

TheCityUK – Written evidence (PBS0023)

1. TheCityUK is the industry-led body representing UK-based financial and related professional services (FRPS). In the UK, across Europe and internationally, we promote policies that drive competitiveness, support job creation and ensure long-term economic growth. The industry contributes over 10% of the UK's total economic output and employs more than 2.3 million people, with two thirds of these jobs outside London. It is the largest taxpayer, the biggest exporting industry and generates a trade surplus almost equivalent to all other net exporting industries combined.
2. We welcome the opportunity to respond to the House of Lords EU Services Sub-Committee's Inquiry into the future UK-EU relationship on professional and business services. TheCityUK would be happy to provide further detail on any of the issues raised in this response.

Executive Summary

- The legal, accountancy and management consultancy sectors make a strong contribution to the UK economy and its trade in services which is evidenced by a multitude of statistics.
- The priority for the UK-based financial and related professional services industry is the ability to continue serving customers and clients through the transition period and beyond, and to grow new markets and develop fresh client relationships in the EU and globally.
- The government should pursue an agreement which binds services market liberalisation at the highest possible level and has minimal restrictions on market access, including rights of establishment and freedom to provide services.
- The future relationship agreement needs to include a robust framework for the mutual recognition of professional qualifications (MRPQ) which includes a clear path for admission into host state regulated professions.
- Without the ability to place the right people at the appropriate time in the jurisdictions in which they have interests, the competitiveness of UK professional services businesses may become compromised.
- Provisions within the EU's existing free trade agreements are substandard for many of the key requirements for UK professional services providers in the future UK-EU relationship.
- In the absence of a UK-EU agreement, UK professionals would find it harder to travel to the EU to work, to have their qualifications recognised within the EU, and to be able to advise and service the needs of their EU clients. Providing professional services in the EU on General Agreement on Trade in Services (GATS)/World Trade Organization (WTO) terms would be more costly across the board, and in many cases, impossible.
- Many firms may have needed to plan or undertake restructures due to the possibility that their current methods of operation in the EU will no longer be permitted at the end of the transition period.

- The professional services sector is among many which depend on the free flow of cross-border data on a daily basis so securing mutual adequacy determinations on data between the EU and UK is of vital importance.

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.

3. The related professional services element of TheCityUK's membership includes the legal services, accounting services and management consultancy sectors. In this submission, we will refer to these sectors individually and, on occasion, collectively. Where we use the term 'related professional services' (or RPS), we are referring to a combination of these three parts of the professional services sector.
4. It is difficult to speak about RPS without also considering the UK's financial services sector; the two are closely intertwined. The UK is a global leader in financial services. A major factor in the development of the UK's comparative advantage in this sector is the presence of world leading RPS sectors. UK-based RPS businesses are, along with financial services, the face of British businesses across the globe, representing an ecosystem that contributes 'soft power' as well as economic and commercial success.
5. 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 legal services industry 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.
6. According to TheCityUK's latest Key Facts report published in April 2020¹, related professional services have over 1.2 million people in employment divided among management consultancy (519,000), accountancy (418,000) and legal services (338,000).
7. The UK has the largest and most developed market in Europe for related professional services (accounting, management consulting and legal services). These three sectors contributed £21.6bn, £15.1bn and £28.8bn respectively to UK output in 2018. According to data from the Financial Reporting Council, there were over 365,000 members in the seven main accountancy bodies in the UK and the Republic of Ireland in 2018. The ICAEW was the largest of these, with 128,626 members, followed by the ACCA (98,049).

¹ <https://www.thecityuk.com/assets/2020/Reports/05a3382368/Key-facts-about-UK-based-financial-and-related-professional-services-2020.pdf>

8. The legal and accounting sectors are heavily weighted towards SMEs, which make up 99.5% of legal firms and 99.7% of accounting firms in the UK. Seventy-seven percent of legal firms and 81% of accounting firms are made up of fewer than four employees².
9. The legal and accounting sectors contributed 2.6% of UK Gross Value Added (GVA) in 2018³ and employed 2.4% of the UK workforce⁴. This compares to the broader professional, scientific and technical activities division, which contributed 7.8% of UK GDP⁵ and employed 8.6% of the UK workforce⁶, indicating higher productivity in the legal and accounting sub-sector than in the professional, scientific and technical activities sector as a whole.
10. The CityUK estimates that the total tax contribution of the legal and accounting sector to the UK public finances in 2018 was £19.1bn. We also estimate that for every £100 of UK turnover made by UK legal and accountancy firms, an amount equivalent to £38.40 is paid in taxes⁷.
11. EU statistics show that, before the UK left the EU, the UK had the largest number of employees working in the legal and accounting sector of any EU country. In 2016, the number of employees in the legal and accounting sector in the UK as a percentage of the total employees in the EU sector as a whole was almost a quarter (23.5%) of the EU total⁸.
12. For legal services alone, the total revenue from legal activities in the UK was £35.5bn in 2018. Much of this was generated by the top 100 UK law firms, who netted over £26bn in 2018/19⁹. The sector contributed

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<https://www.ons.gov.uk/businessindustryandtrade/business/activitysizeandlocation/datasets/ukbusinessactivitysizeandlocation>

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<https://www.ons.gov.uk/economy/grossvalueaddedgva/datasets/nominalandrealregionalgrossvalueaddedbalancedbyindustry>

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<https://www.nomisweb.co.uk/query/construct/summary.asp?mode=construct&version=0&dataset=189>

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<https://www.ons.gov.uk/economy/grossvalueaddedgva/datasets/nominalandrealregionalgrossvalueaddedbalancedbyindustry>

⁶<https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/datasets/broadindustrygroupsicbusinessregisterandemploymentsurveybrestable1>

⁷ <https://www.thecityuk.com/assets/2019/Report-PDFs/070ca1ac22/Total-tax-contribution-for-UK-legal-and-accounting-services.pdf>

⁸ *ibid*

⁹ <https://www.thecityuk.com/assets/2019/Report-PDFs/294e2be784/Legal-excellence-internationally-renowned-UK-legal-services-2019.pdf>

£28.8bn to UK GDP in 2018, equivalent to 1.5% of GVA¹⁰ and posted a record trade surplus of £6.6bn in 2018¹¹.

13. The UK is the largest legal services market in Europe (valued at approximately £35bn in 2018) and is second only to the US globally. It accounts for around a third of Western European legal services fee revenue and around 5-6% of global legal services fee revenue (which totalled between \$680bn and \$886bn in 2018 and is expected by some to grow to above \$1trn by 2021). The UK is home to a wide range of international law firms with more than 200 foreign law firms from around 40 jurisdictions - employing in excess of 10,000 people - operating in the country¹².

14. The UK's international standing in legal services is reflected by the following indicators:

- Five of the 15 largest Global 100 law firms, based on number of lawyers in 2018/19, have their main base of operations in the UK.
- Three of the top 10 revenue generating law firms are based in the UK.
- The largest international law firms in London have between 45% and 65% of their lawyers abroad, and many other London-based firms have between 10% and 20% of lawyers overseas.
- There are more than 10,000 practising certificate holders from England and Wales who are working abroad. This figure has risen 80% in the last decade.
- London's reputation as a leading global centre for international dispute resolution through the courts is underlined by the fact that in 2018, over 800 claims were issued in the Admiralty and Commercial Court, of which 75% involved at least one party whose address was outside England and Wales and 53% were cases where all parties involved were international. In the year to the end of June 2019, over 600 claims were issued with 77% being international in nature, of which half where all parties were international.
- London is also the leading preferred centre for arbitration. The number of civil disputes resolved through arbitration, mediation and adjudication in the UK exceeded 40,000 in 2018¹³.

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

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<https://www.ons.gov.uk/economy/grossvalueaddedgva/datasets/nominalandrealregionalgrossvalueaddedbalancedbyindustry>

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<https://www.ons.gov.uk/economy/nationalaccounts/balanceofpayments/datasets/3tradein servicesthepinkbook2016>

¹² <https://www.thecityuk.com/assets/2019/Report-PDFs/294e2be784/Legal-excellence-internationally-renowned-UK-legal-services-2019.pdf>

¹³ [Ibid.](#)

providers and providers from the UK's regions and devolved nations in particular?

15. In 2018, TheCityUK set out its members' priorities for the future relationship with the EU and future trade agreements in a report *A UK-EU Association Agreement and Future UK Free Trade Agreements*¹⁴. While the context for this report has subsequently changed, its content on our members' priorities remains valid.
16. The priority for the UK-based FRPS industry is the ability to continue serving customers and clients through the transition period and beyond, and to grow new markets and develop fresh client relationships in the EU and globally. Different sub-sectors have specific needs and requirements from the UK-EU future relationship negotiations, but TheCityUK believes that any deal must work for all parts of the FRPS ecosystem and its customers and that related professional services must form an integral part of the future relationship agreement between the EU and UK.
17. In addition to market access, there are a number of significant cross-cutting issues which will be important to each of the RPS sub-sectors including the mutual recognition of professional qualifications, access to skills and talent and the continued ability to transfer data between the EU and the UK.
18. The future relationship agreement needs to include a robust framework for the mutual recognition of professional qualifications (MRPQ) which includes a clear path for admission into host state regulated professions. The Professional and Business Services Council (PBSC), of which TheCityUK is a member, has said it would welcome legally binding wording in a Free Trade Agreement (FTA) to ensure that regulators treat qualifications as they have been treated to date. We note the MRPQ framework proposed in the UK's proposed draft future relationship text with the EU and welcome the government's stated level of ambition on this issue. In the absence of an agreement on the mutual recognition of qualifications, UK nationals seeking recognition to work in regulated professions in the EEA or Switzerland will be subject to individual host states' policies on MRPQ. This situation would create similar uncertainty for EU professionals wishing to work in the UK and add an unnecessary administrative burden to individuals and firms.
19. On talent, provisions within the agreement should include streamlined employee immigration and visa-free short-term business travel. Any policy on access to skills and talent, including the UK's points-based immigration system, should reflect the industry's future and current skills

¹⁴ <https://www.thecityuk.com/assets/2018/Reports-PDF/cdf329b8c4/A-UK-EU-association-agreement-and-future-UK-free-trade-agreements-final.pdf>

needs (see answer to question 5 below for more information on mobility and talent).

20. With respect to data, TheCityUK has been calling for both parties' adequacy determinations to be finalised by the middle of 2020 to ensure the continued and uninterrupted flow of personal data. At the time of this submission no adequacy determinations have been made. Once they are made, the UK authorities should be mindful of the need to ensure that the UK approach to data protection law ensures continued adequacy for UK-EU personal data flows.

Legal Services

21. The agreement should grant UK lawyers rights to advise clients on UK laws (England and Wales, Scotland, Northern Ireland) and public and private international law via all four GATS modes¹⁵ (including the ability to fly-in-fly-out to facilitate the provision of advice across the EU and UK). We would also advocate for the introduction of a foreign legal consultant (FLC) status (or equivalent provisions) where it does not already exist to facilitate the establishment of UK lawyers in the EU.

22. In addition to a robust MRPQ framework as outlined above, we would also like the agreement to include provisions allowing freedom of corporate form for law firms. This would allow UK legal services providers to set up (or continue operating) a law firm under host or home state rules and forms (see question 7 for further information on barriers to trade and investment).

23. Although separate from the future relationship negotiations, UK accession to the Lugano Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters will be an essential step towards maintaining legal certainty and the effective access to civil justice in cross-border disputes between citizens of the EU and UK. The UK formally applied on 8 April 2020 to become a party in its own right to the Convention. However, acceding to the Convention will require the consent of all the other signatories (including the EU Member States, Iceland, Norway and Switzerland).

Accountancy/Audit

24. The accountancy profession serves investors and facilitates the smooth operation of capital markets overall as well as a significant number of pan EU-UK parent and subsidiary undertakings and branches, joint ventures, mergers and acquisitions and listings across borders, in addition to small and medium sized enterprises (SMEs). Issues of particular importance to the accountancy and audit sector include MRPQ, rights relating to joint

¹⁵ The GATS Modes of Supply cover Cross-border trade in services (Mode 1); Consumption abroad (Mode 2); Commercial presence (Mode 3); and Presence of natural persons (Mode 4).

firm ownership, insolvency and the overall regulatory framework for statutory audit.

25. The agreement should deliver a mechanism for mutual recognition of UK/EU qualifications including access to the same aptitude tests (or adaptation periods) rather than requiring requalification. The agreement should also lay the basis for ongoing dialogue between UK and EU authorities on the convergence of educational requirements for accountants, and in particular for statutory auditors.
26. 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 will 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. The sector needs these determinations to be in place at the earliest opportunity and in any event by 1 January 2021 to provide legal and operational certainty.
27. Insolvency practitioners, and the related area of restructuring law and practice, play key roles in successful economies and assume even greater importance in periods of economic dislocation. The accountancy profession has called for the avoidance of a number of adverse consequences for both insolvency and restructuring through the impact of the UK leaving the EU on the EU Insolvency Regulation for cross-border proceedings and on the Brussels I Regulation concerning the mutual recognition and enforcement of judgments. The former provides the basis for cross-border proceedings, whereby a court in one jurisdiction will recognise the appointment of an insolvency practitioner in another jurisdiction and makes clear that the insolvency regime of that other jurisdiction will generally apply in both jurisdictions. The latter assists efficient cross-border restructuring processes through the mutual recognition of judgments.
28. There is the potential for risks, uncertainty, and the occurrence of duplicative burdens and legal complexity for corporate entities, investors and creditors, arising in particular through conflicts of law delaying or reducing distributions to creditors. It should be noted that tax authorities are often significant creditors. In the absence of an UK-EU agreement, where an insolvency practitioner is appointed in the UK to act in the case of a corporate insolvency with assets and creditors across the UK and EU, it would be necessary for the insolvency practitioner to apply to courts in each of the relevant EU jurisdictions to seek to be recognised as the

appropriate authority having jurisdiction over the assets in the EU. This additional procedure in itself will necessarily involve additional costs and complexity. There is also a risk of preference being accorded to creditors in the specific jurisdiction where assets are located, to the prejudice of creditors elsewhere. For this reason, the key ask is for the inclusion within an EU-UK agreement of mutual recognition of insolvency appointments and of judgments.

29. There are also a number of issues in the accountancy/audit sector which relate to Northern Ireland and that the agreement should cover. There are concerns in the sector about the impact of the UK leaving the EU on the staffing of accounting firms and consequently on their ability to service clients. In particular, there are questions over the future ability of firms to attract and develop staff, if qualifications and training experience gained in either jurisdiction ceased to be regarded as valid in both jurisdictions. Similarly, questions arise with regard to practising rights for statutory auditors, as well as the impact of Brexit on the long-established regulatory arrangements between the UK and Ireland. Increased regulatory burdens and compliance costs would ultimately impact on business investment. Consequently, the accountancy profession is calling for legal certainty with regard to mutual market access which avoids disruption to current market functioning and regulatory supervision

Question Three: What preparations (if any) have UK professional and business services providers made, or planned to make, ahead of the end of the transition period?

30. Threatened with the possibility of a no deal exit, some firms may have already planned or undertaken restructures¹⁶¹⁷¹⁸ due to the possibility that their current methods of operation in the EU will no longer be permitted.

31. The new restrictions faced by UK firms that would require businesses to restructure their operations could take the form 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. A large number of solicitors and barristers have had to re-qualify in EU jurisdictions in order to ensure that they are still able to provide services to their clients. Independent Professionals could also face many further restrictions as the EU remains unbound in this category under GATS. Firms are in the unenviable position of having to plan for multiple eventualities as they wait for the future relationship to be agreed.

¹⁶ <https://www.bristows.com/news/bristows-to-open-first-international-office-in-brussels/>

¹⁷ <https://www.lawgazette.co.uk/practice/post-brex-it-creep-into-ireland-continues-with-new-office-opening/5065349.article>

¹⁸ <https://www.legalbusiness.co.uk/blogs/city-stalwart-macfarlanes-opens-in-brussels-with-kwm-hires/>

32. As an example, one of our member firms which has an office in Paris had to undertake substantial work in 2019 in preparation for a no deal exit. It became clear to them that, until French Regulations were passed providing more time if there were to be no deal, they would have to restructure at some cost. This work is now being revisited. The firm's likely new structure will involve moving from its existing arrangement by which the Paris office is a branch of the English LLP to a stand-alone French structure. The new structure will give rise to some tax disadvantages and will be a good deal more cumbersome administratively to operate.

33. With respect to data, many of our members prepared for an earlier anticipated no deal exit by putting alternative data transfer arrangements in place, with Standard Contractual Clauses being one of the most widely used mechanisms. These mechanisms would also be used in the event that the UK failed to secure a data adequacy determination from the EU.

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?

34. As mentioned above, the legal and accountancy sectors are heavily weighted towards SMEs, which make up 97% of legal firms and 99% of accounting firms in the UK. Seventy-seven percent of legal firms and 80% of accounting firms are made up of fewer than four employees. The vast majority of barristers are self-employed sole traders.

35. Recent surveys have indicated that SMEs feel less well prepared for Brexit compared to larger businesses.¹⁹ SMEs also have relatively fewer resources to monitor the ongoing trade negotiations, to prepare for required changes under a no deal exit, and to actually plan and implement any of the changes necessary for their businesses to operate at the end of the transition period.

36. The most important aspect of the new relationship for SMEs is for the government to agree a deal rather than allowing the transition period to end with no deal. Ending the transition period without a deal, or with a deal which does not include provisions reflecting key priorities for the UK-based professional services ecosystem, will necessitate dealing with a patchwork of national regulations among EU members which would

¹⁹ <https://yougov.co.uk/topics/finance/articles-reports/2020/01/29/most-smes-feel-ready-brex-it-also-say-government-ha>

increase the compliance burden significantly and probably impact SME firms disproportionately.

37. The certainty created by reaching a deal would also clear the way for investment decisions, which may have been put off by businesses due to uncertainty about future business conditions. Many of these investment decisions will relate to exploiting advances in technology to aid efficiency.
38. LawTech is a prime example of development in innovation and technology in the UK's professional services industry. The UK has become a global hub for LawTech, a global market which is now worth \$15.9bn.⁵ It benefits from a highly developed legal market, a technology talent pipeline, a competitive tax system, a liberal regulatory regime and the recognition by government of the importance of innovation.

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

39. Mobility and access to talent is an issue of prime importance for the FRPS industry, which has a critical interest in being able to continue moving and recruiting people across the UK and the EU.
40. For example, 16.9% of employees in banking and finance in London are EU citizens. The UK is home to a wide range of international law firms with more than 200 foreign law firms from around 40 jurisdictions - employing in excess of 10,000 people - operating in the country. Among these foreign firms are more than 40 EU headquartered firms and around 3,000 EU qualified lawyers are currently in partnership with English and Welsh solicitors²⁰. This international presence is crucial to the leading position of England & Wales in dispute resolution.
41. Without the ability to place the right people at the appropriate time in the jurisdictions in which they have interests, the competitiveness of UK businesses may become compromised. This risk is accentuated by the interconnectedness of the economies of the UK and the EU, and the degree to which such interconnectedness depends on the free movement of people.
42. Visa free travel for short term business visitors and independent professionals is an essential element of the competitiveness of the UK's professional services sectors. Lawyers, accountants and consultants need to be able to travel to other jurisdictions in order to advise clients, often at very short notice. An inability to do so because of visa restrictions would mean those services businesses would be at a considerable competitive disadvantage.

²⁰ Brexit and the legal services sector in the EU - The Law Society of England and Wales <https://www.lawsociety.org.uk/support-services/brexit-and-the-legal-sector/>

43. In February 2020, the government reiterated that it is ending free movement of people between the UK and the EU and published a policy statement setting out the UK's future mobility arrangements for the EU and the rest of the world, which are to be administered via a points-based system.
44. Our members have previously indicated that they would not welcome future restrictions being imposed on EU citizens' ability to work in the UK and British citizens' ability to work in the EU, and would welcome future trade agreements, with the EU as well as with other countries, which offer streamlined immigration routes to employees.
45. There is a general concern across our industry that existing skills shortages will be exacerbated following the end of freedom of movement.
46. TheCityUK is at work on a Report analysing mobility frameworks in FTAs and mobility policies that could be negotiated between the UK and EU (and other jurisdictions) to facilitate labour mobility. The report is expected to be published in Q3 2020, but we would be delighted to discuss further detail of this work with your committee ahead of publication.

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?

47. The current system under the EU Mutual Recognition of Professional Qualifications (MRPQ) Directive allows the UK's related professional services sector legal certainty in the pursuit of professional recognition and access to cross-border service provision.
48. The future relationship agreement needs to include a robust framework for MRPQ which includes a clear path for admission into host state regulated professions. The PBSC, of which TheCityUK is a member, has said it would welcome legally binding wording in a Free Trade Agreement (FTA) to ensure that regulators treat qualifications as they have been treated to date. Any UK-EU agreement on a mutual recognition framework for professional qualifications should not prevent UK professional bodies and regulators from concluding bilateral mutual recognition agreements with EU member state professional bodies and regulators outside of this framework. This would facilitate an EU-wide minimum recognition standard, which could then be improved or supplemented via bilateral agreements between the professions of different countries.
49. In the absence of a UK-EU agreement on recognition of qualifications, UK nationals seeking recognition to work in regulated professions in the EEA

or Switzerland will be subject to individual host states' policies on MRPQ. This situation would create similar uncertainty for EU professionals wishing to work in the UK and add an unnecessary administrative burden to individuals and firms.

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

50. 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.
51. 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.
52. In particular, any of the following barriers to trade and 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.
53. 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.
54. While the EU's GATS commitments 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.
55. 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). This last requirement means that an English lawyer seeking to establish in France in order to advise clients only on English law, would still have to qualify as a French lawyer.

56. 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 in certain member states from the end of the transition period. While some firms may have already undertaken a restructure 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.
57. 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.
58. 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 requirements than are necessary to ensure that the new agreement functions properly.
59. 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

60. 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.
61. 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.

62. 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). TheCityUK 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?

63. Regulatory cooperation allows for a continuous dialogue on important regulatory measures which will remain important to professional services providers and their regulators given the close economic ties between the UK and the EU.

64. The framework for the future relationship should be based on structured cooperation which: ensures autonomy of decision making of both the UK and EU; aligns closely with international standards to reduce fragmentation; and, supports economic growth and investment in the UK and EU, minimising disruption and the social and economic consequences of the changed relationship.

65. As an example, in the absence of an agreement that permits automatic legal services market access across the EU and EEA, UK legal services regulators and professional bodies will need to reach agreements within 31 different states and their regulatory regimes, all of which place different levels of restrictions on third-country lawyers.

66. TheCityUK is advocating for an agreement to be reached that includes an EU-level mutual recognition framework for professional qualifications but which also allows the UK the flexibility to agree bilateral or plurilateral agreements with EU member states on MRPQ. The process of professional bodies agreeing bilateral agreements that go further with individual or

multiple member states will involve discussions with member state regulators and a degree of initial and ongoing regulatory cooperation.

67. An adequacy determination in respect to data flows and the specific adequacy and equivalence determinations in the audit sector are unilateral and for the UK and EU to grant respectively. Thereafter, continued regulatory cooperation will be needed to avoid any unintended removal of market access in cases of regulatory divergence. Equally, it is important to avoid the potential for equivalence and adequacy determinations 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 reasons for any divergence, and its potential impact, are understood and can be addressed. Uncertainty of underlying access conditions for services trade would have negative consequences on business confidence.

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?

68. The EU FTAs which are the most advanced with respect to the liberalisation of professional services trade are the EU-Canada Comprehensive Economic and Trade Agreement (CETA), the EU-South Korea free trade agreement and the EU-Japan Economic Partnership Agreement.

69. CETA is often cited as the most advanced agreement the EU has reached with respect to services trade. It takes a "negative listing" approach (meaning all aspects of trade are liberalised unless specifically excepted) and includes features to prevent any moves to reduce market access in future such as "standstill" and "ratchet" clauses. It covers all four GATS modes of supply and prohibits any quantitative restrictions or discriminatory treatment of services providers and investors from either party.

70. However, for professional services suppliers, the scale and nature of EU member state national reservations mean that, in reality, CETA has achieved only very limited market opening for legal and some other professional services beyond the level of access already accorded to suppliers from all WTO members under the EU's GATS schedules. While most FTAs include encouraging provisions on services trade in the body of the text, the real scale of market opening can only be seen once the detailed schedules of services commitments are published. In practice, such schedules, while setting out terms for market access and national treatment, tend also to include lists of reservations on non-conforming measures that the parties intend to keep in being.

71. CETA also includes a Most Favoured Nation clause (often called 'MFN forward') under which both parties give a mutual undertaking that each

will benefit from any greater level of liberalisation granted by the other in an FTA with a third party. Some consider this to be a potential roadblock to a comprehensive agreement on services trade between the EU and the UK.

72. CETA is considered substandard for many of the key requirements for UK professional services providers in the future UK-EU relationship such as the mutual recognition of professional qualifications (MRPQ) and limiting reservations on corporate forms. It also allows member states to impose reservations on short term business visitors²¹. Despite advancing market liberalisation for professional services, CETA still falls well short of what these sectors need to operate smoothly²².

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?

73. Two of the most critical assets for the professional and business services sector are people (talent) and knowledge. In order to trade internationally, practitioners need to be able to share their knowledge with international clients. They need to be able to move to and work in their clients' markets; and their professional qualifications need to be recognised in that market.

74. In the absence of an agreement between the EU and the UK covering services, UK practitioners would need to rely on the general rules of the WTO Agreements (such as Most Favoured Nation (MFN) treatment) plus GATS commitments made by the EU, subject to the specific GATS reservations by EU Member States on these crucial points.

75. Importantly, the categories of personnel that are included in the EU's GATS commitments are narrower than those used in modern FTAs. More specifically, the GATS commitments do not include independent professionals (IPs), short-term business visitors or graduate trainees (as part of the intra-corporate transferees or ICTs). Most recently concluded FTAs also include provisions on spouses and family members of ICTs which is not the case in the EU's GATS commitments.

²¹ <https://blogs.sussex.ac.uk/uktpo/publications/can-ceta-plus-solve-the-uks-services-problem>

²² An extreme example of reservations in relation to short term business visitors under CETA is provided by the UK, which does not recognise the category of short term business visitors under CETA at all and is stated to be "unbound" by it. See Annex 10-B, Point 7 of CETA. <https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/aqr-acc/ceta-aecq/text-texte/10-A.aspx?lang=eng#b>

76. While the EU's GATS commitments confer degrees of freedom for professional services suppliers from other WTO members (for instance, to establish businesses and invest under Mode 3), these fall short of the full range of freedoms (full freedom of movement, for instance) available to service-suppliers from within the EU. A UK-EU FTA would, it is hoped, provide "GATS Plus" access for UK professional services providers to the EU, building on both sides' existing GATS commitments. In the absence of an agreement there could be no "GATS Plus" provisions, and UK providers would be subject to the EU's existing GATS commitments and to local restrictions maintained by each EU member state, as each lists its own limitations²³ on the market access and national treatment of professional services providers set out in the EU schedule of GATS commitments.
77. It is the existence of limitations to market access and national treatment, compared with the Single Market, which is the major disadvantage of trading with the EU on GATS terms. Some examples of national restrictions that the EU and its member states would be free to impose on UK businesses if the bilateral trading relationship is governed only by WTO rules include limitations on corporate forms, minimum qualification requirements, equity caps, and nationality and/or residency requirements. A free trade agreement would give a degree of certainty and security to businesses which doesn't exist under WTO/GATS.
78. For all of these reasons, in the absence of a UK-EU agreement, UK professionals would find it harder to travel to the EU to work, to have their qualifications recognised within the EU, and to be able to advise and service the needs of their EU clients. TheCityUK strongly believes that completing a deal with the EU ahead of the end of the transition period is in the best interests of its members and the wider UK economy.
79. We have seen a resultant hiatus in commercial activity as previous potential UK withdrawal cliff-edges have approached and the prospect of a no deal exit has been contemplated by businesses. This has negatively affected firms' investment decisions as they wait for the form of the future relationship between the EU and the UK to become clear. Allowing the transition period to end with no deal would have a similar effect. This effect would be particularly marked for UK based professional services if no deal were to cause a reduction in the level of financial services activities in the UK.
80. While many larger firms, given sufficient time, would be able to adapt to provide services in the EU on WTO terms, there would be across-the-board increases to overhead costs and reductions in the efficiency with which professional services firms can deliver services, thereby affecting

²³ For example see a table outlining cross border limitations in countries with respect to legal services here:
https://www.ibanet.org/PPID/Constituent/Bar_Issues_Commission/BIC_ITILS_Map.aspx

their international competitiveness. Smaller firms may simply be forced to retreat back within the UK's borders, or halt any planned international expansion.

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?

81. The professional services sector is among many which depend on the free flow of data on a daily basis and it is vital for international trade to limit disruption to an absolute minimum.
82. The most legally sound and stable option for ensuring the continued ability to transfer personal data between the UK and the EU/EEA and international destinations, is to secure mutual adequacy determinations between the EU and UK.
83. TheCityUK welcomes the commitment of the European Commission to adopt an adequacy determination for the UK under GDPR by the end of 2020. In order to give vital certainty to businesses, and in line with the commitment to conclude equivalence assessments for financial services by the end of June 2020, TheCityUK has called for the adequacy determination to be concluded under a similar timeframe.
84. 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.
85. 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 Legitimate Interests derogations, which we view as significantly inferior to adequacy.
86. UK-based firms have prepared for an earlier anticipated no deal exit by putting alternative data transfer arrangements in place, with Standard Contractual Clauses (SCC) being one of the most widely used mechanisms. However, they also have the added legal uncertainty in relation to their continuing ability to use SCC in the future, given the current legal challenge before the European Court of Justice (ECJ). The recent initial opinion²⁴ from the Advocate General is to be welcomed as suggesting that SCCs may still be permitted, however we must ultimately await the final ruling from the ECJ to have certainty as to the ongoing validity of such mechanisms.

²⁴ <https://curia.europa.eu/jcms/upload/docs/application/pdf/2019-12/cp190165en.pdf>

87. For most large or international professional services businesses, the likelihood of moving client or customer data in or out of the UK is very high, and almost impossible to avoid. This could include, for example, transmitting people's details such as email addresses between offices. Consequently, the risk of technical default, even though the same protective standards are currently being applied, is extremely high. This is a reciprocal problem: EEA organisations dealing with the UK are just as likely to breach our rules and standards (absent a sensible arrangement between the two). We should work to ensure a fair and reasonable system for transferring personal data between the UK and the EU. No-one will benefit from a situation where every day, essential business activities in the UK and EU, conducted according to the highest international data protection standards, nonetheless break data protection rules.

88. The government should seek to ensure that there is no short term cliff edge on data transfers between the UK and EU, while also acknowledging that some scope to diverge will be needed over the medium to longer term, but with each side recognising that significant divergence could result in either the EU or UK losing acceptance by the other.

89. In the event no adequacy determination is reached by the end of December 2020, we would urge a period of non-enforcement (as per 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?

90. While the uncertainty related to the UK leaving the EU has created some additional work for the UK's professional business services industry in the short term as they have provided advice to clients needing to plan and adapt their business to cope with the new political, legal and economic situation, it is likely that continued uncertainty will have a negative long term effect on the industry.

91. A Thompson Reuters survey found that UK law firms expect to see a long-term decline in work if current negotiations between the UK and the EU end with no deal²⁵.

92. Despite this, the core benefits of choosing English law and England and Wales as a jurisdiction will remain, regardless of the shape of the new relationship. The flexibility of English common law, its track-record of being accepted by business, the UK's strong and independent judiciary and reputation as a centre for legal excellence will endure.

²⁵ <https://blogs.thomsonreuters.com/legal-uk/2018/04/25/no-deal-brexit-scenario-law-firms/>

93. However, there is no room for complacency. If the UK is to remain a centre for professional services, HMG needs to carefully and continuously consider the implications for the competitiveness of the UK's FRPS industry as it develops its trading relationships and policy relating to the UK's business environment.

94. The UK's new-found independent trade and investment policy will enable it to speak for global liberalisation of trade in services from its standpoint as a WTO member in its own right, unconstrained by adherence to a common EU position. It will also enable it to forge new trade agreements with countries in the rest of the world. Through these agreements, the UK has the ability to increase trade and investment with a range of growing trade partners and to further liberalise trade in professional services. HMG has been clear that they intend to be ambitious in seeking services liberalisation in the forthcoming negotiations on trade and investment, a stance which is to be welcomed.

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