

techUK –Written evidence (PBS0050)

techUK represents the companies and technologies that are defining today the world that we will live in tomorrow. The tech industry is creating jobs and growth across the UK. More than 850 companies are members of techUK. Collectively they employ more than 700,000 people, about half of all tech sector jobs in the UK. These companies range from leading FTSE 100 companies to new innovative start-ups. The majority of our members are small and medium sized businesses.

Executive Summary:

techUK would like to thank the House of Lords EU Services Sub-Committee for the opportunity to provide written feedback to their inquiry into the future UK-EU relationship on professional and business services.

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The UK has the largest and one of the most mature tech sectors in Europe, benefiting from a large amount of capital investment and maintaining a position as the third largest global destination for investment in tech, behind only the US and China.

This has allowed the tech sector to be a major contributor to the UK economy, in 2018 the digital sector added £149 billion to the UK economy, more than £400 million per day and accounting for 7.7 per cent of overall GVA.

The UK tech sector is principally made up of services, independent research commission by techUK showed that 81 per cent of digitally intensive industry exports were in services, with at least one third of these going to EU member states.

These industries are also significantly reliant on international supply chains to create their final products, on average 49 per cent of inputs of goods and services in production are imported, compared with 28 per cent for the entire economy.¹

Therefore, like many other sectors the UK tech sector relies on stable international rules and frameworks that allow its supply chains to operate effectively.

As the UK seeks to establish new trade deals, having left the EU, the future of the rules and frameworks that have allowed the UK tech sector to grow are uncertain, presenting both challenges and opportunities.

¹ [The UK Digital Sectors After Brexit – techUK/ Frontier Economics 2017](#)

Ensuring that the UK tech sector can continue to achieve the benefits of access to the EU's single market, while also developing new linkages with other international partners will be essential to the sectors continued success.

In responding to this consultation techUK sets out four priorities for Government to allow the tech sector to continue to support the delivery of business and professional services between the UK and the EU:

- I. Securing an MRPQs framework that supports the tech sector,
- II. concluding an ambitious agreement on digital trade,
- III. securing a data adequacy agreement,
- IV. supporting business prepare for the new relationship.

I. Securing an MRPQs framework that supports the tech sector

How important is the recognition of professional qualifications for the UK tech sector?

As the economy has become more digital it is useful to look at the tech sector, not as its own vertical sector in the economy, but a collection of business activities that cuts horizontally across a large number of different sectoral verticals.

Tech services are being increasingly deployed across different sectors, giving rise to new sub-sectors of industries. For example, financial technology, Fintech, insurance technology, InsurtechUK and legal services technology, Lawtech.

As the economy becomes more digital this expansion of technology services will continue as industries digitise in order to remain competitive, forcing technology providers to turn their hand to operating across a number of sectoral verticals when designing and selling services.

At the moment the UK tech sector does this very well.

Atomico's 2019 State of European tech report showed that across Europe's five largest tech industries, fintech, enterprise software, health, energy and transport, the UK was the number one destination in terms of the share of capital invested in each of these industries in 2018-2019 (tying only with Sweden for capital investment in energy tech).

In fintech in particular the UK has established a strong lead, accounting for 50% of all investment in European tech in 2019.²

Many of these sub-sectors require recognised professional qualifications to allow businesses and self-employed workers to operate and provide services. Therefore, failure to provide for the recognition of qualifications could cause significant disruption. For the tech sector this is likely to be indirect, however still a cause for concern.

² Atomico – [The State of European tech 2019](#)

For example, if there were no agreement on MRPQs, the market for lawtech solutions could be damaged if UK and EU legal firms were not able to operate across each other's markets in the ways they once did.

This could see reduced business opportunities within the lawtech market if firms face increased barriers to business, or due to uncertainty and increased administrative costs, they are less able to invest in new tech solutions.

There is also likely to be growth of new qualifications as the importance of technology increases within existing industries. There is precedent for this, for example, DCMS in 2018 ran a consultation into developing the UK cyber security profession, including on proposals to create a new chartered body for cyber professionals.³

Therefore for the UK tech sector, an agreement and framework for the recognition of professional qualifications will be important to allow companies to continue to provide professional services in the EU, while creating a pathway for the recognition of new qualifications that might emerge in relation to hi-tech business sectors (e.g. cyber security) will also be of great importance.

An MRPQs framework that supports the tech sector:

In a large majority of areas, the draft legal text published by the UK for the UK-EU free trade agreement (FTA) draws heavily on existing EU FTAs, such as the EU-Japan Agreement and the CETA agreement with Canada.

However, in other ways the UK's demands go beyond what is traditionally offered in EU FTAs.

One area where the UK is asking for greater market access than has been provided by the EU to date is on MRPQs, where the UK is seeking greater sectoral coverage than the EU has agreed to date with other trade partners. For example, the UK also wants to include the audio-visual sector.⁴

While this is welcome in principal; it is not clear whether this could be agreed in practice.

Due to the mixed competencies between the EU, member states and the professional bodies within and between member states there a risk that in seeking to achieve an ambitious agreement on MRPQs the EU and the UK could in the end conclude a compromise which is partial in coverage and potentially restrictive on bilateral agreements outside this framework.

For the tech sector there are three important core elements for an agreement on MRPQs, coverage, clarity, and time.

Coverage: it will be important to ensure that any agreement between the UK and the EU on MRPQs covers the maximum possible available at an EU level. This will

³ techUK - A Vision for UK Digital Trade Policy - 2019

⁴ [The UK in a Changing Europe – Services and Brexit 2020](#)

help ensure where an MRPQs agreement is possible, it provides a solution for the whole of the Single Market.

Clarity: where an agreement cannot be found, due to competencies that lie away from the EU level, the two sides should set out detailed information on which sectors are covered by the agreement, similar to a positive list approach.

Where an agreement cannot be reached the two parties should clearly establish that a bilateral process is the appropriate alternative.

Time: the UK and the EU should seek to identify a bridging mechanism which allows for the temporary continued recognition of professional qualifications after December 31 to allow time for any additional bilateral recognition processes to take place. This will be important so as to prevent a cliff edge on MRPQs for non-agreed sectors.

Any agreement should be developed in consultation with business and should be accompanied by Government guidance for seeking recognition with professional bodies or member states which cannot be included in the agreement.

Providing a roadmap to the mutual recognition of professional qualifications will be vital to allowing firms which provide professional services to confidently invest in innovative new solutions and technologies. As well as allowing leading services professionals in the UK and the EU to take advantage of the UK's tech sector while also continuing to operate across both markets.

II. Concluding an ambitious agreement on digital trade:

The value of digital trade:

Digital trade is defined as the cross-border transfer of data, products, or services by electronic means, usually the Internet.⁵

Digital trade spans a wide range of issues, including, e-commerce, data transfer and data protection, telecoms infrastructure, standards, intellectual property, and supporting global value changes and innovation networks.

The UK is major beneficiary of digital trade with ONS recording a UK global trade surplus of £10.2 billion in telecommunications, computer and information services. Currently telecommunications, computer and information services trade with the EU is valued at £16.8 billion, with the UK currently enjoying a trade surplus of £3.5 billion.⁶

However, the value of digital trade is likely to be even greater than this, as the ONS statistics above do not fully capture the total value of cross sectoral services trade that is delivered using digital channels.

Recent work by the Department for International Trade (DIT) is improving our understanding of cross sector digitally delivered services.

⁵ [techUK - A Vision for UK Digital Trade Policy - 2019](#)

⁶ ONS Pinkbook 2017 - 2019

Estimates produced by DIT show that the UK exported £190.3bn digitally delivered services (representing 67.1% of total UK services exports) and imported £91.1bn digitally delivered services (or 51.7% of total UK services imports) in 2018. As a result, the UK recorded a trade surplus of £99.2bn in digitally delivered services in 2018.⁷

This work is extremely important for building a better understanding of the value of digitally delivered services to the UK economy, and therefore the rules contained within digital trade chapters that facilitate this trade.

The report provides some additional detail on the value of “potentially ICT-enabled services”, which were valued at £114bn in 2018. This surplus has increased more than 4-fold since 1997 when ONS records began, driven by strong growth in exports of financial and professional business services.

We encourage the committee to examine the findings of DIT’s [Understanding and measuring cross-border digital trade](#) report when considering the benefits this brings for business and professional services.

techUK has also set our view of the digital trade strategy that the UK should pursue. Our report a [‘A Vision for UK Digital Trade Policy’](#)⁸ sets out 12 principals to guide the UK, including recommendations on intellectual property, standards and liability which will be important to the considerations of this committee when assessing the UK’s approach to digital trade.

UK and EU positions on a digital trade chapter:

Achieving an agreement on digital trade will help support and underpin the future relationship for business and professional services, particularly where large amounts of data processing, auditing and analysis are required.

In the UK-EU negotiations the legal text of UK’s draft digital trade chapter is welcome. The UK’s proposal meets a majority of the 12 recommendations set out in techUK’s A Vision for UK Digital trade report, and provides a good basis for an ambitious agreement, with solid core principals based on reciprocity, non-discrimination and market access.

In particular commitments within the chapter on dialogue and co-operation between the two parties on emerging technologies has been welcomed by techUK members, viewing this as a good precedent for future UK FTAs, as well as a good global precedent for the UK to encourage others to adopt in digital trade agreements.

The inclusion of electronic authentication and electronic trust services has also been welcomed. With members seeing this as foundational step for enabling next generation commercial digital services to evolve and be utilised effectively in future trade.

⁷ [Understanding and measuring cross-border digital trade](#) – Department for International Trade 2020

⁸ techUK - A Vision for UK Digital Trade Policy - 2019

Comparing the texts there is a high degree of alignment between the UK and the EU on digital trade, showing a clear landing zone for an agreement.

However techUK understands that there are disagreements between the UK and the EU on data flows provisions.

The UK's approach to data flows is more similar to those found in the USMCA, US Japan Digital Trade Agreement and CPTPP than existing EU trade agreements such as EU Japan and CETA.

The UK's provisions include a positive obligation to allow cross-border data transfers for business purposes. This principal acknowledges that transfers may be made subject to additional regulatory requirements, but only where these are defined.

The EU, by contrast, takes a more precautionary approach with a much greater focus on personal data protection, and more extensive sectoral exemptions on service provision when it comes to prior authorisation for data transfers for business purposes.⁹

While this is a clear difference, it does not in our view, prevent an agreement.

The EU currently holds trade agreements and adequacy decisions with a wide range of third countries that include provisions for market access and prevent the localization of data.

These agreements include a number of countries which do not implement the GDPR and have free trade agreements with other countries which have more UK style approaches to data flows.

For example, Canada, Japan have EU FTAs, and also digital trade agreements with the USA. New Zealand is currently negotiating an FTA with the EU but is also a member of CPTPP and had data adequacy.

Considering the flexible approach to digital trade the EU has taken there is therefore no reason why an agreement cannot be reached between the UK and the EU, particularly considering the UK and the EU's shared data protection systems and overall similar approaches to digital trade.

III. Securing a data adequacy agreement:

An agreement on data adequacy is vital. While the UK represents around 3 per cent of global GDP it facilitates 11.5 per cent of global cross-border data flows, with 75 per cent of this traffic going to the EU.

A failure to achieve data adequacy will mean every business in the UK and the EU that exchanges personal data will need to be mindful of additional requirements or they could face fines from their national data protection authorities.¹⁰

⁹ [Data flows across the Channel: The emerging UK-EU digital trade relationship – Atlantic Council](#)

¹⁰ [The UK Digital Sectors After Brexit – techUK/ Frontier Economics 2017](#)

Data underpins virtually all elements of trade in the modern economy and allows for the delivery of the personalised products and services that will define the fourth industrial revolution. Ensuring that data can continue to flow will therefore be vital to facilitating healthy trade between two close partners such as the UK and the EU.

Both a digital trade agreement and a positive data adequacy decision will be required to reduce barriers to the trade in data intensive or data enabled services between the UK and EU.

What is data adequacy:

Adequacy is a process created by the EU to certify that a country (or sector within a country) meets equivalent standards to EU rules on personal data protection. Adequacy is a separate process that sits outside the central negotiations around the UK-EU free trade agreement (FTA). It is a unilateral assessment carried out by the European Commission to the country applying for an adequacy decision.

Countries can apply for and may be granted adequacy by the European Commission (EC) if their data protection regimes are deemed to provide sufficient protections to personal data in their jurisdictions. This requires an assessment by the European Commission.

Receiving a full adequacy decision allows personal data to be transferred to and from the EEA as long as the relevant local data protection rules are followed. If the EC won't grant a full decision, partial adequacy decisions can be granted allowing certain sectors or registered companies to transfer data. For example, the EU has a partial decision with Canada and with the US through the Privacy Shield Framework.

The Political Declaration signed between the UK and the EU sets the framework for an adequacy assessment to be made and commits both sides to try and conclude this by the end of December 2020.

If the UK receives a positive adequacy decision personal data transfers will continue much as they did before the UK left the EU, with UK companies only required to comply with UK domestic rules (The Data Protection Act 2018) to meet the requirements to allow a legal transfer.¹¹

*(Further details on the process of the adequacy assessment and international transfers can be read in techUK's report [No Interruptions.](#))¹²

What happens if adequacy is not granted:

If an adequacy decision is not granted by the end of the transition period, the UK and EU will exchange data based on their own individual international transfers rules.

At the moment as both the UK and EU have similar rules based on the GDPR which provides clearly defined processes for transferring data requiring the use of appropriate safeguards, such as standard contractual clauses (SCCs) or Binding

¹¹ [Data, adequacy and the future relationship – an explainer - techUK](#)

¹² [No Interruptions: options for the future UK-EU data sharing relationship](#) – techUK 2017

Corporate Rules (BCRs). The ICO has provided detailed information on appropriate safeguards that can used.¹³

In the preparations for a No Deal Brexit the UK Government stated that it would automatically recognise the EU as adequate for data transfers. In this case outbound transfers from UK entities to EU entities would be supported as long as UK data protection rules were followed.

However, the EU made no such commitment meaning that appropriate safeguards would be needed for inbound transfers, from EU entities to the UK. If these contractual clauses were not included within business contracts where personal data is sent to the UK the EU based entities which transferred the data could be investigated and fined by the data protection authority of the host member state, creating a regulatory risk for companies based in the EEA when they want to transfer to the UK.

The argument for adequacy:

Achieving adequacy should therefore be a mutual goal of the both the UK and the EU and does not impinge on the objectives set out by either the European Council or UK Government in their respective negotiating objectives. There are a number of reasons for this:

- **Adequacy preserves the autonomy of both the UK and the EU;** the political declaration between the two sides notes that the UK will establish its own international transfer regime and that a positive adequacy decision, if reached, would not affect the UK and EU's autonomy over their respective personal data protection rules. The EU will conduct a review of the UK's adequacy status at least every four years, which will take into account all relevant developments, this does not limit the legislative ability of the UK or the EU. These points have been noted in the respective parties negotiating objectives.
- **A failure to achieve adequacy will create regulatory risk for companies based in the EEA;** in their preparations for a no deal outcome in October 2019, the UK Government passed legislation that recognised the EEA as adequate in the event of no deal and the UK falling out of the European Data Protection Board (EDPB) without an adequacy decision. The EU did not take similar actions. If this were to be the case in the event of no adequacy decision at the end of the transition, outbound transfers from the UK to the EU would not require additional appropriate safeguards beyond compliance with UK data protection rules, however inbound transmissions from the EEA to the UK would.

In this event EU companies would need to put in place an alternative transfer mechanism recognised by the EU. Failing to do so could result in fines on EEA located companies under the GDPR from their respective data protection authorities.

¹³ [Data protection if there's no Brexit deal - ICO](#)

- **Adequacy does not prevent either party from negotiating digital trade chapters in future free trade agreements;** New Zealand holds an EU adequacy decision while also being a signatory of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTTP). Japan also holds an EU adequacy decision while being party to agreements and negotiations which cover digital trade, such as the CPTTP and the U.S.-Japan Digital Trade Agreement and the EU-Japan agreement.
- **A failure to obtain adequacy will disproportionately affect SMEs;** techUK's 2019 survey of members on the impact of no deal¹⁴ highlighted that UK SMEs were significantly more likely to be impacted by a no deal outcome (including not achieving adequacy). More than half of small businesses (under 50 staff) and one third of medium-sized business (between 50 and 250 staff) had not taken active steps to prepare for no deal in August ahead of a presumed no deal exit on 31 October.

Anecdotal evidence suggests that levels of preparations within the UK have not increased much beyond this point, while among the EU 27 there is recognition that many companies are not aware of the adjustments, they would need to make to continue legal personal data transfers to the UK.

Both the UK and the EC have made good progress in the adequacy process. In particular it was welcome to see the recent publication of the Explanatory framework for adequacy discussions¹⁵ by the UK Government.

techUK understands that ongoing work between DCMS and the European Commission to fulfil the commitments set out in the Political Declaration is moving forward at pace, however the timeline remains tight and political disruption spilling over from the main FTA negotiations or from the wider political sphere in the UK or the EU could mean reaching a decision is challenging.

To maximise success by 31 December 2020, we would encourage both sides to seek to use their best efforts to continue to keep separate data adequacy from the more contested components of the future relationship negotiations that will fall within the scope of a UK-EU free trade agreement negotiations.

IV. Supporting business prepare for the new relationship.

Achieving a free trade agreement between the UK and the EU is in the interests of both sides. The fallout from a no deal outcome is well documented and could have severe consequences for both the UK and the EU were it to take place.

COVID-19 and the economic damage that has resulted from the pandemic makes a no trade deal outcome even more risky.

A UK-EU FTA also has longer term benefits that the immediate one of removing liberalising trade relative to a no deal outcome. The FTA will set the basis for the

¹⁴ [techUK members survey: How prepared are members for a no deal Brexit? - techUK](#)

¹⁵ [Explanatory framework for adequacy discussions – gov.uk](#)

longer-term future relationship, creating forums, committees and relationships between Government's, regulators, non-governmental bodies and businesses which will allow for the paperwork and processes of trade to be smoothed and made more efficient over time.

However even where a deal is agreed both sides will still need to make significant preparations, as the prospective FTA outline in both UK and EU legal texts still requires a significant amount of preparation from businesses.

To help business across the economy effectively prepare for an implement a deal the Government will need to:

Examine the possibility of an implementation period: achieving a deal alone is not enough to prevent serious disruptions to business and the economy. Even when a deal is struck Government, business and individuals will need time to familiarise themselves with the new rules, create and issue guidance and adapt business functions and supply chains accordingly.

As, if is common in EU trade negotiations, a deal is not reached until the 11th hour there will only be a few short weeks for these changes to be made. In this event the impacts of moving suddenly from the status quo to the new negotiated outcome would be significant, creating large costs and disruption as businesses on in both the UK and EU sides move to adjust.

It is therefore crucial that UK and the EU build a timeframe that allows businesses to adapt to new trading arrangements, potentially by phasing in the new rules over a time limited period once a deal has been reached. The Institute for Government has set out a variety of options for how this could be done.¹⁶

The UK has already shown flexibility in this regard with a new phased border planning arrangement for 2021.¹⁷ This is a welcome, and this kind of flexibility and pragmatism will help make any new agreement be brought in successfully.

Provide timely guidance for businesses: As a result of the changes that will need to be made in the event of either a deal or no deal outcome business will require time and guidance to implement changes.

At the moment there is very limited guidance for business to act on, with much of the previous no deal guidance provided by Government in the run up to the 31 October no deal deadline rescinded or removed after the signing of the Revised Withdrawal Agreement.

New technical notices and Government guidance will need to be issues soon if business is to prepare. While many businesses could make a reasonable approximation of the preparation that is needed. To convince senior management to expend resources on preparation, country managers and Brexit planners need official guidance to back up their requests for funding.

¹⁶ [Implementing Brexit: Securing more time](#) – Institute for Government 2020

¹⁷ [Government accelerates border planning for the end of the Transition Period](#) – gov.uk 2020

This argument is even harder to make after the previous no deal false starts that resulted in significant financial loss, and at a time when resources and funds are stretched due to the ongoing pandemic.

The no deal guidance provided by Government last time was welcomed by the business community. However, without issuing new guidance soon, the Government could find that business struggles to make the preparations they need to in time for the end of the transition.

It is also important to note, that due to commitments made by the UK in the Withdrawal Agreement, no trade deal prep is slightly different this time around

The major example of this is the commitments the Government made in the Northern Ireland protocol. These legal and binding commitments made by the UK mean this round of no trade prep is different than previous rounds, and the Government will need to set out where these differences are and what is required of businesses.

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