

City of London Corporation – Written evidence (FTS0060)

Submitted by the Office of the City Remembrancer

Overview

1. As was expected, the UK-EU Trade & Cooperation Agreement (TCA) focuses on trade in goods, where it creates a preferential trade regime based on comprehensive tariff-liberalisation. On services, the ambition is much more muted. The TCA largely confers existing third-country rights to the UK and does not seek to go further. There is no specific chapter on financial services, instead these rights are included under a general chapter on services.
2. The UK's departure from the EU has meant UK financial services firms have lost passporting rights which allowed them to access the Single Market. The TCA does not provide market access rights, nor will the Memorandum of Understanding (MoU) on regulatory cooperation guarantee any further market access. The principal market access mechanism for financial services remains the EU's equivalence provisions which are contained within EU financial legislation. The European Commission has the power to take equivalence decisions where it believes the financial regulation in the other jurisdiction to be "equivalent" to its own. Although this process is done on a technical basis, it can also be affected by wider political issues. It has been indicated by the European Commission that it does not intend to take further equivalence decisions at this time in respect of the UK. It should also be noted that these equivalence provisions are also more limited than passporting rights and in many cases do not confer direct market access rights to UK firms.
3. The immediate impact on the sector has been mitigated, however, by the fact that many UK-based financial services businesses have put contingency plans in place 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.
4. For the professional services sector an important aspect of the UK-EU relationship is the ability to continue to travel for work in order to meet clients and customers abroad. The TCA does not preserve freedom of movement, nor does it provide a common standard to allow businesses to adopt a lighter touch to EU/UK immigration. However, there are provisions on short-term business visitors. The TCA defines some categories of short-term visitor, including secondments and intra-corporate transfers of highly skilled employees, and the terms of their permitted stays in the EU/UK. The two sides acknowledge a mutual intention to provide for visa-free travel for short visits from the date of entry into force.

5. Another key aspect for the professional services sector is the issue of Mutual Recognition of Professional Qualifications (MRPQs). Further detail on this matter can be found below.

Mobility of professionals

6. 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 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 means that it is not possible to rely on the agreement 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 City of London Corporation would welcome clearer guidance from the Government on short-term business travel to the EU and on any Member State restrictions that may deviate from the TCA to improve the mobility of professionals.
7. The further point has been made by other City sources that tight restrictions on the freedom of movement of people could damage the likelihood of greater UK-EU market access in trade in services. It is suggested that the EU will not be likely to allow the UK greater access to EU markets without a corresponding relaxation of restrictions on the movement of people. This relates to wider labour mobility between the UK and EU, rather than the movement of those with professional qualifications or those in particular sectors. It reflects a hesitancy on the part of the EU to allow UK firms to engage EU markets while excluding EU nationals. Allowing a service to be provided from the UK means allowing an economic activity that would otherwise be carried out in an EU country and which will support not only all the staff (professional, skilled and unskilled) that are part of that activity but also those working in the wider economy who are supported by the benefits of that activity. Sectoral liberalisation, whilst helpful, does not address such wider concerns.

Financial Services

8. The TCA does not cover financial services in any great depth and the provisions largely follow precedent from other trade agreements signed by the EU. The consequence of this is that the provisions mainly confer existing third country rights to the UK and do not go further. There is no separate financial services chapter and many of the provisions are set out in the general services and investment component of the agreement.
9. As detailed above, this means the UK financial services sector is reliant on the EU's equivalence regime for access to the Single Market. The current state of equivalence decisions are as follows:

- In November 2020, the UK announced that a package of equivalence decisions for European Economic Area (EEA) countries would come into force at the end of the transition period.
 - The UK has granted equivalence to the EU in a number of important areas and has not ruled out further determinations.
 - 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.
10. The industry has been preparing for a no deal, or a deal with limited market access, for some time and as such the immediate impact has to some extent been mitigated as firms took actions to ensure that they were able to continue serving EU customers and clients at the end of the transition period. The extent of this preparation can be seen in the results of the ongoing EY Brexit Tracker.¹ As of January 2021, it found that, of the 222 firms it monitors, 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 or have already relocated operations and/or staff to the EU.
11. The long-term impact on the UK market and trade with the EU remains to be seen, and will, to some extent, be dependent on EU decisions on its approach to the relationship with the UK. The EU has spoken about the need to rebalance the bloc's reliance on London markets and should the EU take further measures to restrict London access to the EU or to encourage more business to move to the EU then the impact will be greater. There are concerns about the impact of fragmentation on the financial markets. Fragmentation reduces liquidity, makes it more difficult to manage risks and ultimately increases costs which ultimately impacts on customers both in the UK and EU. The City of London Corporation is therefore of the opinion that UK regulators should take steps to minimise fragmentation where they can – such as via the recent announcements on the STO – and to continue discussions with EU counterparts as the relationship develops.

Joint Declaration on Financial Services Regulatory Cooperation

12. The City of London Corporation welcomes the Joint Declaration to agree a Memorandum of Understanding (MoU) establishing a framework for future

¹ https://www.ey.com/en_uk/news/2020/09/ey-financial-services-brex-it-tracker-fs-firms-continue-moving-staff-ahead-of-brex-it-deadline

financial services regulatory cooperation. The parties should engage in close, regular and structured dialogue to facilitate:

- regular bilateral exchanges of views and analysis relating to domestic and international regulatory initiatives and other issues of interest
- transparency and appropriate dialogue in the unilateral processes of adoption, suspension and withdrawal of equivalence decisions
- enhanced cooperation and coordination, including in international bodies as appropriate.

13. In the view of the City of London Corporation nothing in the MoU should undermine the autonomy of each party in relation to their decision-making and should be without prejudice to the parties' normal legislative process. The MoU should also operate in the context of the existing legislation of both parties, particularly their respective equivalence regimes. The General Provisions of the MOU should establish that, given the breadth and depth of cross border activity between them, the parties should work together in a spirit of cooperation and mutual trust. A permanent EU/UK Forum should be established with agreed Terms of Reference. The meetings of the EU/UK Forum should be co-chaired by representatives of HM Treasury and the European Commission.

Parliamentary Oversight of Regulators

14. As powers are returned from European institutions, Parliament will have a crucial role to play in scrutinising financial regulation and holding the authorities accountable. The International Regulatory Strategy Group (IRSG), jointly convened by the City of London Corporation and TheCityUK, has suggested that Parliamentary scrutiny be strengthened and reordered. This may be achieved through the creation of a new Joint Select Committee on Financial Regulation to complement the Treasury Committee, that would look in detail at specific pieces of financial services regulation. The membership might be drawn in part from members of the Treasury Select Committee and the EU Services Sub-Committee. The effective model of the Treasury Select Committee should continue to oversee all aspects of policy that are the responsibility of the Treasury and its agencies. The IRSG recommendations also support the establishment of an independent body to advise any new committee or sub-committee scrutinising financial regulation.
15. The City of London Corporation, through the IRSG, is currently finalising its position on the future regulatory framework and will be happy to share its response to the HM Treasury Future Regulatory Framework Phase II consultation once this has been done.

Mutual Recognition of Professional Qualifications

16. The provisions in the TCA on mutual recognition of professional qualifications (MRPQs) largely follow provisions seen in 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 system also provides an option to submit joint recommendations for EU-wide mutual recognition arrangements covering the UK and all 27 EU Member States. The TCA does not allow for automatic recognition of qualifications and it is also important to note that although the TCA builds on CETA, CETA has yet to deliver any recognition agreements.

17. The City of London Corporation welcomes the fact that the TCA allows individual regulatory authorities (including individual Bars and Law Societies) to seek bilateral MRPQ agreements with member state national and/or regional counterparts, both within the Partnership Council mechanism and outside this mechanism. This will be key for supporting the industry going forward.

Cross-border supply of services

18. The TCA contains the rights to commercial establishment and cross-border contracting under the general services and investment section. The TCA confirms existing third country access to, and treatment in, both jurisdictions with respect to legal form, rights to full foreign ownership, equal treatment with domestic and other foreign firms and the prohibition of nationality tests for management. However, in financial services, the impact of these provisions is limited by the strong (and usual) prudential carve-out provisions which allow EU Member state regulators to override market access commitments where necessary in order to protect financial stability. Additionally, the UK and EU have exempted financial services from the right to choose legal form. This allows, for example, the EU to apply the requirement under CRDV for large non-EU banks to have their EU subsidiaries under Intermediate Parent Undertakings.

Creative Industries

19. The City of London Corporation is the fourth largest contributor to heritage and cultural activities in the UK. The Corporation provides the Barbican Centre, Europe's largest multi arts and conference venue, and directly funds the London Symphony Orchestra's residency. It is also a major funder of the Museum of London and supports a year-round programme of major arts festivals and events in the City and neighbouring areas and provides the Guildhall School of Music & Drama, which is ranked as one of the top ten performing arts institutions in the world.
20. Prior to the pandemic, the creative industries were one of the fastest growing parts of the UK economy, contributing £115.bn in GVA a year, and making a major contribution to the UK's international reputation and soft power. One of the major contributors to this success is international touring, and the lack of an agreement between the UK and EU for artists, performers and technical teams to travel to the EU for short term, temporary work is a major barrier to delivering this in future. Under the current UK EU agreement, artists, performers and technical teams would be subject to additional costs and red tape by needing to negotiate visa

and immigration rules of each separate EU member state. Some countries do provide an exemption for cultural activity whilst others do not. This will significantly add to the cost and complexity of touring to the EU, potentially making touring to the EU unsustainable for many performers.

21. These changes have impacted the Guildhall School of Music and Drama's ability to partner with EU collaborators on a commercial basis, and limited the ability for students to develop ensemble and project work that can be toured in Europe, which has played an important role in strengthening the school's reputation abroad. Furthermore, current students now face further challenges in their ability to earn income and prize money in Europe. Even early in their student careers, both Home and EU students have previously found paid performance work or won prize money in international competitions in Europe to help to finance their own studies. This is in addition to a decline in EU student enrolment at the school, meaning that where it had had previously enjoyed 45% of its String Department students coming from the EU, it is anticipated that the school will not be able to recruit any EU string players at all this year.

Data Adequacy

22. The ongoing free flow of data is vital to develop economies and create opportunities for growth. It is also essential 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. It is also vital for international trade to limit disruption to an absolute minimum. The financial services sector is among many which depend on the free flow of data on a daily basis. This is also essential in relation to the detection and prevention of financial crime and related offences.
23. 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.
24. 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, particularly for SMEs.

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

Digital Trade in Services

26. Digital trade provisions within the TCA constitute some of the most advanced digital trade provisions that the EU has concluded to date. The ban on forced data localisation is very welcome, as well as the provisions around regulatory cooperation. However, it is yet unclear how the ban on localisation will relate to the FS sector given the carve out for prudential regulation which exists in the digital trade chapter.
27. The UK and the EU have each put in place additional rules for the protection of personal data which are not covered by the provisions within the TCA. In order to ensure the continued ability to transfer personal data between the UK and the EU/EEA and international destinations both parties should secure mutual adequacy decisions. The UK's decision to recognise all EEA countries as 'adequate' to allow data flows continue from the UK to the EU is welcomed by the sector.

February 2021