

## **Federation of Small Businesses - Written Evidence (PBS0051)**

1. The Federation of Small Businesses (FSB) is the UK's leading business organisation representing small businesses. Established over 45 years ago to help our members succeed in business, we are a non-profit making and non-party political organisation that is led by our members, for our members.
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. FSB would be happy to provide further detail on any of the issues raised in this response.

### **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 UK's professional and business services sectors play a major role in the UK's small business economy, and a major role in its international trade. According to FSB's most recent trade survey, concluded in September 2019, 31 per cent of FSB exporters sell services internationally. For comparison, this figure is 66 per cent for goods exports and a further 14 per cent for intangible goods exports (e.g. software). For context, around 20 per cent of FSB's total membership is engaged in exporting activity.<sup>1</sup>
4. Furthermore, existing FSB research has shown that almost half of all those considering to begin exporting (48 per cent) are likely to export a service.<sup>2</sup>

### **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?**

5. FSB has been consistent in calling for a free trade arrangement between the UK and EU that is underpinned, first and foremost, by the aim to ensure as free and easy access to the EU single market as possible, whilst recognising the different level of access and liberalisation afforded to countries via a free trade agreement in contrast to membership of the EU single market.
6. Nevertheless, in line with political declaration, the UK and EU should uphold their commitment to securing an ambitious trading relationship on the basis of an FTA, with deep regulatory and customs cooperation, and which goes well beyond those commitments at World Trade Organisation (WTO) level on goods and services.

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<sup>1</sup> FSB, *Destination Digital: How Small Firms Can Unlock the Benefits of Global E-Commerce*, November 2019, p3, <https://www.fsb.org.uk/resources-page/destination-digital-report-pdf.html>

<sup>2</sup> FSB, *Destination Export – The Small Business Export Landscape*, July 2016, p34, <https://www.fsb.org.uk/static/e0e19b59-9d58-4a4f-bb59f080cbf2d05a/fsb-destination-export-report-2016.pdf>

7. The EU is and continues to be the UK's largest and most important trading partner for the small business community. This is the case regardless of whether they trade in goods or services. Any new additional non-tariff barriers in the area of services trade will make trading with the EU harder and at a greater cost for small businesses.
8. It is important to remember that small businesses trading overseas often do so on tight margins and with limited resources. This means that costs or administrative burdens which could be easily absorbed by larger firms can be prohibitive to small firms, and minimising these burdens is of the utmost importance.
9. Therefore, in future trade negotiations the UK Government should support SMEs—like any other UK business—by achieving (i) comprehensive market access; (ii) ambitious regulatory transparency and regulatory cooperation; (iii) substantial trade facilitation and (iv) reduced administration.
10. The most effective way of specifically enabling SMEs to trade internationally is for FTAs to address trade barriers that *de facto* or *de jure* represent fixed costs, which SMEs will typically find more difficult to surmount than larger businesses. Examples range from regulatory compliance costs to protecting intellectual property rights. Any flexibility in this regard, e.g. improved ease of registering intellectual property, will be particularly helpful for smaller businesses.
11. In addition, FSB has consistently stated that the inclusion of a small business chapter must form a key objective in any FTA that the UK negotiates. This point is expanded upon in our response to question four, but HMG should commit to the inclusion of a comprehensive small business chapter in the future EU FTA, which includes a designated help desk/contact point for SMEs to act as a one-stop-shop for all information UK and EU SMEs require to trade.

**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?**

12. Due to the focus on the coronavirus crisis, FSB has not been able to conduct a Brexit preparedness survey since August/September 2019.
13. In this survey, conducted ahead of the then Brexit deadline of 31 October, we found that among those small firms that believe a no-deal scenario will negatively impact them (39 per cent), only one in five (21 per cent) had planned or prepared for anticipated issues. Nearly two thirds (63 per cent) did not think they were able to plan.
14. Preparations for a no-deal Brexit came at a high price, with the average cost for those exporting or importing businesses that had prepared coming in at around £3,000 on average. In addition, 34 per cent reported temporarily or permanently reduced profitability.

**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?**

15. SME participation in international trade is known to be significantly lower than the trading activities of larger-sized businesses, and utilisation of the preferential market access afforded by Free Trade Agreements (FTAs) is undoubtedly lower amongst SMEs. Previous FSB research, conducted in 2018, supports this, suggesting that only 19% of smaller businesses exporting to the rest of the world (i.e. markets outside the EU) are currently using a free trade agreement to support their trade of goods and services, whereas 52% are not, while a further 29% don't know.
16. While this underutilisation may be because the smaller businesses concerned were trading with overseas markets for which no such formal agreement existed, such as the US or Australia, it can often also be due to reasons relating to the often-limited resources of small businesses. This can include a lack of awareness of the relevant provisions of a given FTA or due to complexity involved in utilising the relevant rules. In addition, lack of information, or information asymmetries, are a major reason behind reduced trade participation of SMEs and low utilisation rates of FTAs, even if helpful provisions are in place.
17. As developed in the report *The Representation of SME Interests in Free Trade Agreements*, published by FSB in conjunction with the UK Trade Policy Observatory in January 2020, one of the foremost ways an FTA can help overcome these issues is through the incorporation of a comprehensive, standalone small business chapter.<sup>3</sup>
18. This small business chapter should commit both parties to creating a comprehensive designated help desk for SMEs (modelled on EU-JEPA), or SME contact point, to act as a one-stop-shop containing information for UK and EU SMEs on provisions including: regulations concerning IPRs; technical regulations and standards, foreign investment regulations; business registration procedures; employment regulations; and taxation information.
19. In addition, the chapter should commit both parties to establishing or maintaining its own publicly accessible website containing information on the agreement such as chapter summaries and online query tools in an accessible manner, based on the CPTPP & EU Japan EPA agreements.
20. Furthermore, the chapter should commit both parties to establishing a dedicated SME Committee, based on the USMCA or CPTPP agreements. The SME Committee should have a meaningful say in all areas that affect the trading prospects of small businesses, and allow for both parties to raise issues relating to implementation of the agreement that impede small businesses from utilising its provisions.

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<sup>3</sup> FSB, *The Representation of SME Interests in Free Trade Agreements: Recommendations for Best Practice*, January 2020, <https://www.fsb.org.uk/resources-page/fsb-trade---tpo-report-pdf.html>

21. In addition, the SME Committee should work to identify ways to assist small businesses take advantage of commercial opportunities under the agreement, exchange and discuss experience and best practice in supporting and assisting small exporters, and explore opportunities for capacity building.
22. Finally, the small business chapter should catalogue small business-friendly provisions in other chapters, for instance in chapters on e-commerce, procurement, mobility, etc., to allow small businesses to easily identify potential provisions that they might benefit from. Any small business chapter should not be negotiated in place of small business-friendly provisions in other chapters.

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

23. Commit to facilitating the entry and temporary stay of natural persons for business purposes on a reciprocal basis and to ensure transparency of this process. This includes business visitors for establishment purposes, contractual service suppliers, independent professionals and short-term business visitors.
24. Commit to ensure that the length of stay for contractual service suppliers or independent professionals is set for a cumulative period of at least 12 months, with extensions at the discretion of either Party, in any 24-month period or for the duration of the contract (whichever is less).
25. Commit to ensure that the natural persons entering the territory of the other Party (contractual service suppliers or independent professionals) must possess: (a) a university degree or a qualification demonstrating knowledge of equivalent level, or applicable professional qualification; or (b) at least two years professional experience in the sector of activity which is subject of the contract at the date of submission of an application for entry into the other Party.
26. Commit to ensuring that the UK or EU does not adopt or maintain limitations on the total number of contractual service suppliers and independent professionals in the form of numerical quotas or the requirement of an economic needs test.
27. Commit to allow the temporary entry of short-term business visitors without the requirement of a work permit or other prior approval procedures of similar intent. Moreover, the UK and EU should ensure that the maximum stay of short-term business visitors is at least up to 90 days in any six-month period (considering the rights granted under bilateral visa waivers by individual Member States).
28. Commit to making publicly available information relating to the entry and temporary stay of natural persons, which include categories of visa, permits or any similar type of authorisation regarding entry and length of stay, documentation required and conditions, fees, conditions for extension or renewal, rules regarding accompanying dependents, review or appeal procedures, and relevant laws of general application.

**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?**

29. While recognising the difficulties in negotiating commitments on the mutual recognition of professional qualifications, FSB would call on both parties to commit to creating a framework that would allow the UK and the EU to recognise professional qualifications in the EU and vice-versa, such as legal, accounting etc. This will enable relevant authorities or professional bodies in the UK and EU to negotiate mutual recognition agreements on a sector-by-sector basis which can be integrated at a later date.

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

30. Small firms have limited technical financial and human resources at their disposal. This means they are less resilient to regulatory changes, have less resource to adapt, are less able to absorb the costs of administrative requirements, and cannot spread these costs across a larger cost base.

31. Therefore, within a UK-EU FTA, both sides should commit to publish laws, regulations, procedures on matters which the FTA covers and make them available to those who are interested.

32. Both sides should promote good regulatory practices and regulatory cooperation with the aim of enhancing bilateral trade and investment. This includes promoting an effective, transparent and predictable regulatory regime, promoting compatible regulatory approaches, reducing burdensome duplicative requirements, discussing regulatory measures, practices or approaches, and reinforcing bilateral cooperation.

33. Both sides should make publicly available descriptions of the processes and mechanisms under which its regulatory authorities prepare, evaluate and reviews its regulatory measures. This includes references to guidance, rules or procedures, including those regarding opportunities for the public to provide comments.

34. Both sides should endeavour to promote regulatory compatibility by considering the promotion of common principles, guidelines, codes of conduct, mutual recognition of equivalence and implementing tools to avoid unnecessary duplication of regulatory requirements, as well as cooperate in relevant international fora with a view to developing and promoting international regulatory standards.

35. When preparing major regulatory measures, the regulatory authorities in the UK and EU should, in accordance with domestic rules, publish draft regulatory measures or consultation documents providing sufficient details about regulatory measures under preparation to enable assessment, and offer reasonable opportunities to provide and consider comments received. Moreover, the regulatory authorities should systematically carry out impact assessments of

major regulatory measures, with a focus on the impact on SMEs and cross-border trade.

36. Both sides should exchange information on their good regulatory practices, such as those relating to impact assessments, including the assessment of the effects on trade and investment.
37. Both sides should establish a forum or Committee on Regulatory cooperation to identify and manage mutual recognition and future regulatory change. This could be modelled on the Canada-US Regulatory Cooperation Council to ensure small business representation.

**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?**

38. In the specific area of small business chapters, the EU-Japan EPA is generally considered to have the most advanced example. Cooperation under the EU-Japan EPA goes beyond information on the website of each party and promotion activities at the signatory level. Interestingly, the EU and Japan established the 'EPA Helpdesk' at the EU-Japan Centre for Industrial Cooperation, which was co-financed by the European Commission and the Japanese Government. The Helpdesk offers advisory services to companies that have enquiries on using the EU-Japan EPA for their business. Other than that, the 'EPA Helpdesk' offers a wide variety of activities with a special focus on assisting European SMEs. For example, it publishes a series of information packages for SMEs to take advantage of the Agreement. It also organises thematic webinars.

**Question 11: 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?**

39. Currently, if UK businesses send personal data to someone else who is outside the European Economic Area (EEA), they are subject to the rules on international transfers for personal data contained in the General Data Protection Regulation (GDPR). The GDPR restricts transfer of personal data unless the rights of the individuals in respect of their personal data is protected<sup>26</sup> in another way, or one of a limited number of exceptions applies.
40. One particular method that small firms can use to transfer data outside the EEA in accordance with the GDPR is by using standard data protection clauses, known as standard model contractual clauses. These clauses are contractual obligations on the data exporter and the data importer, and rights for the individuals whose personal data is transferred. Individuals can directly enforce those rights against the data importer and the data exporter.
41. According to our research, only a small proportion of small businesses are aware of standard model contractual clauses as a legal means to transfer data internationally. Therefore, this suggests that small firms are reliant upon the adequacy decisions that the European Union has struck with other countries

and/or the current European data protection framework, which allows the free flow of personal and non-personal data across the European Union (subject to certain conditions). Seventeen per cent of small business exporters also indicated that they use international cybersecurity standards and recognised data management standards as a means to protect data when trading internationally.

42. Therefore, the best way to ensure that small firms can continue to send and receive data cross-border is to secure an adequacy decision with the EU post-Brexit and rollover existing EU adequacy decisions. Moreover, the Government should look to build upon this by undertaking adequacy assessments and striking decisions with other key export markets, followed by formalising the free flow of data in future free trade agreements.

**Question 12: What opportunities (if any) could the UK's withdrawal from the EU offer to the UK's professional and business services providers?**

43. The UK's withdrawal from the EU allows HMG to pursue an independent trade policy that will allow it to forge new trade agreements with countries in the rest of the world. FSB's members have expressed tremendous interest in this newfound ability. Indeed, in our most recent trade survey, FSB members indicated that the United States, Germany, France, Ireland, Canada, and Australia were the national-level markets they considered 'most important' over the next three years. In addition to the negotiation of a comprehensive agreement with the EU, negotiating high quality, comprehensive trade deals with other priority markets could increase trade and investment for the UK's small businesses.
44. In addition, the UK's withdrawal from the EU and the taking up of its independent seat at the WTO could allow the UK to play a leading role in pushing for greater liberalisation of services trade at the global level. As identified in our 2019 reports *Trading Forward* and *Destination Digital*, there is much more that the WTO can do in areas including boosting global e-commerce, greater support for micro-, small-, and medium-sized enterprises (MSMEs), and better co-ordination on domestic regulation. The UK could be a leading player in this being achieved.

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