TheCityUK – Written evidence (FTS0056)

I write in response to the Committee's inquiry into the future of UK-EU relations on trade in services. TheCityUK represents the UK-based financial and related professional services (FRPS) – an industry that contributes nearly 10% of the UK's total economic output and employs over 2.3 million people, with two-thirds of these jobs and half the exports coming from outside London. It is the UK's largest taxpayer and biggest exporting industry and generates a trade surplus greater than all other UK net exporting industries combined.

Our submission focuses on how the EU–UK Trade and Cooperation Agreement (TCA) has affected the industry and its ability to trade with the EU. The industry welcomed the fact that the UK and EU could agree a deal in 2020. However, the TCA prioritised ensuring trade in goods, not trade in services. UK-based FRPS businesses are now trading with the EU on significantly different terms and this will likely have a considerable impact on UK-EU trade in services.

TheCityUK believes that it is now critical to focus on establishing the foundations for the future UK-EU trading relationship. The TCA set out some services trade areas where the UK and the EU agreed to explore further co-operation and technical groups have been created to discuss co-operation on areas such as procurement, capital flows and regulatory co-operation in non-financial areas.

The UK and EU should also seek to build on the TCA's accompanying side agreements on services trade issues. Both sides should seek to establish formal financial regulatory co-operation dialogues and processes for equivalence determinations as they take forward their joint commitment to agree a Memorandum of Understanding (MoU) on financial services regulatory cooperation by March 2021. The UK should work closely with the EU as the European Commission decides whether to grant a positive data adequacy decision to allow data to continue to flow freely between the UK and EU. Trade in professional services could be strengthened if governments in the UK and the EU can issue timely guidance on the procedures for seeking mutual recognition of professional qualifications (MRPQ) arrangements set out in the TCA.

TheCityUK believes that much important work can be done in the months and years ahead to take these areas of cooperation forward through technical regulatory discussions, industry dialogues, and diplomatic exchanges. In 2020, the UK left the EU and its political and economic structures. It is now time for the UK and its FRPS industry to build a new trading relationship with its European neighbours.

House of Lords EU Services Sub-Committee inquiry on future UK-EU relations on trade in services

TheCityUK response

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

The EU–UK Trade and Cooperation Agreement (TCA) focusses more on international trade in goods than in services. This was not unexpected by the industry and had been the likely outcome for some time. Different sectors within the UK-based financial and related professional services (FRPS) industry have been affected differently by the agreement. In general, the industry welcomed the fact that an agreement was reached which helps its business clients trade and offers a platform to build on, although the conditions for trade in FRPS were broadly akin to both sides' pre-existing GATS commitments. It is too soon to gauge the TCA's full effects, but a review of some key provisions can illustrate some possible trajectories.

In the financial services sector, UK businesses have lost passporting rights to access the Single Market. Cross-border trade between UK-based firms and customers and clients in the Single Market will now rely principally on the UK securing EU equivalence decisions, which are much less comprehensive, or by complying with Member State market access regimes The pattern of future cross-border UK-EU financial services trade will partly be shaped by forthcoming EU equivalence assessments but will likely take place on a relatively restricted basis. The immediate impact on the sector has been mitigated, however, by the fact that many UK-based financial services businesses have worked closely with the authorities to put in place contingency plans in order to continue to service customers and clients in the Single Market in the event of no agreement, or of an agreement without substantial market access provisions for the industry.

Trade in professional services relies in large part on the ability of professionals to travel to meet clients and customers abroad and provide them with expert advice. Provisions enabling the movement of people and recognition of professional qualifications are therefore key. The TCA provides some important provisions which allow for short-term business travel and facilitate the business travel of intra-corporate transferees and independent professionals. However, these general provisions are qualified by many Member State and sector specific exceptions. Importantly, the TCA sets out a framework to enable UK and EU Member States to agree to recognise each other's professional qualifications. But a framework does not by itself provide UK professionals with any rights; UK professionals currently seeking to do business in Europe need to navigate several complex Member State specific rules. Again, however, the impact of this has been mitigated in some cases as several UK-based professional services firms established in the EU have restructured so that they can continue to service clients and customers in the EU.

It is too soon to determine how the TCA has changed or may change trade patterns in FRPS between the UK and EU, particularly in relation to financial services. The TCA's provisions on financial services are relatively unspecific, with an implied focus on financial stability and the prudential carve-out, together with

the intentions (yet to be fulfilled) expressed in the Joint Declaration of financial services regulatory cooperation. All this means that, for financial services, the TCA and its ancillary texts are relatively non-prescriptive, leaving much to be determined by the attitudes and plans of the parties. There is therefore a degree of uncertainty, typified in such questions as whether the European Commission will proceed to financial services equivalence determinations, or the approach in matters affecting cross-border business such as portfolio management delegation, restrictions to outsourcing, or risk management centralisation. These are unknowns, which are dependent on future policy decisions (which in turn may well reflect future global financial developments). The results in practice for the structure of UK and EU financial services businesses, and the relative proportions of future hubs of expertise in the UK or the EU, are difficult to predict, as are geographical splits in liquidity. On the EU side, there are also the future attitudes of EU Member State regulators to be considered, and the scope allowed to them as EU legislation develops. The TCA leaves all these matters relatively open, with room for a spectrum of outcomes for UK financial services suppliers ranging from the favourable to the disadvantageous.

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

The TCA's trade provisions in most respects resemble those in other FTAs and were framed on a "negative list" basis. This means that the TCA begins by rehearsing (Part Two, Heading One: Trade) the terms of permitted market access for trade in goods and services, subject to conditions and reservations that are set out in annexes. In the case of Services and Investment, Title II of the Trade Heading sets out the terms of permitted market access in a series of Articles arranged over Chapters 1-5. FRPS are subject to the entirety of Chapters 1-5, i.e. to all the chapters of general provisions plus the sector-specific provisions relating to, for instance, financial services, unless otherwise specified. These chapters however need to be read together with two Annexes which set out the UK and EU reservations bearing on the commitments in the chapters, as regards both existing and future measures, plus other relevant material.

The overall effect of the key TCA provisions on financial services is to follow the pattern of commitments given by the EU in the EU-Japan CEPA. The effect on related professional services is broadly similar, although there are, as has been said, a few TCA provisions allowing for short term business travel and facilitating the business travel of intra-corporate transferees and independent professionals.

As for the reservations entered by the EU, some are EU reservations while others are Member State (i.e. national) reservations. The latter typically echo the reservations at Member State level applying to the EU GATS commitments i.e. they have the effect of limiting market access and national treatment so that the TCA creates virtually no new preferential access for FRPS.

It is difficult to give any overall characterisation of the effect of EU Member State reservations, because they vary from one Member State to another and have very detailed features (for instance, nationality or residence requirements, or the right to be called by a particular professional title). In some cases, the reservations are confined to existing measures, while in others they reserve the

right to take future measures in specified areas. Nor do the reservations necessarily mean that a particular feature of practice is disallowed: it may be allowed, as a matter of the currently applied regime in a Member State, even though that Member State reserves the right not to allow it. The result is that UK practitioners seeking to operate in the EU must now devote extra resources to examining very carefully what is allowed under the national regime in current application in each Member State.

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

The TCA does not provide for freedom of movement for professionals between the UK and EU, although the agreement does include some provisions which will help UK services businesses and professionals to conduct work in the EU. The TCA enables UK nationals to travel to the EU for up to 90 days within a 180-day period for visit purposes (including business) without a visa. Furthermore, the UK and EU have agreed 11 permitted activities that business visitors can perform, although some Member States specify individual restrictions for activities. The lack of common standards makes it impossible to rely on the TCA as providing blanket permission across the EU. This means country by country understanding will be required of firms, and this has considerable resource implications.

The EU and UK have agreed to allow contractual service providers and independent professionals of the other parties to work in one another's markets under certain circumstances however there are hundreds of reservations set out in the TCA which allow both parties to impose additional measures or requirements. If UK nationals wish to travel to the EU to take up permanent work, a residence and/or work permit will be required.

The usability and accessibility of the rules is a key challenge. In a joint report with EY, 'International Trade Agreements and Migration: A Practical Blueprint for Evolution', [1] TheCityUK encouraged the government to use its new trade agreements to address migration issues and press ahead with earlier plans to enable broader worker mobility between the EU and the UK. Bilateral agreements post TCA-ratification could address this.

Furthermore, TheCityUK would welcome guidance for UK nationals looking to work in the EU and their employers on navigating EU business travel. We would also encourage the government to engage with industry and conduct a review of the practical implications of the short-term business travel provisions and related definitions in the TCA to ensure that any unintended consequences are not repeated in future trade agreements. We would also encourage the UK government to work with EU counterparts to ensure that border staff are clear on the rights of EU/UK national residents in the UK/EU as there have been some issues with border officers scrutinising individuals or wrongfully stamping their passports despite having applied for residency.

[1]TheCityUK and EY ' International Trade Agreements and Migration: A Practical Blueprint for Evolution' September 2021, available at: https://www.thecityuk.com/research/international-trade-agreements-and-uk-immigration-policy-a-practical-blueprint-for-evolution/

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

The UK FPRS industry has important interests in services-related intellectual property (IP) and supports strong IP provisions in trade agreements to facilitate international trade and investment. The industry has particular interest in intellectual property protections in areas such as:

- FinTech
- IP in services products, including electronic versions of products
- Product names
- IP in IT connected with selling and managing products (for example, robo-advisers and on-boarding)
- Other IP or copyright (for example, business names, logo design).

The UK-EU Withdrawal Agreement had already set out some important IP protections, including through preserving existing EU trademark and design registrations in the UK. The TCA contains further IP provisions in which the UK and EU affirm their commitment to uphold international intellectual property agreements such as the WTO TRIPS agreement. Both countries agreed to treat the nationals of the other Party no less favourably than their own nationals with regard to the protection of IP. The TCA largely confirmed the status quo position on IP and provides a foundation for future trade and investment.

5. How will the arrangements in the UK-EU Trade and Cooperation Agreement shape UK-EU trade in financial services?

The TCA was not intended to cover financial services in any meaningful depth and the key provisions relevant to financial services follow precedents in other EU agreements. As noted in the response to question 1 the outcome for FRPS trading is broadly not far removed from trading under both sides' pre-existing GATS commitments.

Not all of the provisions relevant to financial services are found in the financial services section. For example, rights to commercial establishment and cross-border contracting are set out in the general services and investment component of the agreement. While not contained within the TCA the Joint Declaration on establishing financial services regulatory cooperation and the announcement of the temporary bridging mechanism on data flows, ahead of a possible EU adequacy decision, are welcomed.

The outcome of the TCA is that UK-based financial services firms must, to a significant degree, rely on securing equivalence decisions from the EU to access the EU market, or else comply with Member State market access regimes. It should be noted, however, that a minority of equivalence provisions actually cover market access. For example, an area where an equivalence determination is of minimal benefit is direct insurance in Solvency II where no market access is given and there are benefits in ensuring the UK regime properly reflects the features of the UK market. This is distinct from reinsurance where aspects of Solvency II equivalence relating to reinsurance, group supervision and group solvency are important for the functioning of the London Market. Furthermore,

insurance intermediaries will not benefit at all from equivalence determinations. The relevant EU Directive – Insurance Distribution Directive – has no equivalence framework. This means that the UK's international insurance broking sector – responsible for bringing in excess of £10bn of business from EU clients to London – is reliant on local law in each EU Member State and some EU level guidance which creates uncertainty for firms undertaking this business.

At the time of writing, the state of play in relation to equivalence between the UK and EU is:

- The UK has unilaterally granted equivalence to the EU in several important areas and has not ruled out further determinations. The industry welcomed this approach from the British government.
- From an EU perspective, the European Commission has only given the UK temporary equivalence for CCPs (until 30 June 2022) which allows EU market participants to continue to use UK clearing houses, and for CSDs (until June 2021) which allows Euroclear UK & Ireland to continue to offer central security deposit services for Irish securities.

The UK has also created the temporary permissions regime (TPR) which will allow EEA firms to access the UK market for up to three years prior to their authorisation as third country firms. Again, this was very welcome.

Firms across financial services have been clear-eyed on the outcome of any possible agreement. Many had already put in place plans to enable them to service customers and clients on the basis of a possible no-deal outcome. The extent of this preparation can be seen from the data in the ongoing EY Brexit Tracker.[2] As of January 2021, this showed that, of the 222 firms monitored, 41% (92) have said they are considering or have confirmed relocating operations and/or staff to Europe. Almost two thirds (63%; or 30 out of 48) of the universal banks, investment banks and brokerages in this group are considering relocating operations and/or staff to the EU or have already done so.

It is too early to predict the medium- to long-term impact on UK-EU trade as the decisions that firms take on the structure and location of their operations will largely depend on firm-specific business strategies. In addition, there is evidence to suggest that many businesses have used Brexit as an accelerator of strategic decisions that they would have undertaken over a longer period and have moved some activities out of Europe altogether to jurisdictions with higher growth or greater potential.

6. The Joint Declaration on Financial Services Regulatory Cooperation sets out that both sides seek to establish structured regulatory cooperation on financial services. What form should this dialogue take?

We welcome the commitment set out in the Joint Declaration to agree a Memorandum of Understanding (MoU) establishing a framework for future financial services regulatory cooperation.
We believe the following key principles should inform the development and provisions of the MOU on UK-EU financial services regulatory cooperation:

[2] https://www.ey.com/en_uk/news/2020/09/ey-financial-services-brexit-tracker-fs-firms-continue-moving-staff-ahead-of-brexit-deadline

- Stabilise and normalise the relationship between the two parties
- Lay the foundations for a close and continuous dialogue
- Retain the autonomy of each party in their decision making
- Enable both sides to identify common challenges and areas for future collaboration
- Consult with stakeholders to ensure those impacted by changes are informed.

However, it should be noted that the MoU is only one element of a broader relationship for financial services with the EU. Moreover, the MoU will struggle to succeed unless it builds upon a relationship of mutual trust and respect between the UK and the EU. It should serve as part of the effort to establish a positive post-Brexit working relationship between the two sides. As such, it should seek to provide a mechanism to exchange information and, where appropriate, resolve ongoing issues for the benefit of the industry as well as its clients and customers (from all sizes of corporates to individual savers and pension holders) in the UK and EU.

7. Given the plans to delegate more powers to financial regulators, what form of parliamentary oversight of these regulators would be appropriate?

The current mechanisms for parliamentary oversight work well, although given the additional powers that have been delegated to UK regulators, more resources may need to be devoted to this task in future.
TheCityUK believes that the Treasury Select Committee (TSC) could retain its existing role, overseeing all aspects of policy (both macro and micro economic) that are the responsibility of HM Treasury and its agencies. It is important that there is a forum within Parliament which is able to shadow HM Treasury's entire suite of departmental responsibilities and that can make connections (and identify any inconsistencies) between the different components of government economic policy.

The TSC could also take a more proactive role in scrutinising regulatory policy while not second guessing the decisions made by an independent regulator. Within its overarching remit the TSC could in relation to financial services regulation place a particular emphasis on:
- Strategic orientation and objectives: overseeing both ex ante and ex post the government's and regulators' strategic priorities for the financial services sector and the operation of the overall framework for financial regulation
- Monitoring delivery: assessing the regulators' delivery of their strategic plans
- Organisational efficiency and effectiveness: ensuring the regulators are efficient, well-run and professional
- International coherence: overseeing the general state of the relationship between UK policy and policymakers and those in other key jurisdictions and in international forums.

A new financial services sub-Committee could be set up to provide a more focused venue for ongoing scrutiny of regulation, allowing the TSC to conduct thematic inquiries, as necessary. This sub-Committee – comprised of members of both Houses, perhaps drawn (at least in part) from members of the TSC and

the EU Services Sub-Committee – could look in detail at specific pieces of financial services regulation. It would place a particular emphasis on:

- Consistency: ensuring that regulatory action is consistent with the policy intent set out in the underlying legislation
- Assessing outcomes: ensuring that the regulators are accountable for the 'real world' outcomes of the actions they have (or have not) taken, including where their actions have had impact on other public policy objectives
- Interface with other public policy goals: providing a forum in which trade-offs between financial services regulatory policy and other public policy goals - including in relation to equivalence with international partners' regimes - can be considered and debated
- Intervening in matters of immediate interest: on occasion the Joint Committee may wish to intervene in a current issue on which regulators are developing new standards.

TheCityUK is conscious of the additional resource strain that this will place on Parliament. Potential solutions could involve secondments or leveraging a new independent body which could report into the committees.

TheCityUK, through the International Regulatory Strategy Group (IRSG) is currently finalising its position on the future regulatory framework and will be happy to share our response to the HM Treasury Future Regulatory Framework Phase II consultation once it has been finalised.

8. How might the financial services sector be affected by the changes in other, interrelated sectors?

The UK's financial services sector and its related professional services (RPS) sectors are closely intertwined. A major factor in the development of the UK's comparative advantage in financial services is the presence of world leading RPS sectors. Some of the key services provided by the RPS sectors to the financial services sector include legal advice, management consultancy and auditing.

RPS firms, threatened with the possibility of a no deal exit, prepared for the possibility that their current methods of operation in the EU would no longer be permitted, including through planning and implementing restructuring operations. Reservations or Non-Conforming Measures in the TCA mean that UK RPS firms have had to execute plans to navigate the patchwork imposition of foreign investor equity caps, joint venture requirements, economic needs tests, performance requirements, restrictions relating to corporate form of a service-supplier, or residency/nationality requirements for certain business personnel across individual EU member states.

The accountancy/audit sector is awaiting an equivalence determination by the EU of the UK audit regulatory framework on the basis of the full implementation of the recent EU audit reform, as well as an adequacy determination (as under the Statutory Audit Directive). The equivalence determination would maintain a degree of mutual regulatory reliance between the UK and EU, and thereby remove the requirement for UK audit firms to register with EU regulators and be subject to regulatory inspections and potentially overlapping regulations in cases of cross-border listings between the EU and the UK. The adequacy determination is critical to the capacity of regulators to transfer audit working papers between

the UK and EU. In the absence of successful equivalence and adequacy determinations, UK audit and accountancy firms will have to continue to navigate complex regulatory requirements across the EU in order to provide cross-border advice.

These new operating structures and practices will give rise to some tax disadvantages and are a good deal more cumbersome administratively to operate, but they have enabled UK RPS firms to continue to provide services to the financial services sector.

A large number of UK professional services practitioners (particularly solicitors and barristers) sought admission to professions and Bars in EU jurisdictions in order to ensure that they were still able to provide services to their clients. However, the effectiveness of some of these workarounds is now being called into question (for example, UK qualified lawyers may now have to re-qualify in Ireland rather than simply apply to the Irish Law Society based on their UK qualifications[3]) and law firms have had to consider how they provide EU legal advice and adapt practices to ensure that legal privilege continues to be attached to any advice provided.

The global primacy of English law, as the law of choice for international business, is another significant driver of the success of the UK's financial services sector and the wider economy. Of the world's 320 jurisdictions, more than one quarter use English common law, which continues to lead the way as the most widely used governing law for cross border contracts.

The UK is also one of the leading international centres for the resolution of commercial disputes. Therefore, the continuation of civil judicial cooperation between the UK and EU is a matter of importance to the financial services sector. In seeking to continue this cooperation the UK has applied to join the Lugano Convention, an international treaty clarifying which national courts have jurisdiction in cross-border civil and commercial disputes and ensuring cross-border enforcement of judgments. The UK's accession to the Convention requires the agreement of all its signatories, including the EU. Although the Lugano Convention is a separate issue to the TCA, TheCityUK would like to see the EU Commission issue a positive recommendation to Member States regarding the UK's application to accede to the Convention as soon as possible in the mutual interests of businesses and individuals in both the UK and EU.

While covered in more depth in the answer to question 15 below, the free flow of data is an important cross-cutting issue. Any interruption to data flows would likely result in wide cross-industry effects, including in financial services. The securing of mutual adequacy determinations between the EU and UK is of vital importance to the FRPS industry, which depends on the free flow of data to ensure that businesses can continue to operate on a cross-border basis. This is particularly important in relation to the EU, which accounts for 75% of the UK's data flows. Absent an adequacy determination, firms would have to rely on the provisions under the EU GDPR as applicable to all transfers to non-equivalent third countries, such as Consent, Binding Corporate Rules, Model Contracts and

[3] https://www.irishlegal.com/article/brexit-refugee-solicitors-to-be-denied-irish-practising-certificates

Legitimate Interests derogations, which we view as significantly inferior and more cumbersome to adequacy.

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

TheCityUK has long advocated that a robust framework for the mutual recognition of professional qualifications (MRPQ) should be a key pillar for the future UK-EU relationship, and that any UK-EU agreement on MRPQ should not prevent UK professional bodies and regulators from having bilateral MRPQ agreements with EU Member State professional bodies and regulators outside of this framework.

During UK-EU negotiations the UK government sought an automatic path for the recognition of UK legal qualifications allowing for admission/requalification in Member State professions, but this ambition was not realised in the TCA. Instead, the TCA includes an MRPQ system based largely on that seen in the EU-Canada Comprehensive Economic and Trade Agreement (CETA) and other previous EU trade agreements. This allows future discussions to be held between professional bodies in the UK and Member States, who may then submit proposals on MRPQ for approval by the new Partnership Council. The Council will use the compatibility of the respective regimes and the envisioned recognition arrangements' economic value as broad criteria when considering the recommendations. The system also provides an option to submit joint recommendations for EU-wide mutual recognition arrangements covering the UK and all 27 EU Member States. However, due to the heterogeneity of legal systems and regulatory requirements across, and sometimes within, individual EU member states, this option is likely to be of limited utility for some professional services sectors such as lawyers and accountants, who are expected to pursue bilateral agreements.

There are a few issues of particular note on the MRPQ provisions in the TCA. One is that the TCA is explicit that these arrangements should not allow for automatic recognition. It is also noteworthy that the EU-Canada CETA system for MRPQ, on which the TCA is largely based, has not yet led to any recognition agreements despite being in operation for over three years. However, despite the limitations of these provisions in the TCA, the UK government has succeeded in ensuring that individual regulatory authorities (including individual Bars and Law Societies) are able to seek bilateral MRPQ agreements with Member State national and/or regional counterparts, both within the Partnership Council mechanism and outside this mechanism. Concluding such agreements will now be a key priority for the industry.

The UK government has committed to providing guidance to UK regulatory authorities and professional bodies to help them benefit from the FTA provisions and we would hope that guidance relating to MRPQ will be provided in a timely manner.

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?

The TCA confirms that UK-based FRPS businesses will have automatic rights to have a commercial presence in the EU which can be built upon to facilitate trade and international investment. However, in financial services, the impact of these provisions is limited by the strong (and customary) prudential carve-out provisions which allow EU Member State regulators to override market access commitments where necessary in order to protect financial stability. The TCA provisions on cross-border trade in services are considered in TheCityUK's response to questions 1,5 and 8 in this submission.

11. Under the future relationship agreement, the UK will become an associate member of Horizon Europe but will not associate with the Erasmus+ programme. What impact will this have on the UK's research and education sector and students in the UK and EU? N/A

12. What is your assessment of the Turing Scheme - the Government proposed domestic alternative to Erasmus? N/A

13. How will the provisions in the UK-EU Trade and Cooperation Agreement affect the creative industries sector? N/A

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?

See answer to 15. below

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

Digital trade is increasingly important for facilitating economic growth: even before Covid-19, half of global services trade was digitally enabled. Despite this, restrictions on digital trade around the world have doubled in the last 10 years. It is critical to ensure that services businesses can continue to rely on the free flow of data across borders, not least between the UK and the EU, which accounts for 75% of the UK's data flows.

When considering digital trade between the UK and EU, it is important to distinguish between trade in two kinds of data which are regulated differently: personal data (that is, data that refers to an identifiable person) and non-personal data.

Some ground rules around the movement of non-personal data between the UK to the EU are now provided by the TCA digital trade chapter. The industry supports the inclusion of strong digital trade chapters within trade agreements because they can help contain the rise of forced data localisation measures, whereby countries require that businesses store data on servers within a particular market. Forced localisation measures are particularly concerning for financial services businesses because they can make it harder for businesses to

comply with regulatory requirements related to fighting financial crime, the fight against cyber-attacks, and are also a major barrier to trade.

The industry was encouraged by the digital trade provisions within the TCA as they constitute the most advanced digital trade agreement that the EU has concluded to date. The agreement includes a ban on forced data localisation as well as provisions which facilitate electronic authentication, e-signatures, and ban the transfer of source codes and customs duties on electronic transactions. These provisions should help provide a foundation for digital trade between the UK and EU in the future. Given that e-commerce is evolving rapidly, the industry also welcomes the TCA provisions around regulatory cooperation on digital trade. It should be noted, however, that it is not yet clear how the ban on localisation in the TCA will relate to financial services data because the digital trade chapter also contains a carve-out for prudential regulation.

The TCA provisions on digital trade do not apply to the additional rules and safeguards that the UK and EU have each put in place for the protection of personal data. The most legally sound and stable option of ensuring the continued ability to transfer personal data between the UK and the EU/EEA and international destinations is to secure mutual adequacy decisions between the UK and EU. The industry has welcomed the UK's decision to recognise all EEA countries as 'adequate' to allow data flows continue from the UK to the EU.

However, should the EU not grant a positive data adequacy decision to the UK, UK-based firms will need to make use of long-standing mechanisms for alternative data transfer arrangements, with Standard Contractual Clauses (SCC) being one of the most common mechanisms. While the recent *Schrems II* judgment of the CJEU found that companies can still rely on SCCs, they will need to comply with new rules which require that they make a case-by-case assessment of the treatment of data and the legal and political regime in the destination country. This could give rise to challenges and additional cost burdens for firms which could be passed onto customers and clients. Following the judgment, further guidance was recently published by the European Data Protection Board and the recommendations on supplementary measures are being consulted on. The industry is concerned that such measures could be very onerous, and in some cases impractical to implement, particularly for SMEs.

It is important to note that while not all data is personal data, businesses in the financial and related professional services industry need to be able to manage personal and non-personal data together. While we recognise the EU's stated concern to ensure it is fully satisfied that UK data protection and data gathering practice meets the general requirements of EU law, we would urge both sides to work for a pragmatic solution that allows for an open transfer of data subject to robust personal data protection standards.

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