

Professional and Business Services Council (PBSC) – Written evidence (FTS0055)

Professional and Business Services Council

1. The Professional Business Services Council (PBSC) is a partnership between the Professional & Business Services sector and Government. It is industry-led and co-chaired by the private sector and the Department of Business, Energy and Industrial Strategy; it brings together sectors including law, accountancy, consultancy, actuarial, architecture, surveying and advertising services, amongst others.
2. The views contained herein are those of the business-side of the PBSC only.
3. The PBSC has identified several priority areas and works in partnership with Government to inform thinking on the future direction of the sector and its contribution to the UK economy. One of priorities identified is pursuing market access for international trade in professional services.

Cross-cutting issues:

Q1. What is the impact for trade in services of the UK and EU reaching a free trade agreement?

4. A strong relationship between the EU and the UK is very important to all UK citizens and businesses as a whole. Both the EU and UK stand to benefit if they can together work out a comprehensive agreement covering the PBS sectors which would not only provide for the continued operation of strong established interconnected networks but would also encourage further investment, innovation and growth, and job creation on both sides underpinning the strong partnership and recovery from the COVID-19 pandemic.
5. The commitments do not go much beyond existing EU practice in Free Trade Agreements and will limit the scope of many services providers to trade between the EU and the UK going forward.
6. As part of the [PBSC written evidence](#) to the inquiry on the Future UK-EU relationship on professional and business services, we identified the following key priorities in the future trading relationship negotiations for the PBS sector:
 - a) That there are minimal market access restrictions, including on establishment requirements.
 - b) A mobility framework with a broad definition of business visitors.
 - c) A framework that ensures the recognition of professional qualifications.
 - d) Accession to the Lugano Convention.

- e) Timely adequacy and equivalence decisions and continued regulatory co-operation between the EU and UK to provide a conducive framework for mutual market access.
7. Following our analysis of the UK-EU Trade and Cooperation agreement, there has been a partial successful outcome on point a). It is our understanding that c), d) and e) will be subject to future discussions.
 8. Certain improvements have been highlighted with regards to legal services and digital trade. Another area which was welcome concerns the additional access granted under the TCA on government procurement (for both goods and services) which goes beyond the access of the WTO Government Procurement Agreement.
 9. The PBSC also places importance on the issue of continued improvements of which provision is made for under the agreement specifically with regards to:
 - a) Mutual Recognition of Professional Qualifications (more in question 9);
 - b) Review of non-conforming measures and reservations (Art. Servin1.4)

Other elements of interest to the PBSC, is to ensure the proper implementation and functioning of the agreement, including the operationalization of the transparency provisions contained in the Services and Digital Trade chapters of the TCA, in particular those contained in the Domestic Regulation articles. Having this information published in a clear, concise and usable manner is crucial in order for services providers to be able to utilise the agreement. The UK and EU should clearly communicate where they will be putting this information online and disseminate it through the appropriate channels.

10. The importance of a strong regulatory dialogue and supervisory co-operation to underpin market access and ensure the integrity and financial stability of markets and this is as relevant for PBS as Financial Services. The discussions on an MoU for financial services regulatory cooperation
 - a) Ensures autonomy of decision making of both the UK and EU;
 - b) Aligns closely with international standards to reduce fragmentation; and,
 - c) Supports economic growth and investment in the UK and EU, minimising disruption and the social and economic consequences of the changed relationship.
11. In order to ensure that the ongoing implementation of the TCA and any future discussions on improvement address business and other stakeholders concerns, the UK government should ensure that appropriate consultation is sought as part of an ongoing dialogue (whether part of the formal Domestic Advisory Group process or not).

Q2. What effect may national reservations to the UK-EU Trade and Cooperation Agreement have on trade in services with the EU?

12. Unlike for goods trade, once a product has passed through all the customs and regulatory procedures into the EU, it can be sold anywhere in the EU, or its "entered circulation". For services trade, that is not the case. For many services, the domestic regulation is still done on a member state by member state level with restrictions (reservations) being listed both by member state and by sector.
13. The types of reservations contained in the TCA are split into two categories, existing measures and future measures. The reservations which will impact the Professional and Business Services can be found in Reservations 1 (General Reservations), 2 (Professional services except health-related professions) and 6 (Business services).
14. The types of reservations vary by type, member state and sector. The most common type of reservation concerns either market access exemptions or requirements for market entrants to take on a certain legal form, nationality requirements for boards of directors or local presence requirements. Typically, the more regulated a profession, the higher the number of reservations listed.
15. It is also worth noting that these reservations mark baseline of liberalisation that each member state has offered UK service suppliers. Each member state has the ability to implement more liberal measures in practice should they so decide. This means that for UK service suppliers, it will not be enough to look at the TCA to determine whether or not they are able to provide their services. This highlights the importance of transparency and prompt publishing of information referenced above.

Q3. What effect will arrangements on the mobility of professionals have on trade in services between the UK and EU?

16. The TCA sets out the types of activities that can be provided without work permits and visas as well as limits on the amount of time that can be spent in the EU visa-free, even for holidays.
17. The agreement does not provide a common standard that would allow businesses to adopt a lighter touch to EU and UK immigration. The nuances mean that similarly for the member state reservations, an understanding of individual member state requirements will be required which will be resource heavy for many businesses.
18. Business visitors to the EU for less than 90 days in a 180-day period, may be able to do some activities without getting a visa or work permit. The following are specified in the Agreement as permitted business visit activities that do not require a visa or work permit (so long as they meet the definitions given of the activity in the TCA) however these categories do not capture the activities undertaken by many PBS firms and the provision of professional and business services:

- a) Meetings and consultations
- b) Research and design
- c) Marketing research
- d) Training seminars
- e) Trade fairs and exhibitions
- f) Sales
- g) Purchasing
- h) After-sales or after-lease service
- i) Commercial transactions
- j) Tourism personnel
- k) Translation and interpretation

19. As mentioned previously there are individual member states that have lodged reservations on the type of short-term business visitor activities they allow and several member states operate more liberal regimes that have not been captured as part of the TCA.

20. This is particularly true for contractual service providers where the new rules are complex in the extreme. Member States set out their in very disparate ways - for contractual service providers there are considerable level of reservations. In most cases, immigration applications will be required.

21. The overall impact of these changes will mean UK PBS providers will have to consider what activities they are still able to perform under which mode of business mobility in a given member state. They will also have to place additional resources in managing these ongoing requirements and any necessary visa or work permit applications.

Professional and business services:

Q9. How will the new UK-EU framework for the mutual recognition of professional qualifications affect professionals and service sector businesses?

22. The TCA has agreed a new UK-EU framework for mutual recognition of professional qualifications to be agreed in the future. No mutual recognition was agreed under the TCA. This will be reviewed within a reasonable period of time and the Partnership Council may develop and adopt an arrangement on the conditions for the recognition of professional qualifications by decision as an annex to the agreement. In the meantime, UK bodies will be able to work with counterparts to put in place bilateral mutual recognition arrangements.

23. The impact of the lack of MRPQ provision will impact those professionals seeking recognition from the 1 January 2021 as those professionals that had already had their qualifications recognised prior to the 31 December 2020 will continue to be recognised under the Withdrawal Agreement.

24. Several professions have sought to implement unilateral measures. For example, the Architects Registration Board (ARB) will continue to accept the same EU/EEA qualifications that they would have pre-Brexit. The RIAI

have stated that they will recognise UK qualifications in the Republic of Ireland along the same pre-Brexit lines. This change does not mean that UK qualifications will not be recognised in all EU member states. It is for each competent authority to determine the requirements. Another example, accountancy and statutory audit, is some EU member states already have provisions in their national legislation to recognise third-country qualifications, covering accountancy and tax and statutory audit. These have now taken on direct relevance for UK qualifications.

25. The PBSC has welcomed the announcement by BEIS to allocate additional resources to aid UK professional bodies and competent authorities to undertake negotiations with their EU counterparts. However, it is unlikely that this will be a speedy process and there is a material risk that the lack of mutual recognition for some professions does start to impact the ability of firms to provide their services in the way in which they did previously.

Q10. 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. Any of the reservations listed previously could raise significant difficulties for UK professional and business services firms, resulting in them not being able to practise as efficiently and effectively as they have done previously.

27. Many UK-headquartered law firms have operated in the EU through a branch of their UK entity under a limited liability partnership (LLP) structure which may not be permitted, post-Brexit, in certain member states due to residency and other requirements. Many firms have already undertaken a restructure (at great cost) due to the earlier threat of no-deal cliff-edges while others will find it more difficult to continue to provide their services.

Data and digital services:

Q14. 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?

28. In the absence of an adequacy decision there will be a number of legal implications for UK professional and business service providers. GDPR sets out the procedures that need to be followed in the absence of a data adequacy decision. That is not to say that personal data flows would be permanently interrupted but it is widely accepted that without a data adequacy decision there will be disruption to the current free flow of personal data that is currently taking place between both sides.

29. A significant amount of 'no-deal' planning has been undertaken by UK-based firms in the past year which has included establishing alternative data transfer arrangements. GDPR states that personal data can be

transferred to a third country or an international organisation if there are appropriate safeguards, such as Consent, Binding Corporate Rules, Model Contracts and Legitimate Interests derogations.

30. There are a number of recognised safeguards, but most appropriate to businesses are the implementation of Standard Contractual Clauses (SCCs). SCCs are a standard set of contractual terms and conditions for the transfer of personal data which both the data exporter and the data importer enter into. They include contractual obligations which help to protect personal data when it leaves the EEA and ensure compliance with GDPR. SCCs only relate to the transfer of personal data, so they can be incorporated into a wider contract that covers other business terms. However, the recent Schrems II ECJ decision has meant that there is an ongoing consultation with regards to revising the SCCs. Businesses transferring data from the EU to the UK will need to take into account this continued uncertainty when making their preparations.
31. Regardless of whether there is an adequacy decision, there are still actions that businesses must take if operating and transferring data between the UK and EU, including ensuring that the proper registrations have been undertaken with the ICO-equivalents to appoint a data representative.

Q15. What impact will the arrangements agreed have on digital trade and trade in digital services between the UK and EU?

32. The TCA marks a high quality agreement on digital trade between the UK and EU and is an area which goes beyond established practice. There are welcome commitments to remove “unjustified” barriers to digital trade and the prohibition of data localisation requirements. The PBSC is still undertaking additional analysis on the TCA and the digital trade provisions and hope to include this analysis as part of the ongoing House of Commons International Trade Committee inquiry on Digital Trade. Undoubtedly the COVID-19 pandemic has meant the rapid adoption of providing services digitally and this is set to continue to accelerate across nearly all service sectors.

February 2021