTA commitments and the domestic regimes of most EU Member States. For example, from 1 January 2021, under its domestic regime the UK will allow a 6-month length of stay for short-term business visitors when travelling for specific business purposes, which will be visa-free for EU/EEA/Swiss nationals. The UK will also operate an expanded list of permitted activities for short-term visitors, including a range of intra-corporate, cultural and legal activities.

These activities will include provisions for creative industries, which were highlighted in the report (paragraph 112). As the Secretary of State for Digital, Culture, Media and Sport noted in his correspondence to the EU Services Sub-Committee on 2 September and 27 October, the Government recognises the importance that activities such as touring for the music and theatre industries, or attending shows for the fashion industry, have in the creative and cultural sectors. Though the UK is not currently seeking to negotiate a ‘touring visa’ with the EU, our domestic permitted activities list for short-term business visits does include valuable commitments to these industries that will support continued cultural exchange between UK and international creatives. Further information on this can be found under Appendix V of the UK’s Immigration Rules (see specifically Visitor Appendix: Permitted Activities 3).¹⁶

With regards to movement by UK nationals to the EU and EFTA, it is important to note that visas, work permits, or other documentation may be needed from 1 January 2021. The UK’s inclusion on the Schengen visa-waiver means that UK nationals, when performing select activities (e.g. meetings, attending conferences, short term study) can travel without a visa for 90 in a 180-day period. Additionally, some EU Member States offer more permitted activities that can also be performed visa-free. However, for stays longer than 90 days, or when performing an activity not expressly listed, a work permit and/or visa will likely be needed. We urge all employees in the PBS sector travelling to supply services in the EU/EFTA to check the regulations of the nation state they are moving to ahead of time. Further information on this can be found on GOV.UK.¹⁷

Our new, fair and firm points-based immigration system will send a message to the whole world that Britain is open for business as we continue to attract the brightest and best from around the world, but with a system we have control over. As a high-paying, high-skill sector with an average wage of £36,000 compared to the UK average of £31,000 and 73% of PBS jobs requiring A-level qualification or above, PBS is well placed to benefit from this new system.¹⁸ We are happy to work with the PBS Council to ensure that the new system enables their businesses to continue attracting competitive talent in an agile way, and ensure that their employees can confidently move between the UK and the EU. Further information on the new Points-based immigration system can be found on GOV.UK.¹⁹

Recognition of professional qualifications

19. *In some professional and business services sectors, the recognition of qualifications by third country authorities is crucial to enabling*

¹⁶ <https://www.gov.uk/guidance/immigration-rules/immigration-rules-appendix-v-visitor-rules>

¹⁷ <https://www.gov.uk/government/collections/providing-services-to-eea-and-efta-countries-after-eu-exit>

¹⁸ ONS Annual Population Survey (2018), ONS Annual Survey of Hours and Earnings (2019).

¹⁹ <https://www.gov.uk/government/publications/uk-points-based-immigration-system-employer-information/the-uks-points-based-immigration-system-an-introduction-for-employers>

cross-border trade. We reiterate the recommendation in our March 2017 report, Brexit: trade in non-financial services, that an agreement reached with the EU should include provisions facilitating the continued recognition of UK professional qualifications in the EU, and vice versa. (Paragraph 122)

20. ***Bespoke arrangements, in addition to an FTA, are likely to be required in some professional and business services sectors. This is one area where a bad deal, which prevents the agreement of bilateral supplementary agreements on mutual recognition, could be worse than a no deal. We urge the Government to ensure that an agreement explicitly allows for the conclusion of supplementary bilateral arrangements on the mutual recognition of professional qualifications, including at the Member State level. (Paragraph 133)***

21. ***The mutual recognition of professional qualifications is one area where the Parties' negotiating stances differ fundamentally. The Government has proposed that mutual recognition should be the default position. The Commission's proposal allows UK and EU-wide professional bodies to negotiate sector-specific mutual recognition agreements which would have to be approved by a Partnership Council, as under CETA. Our witnesses were unanimous that CETA's mutual recognition provisions have been ineffective so far, having failed to produce a single mutual recognition agreement. We welcome the Government's efforts to secure inclusion of its more ambitious proposals in any final UK-EU agreement. (Paragraph 141)***

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

We know that many UK professionals need their qualifications recognised in EU member states in order to export and deliver their services. In the Government's formal written response (June 2020) to this inquiry's call for evidence, we explained that the UK was seeking an arrangement with the EU that would ensure that such professionals have access to pathways to gain recognition of their qualifications in the other party's jurisdictions. However, as this Committee notes above, the mutual recognition of professional qualifications (MRPQ) is an area where the Parties' negotiating stances differ and the EU's proposals have been less ambitious than the UK's in this area.

The EU's proposal is rooted in precedent, which provides a framework for regulators to agree individual profession-specific recognition arrangements covering the UK and all 27 EU Member States after an FTA has been agreed. While this provides the opportunity to agree arrangements with all 27 EU Member States in one agreement, we acknowledge the sector's concerns about the effectiveness of similar provisions found in CETA. The Government's position – informed by CETA experience – is that there are several areas where significant improvements could be made to the EU's proposal. For example, enabling greater flexibility in the type of arrangement which could be negotiated between UK and EU regulators, to reflect the needs and ambitions of these regulators and the different standards they enforce

It is important to note that, in any scenario, the recognition decisions for UK professionals who are already resident in the EU, or who are frontier workers in the EU, are protected under the Citizens' Rights arrangements within the Withdrawal Agreement. These arrangements also protect EU professionals that are resident in the UK in an equivalent way. Furthermore, the Government has additionally chosen to temporarily implement arrangements to ensure EU-qualified professionals can continue to get their professional qualifications recognised beyond the end of the transition period. Through these and other measures, the Government remains committed to supporting UK regulatory authorities and professional bodies as they seek to agree arrangements with their EU counterparts after the transition period.

Lastly, we welcome the committee's recommendation related to legal services and recognise that in 2018 the UK exported an estimated £2.6 billion in legal services to the EU,²⁰ making lawyers among the most active professionals that rely on recognition to conduct their business abroad. To protect the interests of legal professionals, we are seeking to guarantee the right of UK solicitors, barristers and advocates to provide legal services in the EU using their UK title in UK and public international law, across all modes of supply. Our proposal seeks to lock in this market access on a reciprocal basis for the many Member States that currently already provide this, with those who do not currently grant home title rights and are not yet able to make such a commitment having to seek a carve out. Our proposal would bring important certainty to lawyers in the sector about their rights to practice under their UK title across the EU.

Intellectual property

- 23. *While current EU trade marks will be transferred onto the UK register at no extra cost, we are concerned that at the end of the transition period UK companies could face additional charges if, next year, they are required to register new trade marks at both the UK IPO and EU IPO. (Paragraph 149)***

²⁰ This includes all exports to the EU 27 and European Union Institutions. Please note these are indicative estimates based on survey results and are not directly comparable with the Pink Book trade statistics. Source: ONS, 2020, International trade in services, by service product and country.

- 24. *The Government has proposed that unregistered designs presented in the UK should receive protection in the UK and throughout the EU27, and vice versa. We urge the Commission to give the UK's proposal serious consideration. (Paragraph 157)***

As the Committee notes, the UK is protecting its intellectual property by creating over 2 million rights with no immediate cost to users at the end of the Transition Period. Companies will face additional charges should they wish to receive protection in both UK and EU markets as they will be required to register new trademarks with both the UK IPO and EU IPO. This is an inevitable consequence of the UK having left the EU single market. Retaining membership of the EU IPO for the purpose of trademark registration would require that the UK continue to fall under the remit of the CJEU, which would not be an acceptable outcome.

As the Committee may be aware, the UK proposed text on reciprocity of disclosure of unregistered designs in negotiations with the EU on the future FTA. Unfortunately, the EU were unwilling to agree to this. An agreement would have been beneficial to businesses and individuals in both the UK and EU parties, but the EU have decided to pass up the opportunity to conclude such mutually-beneficial text, which is disappointing. The Government has legislated for supplementary unregistered designs coverage in the UK, allowing for a cost effective and simple domestic option for our businesses.

Equivalence and regulatory cooperation

- 25. *We encourage both Parties to adopt decisions on the equivalence of each other's audit frameworks and adequacy of competent authorities well ahead of the deadline of 31 December 2020, irrespective of developments in the broader negotiations, to avoid unnecessary complexity and uncertainty, particularly for auditors and their clients. (Paragraph 173)***
- 26. *The UK and EU should come to an agreement on a structured process for any regulatory divergence in areas covered by the equivalence and adequacy regimes, including under the Statutory Audit Directive. Both sides should also agree a dispute resolution mechanism for the structured withdrawal of equivalence with suitable notice periods. (Paragraph 174)***
- 27. *Given that trade in professional and business services is dependent on good regulatory practices, we welcome both sides' commitment to ensuring continued regulatory dialogue. This will help to provide certainty to businesses and ensure best practice is shared.(Paragraph 183)***

28. *The governance arrangements for regulatory dialogue should include a dedicated UK-EU committee on professional and business services, which could help to ensure that these sectors are not overlooked. (Paragraph 184)*

We are currently pursuing EU determinations on the equivalence of the UK's audit regulatory framework and the adequacy of the UK's Financial Reporting Council as an audit regulator. These are technical assessments that sit outside the CFTA. We look forward to discussions with the Commission on its assessments, which were the subject of detailed submissions in spring 2020.

Equivalence and adequacy determinations on the EU mean that the Financial Reporting Council (FRC), which is the UK's audit regulator, will be able to rely on inspections of audits conducted by EEA competent authorities. This is necessary for EEA businesses that issue securities on the UK's regulated markets such as the London Stock Exchange. While the UK awaits an equivalence decision from the EU, the FRC will retain the right to require inspections of these audits if necessary. Granting adequacy to the EU means that the UK framework already enables the FRC to agree working arrangements for sharing sensitive audit regulatory information in the form of audit working papers and investigation reports with the EEA competent authorities. These arrangements will need to be reciprocal, and are contingent upon an adequacy decision from the European Commission.

We are also pursuing accounting equivalences. Favourable decisions would enable UK companies to use UK-adopted international accounting standards for the purposes of trading on an EU regulated market and may mean that EU subsidiaries with a UK parent do not have to prepare consolidated accounts. Existing exemptions in respect of country by country reporting may also be preserved if equivalence is granted under that framework.

The UK has unilaterally completed its own assessments of the equivalence of the EEA States and the adequacy of their competent authorities under our domestic audit regulatory framework. It granted these statuses to the EEA States on 9 November via the Statutory Auditors and Third Country Auditors (Amendment) (EU Exit) (No. 2) Regulations 2020. This was a pragmatic decision based on objective criteria and views provided to the Government by the Financial Reporting Council. These regulations will provide businesses, auditors and investors with a firm basis to plan for the coming months.

Securing equivalence and adequacy determinations with the EU would ensure minimal disruption to both UK and EEA businesses after the end of the transition period. The UK has demonstrated its commitment to minimum disruption for EEA companies by its own equivalence decision on EU-adopted international accounting standards (and in line with decisions on audit equivalence and adequacy mentioned above). Reciprocal audit equivalence decisions will reduce

costs to regulators, audit firms, and their clients and emphasise the importance of systems to ensure quality of auditing and audit regulation.

Looking to the future, the establishment of the UK Accounting Standards Endorsement Board (UKEB)²¹ will provide the UK with a platform to influence the development of financial reporting on a global stage. This is underpinned by the UKEB's duty to effectively influence the development of new international accounting standards. The UKEB will also ensure that UK stakeholders' views on any new or amended standards are given due regard and that they are compatible with the UK's economic environment and interests.

Data flows and digital trade

29. ***The free flow of data between the UK and EU is vital to professional and business service providers. Reciprocal UK and EU data adequacy assessments would be the most effective way to support such data flows. While their absence would not pose an absolute barrier, the alternative arrangements prescribed by the GDPR, in particular Standard Contractual Clauses, can be cumbersome to implement and would expose businesses to the risk of sanctions and fines. All of this could add complexity to, and potentially reduce, UK-EU digital trade in professional and business services. We reiterate the conclusion in our July 2017 report Brexit: the data protection package that the reciprocal granting of adequacy decisions is by far the preferred mechanism to support continuing UK-EU data transfers.(Paragraph 202)***
30. ***We are concerned that there is a possibility that the Commission may not grant the UK a data adequacy decision. We call on the Government to push for the assessment to be concluded as soon as possible, to give businesses in the UK and EU legal certainty and time to prepare. We note that the UK has granted the EU data adequacy on a transitional basis. (Paragraph 203)***
31. ***Smaller operators in the UK remain unprepared for the possibility of no adequacy decision, with some unaware of the potential requirement for standard contractual clauses. We welcome the work already done by the ICO to inform businesses, including SMEs, about the implications if no decision to grant adequacy is forthcoming, but call on the Government and ICO to step up their engagement efforts in coming weeks. (Paragraph 204)***
32. ***Separate to the data adequacy process, the Government and EU are negotiating provisions aimed to reduce barriers to data transfers for business purposes as part of a future relationship agreement. We***

²¹ <https://www.gov.uk/government/groups/uk-endorsement-board-ukeb>

welcome the fact that both Parties are seeking a commitment not to impose data localisation requirements, which were highlighted in evidence as a potential barrier to trade and innovation in the professional and business services sectors.(Paragraph 209)

We recognize that the free flow of data is an essential component of trade and is especially critical for the professional and business services sector, where digital economies are critical to building and maintaining international client networks. The ONS modes of supply statistics - a direct measure of services trade that is delivered digitally (Mode 1) - show that the UK exported £190.3bn digitally delivered services (representing 67.1% of total UK services exports) and imported £91bn digitally delivered services (or 51.7% of total UK services imports) in 2018. As a result, the UK recorded a trade surplus of £99b in digitally delivered services in 2018.²²

We are therefore working with the Commission to ensure EU data adequacy decisions for the UK, which are autonomous from CFTA negotiations, are in place by the end of the transition period. In order to expedite this process, HMG prepared a [technical pack](#) of explanatory materials, which was shared with the Commission and published on GOV.UK. We see no reason why we should not be awarded adequacy – the assessment process should be technical and confirmatory given we have an existing data protection framework that is equivalent to the EU's and therefore more than meets the “essential equivalence” test.

The process is nevertheless controlled by the Commission and, with only weeks to go, the EU has yet to decide whether they accept that the UK's data protection regime remains adequate. We are therefore stepping up our communications and engagement and urging businesses to prepare now for a scenario where adequacy decisions are not in place.

The Government's national readiness campaign has included readiness on personal data from the outset, and there is clear guidance available on preparing for the end of the transition period on GOV.UK and the Information Commissioner's Office (ICO)'s website. HMG continues to engage with businesses and other organisations across all sectors on readiness and highlighting personal data as a priority area, especially for SMEs, to address before the end of the transition period.

As the Committee notes, if the UK is not granted adequacy, organisations would be able to use alternative legal mechanisms to continue receiving personal data from the EU/EEA. The UK has also allowed for the continued free flow of personal data for commercial processing, on a transitional basis, from the UK to the EU/EEA Member States and Institutions at the end of 2020. Guidance for businesses is available on GOV.UK and the ICO website.

²² Cambridge Econometrics 2020, 'Understanding and measuring cross-border digital trade, 2020; ONS, Modes of Supply, UK experimental estimates, July 2019

In any scenario it is important to acknowledge that, while the UK will have an independent policy on data protection at the end of the transition period, no other third country's framework for data has ever been closer to the EU's. The Data Protection Act 2018 (DPA) strengthened UK standards by implementing the EU's General Data Protection Regulation (GDPR) and transposing the Law Enforcement Directive (LED) faithfully. The GDPR will also be retained in UK domestic law at the end of the transition period and the legislation that transposed the LED (Part 3 of the DPA) will also be preserved. Finally, the ePrivacy Directive (Directive 2002/58/EC), which supports data protection and privacy in the digital age, was transposed into UK law mainly through the Privacy and Electronic Communications (EC Directive) Regulations 2003 (PECR).

Separately, the UK and EU are also seeking to agree provisions on digital trade, which are an increasingly common feature of modern free trade agreements. This would include commitments that prohibit requirements to store or process data in a certain location, which prevent the imposition of costly requirements for businesses in future. Removing unjustified barriers to cross border data flows and upholding data protection standards are mutually reinforcing and beneficial for trade and trust.