

Professional and Business Services Council – Written evidence (PBS0007)

SUMMARY

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 partnership agreement (Future Partnership Agreement or FPA) covering the PBS sectors which would not only provide for the successful 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.

Key priorities for the PBS sector in the future relationship between the UK and EU are:

- a) That there are minimal market access restrictions, including on establishment requirements.
- b) Mutual Recognition of Professional Qualifications (MRPQ).
- c) A mobility framework with a broad definition of Business Visitors.
- d) Accession to the Lugano Convention.
- e) Granting of, and continued cooperation on, the Adequacy Decision with respect to Data Flows and the Equivalence Decisions related to Audit.

Regardless of the ambition of a free trade agreement, the level of integration when compared with the Single Market is less and trade disruption will occur regardless for trade in professional and business services. This submission includes suggestions for steps can be taken by each side to minimise the disruption to trade for the PBS sector.

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.

Question One: How important are the different UK professional and business services sectors to the UK's economy and trade in services? Please include data where possible.

4. **Economic value:** UK professional and business services is one of the UK's largest and most successful sectors accounting for £236bn of gross value added (GVA) in 2019, representing 12 % of total UK GVA (*more than manufacturing*). Combined, between 1998-2018, the sector enjoyed a compound annual growth rate of 4.6 % - twice the rate of growth of the economy's other sectors, and its employment has grown by 70 %. But critically, together the sub-sectors have a symbiotic relationship with the growth of the UK economy, playing a crucial enabling role for businesses of every size and in every location across the UK, to grow, become more productive and competitive.

Latest figures for subsector GVA for 2019:

Sub - sector	GVA (figures rounded)
Employment activities	£35bn
Management consultancy	£27bn
Legal activities	£26bn
Accounting and Audit	£26bn
Architectural and Engineering	£26bn
Office administrative, office support and other business support activities	£25bn
Rental and leasing activities	£23bn
Advertising and market research	£21bn
Scientific research and development	£17bn
Other professional, scientific and technical activities	£9bn
Total	£236bn

5. **Employment:** The professional and business services sector is also a major employer and investor in people. It trains apprentices, graduates and experienced hires, attracting people from across the UK and the world to work in the sector. Making up 1 in 8 jobs across the UK, the professional and business services employs 4.6 million people, with 62 per cent of its workforce situated outside of London and the South-East. It is also a sector made up of small and medium sized businesses: 99.8 per cent of professional and business services firms have fewer than 250 people.
6. **PBS Exports:** The professional and business services sector is also the leading UK services export, second only to the US on the world stage. Export growth for the sector has remained consistently high, with £99bn of exports and a trade surplus of £33bn, 30 % of the UK's trade in services surplus overall. It also enables vital inward investment, generating £150bn in FDI in 2018. Furthermore, in supporting the wider UK economy and the sector's own services exports, the sector's professional bodies promote world leading professional qualifications and English law underpins more

than a quarter of the world's jurisdictions. The reliability of these key levers has built trust and made the UK PBS firms attractive service providers, in turn playing a major role towards the UK's commercial success.

Question Two: What are the UK's different professional and business services sectors' key priorities for the future UK-EU relationship? What are the key priorities of smaller professional and business services providers and providers from the UK's regions and devolved nations in particular?

7. 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.
8. Key priorities in the future trading relationship negotiations for the PBS sector are, as follows:
 - a) **That there are minimal market access restrictions, including on establishment requirements.** These are expressed through the services reservations and include restrictions on equity caps and nationality requirements which would effectively bar UK Professional and Business Services firms from the European market.
 - b) **A mobility framework with a broad definition of business visitors.** (More information provided under question five).
 - c) **A framework that ensures the recognition of professional qualifications.** (More information provided under question six).
 - d) **Accession to the Lugano Convention.** While not formally part of the trade negotiations between the UK and EU, ensuring that the UK accedes to the Lugano Convention with the agreement of the EU is crucial to ensuring that all citizens, SMEs and corporations are subject to the same rules regarding bringing civil and commercial matters, recognition and enforcement of judgments and the same rules for avoidance of duplicative court process.
 - 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.** An adequacy decision in respect to data flows and the specific adequacy and equivalence decisions in the audit sector are unilateral and for the UK and EU to grant respectively. It is of vital importance that these decisions are made in a timely fashion to remove business uncertainty. Thereafter, continued regulatory cooperation is needed to avoid any unintended removal of mutual market access in cases of regulatory divergence. Equally, it is important to avoid the potential for equivalence and adequacy decisions to be revoked with

little warning. We would welcome some intra-institutional architecture to be established between the UK and the EU to ensure that the impact of any divergence is understood and intentional. Uncertainty of underlying access conditions for services trade would have negative consequences on business confidence.

Question Four: What provisions should the Government seek to negotiate to minimise potential barriers to trade, particularly for smaller professional and business services providers? What steps should the Government take to preserve the competitiveness and innovation capacity of the UK's different professional and business services sectors?

9. The Government should seek to negotiate provisions that offer clarity and certainty as to what can be expected for services providers. In addition, we think that the Government should undertake several internal reforms to give the best possible effect to the provisions of the EU-UK trading arrangements.
10. Concerning the former, the Government should seek to negotiate provisions that facilitate trade in services. These include transparency, domestic regulation, regulatory cooperation and governance provisions (allowing for the possibility to address the potential barriers on an ongoing basis).
11. There are a number of steps the Government will be able to take to minimise the potential disruption from leaving the EU's Single Market and moving to a relationship either based on an FTA-type model or no deal at the end of December 2020. These include the following:
 - a) **Ensure that the UK's immigration system facilitates temporary mobility for short term professional/business travel** (ideally, visa-free or with very little administrative burden). Non- EU professionals have faced challenges in getting short term visas for business trips, or to attend court/arbitration, which is creating a disincentive for EU entities from using UK firms. For the PBS sector it is also crucial that members/professional are able to travel to EU member states with minimal barriers and the EU has already stated that it will reciprocate any immigration barriers established by the UK. It is therefore crucial that a workable system is put forward by the UK to ensure that UK professionals can travel to EU member states with minimal barriers and vice versa.
 - b) **More broadly, ensure that the UK's immigration systems is fit for purpose by the time the transition period ends.** In support of this, the PBS sector is committed to working with the Home Office, as well as BEIS and DIT, on the implementation of the new immigration regime to ensure it is recognised as world-leading. The PBSC has put forward ambitious recommendations including the remodelling of the temporary short-term scheme to maximise its value to employers, workers and apprentices, reduce costs for hiring international talent for SMEs, and ensure that the definition of 'skilled' workers covers the diverse skills needed by the PBS sector.

- c) **Extend recognition of European professional qualifications for some parts of PBS until Mutual Recognition Agreements are in place.** The Withdrawal Agreement makes allowances for professional qualifications which are currently recognised to be continued.¹ In the event of a no deal in December 2020, European citizens who qualify after that date and move to the UK would risk their qualifications not being recognised.² To address this as part of the no-deal planning in 2019, the UK announced that they would be unilaterally extending recognition.³ The Government should consider doing the same in 2020.

While outside of the FTA framework, there are certain arrangements that underpin trade in services and effective enforcement of obligations and contractual arrangements between business operators, including:

- d) **Retain UK recognition of EU judgments** pending Lugano membership. While separate from bilateral trade negotiations, ensuring that the UK accedes to the Lugano Convention with the agreement of the EU is crucial to ensuring that all citizens, SMEs and corporations are subject to the same rules regarding bringing civil and commercial matters, recognition and enforcement of judgments and the same rules for avoidance of duplicative court process.
- e) **Continue to push for adequacy and equivalence decisions,** including data adequacy to allow the processing and flow of personal data to/from the UK and the EU. The adequacy and equivalence decisions are separate from the bilateral trade negotiations so a no deal scenario should not prevent the application and decisions being made. Indeed, the EU has granted adequacy and equivalence to a number of third-countries with whom there are no free trade agreements.

12. Irrespective of the type of trade arrangements which are agreed with the EU, in order to recover from the COVID-19 pandemic, to continue attracting global businesses to the UK and to foster home-grown entrepreneurs and start-ups, we need to refocus ourselves on what the UK needs. This means re-investing in infrastructure (both digital and physical), ensuring a first-rate education system to address our current skills shortages, encouraging investment and trade agreements focusing on supply chains to help the UK recovery, and promoting a world class scientific research agenda.

Question Five: What type of arrangements should the Government seek to negotiate with the EU for the mobility of professionals?

¹ Article 27 through Article 29 of the Withdrawal Agreement

² There is protection for EU nationals who are in the process of qualification at that date

³ Para 6 Statutory Auditors and Third Country Auditors (Amendment) (EU Exit) Regs 2019

13. Beyond the mobility issues raised under question four, the draft negotiating texts include several definitions of business visitors. The draft EU text (unlike that of the UK) also does not include the term 'investor' as part of the business visitor activities; the UK's inclusion of the term is a welcome addition. While neither the UK nor the EU has provided a draft list of covered activities which is extremely important for understanding the full scope of what is being proposed by each side, from past precedence this list is extremely limited and does not include paid work. The UK Government should be seeking to negotiate as ambitious provisions as possible with regards to short term business visitors, including a wider scope of covered activities.

Question Six: How important are arrangements on the mutual recognition of professional qualifications to professional and business services providers in the UK and EU? How could a future UK-EU agreement best allow for this?

14. The PBS sector has said that it wants the UK Government to maintain its ambition in seeking an agreement with the EU, including reaching agreement on mutual recognition of qualifications. We are pleased to see the ambition in the UK legal text in this area.

15. However, should the EU and the UK reach an agreement on how to conclude MRAs in future agreements, it would be important to provide a clear route for flexible arrangements, for example, agreeing bilateral MRAs (between one or several EU states and the UK) within the FTA framework.

Question Seven: What provisions should the Government seek to agree with the EU on cross-border investment and rights of establishment?

16. In free trade agreements (FTAs) provisions on trade in services tend to cover the terms on which a foreign service-supplier may supply services, whether through cross-border supply or through commercial presence (establishment) or personal supply of services by various types of service-provider. For investments, FTAs contain provisions on the protection of investments (including investment in commercial presence), non-discriminatory treatment, and the resolution of investment disputes.

17. The government should pursue an agreement which binds liberalisation at the highest possible level and has minimal restrictions on market access, including rights of establishment and freedom to provide services. Any agreement should include transparent, stable and predictable rules governing investment and allow UK investors to freely transfer their capital to the EU, and vice versa.

18. In particular, the following barriers to investment should be avoided:

- Foreign investor equity caps;
- Joint venture requirements;
- Economic needs tests;
- Performance requirements;
- Restrictions relating to corporate form of a service-supplier;

- Residency and nationality requirements for certain business personnel.

19. Any of the above-mentioned barriers could raise significant difficulties for UK professional and business services firms, resulting in them not being able to practise as efficiently and effectively, or in some cases, not being permitted to practise in the EU at all at the end of the transition period.
20. While the EU's commitments under the General Agreement on Trade in Services (GATS) confer a degree of freedom for third country service-suppliers to establish businesses and invest under Mode 3, the UK professional services industries would face significant barriers under WTO terms compared to the EU Single Market rules on freedom of establishment and the provision of services under which they currently operate. In the absence of an agreement they would be subject to local laws as each EU member state lists its own limitations on the market access and national treatment of professional services providers as reservations within the EU schedule of GATS commitments.
21. For example, the rules governing establishment for the legal sector differ widely across the EU. Examples of legal sector barriers include: an inability to partner with non-EU lawyers (France, Spain, Sweden); restrictions on permitted corporate forms (France, Spain, Portugal); and a requirement to be qualified in local law in order to practise 3rd country law (France).
22. 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. While some firms may have already undertaken a restructure (at great cost) due to the earlier threat of no-deal cliff-edges, there are great operational, regulatory and tax advantages associated with the use of LLP structures, which will be lost, to the detriment of the UK legal sector, in the absence of an overarching agreement on corporate forms.
23. Within the audit sector, joint UK-EU ownership of audit firms will no longer be permitted in certain member states in the absence of an agreement on corporate forms and on the equivalence of UK professional recognition leading to statutory audit rights.
24. In terms of specific asks, the government should ensure that they reach an agreement under which professional services providers are permitted to advise via all GATS Modes covering the rights to provide services cross-border, permanent establishment and on a fly-in-fly-out (FIFO) basis. Any agreement should forbid the imposition of any more additional bureaucratic requirements than are necessary to ensure that the new agreement functions properly.
25. The agreement should allow for the continued use of preferred corporate forms and with UK professional service providers facing minimal restrictions related to control, management, share rights and the right to employ or be employed by local providers.

Investment protection

26. Investment protection provisions are a comparatively recent development in FTAs. While confirming the parties' right to regulate at all levels of government, they typically offer mutual guarantees of fair treatment for foreign direct investment, plus some system of dispute settlement in the event of claims for compensation for expropriation or adverse discriminatory treatment. Typical measures are designed to preserve freedom of investment between parties, plus guarantees against discriminatory treatment tantamount to expropriation.
27. In a UK-EU FTA, as in any FTA, investment protection provisions will need to be crafted so as to respond to a number of needs and circumstances. These will include the actual nature of the investment in question; the level of protection required taking account of the risk of expropriation in the jurisdictions that are party to the FTA; the definition (broad or narrow) of "investment"; the balance to be struck between protection of both parties' investments, on the one hand, and both parties' right to regulate, on the other; the definition of fair treatment of investors; the definition of expropriation; any exclusions that are decided upon; the type of dispute resolution (state-state or investor-state) that is chosen; the approach to decision-taking in disputes (for instance, arbitral tribunals or a court system); and applicable law in disputes. Mapped across all of these will be the need to devise provisions that work for investment both by service-providers and by suppliers or manufacturers of goods.
28. The UK's proposed approach to these investment protection issues is outlined in Chapter 9 of the Government's White Paper "The Future Relationship with the EU: The UK's Approach to Negotiations" (CP 211 of February 2020). The professional and business services sector looks forward to discussing with UK negotiators the precise provisions that are likely to form part of the UK-EU FTA as the negotiations progress.

Question Eight: Should there be regulatory cooperation between the UK and the EU on professional and business services? If so, what form should such cooperation take?

29. 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 framework for the future relationship on regulatory cooperation should be based on structured cooperation which:
- 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.

Question Nine: What lessons, if any, can be learnt from the EU's existing trade agreements with other third countries including services, or negotiations on trade in services?

30. The EU has made some progress regarding the inclusion of services as part of its trade agreements, but the access provided under an FTA is considerably less than that offered by the EU Single Market. Therefore, it is difficult to categorise the lessons from trade agreements which lowered barriers between the EU and third countries versus the situation in which the UK and EU find themselves in negotiating which barriers to raise.
31. The purpose of an FTA is to promote trade between the two parties to the agreement. This is only possible if the agreement is i) Outcome orientated and ii) Usable by business. Traditionally, services provisions in FTAs have not provided a similar degree of liberalisation compared with goods trade. This is reflective of the fact that barriers to services trade are often more complicated and exist behind the border as part of the domestic regulatory environment.
32. The EU has made progress in its FTA practice for services trade in recent years. The shift from positive listing of market access and national treatment to negative listing was welcomed by businesses as it provides a concrete basis on which to understand market access and national treatment limitations rather than abstract openings which is the case in positive listing.
33. Precedent can also be drawn from the Trade in Services Agreement (TiSA) negotiations which looked to break new ground on services trade before negotiations stalled in 2016. The agreement was set to broker compromises on several longstanding divides in services negotiations such as those around Domestic Regulation.
34. However there are examples of mixed success when agreeing new and innovative provisions in trade agreements. A good example of this is the Mutual Recognition of Professional Qualifications framework agreed between Canada and the EU as part of CETA. It sets out an admirable framework – but has yet to achieve a single Mutual Recognition Agreement negotiated under it.

Question Ten: To what extent could UK-EU trade in professional and business services continue in the absence of a UK-EU agreement covering services? How effective would the WTO General Agreement on Trade in Services be in supporting such trade, and what arrangements (if any) could be put in place to go beyond the WTO framework?

35. In the event of no UK-EU trade agreement which covered Professional and Business Services, reverting to the terms set out under the GATS would be potentially problematic and varying sector-by-sector. The commitments set out in the consolidated EU and its Member States GATS schedule were first agreed in 1994 and are out of date today.

36. Given the EU GATS schedule does not represent an accurate picture of current applied market access into the EU offered on a unilateral basis, one of the larger issues associated with relying on those terms is lack of legal certainty for service providers. There is also an issue that the EU's GATS commitments differ Member State by Member State which adds additional complications for UK service providers looking to operate in the EU.
37. In the event of this outcome, there are actions which the UK Government can take to support confidence in the PBS sector:
- a) Ensure that the UK's immigration system facilitates temporary mobility for short term professional/business travel.
 - b) Ensure that the UK's immigration systems is fit for purpose by the time the transition period ends.
 - c) Retain UK recognition of EU judgments pending Lugano membership.
 - d) Extend recognition of European professional qualifications until Mutual Recognition Agreements are in place.
 - e) Continue to push for the European Commission to grant relevant adequacy and equivalence decisions.

Question Eleven: If there were no reciprocal data adequacy arrangements in place between the EU and UK by the end of the transition period, what would the implications be for professional and business services providers?

38. The most legally sound and stable option of ensuring the continued ability to transfer personal data between the UK and the EU/EEA is to secure mutual adequacy decisions. It is therefore positive that the Government has published draft legislation to transitionally recognise all EEA countries as 'adequate' and continue to allow data flows from the UK to the EU/EEA should no adequacy decision be reached. This has been welcomed by industry as the EU accounts for 75% of the UK's data flows.
39. 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.
40. 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.
41. 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, there is also legal uncertainty surrounding the use of SCC in the future, given the current challenge before the European Court of Justice (ECJ) in the *Schrems* case. While the initial opinion from the Advocate General was encouraging, only the final ruling can provide certainty as to the validity of such mechanisms. This is reportedly scheduled for 16 July 2020.

42. A multinational operating in the UK and in one or more EEA country, then Binding Corporate Rules are required to transfer personal data between the different parts of the Group located in the UK and the EEA.
43. If the ICO is a company's lead Data Protection Authority, they will need to review operations to assess whether they can still have a lead authority and benefit from the one-stop-shop.
44. Data controllers or processors that are subject to GDPR but not established in the EEA are obligated to designate a data representative based in the EEA. This representative will be the go-to person to deal with individuals and DPAs in the EEA.
45. The UK has also set up its own data adequacy regime based on its own implementation of GDPR, so personal data transfers from the UK to third countries will be subject to similar requirements to what has been described above. Whilst the UK has recognised that the EU/EEA is data adequate and the data adequacy decisions made by the EU, we understand that the UK is keeping this under review. The UK has also said it plans to oblige non-UK controllers who are subject to the UK data protection framework to appoint representatives in the UK if they are processing UK data on a large scale.
46. Therefore, there is potential for a December 2020 cliff edge should no reciprocal data adequacy arrangements be in place at the end of the transition period. This is problematic as the free flow of data is essential to develop economies, create opportunities for growth and ensure that businesses can continue to operate on a cross border basis. Should this be the case, a period of non-enforcement should be implemented (similar to the Safe Harbour precedent) to safeguard personal data transfers from the EU to the UK, to avoid unprecedented disruption to firms and individuals.

Question Twelve: What opportunities (if any) could the UK's withdrawal from the EU offer to the UK's professional and business services providers?

37. The UK's withdrawal does offer opportunities to pursue a more tailored UK trade policy and this could reflect the importance of professional and business services sector to the UK economy.
38. The Government has a long history of supporting professional and business services providers internationally. It is crucial that as the UK leaves the EU, this is increased and expanded. Crucially, trade agreements are not the only

way to promote UK services exports and facilitate inward investment in UK businesses. The Government should be looking at all the possible policy levers, including:

- a) Working with stakeholders to identify individual market access barriers to PBS trade and address them;
- b) Prioritise the PBS sector in HMG initiatives to promote trade and investment, including the GREAT campaign.
- c) Engage in bilateral and regional regulatory cooperation dialogues;

39. We have already seen that the UK Government is seeking to be ambitious on services in its negotiations, including with the USA, Japan, Australia and New Zealand, which is welcomed. In particular, the negotiations with Australia and New Zealand offer the opportunity to trial new and innovative approaches to services and investment in free trade agreements. However, these potential benefits should also be weighed against the depth of access that the UK has with the EU and the close ties on their economies.

40. The UK should also be spearheading a resurgence of multilateral and plurilateral negotiations at the World Trade Organisation on trade in services. There are a number of initiatives that the UK should be looking at including concluding talks on Domestic Regulation and E-Commerce. Over the longer-term, the UK should champion the launch of negotiations on Trade Facilitation 2.0; including services in the Environmental Goods talks; improving the scope of the services in the Government Procurement Agreement; and, explore services linked to the Information Technology Agreement and its expansion.

22 June 2020