

## **Federation of Small Businesses (FSB) - Written evidence (FTS0052)**

1. The Federation of Small Businesses (FSB) is the UK's leading business organisation representing small businesses. Established over 45 years ago to help our members succeed in business, we are a non-profit making and non-party political organisation that is led by our members, for our members.
2. FSB welcomes the opportunity to respond to the EU Services Sub-Committee inquiry into future UK-EU relations on trade in services. We would be happy to provide further detail on any of the issues raised in this response.

### **1. What is the impact for trade in services of the UK and EU reaching a free trade agreement?**

3. Trade in services, in particular exports to the EU, constitutes a substantial part of the UK's economy. In 2019 services worth £123.7 billion were exported to the EU, representing nearly 40 per cent of all UK services exports<sup>1</sup>.
4. FSB research has consistently shown that the EU as a bloc is the largest trading partner for small firms, regardless of whether they trade in goods or services. Around one in five FSB members export, of which 77 per cent export goods and 24 per cent export services. In addition, a further 30 per cent export intangible goods such as software.<sup>2</sup> Not reaching a deal would therefore have created significant costs, legal uncertainty and disruption for a considerable proportion of the UK's small businesses.
5. FSB therefore welcomed the agreement of the TCA. Beyond the avoidance of a no deal outcome, FSB welcomed elements of the deal relating to services that went beyond precedent within existing FTAs, including provisions on digital trade and home title legal services.
6. Nonetheless, the UK's exit from the single market and move to a new FTA-based trading relationship with the EU means that small businesses will now have to overcome new requirements and processes in order to provide services in EU Member States. While provisions on Mode 4 services reflect those seen in existing FTAs, such as CETA, and are welcome, they represent a significant change to the status quo for independent professionals and contractual service providers versus single market membership. As explored in more detail below, this includes new experience and qualification requirements for independent professionals, a patchwork of national reservations, and issues relating to the recognition of professional qualifications.

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<sup>1</sup> UK Trade Policy Observatory (UKTPO), [Taking Stock of the UK-EU Trade and Cooperation Agreement: Trade in Services and Digital Trade](#), January 2021, p2

<sup>2</sup> FSB transition survey, December 2020

7. Furthermore, there are several important aspects of UK-EU trade in services for which the provisions within the TCA – or related elements, such as an adequacy decision for the UK – must be developed further and precise conditions agreed to mitigate the impact on UK businesses. For small businesses these relate in particular to the mutual recognition of professional qualifications and the free flow of data.
8. Small businesses will incur considerable costs adapting to the new arrangements set out in the TCA. As an indication, FSB's recent transition readiness survey, conducted in early December 2020, showed that among FSB members that had managed to make some preparations for the end of the transition period, more than a quarter (27 per cent) reported the cost of doing so had been in excess of £2,000 while one in ten (10 per cent) said the cost had exceeded £5,000.<sup>3</sup> For many small firms such sums represent a significant percentage of their overall revenues.

## **2. What effect may national reservations to the UK-EU Trade and Cooperation Agreement have on trade in services with the EU?**

9. While the TCA has secured a level of market access for services comparable to that obtained in CETA and the Japan-EU EPA, in general the level of market access secured under the TCA is a significant step down for UK small businesses compared to the freedom to provide services under the terms of the EU Single Market. This is particularly true due to the inclusion of many national reservations in the agreement, which create a regulatory patchwork that small firms must now navigate. This will affect a wide range of sectors, but is a particular issue for highly regulated professions such as architecture, accounting, engineering, and legal services, amongst others.
10. The form and type of national reservation varies within the annexes to the agreement. Many national reservations deny or severely restrict the market access agreed within the articles of the TCA. Reservations relate to obligations in a number of areas including: technical standards, local presence, nationality, professional qualifications and licensing, examinations including language skills, and temporary movement including visa or work permit rules.
11. Small businesses will need to ensure that they comply with both the requirements of the TCA and the laws of each Member State to which they wish to provide services in order to continue exporting. Further details on this are provided in sections below.
12. Small businesses trading overseas often do so on tight margins and with limited resources. SME participation in international trade is already known to be significantly lower than that of larger businesses. These additional administrative burdens and related costs, which could be easily absorbed by larger firms, may therefore be prohibitive to small firms that may either stop exporting services or be discouraged from beginning their export journey.

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<sup>3</sup> FSB transition readiness survey, December 2020

### **3. What effect will arrangements on the mobility of professionals have on trade in services between the UK and EU?**

13. Throughout the negotiations for the TCA, FSB called for both parties to facilitate the entry and temporary stay of natural persons for business purposes on a reciprocal basis, including business visitors for establishment purposes, contractual service suppliers (CSS), independent professionals (IP), and short-term business visitors.
14. While the inclusion of the categories of independent professionals and short term business visitors broadens the free movement provisions of the WTO framework to which businesses would have been subject under a no-deal scenario, the terms of the TCA will nonetheless generate administrative and financial costs for small businesses which now need to navigate new rules on mobility.
15. FSB welcomes the agreement of temporary entry without the requirement of a work permit or visa for short-term business visitors. However, the permitted activities for short-term business visitors is limited to specific activities set out in the annex of the TCA and excludes many activities. In addition, the provisions prohibit short-term business visitors from selling services to the general public and from receiving remuneration from within the Party where they are staying temporarily. While this may permit employees of businesses to carry out many activities visa free, it will preclude many self-employed individuals or owner-directors who will likely fall under more restrictive provisions on CSS or IP.
16. As noted above, the provisions relating to contractual service providers and independent professionals are welcome as they go beyond the market access that would have been available under a WTO relationship between the UK and the EU.
17. Nevertheless, the provisions on CSS and IP are very restrictive. In the case of IP, those wishing to make use of the market access granted under the TCA must hold a university degree – or equivalent qualification – and six years' experience in their given field, as well holding any relevant recognised qualifications in the Member State in question. As with short-term business visitors, market access to CSS and IP is only granted in certain sectors, listed in the annexes to the agreement. The range of sectors available to CSS is notably more wide-ranging than that available to IP.
18. National reservations contained in the annexes to the agreement further restrict market access agreed in the services chapter of the TCA. In particular, economic needs tests that make access to EU Member State markets conditional on the country's need for foreign workers will particularly affect independent professionals and suppliers of contractual services. It will be difficult for FSB members to meet these tests and provide services to the same extent as was possible under the terms of the EU Single Market. These reservations are widespread in the TCA: as the UK Trade Policy Observatory points out, 14 of the 27 EU Member

States apply economic needs tests to foreign independent service professionals for legal advisory services in public international law and home jurisdiction law.<sup>4</sup>

19. As with other aspects of the agreement on services, small firms will need to familiarise themselves with the text of the TCA, the relevant national reservations, and the national law in the Member States in which they wish to provide services. Small firms often lack the resources and technical knowledge to do this, which can cause considerable uncertainty as to whether a businesses' services exporting activity is permitted.

#### **4. How will the intellectual property provisions set out in the Agreement affect UK-EU trade in services?**

20. Infringement of intellectual property rights is a major concern for one in ten small businesses participating in international trade. Of those small businesses that own intellectual property rights, one in three are heavily reliant upon them.<sup>5</sup> This means that weak protection or infringements can be incredibly damaging.

21. FSB broadly supports the intellectual property provisions in the TCA, which uphold existing standards and provide continuity with existing protections (including geographical indications). The commitment of the UK and EU to comply with the international agreements to which they are both party provides welcome legal certainty for UK businesses.

22. In areas where there is scope for longer-term divergence between the UK and EU intellectual property regimes, FSB encourages Government to ensure continued high standards of protection and minimal friction for UK businesses. FSB therefore supports the creation of the Trade Specialised Committee on Intellectual Property to examine these issues.

#### **9. How will the new UK-EU framework for the mutual recognition of professional qualifications affect professionals and service sector businesses?**

23. The TCA leaves the mutual recognition of professional qualifications to bilateral negotiation between professional bodies from each respective party. This means that, until such recognition is agreed, independent professionals and businesses' employees looking to deliver a service in the EU that relies on the recognition of their qualification will have to seek that recognition directly in each respective Member State in which they operate. Depending on the Member State concerned, this process can often be time consuming or difficult to achieve for non-residents.

24. Within the TCA, FSB welcomes the agreement of a framework for recognition through the Partnership Council. The provisions of the EU-

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<sup>4</sup> UK Trade Policy Observatory (UKTPO), [Taking Stock of the UK-EU Trade and Cooperation Agreement: Trade in Services and Digital Trade](#), January 2021, p5

<sup>5</sup> Federation of Small Businesses (FSB), [Spotlight on Innovation: How Government Can Unlock Small Business Productivity](#), July 2018, p12

Canada FTA (CETA) establish a similar framework for the recognition professional qualifications. It is noteworthy that since the agreement came into force in 2017, by November 2020 only one draft Mutual Recognition Agreement had been discussed – and not yet approved – by the Mutual Recognition of Professional Qualifications Committee.

25.FSB therefore encourages Government to work closely with the EU and relevant regulatory authorities to achieve mutual recognition in key sectors within a reasonable timeframe.

**10. What will be the impact of the Agreement’s provisions on the cross-border supply of services and rights of establishment, such as commitments on local presence and economic needs tests?**

26.FSB welcomes Article SERVIN 3.3 of the TCA on Local presence, which states that parties shall not require a service supplier of the other party to establish or maintain an enterprise or to be resident in a territory as a condition for the cross-border supply of a service.

27.However, the TCA contains numerous non-conforming measures and national reservations that will create a patchwork of exemptions and conditions that small firms will need to navigate. For legal services, a number of Member States require residency, citizenship, and/or commercial presence. For instance, in the areas of accountancy and bookkeeping services, France, Italy, and Portugal all require residence or business domicile in order to provide or register to provide services. In other sectors, some Member States waive nationality requirements only on reciprocity, such as veterinary services in France or insurance services in Italy.

28.Despite the provisions on local presence in the TCA, the reality for small firms supplying cross-border services to the EU under the TCA will therefore be navigating 27 different regulatory regimes, each with its own rights, obligations, and restrictions in order to ascertain whether they can provide services without local presence.

29.Small firms and self-employed individuals often lack the resources to navigate such a patchwork of regulatory requirements on a Member State by Member State basis. In contrast, larger firms may be better able to meet and absorb the costs of these requirements, and may also have EU-based foreign affiliates that will facilitate navigating local presence provisions.

30.Finally, the TCA does not remove requirements for UK companies to appoint EU-based representatives in certain circumstances to comply with EU legislation. For instance, UK firms offering services to individuals in the EU must comply with the obligation under Article 27 of the General Data Protection Regulation to appoint a representative in EU territory to communicate with individuals and data protection authorities on behalf of the organisation on data protection matters.

**14. The EU has granted the UK a six-month data adequacy 'bridge' to allow the free flow of personal data until the EU determines whether or not to grant a data adequacy decision to the UK. How would the absence of a data adequacy decision at the end of this bridging period affect trade in services?**

31. The EU is UK small firms' largest and closest market. The majority of the UK's international data flows (75 per cent) are with the EU.<sup>6</sup> Data plays a central role in the business models of the vast majority of UK small businesses and is a key commodity for the modern economy and the services sector. For small businesses, data facilitates the conduct of basic and important business operations, such as taking and making payments, and is used to enhance the competitiveness of smaller businesses by, for example, helping the market orientation of business activity.<sup>7</sup>

32. The costs associated with data protection compliance can be prohibitive for small firms. The estimated collective cost of the transition to the General Data Protection Regulation for small firms has been estimated at more than £5 billion.<sup>8</sup> The absence of an adequacy agreement would lead to small businesses incurring further compliance costs due to putting in place alternative mechanisms such as Standard Contractual Clauses. The UCL-New Economics Foundation report *The Cost of Data Inadequacy*, to which FSB contributed qualitative and quantitative data, estimates the legal costs of this at £2,000 for a micro business, £2,000 for a small business and £10,000 for a medium.<sup>9</sup> The overall average compliance costs for a business of adapting to no adequacy agreement were estimated from £3,000 for a micro businesses to £19,555 for a medium-sized business.<sup>10</sup>

33. FSB research from 2019 showed that over half (62 per cent) of small businesses were not aware of the ICO's Standard Contractual Clauses,<sup>11</sup> suggesting that small firms are reliant upon adequacy mechanisms to transfer data across the EU. FSB's recent transition readiness survey, conducted in early December 2020, showed that although some FSB members had renegotiated contracts prior to the end of the transition period to insert Standard Contractual Clauses (3 per cent), the vast majority did not.

34. Failure to secure an adequacy agreement from the EU would therefore have a significant impact on the large number of small businesses that

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<sup>6</sup> techUK & Frontier Economics, [The UK Digital Sectors After Brexit](#), 2017, p10

<sup>7</sup> Federation of Small Businesses (FSB), [Data Ready, Mitigating the Impact of Data Protection Regulation on Small Business](#) February 2018, p10

<sup>8</sup> Federation of Small Businesses (FSB), [Data Ready, Mitigating the Impact of Data Protection Regulation on Small Business](#) February 2018, p18

<sup>9</sup> UCL European Institute with the New Economics Foundation, '[The Cost of Data Inadequacy: The economic impacts of the UK failing to secure an EU data adequacy decision](#)', November 2020, p26

<sup>10</sup> UCL European Institute with the New Economics Foundation, '[The Cost of Data Inadequacy: The economic impacts of the UK failing to secure an EU data adequacy decision](#)', November 2020 p26

<sup>11</sup> FSB transition survey, August-September 2019

transfer data between the UK and EU or store data within an EU Member State. The UCL-New Economics Foundation report referred to above estimated the cost of the EU not granting an adequacy decision to the UK at up to £1.6 billion.<sup>12</sup>

35. Beyond direct financial implications for UK SMEs, failure to obtain an adequacy decision could have broader negative consequences, including:<sup>13</sup>
- Falling levels of EU-UK digital trade resulting from additional compliance costs and the increased risk of GDPR fines
  - Reduced inward investment due to increased compliance burdens and greater risk of regulatory enforcement
  - The relocation by EU or international businesses of business functions or personnel outside the UK

## **15. What impact will the arrangements agreed have on digital trade and trade in digital services between the UK and EU?**

36. FSB welcomes the TCA's provisions on digital, including the prohibition of customs duties on electronic transmissions, prohibitions on data localisation, and support for the use of electronic authentication and electronic trust services. Many aspects of the TCA are "best in class" and will help support UK small businesses looking to provide digital services to the EU in the future.

37. FSB welcomes the commitment set out in the TCA to ensure the free flow of data cross-border. Data localisation requirements can constitute a significant barrier to cross-border digital trade. Prohibitions on data localisation allow SMEs to take advantage of the opportunities of digital trade, potentially enabling small businesses to scale up to global markets more quickly or improve efficiency through employing cloud services.<sup>14</sup>

38. The loss of the Country of Origin principle for digital services based in the UK will create administrative burdens for small businesses which will now be required to comply with the regulatory framework of each Member State to which they provide services. As noted above, small businesses do not have the financial or human resources to be able to easily absorb these costs.

39. As the UK develops its own regulatory framework for digital services, FSB encourages the Government to continue to consider EU legislation that will shape the international digital economy. This includes forthcoming EU legislation on artificial intelligence, the regulation of online platforms such as the Digital Services Act and Digital Markets Act, and ongoing

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<sup>12</sup> UCL European Institute with the New Economics Foundation, '[The Cost of Data Inadequacy: The economic impacts of the UK failing to secure an EU data adequacy decision](#)', November 2020

<sup>13</sup> UCL European Institute with the New Economics Foundation, '[The Cost of Data Inadequacy: The economic impacts of the UK failing to secure an EU data adequacy decision](#)', November 2020

<sup>14</sup> Federation of Small Businesses (FSB) and the UK Trade Policy Observatory (UKTPO), '[The Representation of SME Interests in Free Trade Agreements](#)', 2020, p15

discussions on a digital levy. While EU legislation in these areas will no longer have direct application in the UK, it will continue to affect UK small exporters and will influence global approaches to these policy issues.

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