



HOUSE OF LORDS

European Union Committee

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18th Report of Session 2016–17

# **Brexit: trade in non-financial services**

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Evidence is published online at <http://www.parliament.uk/brexit-trade-services-eu-inquiry> and available for inspection at the Parliamentary Archives (020 7219 3074).

Q in footnotes refers to a question in oral evidence.

## SUMMARY

The UK is the second largest exporter of services in the world. The majority of these services are non-financial, encompassing a broad range of sectors such as ICT (information and communications technology), telecoms, broadcasting, fashion design, aviation, tourism, education, and professional services such as accountancy and law. These non-financial services are critical to the UK's economy, fuelling growth, creating employment and supporting goods exports. At a value of £161.8 billion in 2015, they accounted for 32% of all the UK's exports and generated a £33 billion surplus for the UK's trade balance.

The EU is a significant trading partner—receiving 39% of the UK's non-financial services exports. The UK generates a surplus in its trade with the EU in many of the high-growth industries of the future—such as professional business services, digital and creative services. This report puts forward recommendations to the Government to ensure the UK remains a world leader in services exports after it leaves the EU.

Trade in services is inherently different from, and in many ways more complex than, trade in goods. Services are intangible and can be traded either online, in person, via a subsidiary business located in another territory or (increasingly) embedded within manufactured goods. We note that current statistics on the UK's trade in services only capture some of the ways in which services can be traded, and probably underestimate the importance of services trade for the UK.

Unlike trade in goods, trade in services is largely unaffected by tariffs, but instead can be restricted by non-tariff barriers. Such barriers may not only increase the cost of trade but can also prohibit trade altogether. For example, without the right qualifications or licence, some UK service providers may not be able to deliver a service abroad.

The interrelationship between the different ways services can be traded is reflected in the EU Single Market's founding principles—the 'Four Freedoms', namely the free movement of goods, services, people and capital. Accordingly, the Single Market supports trade in services by removing barriers and reducing transaction costs. While it is true that the Single Market in services is less integrated than that of goods, it would be a mistake to conclude that it is unimportant. In fact, the Single Market remains the most integrated regime for services trade in the world. It was therefore unsurprising that witnesses told us they favoured remaining in the Single Market when we launched our inquiry in October 2016. This view was overtaken by the Prime Minister's announcement on 17 January 2017 that the UK would leave the Single Market and seek a new trading partnership with the EU based on a "bold and ambitious" free trade agreement (FTA).

In light of this announcement, this report analyses those aspects of Single Market membership that witnesses favoured retaining, in order to outline what a UK-EU FTA would need to include to represent a 'good' deal for the UK's services industry. The report focuses on the UK's largest exports to the EU in non-financial services: professional business services; digital services; creative services; air services; and tourism, education and health-related travel services. We further examine the implications for each sector if no agreement with the

EU were reached and trade took place under World Trade Organization (WTO) rules.

We conclude that, in negotiating a UK-EU FTA, the Government should to seek to secure market access in specific respects. Reciprocal arrangements will also be important. For example:

- For professional business services, a FTA should include significant provisions surrounding the mutual recognition of professional qualifications and regulatory structures. It should also include rights of establishment for all types of UK service providers, particularly legal services, in the EU and *vice versa*.
- For all service providers, but particularly for providers of digital services, the UK should aim to secure an adequacy decision from the Commission, which recognises that the UK has adequate data protection standards, in order to maintain the free flow of data.
- In relation to telecommunications, to ensure UK consumers do not suffer increased prices, a UK-EU FTA should include provisions extending the abolition of roaming charges in the UK beyond 2019.
- For creative services, broadcasting licences from Ofcom should continue to be recognised in the EU. Strong protections should also be afforded to intellectual property rights, such as registered and unregistered designs.
- To continue to offer the routes they fly today, UK airlines should be able to fly to any point within the EU and provide intra-EU services either through membership of the European Common Aviation Area (ECAA), or by means of a comprehensive UK-EU air services agreement.

Negotiations on a FTA and the UK's withdrawal from the EU should recognise the link that exists between trading services and the cross-border movement of persons. The continued movement of workers and service providers in both directions is seen by the UK's booming services sectors as necessary to support growth. Without provisions in a FTA, trade in tourism, education and health-related travel services between the UK and the EU will also be restricted.

While full market access has been taken for granted as part of the UK's EU membership, outside the Single Market access in each individual area will need to be negotiated if it is to be included in a UK-EU FTA. In some cases there is no precedent to draw on, and we therefore conclude that the UK's FTA with the EU will have to be uniquely comprehensive. A dispute resolution mechanism will also be a feature of the UK's future trading relationship with the EU. We urge the Government to consult service providers fully, in particular SMEs, for whom costly and protracted legal proceedings are often prohibitive, and to bring forward initial proposals for such a mechanism at the earliest opportunity.

A 'no deal' scenario, or a deal which gave no special consideration to UK trade in non-financial services, would risk significant damage to these sectors. For instance, WTO rules do not provide for trade with the EU in aviation or broadcasting services at all. Instead, UK firms would have to rely on outdated and restrictive agreements. While the UK's global standing in services may

mitigate some negative consequences, faced with a ‘no deal’ scenario, businesses could be forced either to re-structure or relocate in order to continue to operate in the way that they do today. Moreover, WTO rules would also not sufficiently facilitate the cross-border movement of persons that supports the UK’s trade in services with the EU, nor would they ensure the free flow of data. Rules on market access also differ between EU Member States—increasing the regulatory complexity for UK firms.

Given the consequences of a ‘no deal’ scenario, and the fact that it will almost certainly take longer than two years to agree a comprehensive FTA, we re-iterate the recommendation made in our report *Brexit: the options for trade*, that the Government prioritise securing agreement to a transitional trading arrangement as part of negotiations under Article 50, so as to avoid a regulatory ‘cliff-edge’ for businesses.

We recognise that the circumstances surrounding the UK’s withdrawal from the EU will continue to change. We therefore also conclude that the Government needs to maintain and increase its engagement with the services industry throughout negotiations—particularly when the time comes for trade-offs to be made. It is of great importance that the Government should continue to narrow down uncertainty so that the UK’s leading services industries can prepare themselves to survive and flourish under the UK’s new relationship with the EU and the rest of the world.





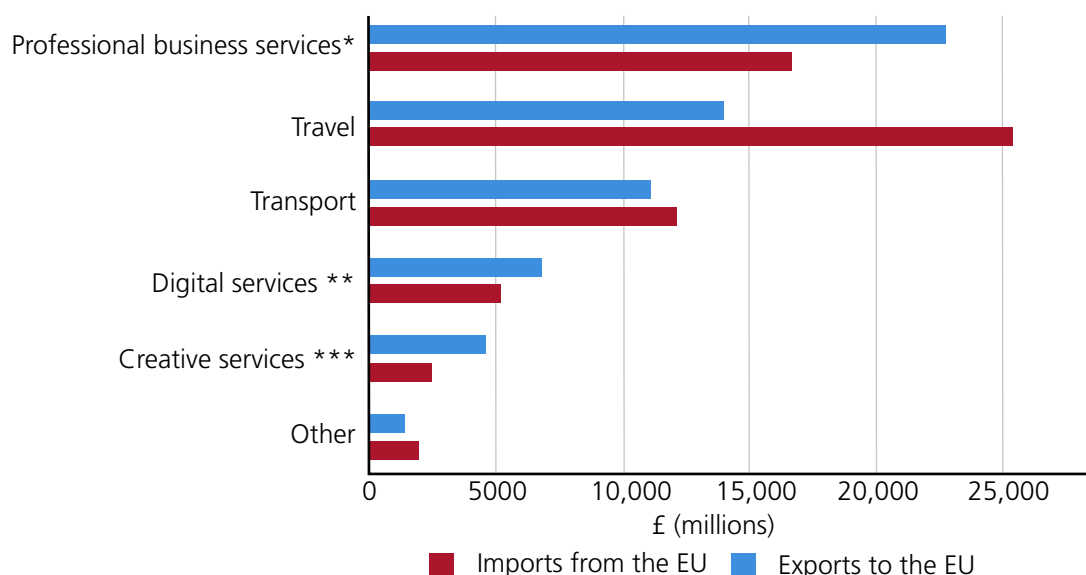
# Brexit: trade in non-financial services

## CHAPTER 1: INTRODUCTION

### Brexit: trade in non-financial services

1. Since the referendum on 23 June 2016, this Committee has published a series of reports on aspects of Brexit, including reports on the options for trade between the UK and the EU after Brexit, and on the implications of Brexit on financial services.<sup>1</sup> This latest report focuses on non-financial services. It begins with a description of the main ways in which such services can be traded, and how that trade is measured (Chapter 2). Chapter 3 explains how the UK currently trades services with the EU as a Member State and compares this with how services would be traded under free trade agreements (FTAs) and World Trade Organization (WTO) rules.
2. Subsequent chapters focus on the UK's largest exports to the EU in non-financial services. The chapters are ordered according to the size of the services' contribution to the UK's trade, and the issues raised by the different sectors. They cover professional business services (Chapter 4), digital (including telecoms) services (Chapter 5), creative services (Chapter 6), trade in aviation (Chapter 7) and tourism services (Chapter 8).

**Figure 1: UK-EU trade in non-financial services in 2015**



Source: Written evidence from the ONS ([TAS0064](#)).

\*Retitled from 'Other business services. \*\*Retitled from Telecommunications, Computer and Information services.

\*\*\*This is an amalgamation of intellectual property and personal, cultural and recreational services.

1 European Union Committee, [Brexit: the options for trade](#) (5th Report, Session 2016–17, HL Paper 72), European Union Committee, [Brexit: financial services](#) (9th Report, Session 2016–17, HL Paper 81)

3. Figure 1 uses the Office for National Statistics' (ONS) Pink Book<sup>2</sup> data to illustrate the value of the UK's trade in non-financial services, grouped under six broad headings, in 2015.
4. The majority of our evidence was received in October and November 2016, prior to the Prime Minister's speech on 17 January and the publication of the Government's White Paper, *The United Kingdom's exit from and new partnership with the European Union* on 2 February.<sup>3</sup> At that time, witnesses favoured continued membership of the Single Market for services. Although witnesses were offered the opportunity to update their testimony, we only received a handful of responses outlining similar views to those already expressed. Accordingly, this report uses the evidence we received to outline what a 'good' comprehensive FTA between the UK and EU would look like for the sectors concerned.
5. Given the Prime Minister's statement that 'no deal is better than a bad deal', each chapter also considers the implications for UK services firms of what would be, in the event that talks broke down, the fall-back position—namely, trading under WTO rules (and the General Agreement on Trade in Services (GATS)).<sup>4</sup>
6. A number of issues and sectors are outside the scope of this report. Although important, we do not consider trade in retail services.<sup>5</sup> Nor do we comment on the implications of Brexit for consumer protection, competition, employment or public procurement law.
7. Nonetheless, given that membership of the Single Market affects consumers as well as businesses, we have highlighted the most striking instances in which failure to agree a comprehensive FTA may affect consumers either through reduced access to services or increased prices.
8. This report also discusses the link between trading services and the movement of persons either to provide or consume a service. We do not comment on domestic immigration law, as this issue has been covered in our recent report on *Brexit: UK-EU movement of people*.<sup>6</sup> However, we do highlight the possible implications of changes to the movement of persons on trade in services.

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2 The Office for National Statistics (ONS) Pink Book provides detailed annual estimates of the UK Balance of Payments, which measure the economic transactions between UK residents and the rest of the world, including estimates for the current account, capital and financial accounts and the international investment position. This report refers to 2015 Pink Book data directly as well as via written evidence from the Office for National Statistics ([TAS0064](#)). We acknowledge that published Pink Book data are subject to revision by the ONS; figures were correct at the time of drafting this report.

3 HM Government, *The United Kingdom's exiting from and new partnership with the European Union*, Cm 9417, February 2017, p 42: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/589191/The\\_United\\_Kingdoms\\_exit\\_from\\_and\\_partnership\\_with\\_the\\_EU\\_Web.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/589191/The_United_Kingdoms_exit_from_and_partnership_with_the_EU_Web.pdf) [accessed 15 February 2017]

4 Theresa May MP, Speech on The Government's negotiation objectives for exiting the EU, 17 January 2017: <https://www.gov.uk/government/speeches/the-governments-negotiating-objectives-for-exiting-the-eu-pm-speech> [accessed 15 February 2017]

5 Figure 1 does not include retail services because, in the words of the Office for National Statistics (ONS), "there is no obvious match for trade in services data" and "trade by wholesale and retail" (which is collected via the OECD Trade in Value Added database). Although the ONS notes that through the ITIS survey £11.4 billion wholesale and retail services were exported globally in 2014, they do not have the figures for UK-EU trade. Accordingly, we have excluded retail services from the scope of this inquiry. We note that the ONS are planning to improve their data in this area. Written evidence from the Office for National Statistics ([TAS0064](#))

6 European Union Committee, *Brexit: UK-EU movement of people* (14th Report, Session 2016–17, HL Paper 121)

9. The report concludes with an overall assessment of what a good UK-EU FTA would look like, and of the Government’s engagement with industry. We discuss the Great Repeal Bill, and the importance of an effective dispute resolution mechanism to police the UK’s future trade relationship with the EU.

### The European Union Committee’s work

10. This report forms part of a coordinated series of inquiries undertaken by the European Union Committee and its six sub-committees following the referendum on 23 June 2016. It should be considered alongside a number of these other reports and inquiries, including our December 2016 reports on *Brexit: the options for trade*<sup>7</sup> and *Brexit: financial services*.<sup>8</sup> More recently, we have published two other relevant reports, on *Brexit: trade in goods*<sup>9</sup> and *Brexit: UK-EU movement of people*.<sup>10</sup> Our aim in all these reports is to explore and inform wider debate on the major opportunities and risks that Brexit presents to the United Kingdom.

### Brexit: the options for trade

11. In our December 2016 report on *Brexit: the options for trade* we considered the different frameworks for trade available to the UK outside the EU. We noted that those frameworks that allowed the greatest possible access to the EU’s Single Market (becoming a non-EU signatory to the EEA Agreement, or remaining within the EU’s customs union) would also require the UK to continue to implement the relevant EU body of law (referred to as the *acquis*), and could also restrict the UK’s ability to negotiate FTAs with third countries. On the other hand, trading with the EU under a FTA, or under WTO rules, would grant only restricted access to the Single Market, but would give the UK greater flexibility in other respects.
12. We concluded that there was an inherent trade-off between liberalising trade and the exercise of sovereignty. We also concluded that if the Government wished to pursue a bespoke FTA, this would almost certainly take longer than two years to negotiate—a conclusion that has become particularly pertinent following the Prime Minister’s announcement on 17 January 2017 that the Government had ruled out Single Market membership, and would seek a “bold and comprehensive” FTA with the EU. In light of this, we reiterate the conclusion reached in our report on *Brexit: the options for trade* that agreeing a transitional arrangement for the UK and the EU to adapt to their new trading terms should be an early priority in negotiations.

### This inquiry

13. The EU Internal Market Sub-Committee, whose members are listed in Appendix 1, met in October and November 2016 and January 2017 to take oral evidence from the witnesses listed in Appendix 2. The Committee is grateful for their participation in this inquiry. We also thank our Specialist Advisor, Dr Ingo Borchert.
14. **We make this report for debate.**

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7 European Union Committee, *Brexit: the options for trade* (5th Report, Session 2016–17, HL Paper 72)

8 European Union Committee, *Brexit: financial services* (9th Report, Session 2016–17, HL Paper 81)

9 European Union Committee, *Brexit: trade in goods* (16th Report, Session 2016–17, HL Paper 129). This report considers how changes to tariffs, customs procedures and technical standards will affect the movement of goods after 2019.

10 European Union Committee, *Brexit: UK-EU movement of people* (14th Report, Session 2016–17, HL Paper 121)

## CHAPTER 2: UK TRADE IN NON-FINANCIAL SERVICES

15. The UK is a leading exporter of services globally, second only to the US.<sup>11</sup> Services account for 44% of the UK's total global exports, and the majority of services exports are in non-financial services (72%). As with goods, the EU remains a key trading partner and is the destination of 39% of the UK's exports.<sup>12</sup> According to the ONS, unlike goods, the UK's services exports to the EU as a percentage of GDP are growing, up from 3% in 1999 to 4.8% in 2015.<sup>13</sup>
16. At 25%, services represent a relatively smaller proportion of the UK's total imports. However, 94% of service imports are made up of non-financial services, of which approximately 50% come from the EU.<sup>14</sup>
17. Trade in services differs dramatically from trade in goods. In a recent report, HSBC and Oxford Economics note that while trade in goods is often associated with "container ships transporting manufactured products, or bulk carriers laden with commodities like wheat and copper", it is "much harder to conceptualise trade in services, because services are less visible and tangible".<sup>15</sup> They define services broadly as being "intangible, non-storable activities", which may require physical interaction between producer and consumer. They conclude: "Although services account for two-thirds of output in most developed economies, they still represent only around 20%–25% of international trade."<sup>16</sup> This observation is reflected in the UK, where services make up three-quarters of economic output but only 44% of trade.<sup>17</sup>
18. At the same time, technological advances and the growing interconnection of economies around the world have "multiplied the opportunities for trading services across borders". Examples of commonly traded services include business-to-business services (such as providing legal and accountancy services), tourism services, transportation services, financial services and information and communications technology (ICT) services.<sup>18</sup> HSBC and Oxford Economics found that services' share of total world trade was growing.<sup>19</sup> The Institute for Fiscal Studies reported that the UK's trade in

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11 The USA exported 15.6% of the world's services in 2015, while the UK exported 7.1%. China was ranked third, Germany fourth and France fifth. HSBC and Oxford Economics, *Unlocking the growth potential of services trade* (2016) p 6: <https://www.oxfordeconomics.com/recent-releases/unlocking-the-growth-potential-of-services-trade> [accessed 1 February 2017]

12 Calculations based on written evidence from the Office for National Statistics ([TAS0064](#)) and The Pink Book—2016, Summary of balance of payments, (29 July 2016): <https://www.ons.gov.uk/economy/nationalaccounts/balanceofpayments/datasets/3tradeinservicesthepinkbook2016> [accessed 1 February 2017]

13 Written evidence from the Office for National Statistics ([TAS0064](#))

14 Written evidence from the Office for National Statistics ([TAS0064](#)). The final approximate value excludes contributions from Manufacturing and Maintenance, which were omitted from the ONS' submission.

15 HSBC and Oxford Economics, *Unlocking the growth potential of services trade* (2016) p 4: <https://www.oxfordeconomics.com/recent-releases/unlocking-the-growth-potential-of-services-trade> [accessed 15 February 2017]

16 *Ibid.*, p 4

17 These figures include financial services. The Institute for Fiscal Studies, *The EU Single Market: the value of membership versus access to the UK* (2016) p 5: <https://www.ifs.org.uk/uploads/publications/comms/R119%20-%20The%20EU%20Single%20market%20-%20Final.pdf> [accessed 15 February 2017]

18 HSBC and Oxford Economics, *Unlocking the growth potential of services trade* (2016) p 2: <https://www.oxfordeconomics.com/recent-releases/unlocking-the-growth-potential-of-services-trade> [accessed 15 February 2017]

19 *Ibid.*, p 1

all types of services (including non-financial services) increased from 31% of exports in 1999 to 44% in 2015.<sup>20</sup> This chapter explores the trends in the UK's trade in non-financial services and the statistical difficulties in accurately assessing the value of services trade.

### Understanding and measuring the UK's trade in non-financial services

19. There are four main ways in which services are internationally traded. They are defined as the 'Four Modes of Supply' by the World Trade Organization (WTO) under its General Agreement on Trade in Services (GATS), which provides the basis for global rules on services trade. These 'modes' are described in Table 1.

**Table 1: Modes of Supply under the GATS**

Modes of Supply	Examples
Mode 1: Cross-border Services	Services supplied from the territory of one country into the territory of another, without either the consumer or producer moving to the physical location of the other. An example would be a call centre in India providing services to a company in the UK. <sup>21</sup>
Mode 2: Consumption Abroad	Services which are consumed by the resident of another territory who moves to the location of the service provider, for example a French tourist visiting the UK. <sup>22</sup>
Mode 3: Commercial Presence	This refers to trade between a business resident in one country which controls an enterprise resident in another (referred to as 'foreign controlled enterprises', 'foreign affiliates', or 'subsidiaries'). For example, UK-based retailers setting up branches in France. <sup>23</sup>
Mode 4: Presence of Natural Person	This mode of trade occurs when a service professional moves to another territory temporarily to deliver their service directly to a consumer. For example a London-based management consultant going to Paris to deliver a presentation. <sup>24</sup>

#### *Trade via modes 1 and 2*

20. Trade via modes 1 and 2 is measured by the ONS in its annual Pink Book as part of a country's Balance of Payments (which records its financial transactions with the rest of the world), and by the International Trade in Services survey (ITIS).<sup>25</sup>

20 The Institute for Fiscal Studies, *The EU Single Market: the value of membership versus access to the UK* (2016) p 6: <https://www.ifs.org.uk/uploads/publications/comms/R119%20-%20The%20EU%20Single%20market%20-%20Final.pdf> [accessed 15 February 2017]

21 [Q 1](#) (Professor Holger Breinlich)

22 [Q 1](#) (Professor Holger Breinlich)

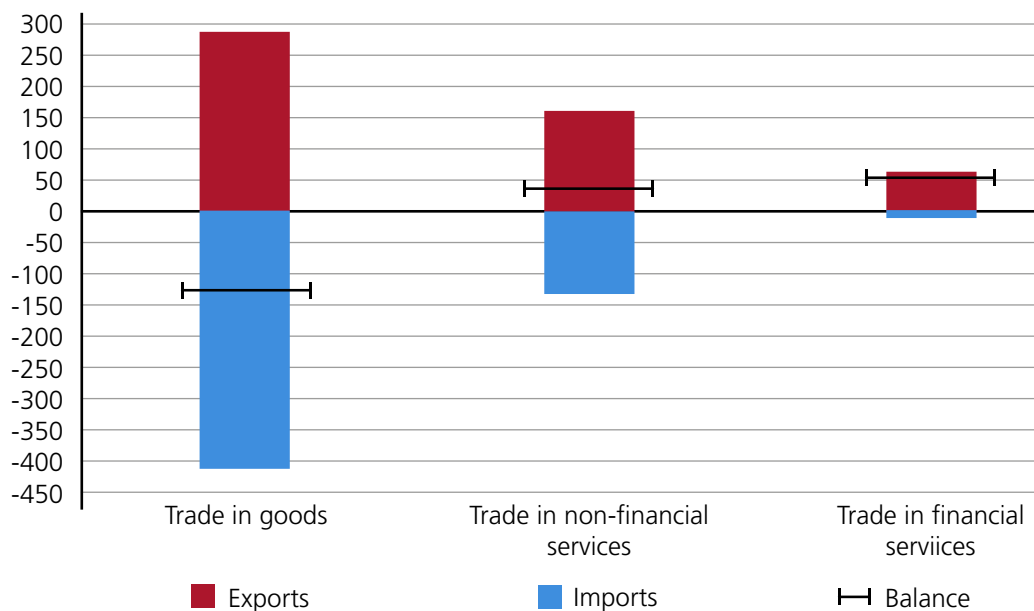
23 European Commission, 'Eurostat: Foreign Affiliates': <http://ec.europa.eu/eurostat/web/structural-business-statistics/global-value-chains/foreign-affiliates> [accessed 21 February 2017]

24 [Q 3](#) (Professor Holger Breinlich)

25 Written evidence from the Office for National Statistics ([TAS0064](#))

21. Globally, in 2015, the UK exported more non-financial services under modes 1 and 2 than it imported, generating a surplus of £33 billion.<sup>26</sup> The UK Trade Policy Observatory commented, in evidence to this inquiry, that the UK's general trade surplus in all types of services revealed the UK's "comparative advantage in services, both relative to the world as a whole and even relative to EU-27 economies".<sup>27</sup>
22. As shown in Figure 2, although the UK's global trade surplus in non-financial services is smaller than the surplus generated by financial services (which is in the order of £55 billion), it is still important in partially offsetting the UK's very large trade deficit in goods. Moreover, there is a greater volume of trade in non-financial than financial services: exports of £161.8 billion versus £63.7 billion.<sup>28</sup>

**Figure 2: Global trade balance in goods, services and financial services in 2015 (£ billions)**



Source: *Pink Book 2016* and calculations based on written evidence from the ONS ([TAS0064](#))

23. The EU is a significant market for UK exports in non-financial services (39%). In 2015, the UK ran a surplus in its trade with the EU in professional business, digital and creative services (totalling £9.8 billion). However, this was outweighed by the extent of the UK's deficit with the EU in tourism (recorded as 'travel', at £11.5 billion) and, to a lesser extent, transportation services (totalling £1.1 billion).<sup>29</sup>
24. Nonetheless, the UK Trade Policy Observatory said focusing on positive balances alone "misses the point of trade", because "in terms of employment, the output from sectors in deficit requires labour and so generates jobs just as much as that from sectors in surplus". Dr Angus Armstrong, Director

26 Calculations based on written evidence received from the Office for National Statistics ([TAS0064](#))

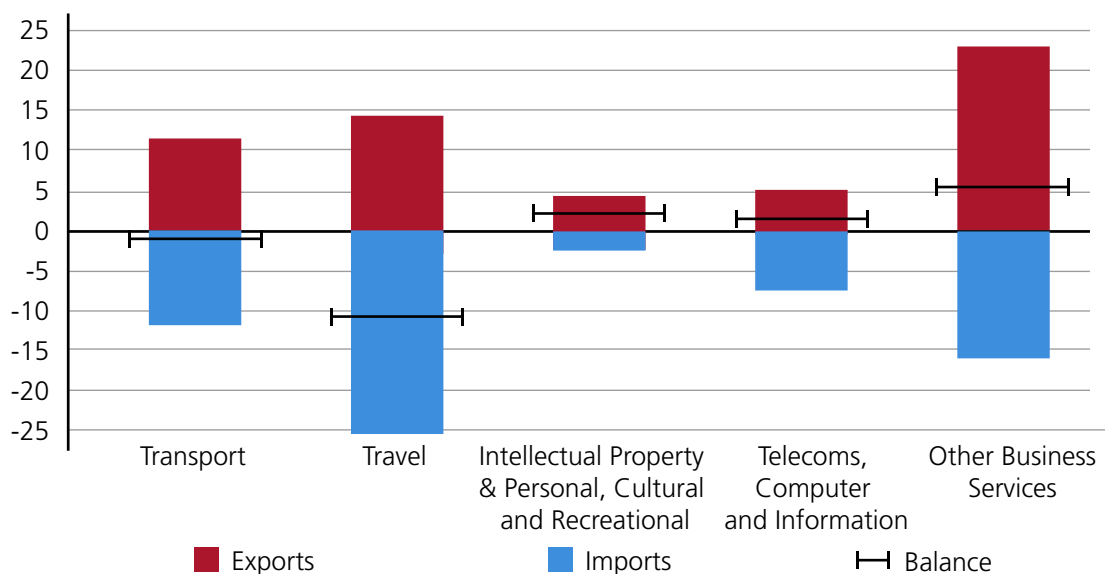
27 Written evidence from the UK Trade Policy Observatory ([TAS0085](#))

28 Calculations based on written evidence from the Office for National Statistics ([TAS0064](#))

29 Calculations based on written evidence from the Office for National Statistics ([TAS0064](#)). Total imports from the EU to the UK in non-financial services were worth £64.7 billion in 2015, while UK exports to the EU were worth £62.9 billion.

of Macroeconomics, National Institute of Economic and Social Research (NIESR), added that trade was about the “allocation of resources, the efficiency and the wages and salaries you generate from this”. He said the UK could have a “zero [trade balance] but do a lot of trade between countries, and this would still be a good thing for us because it means we can specialise in what we are good at”, while importing those things the UK was less able to produce itself.<sup>30</sup>

**Figure 3: UK-EU trade in non-financial services 2015 (£ billions)**



Source: Calculations based on written evidence from the ONS ([TAS0064](#))

### Limitations to Pink Book data on services trade

25. The ONS recognised that “trade in services data is inherently more difficult to quantify and therefore can be subject to greater variability”. We heard that the data provided in the Pink Book had many limitations—which are discussed below.

#### *Measuring modes 3 and 4*

26. Dr Armstrong explained that it was “much more difficult” to measure the value or volume of trade occurring under modes 3 and 4, because the statistics had to be collected from outside the UK, and required “imputing and estimating” numbers based on other data available.<sup>31</sup>
27. The lack of data on mode 3 is particularly concerning, because this is the mode under which the largest volume of services trade occurs. Professor Catherine Barnard, Professor of European Law at the University of Cambridge, estimated trade via mode 3 to be worth “55% or 60%”<sup>32</sup> of the world’s trade in services, while Professor Holger Breinlich, Professor of Global Economics, University of Nottingham, said that “as a rule of thumb”, it was “roughly twice as big as the other modes combined”. Professor Breinlich explained that mode 3 was not included in the Balance of Payments data,

30 [Q 3](#) (Dr Angus Armstrong)

31 [Q 1](#) (Dr Armstrong)

32 [Q 1](#) (Professor Catherine Barnard)

because “balance of payments is meant to measure transactions between residents and non-residents and, if there is a foreign company in the UK, that company would count as a resident and would not be part of the balance of payments”.<sup>33</sup> Dr Armstrong said that, while there was a close correlation between data on Foreign Direct Investment and trade via mode 3, it was not exact.<sup>34</sup>

28. The lack of data on trade via mode 4 is also problematic, and is linked to wider concerns about immigration. The UK Trade Policy Observatory said that mode 4 was “notoriously mis-measured”, thanks to the many different categories of persons working (either as ‘independent professionals’, ‘contractual services suppliers’ or ‘intra-corporate transferees’), and the difficulty of collecting data on professionals registering themselves abroad.<sup>35</sup> Professor Breinlich explained: “If McKinsey has a consultant in Paris and in London and they work together, which is basically a services trade, it goes completely unrecorded.” In his opinion, “the figures we have are an underestimate of what is truly going on”, but “by how much, it is unclear”.<sup>36</sup> The UK Trade Policy Observatory also said the movement of unskilled workers was “more likely to go unmeasured”.<sup>37</sup>
29. The UK Trade Policy Observatory concluded:
- “The fact that investment flows and movement of services professionals figure less prominently should not be construed as indicating that these modes are of lesser economic significance.”<sup>38</sup>
30. The Pink Book, in excluding modes 3 and 4, also fails to capture the extent to which different modes of supply may be complementary or substitutable. The UK Trade Policy Observatory said it was “widely believed” that professional services (such as legal advice) required “a combination of (at least) modes 3 and 4”. For example, a law firm looking to trade its services in another territory would need to begin by “establishing partnerships or other contractual arrangements (mode 3)”; in addition, “the temporary exchange of staff (often on a project [or] case-related basis) would also be required”.<sup>39</sup> Professor Breinlich developed this point, arguing that it was important, in any negotiations on a FTA, to “bear in mind that services can be provided through [these] different modes”.<sup>40</sup>

*Measuring the ‘value added’ by the UK’s services trade*

31. Professor Breinlich also told us that a service embedded within a good—referred to as the value added by UK service providers to exports—did “not show up in the service[s] statistics” found in the Pink Book.<sup>41</sup> Dr Armstrong

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33 [Q 3](#) (Prof Breinlich)

34 [Q 3](#) (Dr Armstrong). Foreign Direct Investment refers to investments made by companies or individuals based in one country in business interests that are based in another country. Data on FDI measure investments that lead to 10% foreign ownership of a firm rather than the 50% normally required for a firm to be considered as being controlled by a foreign business (thereby falling under mode 3). Investopedia, ‘Foreign Direct Investment’: <http://www.investopedia.com/terms/f/fdi.asp> [accessed 15 February 2017]

35 Written evidence from the UK Trade Policy Observatory ([TAS0085](#))

36 [Q 4](#)

37 Written evidence from the UK Trade Policy Observatory ([TAS0085](#))

38 Written evidence from the UK Trade Policy Observatory ([TAS0085](#))

39 Written evidence from the UK Trade Policy Observatory ([TAS0085](#))

40 [Q 6](#) (Professor Holger Breinlich)

41 [Q 3](#) (Professor Holger Breinlich)



referred to this as the ‘fifth mode of supply’. For example, while “software counts as a mode 1 delivery under GATS”, if that software was “embedded in some manufactured goods” it was “count[ed] as a manufactured good”.<sup>42</sup> The UK Trade Policy Observatory cited an estimate that in 2009 “nearly 35% of the EU-27 gross merchandise exports in fact represented services inputs, equivalent to over 300 billion Euro”.<sup>43</sup> The Minister for Energy and Industry at the Department for Business, Energy and Industrial Strategy, Dr Jesse Norman MP, agreed that UK non-financial services businesses were “prominent in areas that have very high value added”.<sup>44</sup>

### *The usefulness of the data*

32. The Rt Hon Matt Hancock MP, Minister of State for Digital and Culture at the Department for Culture, Media and Sport, told us the problems with the data did “not really matter much because we know from hard data that we do have, such as on employment and jobs, that Britain is really quite good at this digital stuff and our services and business services are excellent”. He concluded: “We know enough to know that that is important and therefore we know that it is important to get the freest possible trade in goods and services” between the UK and the EU.<sup>45</sup>

### **Conclusions**

33. **Services are a competitive, profitable and growing part of the UK’s trade. This is only partly reflected in the statistics on the UK’s trade in services. The data in the Pink Book only capture some of the ways in which services can be traded and probably underestimate the importance of services trade for the UK.**
34. **As with goods and financial services, the EU remains a critical trading partner for the UK’s trade in non-financial services. Trade with the EU in professional business services, digital and creative services generated a surplus of £9.8 billion for the UK’s trade balance in 2015. This was offset by large deficits in the UK’s trade in tourism and, to a lesser extent, transportation services with the EU (£11.4 billion and £1 billion respectively).**
35. **Nonetheless, the total volume of UK exports to the EU of non-financial services (£62.9 billion) is growing, and is much higher than the volume of exports of financial services (£26 billion). More jobs are also linked to trade and investment in these sectors.**
36. **In preparing its negotiating strategy, the Government will need to take account of many factors, such as the value of the sectors’ exports, the number of jobs that depend on them, whether the sectors are growing or declining, and, their strategic importance to the UK economy and the Government’s longer-term trade and industrial strategies, together with a range of cross-sectoral issues.**
37. **The Government therefore needs more accurate and detailed statistical information on trade in non-financial services than is**

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42 [Q 1](#) (Dr Angus Armstrong)

43 Lucian Cernat and Zornista Kutlina-Dimitrova, ‘Thinking in a box: ‘Mode 5’ approach to service trade’, EC Trade, Chief Economist Note, Issue 1 (March 2014): [http://trade.ec.europa.eu/doclib/docs/2014/march/tradoc\\_152237.pdf](http://trade.ec.europa.eu/doclib/docs/2014/march/tradoc_152237.pdf) [accessed 15 February 2017]

44 [Q 64](#)

45 [Q 65](#)

**currently available, particularly in relation to trade in modes 3 (establishing a commercial presence abroad) and 4 (the temporary movement of service providers across borders). Entering negotiations without such data could risk long-term, unintended consequences for the UK economy.**

## CHAPTER 3: FRAMEWORKS FOR TRADING NON-FINANCIAL SERVICES

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38. Unlike trade in goods, trade in services is rarely directly affected by tariffs (the duties imposed on goods entering a country), but can be significantly affected by non-tariff barriers. Non-tariff barriers include restrictions on the ability of a service provider to establish itself or operate in a different country, and requirements for service providers to possess certain qualifications before being allowed to provide a service.<sup>46</sup> In its report *The EU Single Market: The Value of Membership versus Access to the UK*, the Institute for Fiscal Studies (IFS) notes that the steady reduction in the use of tariffs has increased the relative importance of non-tariff-barriers, “especially so in services trade ... Estimates suggest the costs affecting services trade may be over twice those in goods.”<sup>47</sup>
39. The UK currently trades services as an EU Member State. Trade with other EU Member States is determined by the rules and principles governing the Single Market, while trade with the rest of the world is predicated upon EU-negotiated FTAs and a shared schedule of commitments at the WTO. These frameworks for trading services are described in further detail below.

### The Single Market

40. As well as creating a Single Market for the trade of goods (principally through the creation of the EU’s customs union),<sup>48</sup> the EU has worked to eliminate non-tariff barriers to the trade of services in the Single Market.

### The EU Treaties

41. The Treaty of Rome, which established the European Economic Community, referenced the creation of a ‘common market’ among its members. Article 26 (2) of the Treaty on the Functioning of the EU (TFEU) defines this ‘common’ or Single Market as:

“An area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of the Treaties.”<sup>49</sup>

42. The freedom to provide and receive services, which covers the temporary cross-border provision of services (either in person or, for example, trading digitised content online), is enshrined in Articles 56 and 57 TFEU. Services are defined as those that are provided for remuneration, and include: “(a) activities of an industrial character, (b) activities of a commercial character, (c) activities of craftsmen, [and] (d) activities of the professions”.<sup>50</sup>

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46 OECD, ‘Glossary of statistical terms : Non-Tariff Barriers’, (28 March 2014): <https://stats.oecd.org/glossary/detail.asp?ID=1837> [accessed 5 January 2017]

47 Institute for Fiscal Studies, *The EU Single Market: The Value of Membership versus Access to the UK* (August 2016) p 1: <https://www.ifs.org.uk/uploads/publications/comms/R119%20-%20The%20EU%20Single%20market%20-%20Final.pdf> [accessed 8 March 2017]

48 In the EU’s customs union, Member States have agreed to remove tariffs and restrictions on the movement of goods between their borders. Member States have also agreed to a common external tariff for all goods imported from countries outside their borders and to harmonise customs procedures. European Union Committee, *Brexit: the options for trade* (5th Report, Session 2016–17, HL Paper 72) pp 10–11

49 Article 26(2), Treaty on the Functioning of the European Union, [OJ C 326](#) (consolidated version of 26 October 2012)

50 Article 57, [Treaty on the Functioning of the European Union](#)

43. Articles 49 and 54 TFEU provide for the freedom of establishment, thereby enabling a self-employed individual in one Member State to establish a business in another Member State, and companies and firms established in one Member State to establish subsidiaries in another Member State (mode 3).
44. The ability to trade services either by having the consumer move to the location of the service provider (mode 2) or *vice versa* (mode 4) is fundamentally supported by the principle of the free movement of people established under the Citizens' Directive 2004/38/EC. This provides for the temporary and long-term movement of EU citizens across the EU.<sup>51</sup>

### *EU legislation*

45. Treaty-based rights and prohibitions form the basis for EU legislation. The Government's Balance of Competences Review stated that "90% of all services in the EU are covered either by the horizontal Services Directive or by specific pieces of sectoral legislation".<sup>52</sup> EU legislation in this field either harmonises standards and regulations across all Member States, or ensures that Member States mutually accept each other's rules and standards as being equivalent to their own (the principle of 'mutual recognition'). The principle of mutual recognition means that individuals or businesses can provide a service in another host Member State, as long as they meet the required standards in their own Member State (also known as the 'Country of Origin' approach).<sup>53</sup> Legislation can apply horizontally to most services sectors (such as the Services Directive 2006/123/EC), or target rules at specific services sectors (such as the Audiovisual Media Services Directive 2010/13/EU).
46. EU legislation also harmonises rules and standards for other potential non-tariff barriers, for instance state-aid and competition law, consumer protection law, the protection of intellectual property and, more recently, the use and flow of data. While we do not consider these areas of legislation in this report, we recognise their importance to any future trade negotiations.

### *Enforcement*

47. EU law either applies directly to Member States (under Regulations) or through national implementing legislation (such as Directives). It is enforced by national courts (which are required to give supremacy to EU law over conflicting national law), and is ultimately interpreted by the supranational Court of Justice of the European Union (CJEU). Where national courts are unclear as to the meaning of EU law, they can refer the question to be decided to the CJEU for a binding opinion. As Professor Barnard told us:

"If there is a rule that obstructs me as an independent contractor, a consultant, from providing advice of some form—for example, providing teaching services in France—I can go to the French local court and

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51 Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, (OJL 158, 30 April 2004)

52 HM Government, *Review of the Balance of Competences between the United Kingdom and the European Union, The Single Market: Free movement of services* (Summer 2014) p 46: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/332668/bis-14-987-free-movement-of-services-balance-of-competencies-report.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/332668/bis-14-987-free-movement-of-services-balance-of-competencies-report.pdf) [accessed 5 January 2017]

53 *Ibid.*, p 5

invoke EU law and get my rights enforced. If they are not enforced in France, I can ask the court to make a reference to the Court of Justice.”<sup>54</sup>

48. Individuals and businesses can also resolve restrictions to trade via the SOLVIT mechanism. This is a light-touch, EU-wide mechanism, which provides a framework for cooperation between the relevant authorities in the Member States concerned, allowing them to find a solution to a problem within a ten-week time period.<sup>55</sup>

*Evaluating the Single Market for trade in services*

49. The Government’s Balance of Competences Review on the Single Market in Services concluded that:

“The advantages of EU action outweighed the disadvantages for service providers. Whilst it was recognised that the costs fell on service providers that were not trading in overseas markets, as well as those that are active internationally, economic analysis shows that non-exporting businesses have benefited from liberalisation in domestic service markets, and that any national legislation on services would not have been dissimilar from the current EU regime.”<sup>56</sup>

50. Nevertheless, it is widely accepted that the Single Market for services is less integrated than that in goods. Dr Armstrong said: “In an ideal world, a perfect single market ... trading between Liverpool and London would be the same as between Liverpool and Lisbon.” In such circumstances one would “have the same set of chartered accountants”, but the “fact that we do not ... means that these services become more restricted”.<sup>57</sup> The Government estimates that only a fifth of services provided in the EU crossed Member States’ borders.<sup>58</sup>
51. The incomplete nature of the Single Market for services reflects the fact that the regulation of services remains a shared competence between the EU and its Member States. While only the EU can act in areas where it has exclusive competence (for example in setting the Common External Tariff for goods entering the customs union), in areas of shared competence either the EU or Member States can act (although Member States may be prevented from acting where the EU has already done so). The Government’s Balance of Competences Review highlighted that businesses’ main concerns about existing EU legislation were that “considerable amount[s] of discretion [were] left to Member States to decide which restrictions should remain in place and assess their proportionality”, with some businesses feeling “that this power [is] sometimes used for protectionist purposes”.<sup>59</sup>

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54 Q 7

55 HM Government, *Review of the Balance of Competences between the United Kingdom and the European Union, The Single Market: Free movement of services* (Summer 2014) p 67: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/332668/bis-14-987-free-movement-of-services-balance-of-competencies-report.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/332668/bis-14-987-free-movement-of-services-balance-of-competencies-report.pdf) [accessed 5 January 2017]

56 *Ibid.*, p 6

57 Q 6

58 HM Government, *Review of the Balance of Competences between the United Kingdom and the European Union, The Single Market: Free movement of services* (Summer 2014) p 48: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/332668/bis-14-987-free-movement-of-services-balance-of-competencies-report.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/332668/bis-14-987-free-movement-of-services-balance-of-competencies-report.pdf) [accessed 5 January 2017]

59 HM Government, *Review of the Balance of Competences between the United Kingdom and the European Union, The Single Market: Free movement of services* (Summer 2014) p 53: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/332668/bis-14-987-free-movement-of-services-balance-of-competencies-report.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/332668/bis-14-987-free-movement-of-services-balance-of-competencies-report.pdf) [accessed 5 January 2017]

52. Whereas the customs union was established in 1958, the key pillars of the Single Market for services were only adopted more recently, such as the Services Directive (2006/123/EC) in 2006. Current EU proposals addressing concerns about the Services Directive, and regarding the Digital Single Market (DSM) Strategy, suggest that the Single Market for services will continue to integrate further over time.<sup>60</sup>

### *The European Economic Area*

53. When we began this inquiry in late 2016, continuing UK membership of the Single Market, via non-EU membership of the European Economic Area (EEA), was the favoured option of most witnesses. The Professional and Business Services Council said that although the Single Market was “far from perfect”, it was “still the most integrated market in the world for services that is not a single State”.<sup>61</sup> Representing small and medium sized enterprises (SMEs) in the professional business services sector, Ian Harris, Director of Z/Yen, told us that the “EEA model is the only one we could possibly, possibly, in practical terms, implement without damaging ourselves economically within the time-frame permitted”.<sup>62</sup>

### **Free trade agreements (FTAs)**

#### *The Government’s view*

54. Membership of the Single Market or of the EEA was ruled out by the Prime Minister, in her Lancaster House speech on 17 January 2017. She made it clear that the UK would pursue a “bold and ambitious” FTA with the European Union which would “aim for the freest possible trade in goods and services” between the UK and the EU.<sup>63</sup>
55. Commenting on the content of a future UK-EU FTA, the Prime Minister said that the Government would “not seek to hold on to bits of membership as we leave”, but that it might “take in elements of current Single Market arrangements in certain areas”, such as the “freedom to provide financial services across national borders”. She described this as a pragmatic approach: “It makes no sense to start again from scratch when Britain and the remaining Member States have adhered to the same rules for so many years.” The Prime Minister said that a FTA should also “give British companies the maximum freedom to trade with and operate within European markets and let European businesses do the same in Britain”.<sup>64</sup>

#### *EU FTAs*

56. A FTA is an agreement between two or more countries, or between international organisations and countries, that aims to liberalise the trade of goods and, in the case of comprehensive FTAs, services. Rather than providing completely free trade, they provide preferential market access

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60 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - ‘A Digital Single Market Strategy for Europe’ COM(2015)192. See also European Commission, ‘A services economy that works for Europeans’, (10 January 2017): [http://europa.eu/rapid/press-release\\_IP-17-23\\_en.htm](http://europa.eu/rapid/press-release_IP-17-23_en.htm) [accessed 23 February 2017]

61 Written evidence from the Professional Business Services Council (TAS0022)

62 Q 22

63 Theresa May MP, Speech on The Government’s negotiation objectives for exiting the EU, 17 January 2017: <https://www.gov.uk/government/speeches/the-governments-negotiating-objectives-for-exiting-the-eu-pm-speech> [accessed 24 February 2017]

64 *Ibid.*

relative to a situation in which no agreement exists. Depending on the comprehensiveness of what is negotiated, FTAs can provide increased market access and lower non-tariff barriers for services compared to trading under WTO rules.<sup>65</sup>

57. FTAs can and do vary significantly in the levels of market access they provide, and the extent to which they reduce non-tariff barriers for different goods and services sectors. However, in order to abide by WTO rules (under Article V of the GATS), FTAs must have “substantial sectoral coverage”.<sup>66</sup> This means that individual sectoral trade agreements (covering just telecoms, for example), outside a wider FTA, would not be legal under WTO rules. This is an important constraint, given that some sectors appeared to be calling for a sectoral agreement with the EU. We acknowledge that Article V and other WTO conditions have rarely been raised in dispute settlement procedures at the WTO, have been poorly enforced, and that there is considerable uncertainty over the definitions used. Nonetheless, they would appear to preclude the UK from pursuing separate trade agreements for individual sectors.<sup>67</sup>
58. Generally, the services aspects of a FTA can be negotiated differentially, according to a ‘positive’ or ‘negative’ list approach. Under a ‘positive list’ approach (similar to the approach taken at the WTO under the GATS), signatories choose which sectors to list, and what commitments to make to their trading partner, understanding that no commitments are undertaken for the sectors not listed. Under a ‘negative list’ approach, signatories are required to list all services sectors in which they wish to maintain restrictions towards foreign individuals and firms and what those restrictions are. The negative list approach increases transparency for businesses and encourages greater liberalisation (as parties have to review all the domestic legislation that affects these sectors). However, negotiations may require more time, as signatories need to consolidate and process a vast array of information. The EU has adopted both approaches, and hybrid approaches, in the past, but the recent EU-Canada FTA adopted a negative list approach.<sup>68</sup>
59. Examples of some of the most comprehensive EU FTAs regarding services are outlined below in Boxes 1, 2 and 3.

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65 The Government’s White Paper envisages an “ambitious and comprehensive Free Trade Agreement” (FTA) for future trade in goods and services between the UK and the EU. (HM Government, *The United Kingdom’s exiting from and new partnership with the European Union*, Cm 9417, February 2017, p 35: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/589191/The\\_United\\_Kingdoms\\_exit\\_from\\_and\\_partnership\\_with\\_the\\_EU\\_Web.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/589191/The_United_Kingdoms_exit_from_and_partnership_with_the_EU_Web.pdf)). Hence, this report refers to a trade agreement encompassing non-financial services between the UK and EU as a FTA. We note that there is different terminology for agreements liberalising trade in services, for example the WTO refers to services “economic integration” agreements.

66 The substantial sectoral coverage condition in Article V of the GATS is understood in terms of “number of sectors, volume of trade affected and modes of supply.” In order to meet this condition, an FTA in services “should not provide for the *a priori* exclusion of any mode of supply.” In addition to substantial sectoral coverage, Article V of the GATS requires an FTA in services to provide for the “elimination of substantially all discrimination”. For example, by eliminating substantially all discrimination implemented through regulatory measures.

67 Article V:1 (a) GATS: [https://www.wto.org/english/docs\\_e/legal\\_e/26-gats\\_01\\_e.htm](https://www.wto.org/english/docs_e/legal_e/26-gats_01_e.htm) [accessed 23 November 2016]; Article XXIV GATT, Understanding on the Interpretation of Article XXIV of the GATT 1994 (Tevini) in Wolfrum, Stoll, Hestermeyer (eds), *WTO–Trade in Goods* (Brill, 2011).

68 Aaditya Mattoo, Robert M. Stern and Gianni Zanini, *A handbook of international trade in services* (Oxford University Press, 2008), p 248: <http://www19.iadb.org/intal/intalcdi/PE/2008/01285.pdf> [accessed 15 February 2017]

### Box 1: Treatment of services in Swiss-EU bilateral agreements

Over the last two decades, Switzerland and the EU have negotiated a bespoke bilateral trade arrangement, which encompasses over 100 individual agreements covering a diverse range of issues and sectors. Among the most significant of these agreements is the 1972 Free Trade Agreement, which laid the groundwork for trade relations. It also provided the foundation for seven sectoral agreements (known as ‘Bilateral Agreements I’) signed in 1999, which covered the free movement of persons, technical barriers to trade, public procurement markets, agriculture, research, civil aviation and overland transport, and nine agreements covering broader topics (known as ‘Bilateral Agreements II’), which were signed in 2004. Although the trade relationship between the EU and Switzerland is made up of hundreds of bilateral agreements, in its entirety, it substantially liberalises trade and would seem to be comprehensive enough to meet the WTO’s conditions for ‘substantial sectoral coverage’.<sup>69</sup>

The EU and Switzerland do not have a specific agreement to facilitate trade in services. Instead, services trade is indirectly facilitated by the individual sectoral agreements under Bilateral I. Importantly, all the agreements under Bilateral I are linked, so that if either party reneges on an individual agreement, they all fall.<sup>70</sup> Relevant sectoral agreements within Bilateral I include:

- *Free movement of persons.* Under this agreement, Swiss and EU nationals are entitled to the same working and living conditions in Switzerland and the EU. This agreement covers the temporary cross-border provision of services for short periods and includes employed, self-employed and other persons who have sufficient means. Importantly, the mutual recognition of professional qualifications and the coordination of social security payments are included within this agreement.
- *Air transport.* This is the most comprehensive agreement between Switzerland and the EU. Switzerland is included in the EU’s single aviation market, and Swiss airlines have similar rights to EU airlines.<sup>71</sup> In exchange, Switzerland has accepted the EU’s *acquis* in this sector and the EU’s rules on state aid.
- *Public procurement.* This extends the WTO’s Global Agreement on Procurement (GPA) and includes provisions on market access in the telecommunications and rail transport sectors.

69 Article V:1 (a) of the GATS: [https://www.wto.org/english/docs\\_e/legal\\_e/26-gats\\_01\\_e.htm](https://www.wto.org/english/docs_e/legal_e/26-gats_01_e.htm) [accessed 23 November 2016]

70 HM Government, *The United Kingdom’s exiting from and new partnership with the European Union*, Cm 9417, February 2017, p 71: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/589191/The\\_United\\_Kingdoms\\_exit\\_from\\_and\\_partnership\\_with\\_the\\_EU\\_Web.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/589191/The_United_Kingdoms_exit_from_and_partnership_with_the_EU_Web.pdf) [accessed 15 February 2017]

71 The Annex to the Agreement suggests that Swiss airlines can be considered the same as EU airlines (referred to as ‘Community carriers’)—except in relation to Article 15. Article 15 deals with traffic rights and states that two-years after coming into force, Swiss airlines may have the ability to fly between two EU Member States but not to offer domestic services between two points in a single Member State. Agreement between the European Community and the Swiss Confederation on Air Transport (OJ L 114/73, 30 April 2002)



- *Audiovisual media services.* Prior to 1992, Switzerland and the EU both belonged to the MEDIA programme, which promoted the creation and distribution of European films and training for film professionals. When Switzerland rejected membership of the EEA in 1992, its participation in this programme ended. Instead, trade in audiovisual media services relies on Switzerland's participation in the European Council Transfrontier Television Convention.<sup>72</sup>

The EU and Switzerland have also agreed to liberalise trade in legal services, and the Lawyers' Services Directive 77/249/EC and the Lawyers' Establishment Directive 98/5/EC apply to Swiss lawyers in addition to lawyers qualified in the EU.<sup>73</sup>

Negotiations to expand the scope of these bilateral agreements to include greater trade in services have stalled, and the Council of Ministers has said it will not enter into further trade liberalisation without improvements to the institutional framework governing these agreements. Suggested changes include the creation of a supervisory body to monitor the implementation of EU legislation in domestic law, and an improved dispute resolution mechanism, ostensibly requiring similar institutions and processes to those used for non-EU EEA countries.<sup>74</sup> Currently, dispute resolution is handled by joint committees representing both Switzerland and the European Commission, which are established for each of the principal agreements. Each joint committee is responsible for managing the agreement, ensuring its correct application and taking steps to adjust or revise the agreement where necessary.<sup>75</sup>

### Box 2: Treatment of services in the EU-South Korea FTA

This agreement liberalises a number of services sectors. In telecoms, South Korea has relaxed its foreign ownership requirements, and EU satellite broadcasters also have the right to operate directly cross-border into Korea without having to liaise with the Korean regulator. On transportation, the agreement provides rights of establishment for EU shipping firms in Korea.

The agreement allows European law firms to open offices in South Korea, and to advise foreign investors or Korean clients on non-Korean law. Law firms are also able to form partnerships with Korean firms and recruit Korean lawyers, while all lawyers are allowed to use their domestically acquired qualifications. The agreement also includes provisions on investments and movement of capital.

The agreement improves on the WTO's trade-related provisions on intellectual property rights (TRIPS), regarding recourse for copyright infringements, and includes provisions on unregistered designs (discussed in greater detail in Chapter 6). Both parties have agreed to prohibit and sanction anti-competitive practices and base their dispute resolution mechanisms on WTO processes.

Source: European Commission, 'EU-South Korea FTA: a quick reading guide' (October 2010): [http://trade.ec.europa.eu/doclib/docs/2009/october/tradoc\\_145203.pdf](http://trade.ec.europa.eu/doclib/docs/2009/october/tradoc_145203.pdf) [accessed 15 February 2017]

72 Centre for European Policy Studies, *Integration without membership: Switzerland's bilateral agreements with the European Union*, (2006): <https://www.ceps.eu/system/files/book/1304.pdf> [accessed 15 February 2017]

73 Q 22 (Mickaël Laurans). These two Directives are explained in detail in Chapter 4.

74 Centre for European Reform, *Outsiders on the inside: Swiss and Norwegian lessons for the UK* (September 2012): [https://www.cer.org.uk/sites/default/files/publications/attachments/pdf/2012/buchan\\_swiss\\_norway\\_11oct12-6427.pdf](https://www.cer.org.uk/sites/default/files/publications/attachments/pdf/2012/buchan_swiss_norway_11oct12-6427.pdf) [accessed 15 February 2017]

75 HM Government, *The United Kingdom's exiting from and new partnership with the European Union*, Cm 9417, February 2017, p 71: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/589191/The\\_United\\_Kingdoms\\_exit\\_from\\_and\\_partnership\\_with\\_the\\_EU\\_Web.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/589191/The_United_Kingdoms_exit_from_and_partnership_with_the_EU_Web.pdf) [accessed 15 February 2017]

### Box 3: Treatment of services in the EU-Canada Comprehensive Economic and Trade Agreement (CETA)

In relation to services, CETA contains provisions on increasing the transparency of Canadian rules and regulations at national and regional levels that might affect EU service providers. It liberalises trade for postal, telecommunications and marine transport services. The agreement follows a negative list approach, and binds Canada and the EU to not introduce new restrictions in these sectors in future. It includes an investment chapter about the flows of capital between the parties.

CETA also includes provisions on the temporary cross-border provision of services, principally by extending the time limit on intra-corporate transferees for up to three years, on a reciprocal basis. It also enables spouses and family members to accompany a transferee. It extends the time individual service suppliers or professionals can stay in either the EU or Canada from six to 12 months, and establishes a framework for the mutual recognition of professional qualifications, enabling detailed negotiations on specific professions to begin in due course.

The agreement, and any disputes, are managed by the CETA Joint Committee, which can reach binding decisions. Such decisions are made by consensus between the parties to the Joint Committee, including representatives from Canada and the EU.<sup>76</sup>

Source: European Commission, 'CETA: Summary of the final negotiating results' (February 2016): [http://trade.ec.europa.eu/doclib/docs/2014/december/tradoc\\_152982.pdf](http://trade.ec.europa.eu/doclib/docs/2014/december/tradoc_152982.pdf) [accessed 24 February 2017] and Theresa May MP, Speech on The Government's negotiation objectives for exiting the EU, 17 January 2017: <https://www.gov.uk/government/speeches/the-governments-negotiating-objectives-for-exiting-the-eu-pm-speech> [accessed 15 February 2017]

#### *The implications for a UK-EU FTA*

60. In our report *Brexit: the options for trade* we concluded: "Negotiation of a Free Trade Agreement between the UK and the EU would be unprecedented. While FTA negotiations usually aim to increase market integration between two sides, the UK would start from a position of full integration, and would presumably seek to maintain many aspects of the status quo while reducing integration in some areas."<sup>77</sup>
61. We note that a UK-EU FTA would also need to be broader in scope than existing FTAs. Raoul Ruparel, then Director of Open Europe and a witness to our previous inquiry, said services would "clearly be the most difficult sector" to negotiate in a UK-EU FTA, because "there is no precedent for third-country access to the Single Market in financial services and other services".<sup>78</sup> Markus Gehring, Professor of European Law at the University of Cambridge, said: "Let us be honest: the current *acquis* of EU rules is normally much broader [than a FTA]." While the CETA agreement included "some mild form of mutual recognition of qualifications", there were "quite a few areas of the existing EU *acquis* that I have not seen in any FTA in a bilateral

76 HM Government, *The United Kingdom's exiting from and new partnership with the European Union*, Cm 9417, February 2017, pp 69–70: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/589191/The\\_United\\_Kingdoms\\_exit\\_from\\_and\\_partnership\\_with\\_the\\_EU\\_Web.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/589191/The_United_Kingdoms_exit_from_and_partnership_with_the_EU_Web.pdf) [accessed 15 February 2017]

77 European Union Committee, *Brexit: the options for trade* (5th Report, Session 2016–17, HL Paper 72) para 160

78 Oral evidence taken on 8 September 2015 (Session 2016–17), [Q 12](#) (Raoul Ruparel)

relationship”.<sup>79</sup> Mr Ruparel noted that while CETA provided “some rights of establishment, and the ability to set up subsidiaries and entities in the EU”, it was “far short ... of providing a passport and being able to provide a service from your home base in the UK”. There were also “hundreds of pages of restrictions”, and he concluded that a similar agreement between the UK and the EU “would be a big change for the UK, particularly on the services side”.<sup>80</sup>

62. Witnesses to the present inquiry echoed these views. The UK Trade Policy Observatory explained: “Broadly speaking ... in the past services [FTAs] have done little in terms of actually improving market access.” They concluded that to replicate current conditions on trade in services would require a FTA of “unprecedented depth”.<sup>81</sup>
63. In her Lancaster House speech, the Prime Minister said that she wanted “to have reached an agreement about our future partnership by the time the 2-year Article 50 process has concluded”.<sup>82</sup> In our previous report we noted that “FTA negotiations with the EU are complex and slow moving”, and highlighted the lack of clarity over whether negotiations on a UK-EU FTA could begin under the Article 50 process, or only post-withdrawal. We concluded that, even if it were possible to begin negotiations on a future UK-EU FTA during the Article 50 negotiating period, “it would be impossible to agree it within two years”. We also concluded that a UK-EU FTA including services would probably be a ‘mixed agreement’, therefore requiring the agreement of individual Member States, and, depending on their constitutional arrangements, national and regional parliaments. We recommended that, were the Government to seek to negotiate a FTA, “it should clarify whether it is also considering a transitional trading arrangement”.<sup>83</sup>
64. Finally, we concluded that a UK-EU FTA might require “stronger institutions than are normally included in FTAs to police their trading relationship”.<sup>84</sup> In FTAs, the most common procedure for resolving trade disputes is state-to-state dispute settlement: a state complains about violations of the agreement by the other state to a joint panel or committee, including representatives of both parties. We noted that the establishment of a UK-EU court could improve on this, but might be regarded as an indirect way of imposing decisions made by the CJEU.<sup>85</sup>

### Trading under World Trade Organization (WTO) rules

65. The Prime Minister also emphasised that the Government would be willing to forgo a preferential FTA with the EU, stating: “No deal for Britain is better than a bad deal for Britain.” A ‘no deal’ scenario would result in the UK trading with the EU on the basis of WTO rules.<sup>86</sup>

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79 Oral evidence taken on 8 September 2016 (Session 2016–17), [Q 14](#) (Dr Markus Gehring)

80 Oral evidence taken on 8 September 2015 (Session 2016–17), [Q 15](#) (Raoul Ruparel)

81 Written evidence from the UK Trade Policy Observatory ([TAS0085](#))

82 Theresa May MP, Speech on The Government’s negotiation objectives for exiting the EU, 17 January 2017: <https://www.gov.uk/government/speeches/the-governments-negotiating-objectives-for-exiting-the-eu-pm-speech> [accessed 15 February 2017]

83 European Union Committee, *Brexit: the options for trade* (5th Report, Session 2016–17, HL Paper 72)

84 *Ibid.*, para 165

85 *Ibid.*, p 49

86 Theresa May MP, Speech on The Government’s negotiation objectives for exiting the EU, 17 January 2017: <https://www.gov.uk/government/speeches/the-governments-negotiating-objectives-for-exiting-the-eu-pm-speech> [accessed 15 February 2017]

66. The aim of the WTO, and the WTO's agreements, is to provide a stable and predictable global trading environment by ensuring member countries all agree on the basic rules for trade. As a general rule for all forms of trade, member countries must follow the WTO's non-discrimination principles, which includes the Most Favoured Nation (MFN) principle. This means that countries cannot normally discriminate between their trading partners, and are obliged to offer the same market access conditions to all WTO members.<sup>87</sup>
67. The General Agreement on Trade in Services (GATS), which came into force in 1995, is the main global agreement governing international trade in services. Under this agreement, WTO member states can outline restrictions to trade in services across sectors and modes of supply (under their individual schedule of commitments). These restrictions can fall into two categories:
- (1) those limiting 'market access' for a foreign firm or individual service provider entering a domestic services market (the GATS Art. XVI); and
  - (2) those that affect the 'national treatment' of a foreign firm or individual compared to domestic competitors (GATS Art. XVII).<sup>88</sup>

The GATS follows a 'positive list' approach, whereby member countries choose which sectors or sub-sectors to list.

68. The GATS framework does recognise the right of member countries to introduce new regulations, and to tailor their commitments in line with national policy, in cases where changes to domestic regulation do not discriminate against foreign service providers.
69. Trade disputes in the WTO are handled on a state-to-state basis between governments, and action on behalf of individuals or businesses is not possible. Allegations are heard by a panel of three to five experts (appointed by both sides). Their final recommendations are adopted by the General Council, convening as the Dispute Settlement Body, unless rejected by negative consensus. Although panel reports are generally adopted by the Council, both parties can appeal the outcome to a standing Appellate Body. If panel recommendations are not implemented, a party can request the authorisation of sanctions after a further round of consultations has failed.<sup>89</sup>

#### *Agreeing the UK's services schedule*

70. Currently, the UK shares both the General Agreement on Tariffs and Trade (GATT) schedule, which covers goods, and GATS schedule with the EU. Post-Brexit, the UK will need to have its own schedules established under both agreements, and each schedule will have to be certified by other member countries of the WTO in order for the UK to be able to trade under WTO rules.

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87 Member countries can depart from the MFN principle in services if they are agreeing 1) a FTA or economic integration agreement with another member country (permitted under the GATS Art. V); or 2) to mutually recognise education and other qualifications obtained by suppliers in other member countries (under the GATS Article VII: 3)

88 The WTO, 'Guide to reading the GATS schedules of specific commitments and the list of article II (MFN) exemptions': [https://www.wto.org/english/tratop\\_e/serv\\_e/guide1\\_e.htm](https://www.wto.org/english/tratop_e/serv_e/guide1_e.htm) [accessed 15 February 2017]

89 European Union Committee, *Brexit: the options for trade* (5th Report, Session 2016–17, HL Paper 72) para 207

71. Our previous report found that gaining agreement to the UK's schedules for goods and services raised a number of legal questions, not least in relation to whether, after enlargement, the EU's current schedules have been certified by other WTO member countries—though Mr Eglin, Senior Trade Advisor at White and Case LLP, told us that a services schedule could be certified within in 45 days.<sup>90</sup> The UK has made few derogations regarding market access and national treatment restrictions to the EU's services schedule.
72. In evidence given to a separate inquiry into *Brexit: trade in goods*, Lord Price CVO, Minister of State for Trade Policy at the Department for International Trade, told the EU External Affairs Sub-Committee that the Government's objective remained to “replicate as far as possible the schedule that we have today”.<sup>91</sup>

*Implications of WTO rules for UK-EU trade in services*

73. UK trade in services with the US (the UK's second most important trading partner for services) is currently governed by WTO rules. More information on UK-US trade in services is provided in Box 4.

**Box 4: UK-US trade in services under the WTO rules**

The UK and the US do not trade on the basis of a preferential FTA, but on the basis of their respective services schedules under the GATS at the WTO. We note that the trade policies applied between the UK and US are in practice more liberal than provided for under GATS, but also that such policies can in principle be withdrawn or tightened at any time. The Office of the US Trade Representative has stated that the US position in relation to the GATS is to “maintain current levels of market openness”, and to “remove significant trade impediments, such as local presence requirements, foreign equity limitations, and limitations on forms of establishment”.<sup>92</sup>

According to the US Department for International Commerce, the UK was the United States' largest market for services exports in 2015 (worth \$67 billion). Overall, the US imported \$111 billion worth of goods and services from the UK in 2015, with ‘other business services’ being the largest services sector. In 2014, the UK-US had a direct investment relationship valued at \$1.05 trillion.<sup>93</sup>

90 European Union Committee, *Brexit: the options for trade* (5th Report, Session 2016–17, HL Paper 72) para 174

91 Oral evidence taken on 8 February 2017 (Session 2016–17), [Q 127](#) (Lord Price CVO)

92 Executive Office of the President of the United States, Office of the United States Trade Representative, ‘Services in the WTO’: <https://ustr.gov/issue-areas/services-investment/services/services-wto> [accessed 24 February 2017]

93 US Department of Commerce, International Trade Administration, ‘US Export factsheet’ (6 July 2016): <http://trade.gov/press/press-releases/2016/export-factsheet-070616.pdf> [accessed 24 February 2017]

The OECD has created a Services Trade Restrictiveness Index (STRI), which identifies policy measures that restrict trade. The index measures trade restrictiveness (between 0 to 1, with 0 being the most open and 1 the most restricted) in 22 services sectors across 44 countries.<sup>94</sup> On this index, in December 2016, the OECD reported that the US scored lower than average for 16 of the 22 services sectors covered. The sectors that were the most open were legal services, telecommunications services and rail freight transport. The sectors with the greatest restrictions were air and maritime transport, and courier services.<sup>95</sup>

In comparison, the UK was “one of the most open economies in services” out of the 44 countries included in the index, with a below average score on all 22 services sectors, except architecture. The UK’s most open sectors were legal services, rail freight transport and broadcasting. The UK’s most restricted sectors were accounting, architecture and engineering services.<sup>96</sup>

74. The UK Trade Policy Observatory observed that, as illustrated in Box 4, a country’s policies on trade in services were almost always appreciably more liberal than their GATS schedules. This situation is referred to as the ‘commitments overhang’. However, they added that trading on the basis of “applied MFN regimes”, rather than their stated schedules, “lack[ed] the legal certainty and predictability of membership [of] the Single Market”.<sup>97</sup>
75. In our previous report, we concluded that trading services under WTO rules would involve “much greater restrictions” than exist within the Single Market.<sup>98</sup> Piet Eeckhout, Professor of EU Law at University College London, explained that when the GATS was agreed in 1995, it aimed to capture “the current state of domestic liberalisation”, but did not strive to be “a major liberalising force” for services. While the extent of market access in services provided by WTO agreements varied sector by sector, some industries, like aviation, were “hardly touched upon by WTO commitments”, and would be particularly badly affected.<sup>99</sup>
76. Reliance upon the WTO for the temporary cross-border movement of service providers (classified as mode 4 under GATS) could be particularly restrictive. The UK Trade Policy Observatory told us: “What is plain is that mode 4 clauses of the sort currently offered by the EU, would not provide access to anything like the numbers of workers that free mobility currently does.” More broadly, commitments on mode 4 “have to be applied on a most favoured nation basis” (and so cannot distinguish between persons by country of origin), which has discouraged greater liberalisation.<sup>100</sup>

94 OECD, ‘Services Trade Restrictiveness Index’: <http://www.oecd.org/tad/services-trade/services-trade-restrictiveness-index.htm> [accessed 3 March 2017]. We note that the World Bank also has a Services Trade Restrictions Database which offers an alternative analysis of the restrictiveness of services trade policy across 103 countries, five sectors (telecommunications, finance, transportation, retail and professional services) and the key modes of service supply. This database is available at: <http://iresearch.worldbank.org/servicetrade/home.htm> [accessed 3 March 2017]

95 OECD, ‘Services Trade Restrictiveness Index (STRI): United States (December 2016): [http://www.oecd.org/tad/services-trade/STRI\\_USA.pdf](http://www.oecd.org/tad/services-trade/STRI_USA.pdf) [accessed 24 February 2017]

96 OECD, ‘Services Trade Restrictiveness Index (STRI): United Kingdom (December 2016): [http://www.oecd.org/tad/services-trade/STRI\\_GBR.pdf](http://www.oecd.org/tad/services-trade/STRI_GBR.pdf) [accessed 24 February 2017]

97 Written evidence from the UK Trade Policy Observatory (TAS0085)

98 European Union Committee, *Brexit: the options for trade* (5th Report, Session 2016–17, HL Paper 72) para 30

99 Oral evidence taken on 8 September 2016 (Session 2016–17), Q 7 (Professor Piet Eeckhout)

100 Written evidence from the UK Trade Policy Observatory (TAS0085)

77. Finally, we noted in our earlier report that WTO mechanisms for dispute resolution were “only accessible to businesses and individuals through governments”.<sup>101</sup> Professor Barnard said the “reality” of the GATS was that “the enforcement vehicle is extremely cumbersome”:

“Because it is an international law agreement, it means one state bringing action against another. Will the UK Government be concerned that my little business, from which I want to provide some services in France, cannot get on to the French market, or the French are making it very difficult, and will the UK start a panel proceeding on my behalf? The answer is categorically no.”<sup>102</sup>

### Conclusions

78. **Although the EU Single Market in services is significantly less integrated than that in goods, it remains, even in its imperfect form, the most integrated market for trade in services in the world, and it continues to integrate further.**
79. **In the absence of Single Market membership, it will be much harder to liberalise trade in services than trade in goods. This is because trade in services often involves the movement of persons and either the harmonisation or mutual recognition of regulatory frameworks regarding how services should be supplied. The EU does not have harmonised trade policy in relation to trade in services with third countries outside the Single Market, meaning that UK businesses could face differing non-tariff barriers between Member States, which will be difficult to identify and quantify.**
80. **The UK’s starting-point in negotiations with the EU on a FTA is unprecedented and unique, in that, even though the Single Market in services is incomplete, the rules and regulations in the UK and EU will be, at the point of departure, completely harmonised. On the other hand, existing FTAs have not led to great liberalisation in trade in services. Rather, they tend to reduce the difference that exists between countries’ formal restrictions to trade listed at the WTO and the actual trade policies they apply (which tend to be more liberal). Even terms similar to those agreed under the most ambitious FTAs agreed by the EU, such as CETA, would represent a deterioration of trading conditions for UK businesses. This would be the case both for sectors in which a harmonised Single Market framework exists, and also for sectors that are reliant on the EU *acquis* for the elimination of non-tariff barriers to trade, such as the mutual recognition of professional qualifications, free movement of persons, and the free flow of data. In short, the UK will require the most comprehensive FTA in services ever agreed with the EU.**
81. **A deal which did not provide market access for all services sectors, or no deal at all, would result in the UK trading services with the EU on the basis of WTO rules, which would provide less favourable trading conditions than membership of the Single Market or a FTA. WTO terms would require the UK and the EU to comply with the**

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101 European Union Committee, *Brexit: the options for trade* (5th Report, Session 2016–17, HL Paper 72) para 34

102 [Q.7](#)

**‘Most Favoured Nation’ principle: the UK would not be able to trade on more preferential terms with the EU, unless it applied those same terms to all other WTO member countries (and vice versa).**

- 82. A dispute resolution mechanism will undoubtedly be a feature of the UK’s future trading relationship with the EU, implying an inherent trade-off between liberalising trade and the exercise of sovereignty. Under either a FTA or WTO rules there will be a fundamental change to the way in which trading terms are presently enforced for the UK. The Government needs to engage with service providers and clarify the dispute resolution mechanism it will seek in a FTA. It will also need to consider how individuals and businesses who were formerly able to appeal to domestic courts, and ultimately the Court of Justice of the European Union (CJEU), would be able to petition the Government to act on their behalf under a FTA or WTO trading rules scenario.**



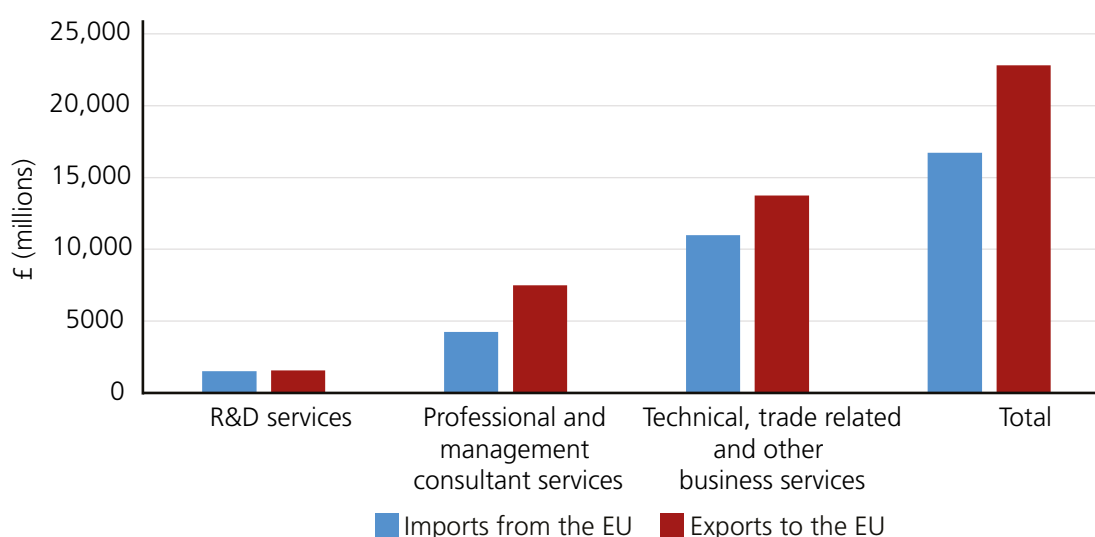
## CHAPTER 4: PROFESSIONAL BUSINESS SERVICES

83. Business services are the UK's largest services export, accounting for 44% of all the UK's trade in non-financial services. After financial services, they also provide the UK with its biggest trade surplus: global trade generated a surplus of £30 billion in 2015. The EU also remains a key trading partner. It is the destination for 32% of UK business service exports, generating a £6 billion surplus in 2015.<sup>103</sup>

### Professional business services in the UK

84. The ONS collects data on trade in a broad category of 'Other business services' (see Figure 4). This category covers a wide range of specialisms and sub-sectors in the UK's economy, including legal and accounting services, management consulting, engineering and architecture services, recruitment, advertising and market research, and research and development services.<sup>104</sup>

**Figure 4: UK-EU trade in 'Other business services' 2015**



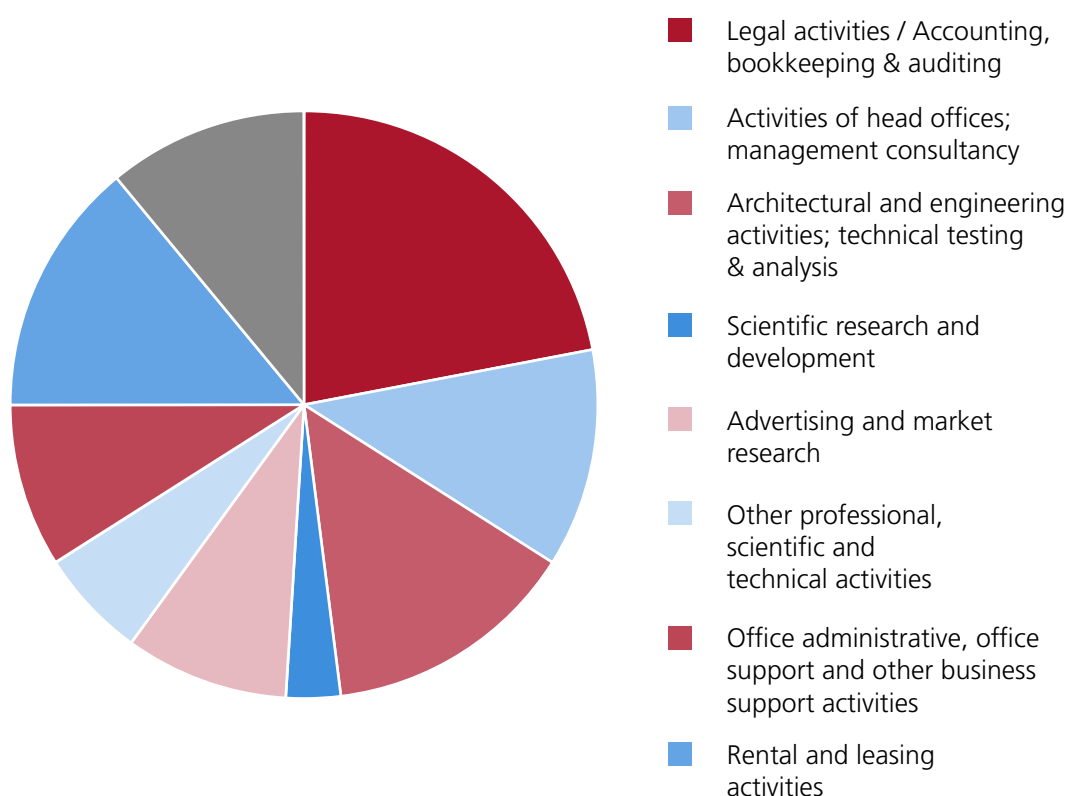
Source: Written evidence from the ONS (*TAS0064*)

103 Calculations based on written evidence from the Office for National Statistics (*TAS0064*), under the category of 'Other business services'. This category includes the following services: legal, accounting, management consulting, many other sectors including recruitment, training, public relations, advertising and market research, research and development, architectural and other technical services but also agricultural, mining, and on-site processing services associated with agricultural crops. It also includes include forestry, mining and other services such as placement of personnel, security and investigative services, translation and photographic services. A similar definition was used by the Government in its strategy for professional business services: HM Government, *Growth is our business: a Strategy for Professional and Business Services* (July 2013) p 36: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/211842/bis-13-922-growth-is-our-business-professional-and-business-services-strategy.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/211842/bis-13-922-growth-is-our-business-professional-and-business-services-strategy.pdf) [accessed 8 March 2017]

104 Research and development services in this context consist of services that are associated with basic research, applied research, and experimental development of new products and processes. In principle, activities in the physical sciences, social sciences, and humanities are covered, including the development of operating systems that represent technological advances. Also included is commercial research related to electronics, pharmaceuticals, and biotechnology. R&D services also include other product development that may give rise to patents. Outright sales of the results of research and development (such as represented in patents, copyrights, and sale of information about industrial processes) are included in research and development. However, amounts payable for use of proprietary rights arising from research and development are included under charges for the use of intellectual property, which is a separate EBOPS category. The International Monetary Fund, *Balance of Payments Manual*, paras 10.147-148: <https://www.imf.org/external/pubs/ft/bopman/bopman.pdf> [accessed 16 February 2017].

85. In 2013, the Government published *Growth is Our Business: A Strategy for Professional Business Services*, which described these business services, broadly speaking, as ‘professional business services’ (PBS). This strategy found that the UK’s PBS sectors employed 3.8 million people and represented nearly 12% of UK employment.<sup>105</sup> It also found that PBS were worth £153 billion, or 11% of the UK’s economy, and that the sector saw an average growth rate of nearly 4% every year from 2000–2010—despite the economic downturn.<sup>106</sup> Of the different PBS sectors, legal and accounting services are the largest, “representing over a fifth of the sector’s [domestic] output”.<sup>107</sup> The size of the various main PBS sectors, as a proportion of the whole, are illustrated in Figure 5.

**Figure 5: Share of PBS output by sub-sector (GVA current prices 2011)**



Source: HM Government, *Growth is our business: a Strategy for Professional and Business Services* (July 2013) p 6: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/211843/professional-and-business-services-industrial-strategy-infographics.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/211843/professional-and-business-services-industrial-strategy-infographics.pdf) [accessed 17 February 2017]

86. The strength of PBS firms in the UK’s domestic economy has translated into significant strengths in international trade. The Government’s strategy found that “nearly one fifth (18%)” of PBS firms operated internationally, and that a quarter of all UK firms that traded internationally were from the PBS sector. It is therefore not surprising that the UK is host to many leading PBS businesses, “including six of the top 10 international networks of accountancy firms, the ‘magic circle’ of leading law firms and the world’s

105 HM Government, *Growth is our business: a Strategy for Professional and Business Services* (July 2013) p 36: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/211842/bis-13-922-growth-is-our-business-professional-and-business-services-strategy.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/211842/bis-13-922-growth-is-our-business-professional-and-business-services-strategy.pdf) [accessed 16 February 2017]

106 *Ibid.*, p 37

107 *Ibid.*, p 5

largest advertising company, WPP”.<sup>108</sup> The Government’s 2013 strategy noted that the extent of trade in the UK’s PBS sector was “probably underestimated by trade statistics which don’t fully capture the extent to which PBS firms operate overseas, either by travelling to the customer destination or establishing an overseas commercial presence”.<sup>109</sup>

87. The strategy also noted that the “European Single Market created a huge opportunity for the UK’s PBS sector by opening up access to a large market at a time when demand for its services was increasing”. It stated that, outside the Single Market, the PBS sector “often faces considerable barriers to trade in international markets”.<sup>110</sup>

### **Priorities for a UK-EU FTA**

88. Giving evidence before the Prime Minister’s speech ruled out Single Market membership, most of our PBS sector witnesses supporting staying in the Single Market. The Professional and Business Services Council, for instance, said: “There is no precedent for an FTA giving full access to the single market in services ... only the EEA agreement provides the full services package.” They were also concerned that FTAs typically took “many years to conclude”, noting that ratification of EU FTAs was “becoming increasingly difficult”, and that the “political rhetoric in some EU Member States is increasingly anti-trade”.<sup>111</sup>
89. Sally Jones, Director of International Trade Policy and Global Brexit Insight Lead at Deloitte (and representing the Professional and Business Services Council), took a different approach, telling us that a “best-in-class free trade agreement would be pretty much the optimal non-EEA answer” for PBS.<sup>112</sup> EY, in contrast, said that, while in principle a FTA could provide “effective rights of access for services, movement of people, mutual recognition and enforcement between [the] UK and [the] EU”, there were “doubts about the political will of both the UK and [the] EU to negotiate such a deal”.<sup>113</sup>
90. The Minister, Dr Norman, described the UK’s PBS sectors as a “powerhouse”, and said that despite concerns about the imposition of new non-tariff barriers, he had been impressed “by the degree of positivity and confidence with which they are facing the prospect of change”.<sup>114</sup>

### *Right to provide a service and the right of establishment*

91. Witnesses told us that the right to provide a service in another Member State, combined with the right to establish a commercial presence or subsidiaries, was essential in order to continue to provide PBS across the EU. Such concerns are relevant to all services sectors but were particularly acute for businesses providing legal services. These two broad categories of rights are provided for under the Services Directive and are expressed, in relation to legal services, in the Lawyers’ Services Directive and the Establishment of Lawyers Directive. These three Directives are outlined in Box 5.

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108 *Ibid.*, p 5

109 *Ibid.*, p 38

110 *Ibid.*, p 27

111 Written evidence from the Professional and Business Services Council ([TAS0022](#))

112 [Q 24](#)

113 Written evidence from Ernst and Young ([TAS0035](#))

114 [Q 64](#)

### Box 5: The Services and Legal Services Directives

#### *The Services Directive 2006/123/EC*

This Directive liberalises the services market by identifying and prohibiting certain restrictions on the freedom of establishment and on the freedom to temporarily provide and receive services. The Directive is estimated to cover services activities accounting for 46% of EU GDP, though some sectors are excluded, including healthcare, financial, electronic communications and transport services. Where the Directive conflicts with sector-specific EU legislation, that legislation takes precedence.

The Directive bans or blacklists some restrictions used by Member States, including nationality requirements for service providers, requirements for businesses to have a minimum number of staff for different roles, requirements not to have more than one establishment in more than one Member State, and requirements for authorisation subject to the existence of economic needs.<sup>115</sup>

The Directive allows Member States to retain restrictions, as long as they are “non-discriminatory, necessary and proportionate”. Professor Barnard characterised this as a “grey list” of rules and restrictions, which the Commission “really do not like”. These included “rules on requiring a service provider to have infrastructure in the host state before they can provide the service, or requirements about the contractual arrangements regulating the staff providing those services”.<sup>116</sup>

#### *The Lawyers’ Services Directive 77/249/EC and the Establishment of Lawyers Directive 98/5/EC*

The Lawyers’ Services Directive permits EU lawyers to provide temporary cross-border services within the EU, without prior notification or registration with the host Member State’s Bar.<sup>117</sup> In contrast, the Establishment of Lawyers Directive 98/5/EC enables lawyers to practice on a permanent basis (either self-employed or salaried) in a Member State other than that in which their qualifications were obtained. This entitles a UK qualified lawyer to practice on a permanent basis in Brussels, with equal rights to their Belgian counterparts. These Directives also ensure that UK lawyers have the right to appear before EU Courts.<sup>118</sup>

92. Facilitated by the Services Directive (and other pieces of EU legislation relevant to specific sectors such as accounting), PBS firms told us that they often conducted trade overseas by establishing subsidiaries in other territories (mode 3). Ms Sally Jones said firms like Deloitte typically grew “not by exporting”, but by “setting up a local subsidiary or a local member firm, staffing it and then using that local firm to build local relationships”.<sup>119</sup> KPMG told us that their business created individual “legally distinct and

115 An economic needs test (ENT) consist of a set of criteria that a government applies to foreign suppliers to assess their economic contribution to a sector and the country as a whole. The criteria may include (but are not restricted to): whether a foreign firm will generate domestic income and employment, whether and how a firm would transfer technology or knowledge on to local citizens. Council Directive 2006/123/EC of 12 December 2006 on services in the internal market ([OJ L 376/36](#), 27 December 2006), Article 14.

116 [Q 5](#)

117 Written evidence from Freshfields Bruckhaus Deringer LLP ([TAS0046](#))

118 Written evidence from Clifford Chance LLP ([TAS0036](#))

119 [Q 25](#)

separate entities” in different territories, which in turn “reduced the need to provide services across borders”.<sup>120</sup>

93. The Law Society told us that under the two legal services Directives “UK lawyers and their law firms ... benefit from a simple, predictable and uniform system”, whereby they can “provide services on a temporary basis and/or establish permanently in another Member State under their home title”.<sup>121</sup> Clifford Chance added that the Directives had ensured that UK-based solicitors could represent clients in the EU27 and the EFTA states on a ‘fly-in-fly-out’ basis, and that they could enter partnerships with lawyers in other EU Member States. They further noted that, since the Establishment of Lawyers Directive was introduced, “English-headquartered law firms have become a major force in continental Europe”.<sup>122</sup> This observation was supported by Mickaël Laurans, Head of Brussels Office at the Law Society, who commented: “We have 36 of the top 50 UK law firms with offices in 25 of the 27 EU Member States”.<sup>123</sup>
94. Witnesses from the legal sector also emphasised the critical role of both Directives in attracting law firms from third countries to, in the words of the Law Society, “to set up an office in the UK as a means of gaining access to the EU market”. They estimated that there were over 200 foreign-owned law firms in London, including 100 US firms, which might consider seeking a new ‘European hub’ location if they did not have “access to practise and establishment across the EU”.<sup>124</sup> The Bar Council wrote: “The international earnings of the Bar, and of the legal services sector more broadly, will significantly be determined by the extent to which the suite of existing cross-border rights and practising rights are maintained.”<sup>125</sup>
95. As for FTA options, Mr Laurans told us that “any off-the-shelf free trade agreement would be a setback to current levels of market access and national treatment” for legal services. Legal services remained highly restricted globally, and the EU-South Korea FTA was “the one example of a free trade agreement that achieved a significant change in market access for the legal services sector”. He said the Government should be “very, very ambitious for the services sector to achieve the kind of market access we would like”.<sup>126</sup>
96. We asked the Minister what work the Government was doing to understand how far a FTA could provide rights of establishment and market access for UK firms after Brexit. Dr Norman said it was “absolutely a live issue ... officials are working on this at the moment”. While he could “echo the concern that you have described”, it was “a working assumption that it will be possible, at a minimum, to have, if not formal rights of establishment, mechanisms by which companies can continue to trade”.<sup>127</sup>

*Temporary movement of staff to provide services*

97. Although many PBS businesses seek to set up a local presence abroad, we also heard that they benefited from moving staff between offices—thus

120 Written evidence from KPMG ([TAS0030](#))

121 Written evidence from the Law Society ([TAS0021](#))

122 Written evidence from Clifford Chance LLP ([TAS0036](#))

123 [Q 21](#)

124 Written evidence from the Law Society ([TAS0021](#))

125 Written evidence from the Bar Council ([TAS0086](#))

126 [Q 24](#)

127 [Q 70](#)

highlighting the complementary nature of trade via modes 3 and 4. EY told us they “often use our UK people to deliver work in other EU Member States where local teams need supplementary or technical resources that do not exist domestically”.<sup>128</sup>

98. Witnesses emphasised the importance of the frictionless temporary movement of staff across borders. Ms Jones said it was “vital” for Deloitte and others to be able “to put the right people in the right place at the right time”, and that the free movement of persons helped to achieve this for both short and long term projects.<sup>129</sup> Ian Harris, Director of Z/Yen Group Limited, noted that in management consulting and project-based work, “you do not know what is going to happen on the project from one week to the next”; this meant that determining whether you could “just jump on a plane and go to such-and-such a place to sort a problem out if a problem arises” was an important consideration in bidding for a project.<sup>130</sup>

### *Access to skills*

99. Several witnesses said that the UK’s future trading relationship with the EU, and indeed the rest of the world, for PBS needed to ensure continued access to EU skilled service providers. Ms Jones said that London had “more high-skilled jobs than any other city in the world”, with 1.7 million such jobs, compared to New York with 1 million and Paris with 600,000. Many of these jobs were in “in business and professional services, high-tech or financial services. If we cannot get the people to fill those roles we will not grow; worse, we will diminish.” While not all those jobs were filled by EU nationals, “a decent chunk” of them were.<sup>131</sup> This point is particularly pertinent as the Government has predicted “a net increase of over 600,000 PBS jobs” by 2020.<sup>132</sup>
100. James Kenny, Head of Global Affairs at consulting engineers Arup, highlighted the significant skills shortage in the construction sector, and said that, for forthcoming projects such as HS2, for which they needed “planning and design engineers”, the “first place we would normally look to fill those gaps would be Europe”. Not being able to do so in future “could be a brake on the UK economy”.<sup>133</sup>
101. In relation to SMEs, Mr Harris said “access to skills and talent” seemed to be the “biggest concern” for managing partners of professional firms and that this “clearly leads us down the line of thinking that free movement of people is important”. Although this issue would not affect all SMEs, for those it did affect it was “an existential issue ... as to whether they will be able to continue to do the sort of work they are doing at the moment”.<sup>134</sup>

### *Mutual recognition of professional qualifications*

102. KPMG highlighted the dependence of regulated PBS, such as law and accountancy, upon “the level of professional mobility—i.e. mutual recognition

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128 Written evidence from Ernst and Young ([TAS0035](#))

129 [Q 21](#)

130 [Q 30](#)

131 [Q 30](#)

132 HM Government, *Growth is our business: a Strategy for Professional and Business Services* (July 2013) p 36: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/211842/bis-13-922-growth-is-our-business-professional-and-business-services-strategy.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/211842/bis-13-922-growth-is-our-business-professional-and-business-services-strategy.pdf) [accessed 16 February]

133 [Q 30](#)

134 [Q 21](#)

of qualifications, registration and licensing for regulated professions”. In contrast, “loss of mutual recognition would hamper the mobility of [firm’s] professionals”. KPMG recommended the Government seek to “retain or, ideally, enhance mutual recognition of professional qualifications” as part of the negotiations.<sup>135</sup> While the Professional and Business Services Council accepted that the Professional Qualifications Directive could be better implemented, they said it was “most important that leaving the Single Market does not result in currently recognised qualifications becoming unrecognised”.<sup>136</sup>

103. Danny Mortimer, Chief Executive of NHS Employers, explained that the NHS also benefited from the mutual recognition of professional qualifications for doctors and other medically trained staff. Some 6% of the NHS workforce nationally, and 10% in London, were EU nationals.<sup>137</sup> The NHS Confederation also noted that the UK was a “net importer of healthcare professionals qualified in other parts of the EU”, and that mutual recognition had helped to “fast-track” EU health professionals “for registration with the General Medical Council, the Nursing Midwifery Council or other relevant regulatory body”.<sup>138</sup>
104. The Mutual Recognition of Professional Qualifications Directive, which supports the ability for PBS service providers to practice in other EU Member States, is outlined in Box 6.

**Box 6 Mutual Recognition of Professional Qualifications Directive  
2005/36/EC, as amended by Directive 2013/55/EU**

All Member States regulate access to professions such as medicine, engineering, law and accountancy. In order to support the free movement of these services, the Directive harmonises qualifications in some professions and extends the principle of ‘mutual recognition’ to others. In the words of the Directive:

“The recognition of professional qualifications by the host Member State allows the beneficiary to gain access in that Member State to the same profession as that for which he is qualified in the home Member State and to pursue it in the host Member State under the same conditions as its nationals.”<sup>139</sup>

Under the Directive, qualifications for nurses, midwives, doctors, pharmacists, architects and veterinary surgeons receive automatic recognition across the EU. Qualifications for lawyers, auditors, insurance intermediaries, commercial agents and other professions have to go through a general process for mutual recognition. Individuals apply to the competent authority in the relevant Member State, which then considers whether there is a gap in the qualifications they have achieved compared with the requirements in that Member State. The relevant authority can request the applicant take ‘compensation measures’, such as sitting an aptitude test or completing a probation period.

135 Written evidence from KPMG ([TAS0030](#))

136 Written evidence from the Professional and Business Services Council ([TAS0022](#))

137 [Q 56](#)

138 Written evidence from the NHS Confederation ([TAS0069](#))

139 Directive 2005/36/EC of the European Parliament and the of the Council of 7 September 2005 on the recognition of professional qualifications ([OJ L 255](#), 30 September 2005) Article 4

The Directive also provides for mutual recognition of non-degree qualifications by outlining the minimum criteria for qualifying work experience.

The Directive was amended in 2013 to improve its implementation. In January 2016 the Commission introduced a European Professional Card (EPC) for five professions (nurses, physiotherapists, pharmacists, real estate agents and mountain guides). This is an electronic certificate issued via an online EU-wide system for recognising qualifications.<sup>140</sup>

105. The Royal Institute of British Architects (RIBA) said: “Any professional licensing restrictions following the departure of the UK from the EU would represent a key non-tariff barrier for architecture professionals.”<sup>141</sup> Without continued mutual recognition of professional qualifications, the ICAEW, the accountancy training body in the UK, said there was “a risk that UK auditors and chartered accountants will no longer be able to practise in other Member States, or at least not as easily as at present”. Conversely, there was a risk that “EU auditors and accountants qualified in other Member States may no longer find it possible to work in the UK or may encounter new hurdles”.<sup>142</sup> EY suggested that without the mutual recognition, new arrangements “would need to be negotiated, potentially on a bilateral basis with each EU Member State”.<sup>143</sup>
106. Ms Jones explained that mutual recognition of professional qualifications mattered more to ‘regulated’ as opposed to ‘unregulated’ professions (such as management consultants). Service providers in unregulated sectors were “free to trade without qualifications at all”, in the sense that there was no requirement for membership of a professional body.<sup>144</sup> Ms Jones also noted the limitations of mutual recognition of professional qualifications in some sub-sectors. For example, even if there was “complete and free market access” to provide “tax advice in any other Member State”, she noted that she “could not go to Ireland and pick up its tax statute and sensibly advise on it”.<sup>145</sup>
107. There are precedents for a degree of mutual recognition of professional qualifications between the EU and third countries: the EU has extended the application of the Directive to Switzerland, and has also agreed a framework for mutual recognition with Canada under CETA. We asked the Minister, Dr Jesse Norman MP, what weight the Government would give to mutual recognition in negotiating a FTA. He told us that it was “not absolutely clear at the moment” what sort of agreement the UK might reach in this area, but he felt it was “hard to imagine that we would not be able to put in place some set of working arrangements”, given the extent of harmonisation between UK and EU law. He acknowledged that there was “every possibility that other states might use” restrictions on qualifications “to try to escalate barriers against UK nationals”, given that PBS were generally highly regulated.<sup>146</sup>

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140 HM Government, *Review of the Balance of Competences between the United Kingdom and the European Union: The Single Market: Free movement of services* (Summer 2014) pp 15–16, 29–31, 34 and 52–53: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/332668/bis-14-987-free-movement-of-services-balance-of-competencies-report.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/332668/bis-14-987-free-movement-of-services-balance-of-competencies-report.pdf) [accessed 16 February 2017]

141 Written evidence from RIBA ([TAS0045](#))

142 Written evidence from the Institute of Chartered Accountants in England and Wales ([TAS0020](#))

143 Written evidence from EY ([TAS0035](#))

144 [Q 28](#)

145 [Q 28](#)

146 [Q 69](#) (Dr Jesse Norman MP)



108. Dr Norman also suggested there was “likely to be an increasing move towards more mode 3 activity”, so there would be “an increasing incentive for them to use people, whether UK nationals or not, who are appropriately qualified locally as well as internationally qualified”.<sup>147</sup>

#### *Mutual recognition of regulatory frameworks*

109. For other regulated professions, such as accountancy, market access also depends on mutual recognition of regulatory frameworks, including regulators. Ms Jones explained that the Financial Reporting Council (FRC) was “the main regulator for the accountancy and auditing profession”<sup>148</sup> in the UK, and was currently “recognised across Europe”.<sup>149</sup> She continued: “If it were not to be so recognised it would be far harder for us to be able to do cross-border work.” The FRC could continue to be recognised, outside the Single Market, in two ways: either via ‘equivalence’, or via ‘mutual recognition’. Equivalence meant that “every single way that the regulator acts mirrors exactly the way that the European regulators act ... you have zero divergence in how regulations are written and applied”. Equivalence was thus “very inflexible”. Ms Jones preferred mutual recognition, because it focused on “the outcome instead of the manner in which you get there”.<sup>150</sup>

#### *Free flow of data*

110. Ensuring the free flow of data between the UK and the EU will also be critical. The Professional and Business Services Council highlighted the importance of data flows to professional business services, as their entire aim was “to analyse data and provide advice based on professional knowledge”, and noted that “email is now the primary means of business communication”.<sup>151</sup>
111. Changes to data protection rules would have a significant impact on PBS firms. EY said they maintained a single IT system across the EU, in compliance with the Data Protection Directive. If the UK were no longer party to this, “we would be required to undertake significant re-designing of our data systems in the UK and EU”.<sup>152</sup> Concerns about data flows in digital and creative services are discussed further in Chapter 5.

#### **Trading under WTO rules**

112. The Professional and Business Services Council said trading under WTO rules would affect most PBS services, and that “in many cases they may face an absolute barrier to trading, (as opposed to merely facing additional costs)”.<sup>153</sup> In relation to legal services, Mr Laurans said the EU’s GATS schedule would require the UK to negotiate with 27 individual markets, of which “some ... will not have third country lawyer status, so you will not be able to practise in that Member State”. In others, UK lawyers “will not be able to set up a law firm with local lawyers”; this would be another

147 [Q 69](#) (Dr Jesse Norman MP)

148 [Q 21](#)

149 [Q 28](#) (Sally Jones) The Professional and Business Services Council explained that the FRC was responsible for the approval and registration of statutory auditors, technical standards and standards of professional ethics and internal quality control of statutory auditors and audit work, continuing education of statutory auditors, monitoring and investigating (by means of inspections) statutory auditors and their work and imposing and enforcing sanctions. Written evidence from the Professional and Business Services Council ([TAS0022](#))

150 [Q 29](#)

151 Written evidence from the Professional and Business Services Council ([TAS0022](#))

152 Written evidence from Ernst and Young ([TAS0035](#))

153 Written evidence from the Professional and Business Services Council ([TAS0022](#))

“significant setback for the legal services sector”.<sup>154</sup> As for accounting and auditing services, EY said trading under the GATS “would constrain the ability of our business and our people to operate across the EU”.<sup>155</sup>

113. The UK Trade Policy Observatory referred us to the Services Trade Restrictiveness Index (STRI) compiled by the World Bank, noting that outside the Single Market, lawyers and accountants looking to provide services in the EU would be up against “major restrictions”.<sup>156</sup>
114. The Professional and Business Services Council added that while actual applied trade restrictions were “generally better” than what was included in GATS schedules, such a “favourable market access environment could change at any time, giving rise to considerable uncertainty”.<sup>157</sup>
115. For PBS such as management consulting, for whom mutual recognition of qualifications or regulatory frameworks is not necessary, trade under WTO rules could be subject to fewer restrictions. Even so, the Management Consultancies Association described international trade under WTO rules as “manageable” but “scarcely attractive”. They noted that there was a “risk that many of our global consulting companies, who have used UK consulting resources on projects within the EU, would simply equip their local EU offices to respond to local demands, reducing net UK consulting exports”.<sup>158</sup>
116. Witnesses acknowledged that trade between the UK and the US in PBS currently occurred only on WTO rules. However, Ms Jones said this trade incurred additional “frictional costs and administrative costs”, and that it was “materially harder” than trade with EU Member States. She concluded: “We would far, far rather, if we could, have the same freedom with the US than move Europe to a US model.”<sup>159</sup> Mr Laurans agreed that trade in legal services with countries such as the US or Canada was possible, “but it is more complicated, more complex and it costs more”.<sup>160</sup>

#### *Trade in Services Agreement (TiSA)*

117. The negative effects of trading under WTO rules could be mitigated by the conclusion of negotiations on the plurilateral Trade in Services Agreement (TiSA), a broad global services agreement that seeks to improve on the terms of trade provided by the GATS. Although negotiations between the 23 WTO member countries (including the EU) started in 2013, there is no formal deadline for final adoption. Ms Jones recommended TiSA as “the way forward”, because it recognised “technological developments”, generally improved market access for PBS, and improved rules on data localisation and data flows. She also noted that TiSA contained “far greater mutual recognition of qualifications and regulatory coherence”. Ms Jones concluded that it was a “far better, more robust agreement”, which borrowed its approach from “much more recent free trade agreements”, and was “in some ways, best in class”.<sup>161</sup>

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154 [Q 23](#)

155 Written evidence from Ernst and Young ([TAS0035](#))

156 Written evidence from the UK Trade Policy Observatory ([TAS0085](#))

157 Written evidence from the Professional Business Services Council ([TAS0022](#))

158 Written evidence from the Management Consultancies Association ([TAS0002](#))

159 [Q 22](#)

160 [Q 22](#)

161 [Q 23](#)

118. Nonetheless, TiSA will have some limitations. Mr Laurans said that while TiSA usefully “improved the transparency of ... restrictions”, it did not amount to “a liberalisation of market access” for legal services.<sup>162</sup> Comparing TiSA with FTAs, like CETA, Ms Jones said that the EU was “taking what is referred to as a CETA-minus approach to TiSA”. Thus the EU’s “TiSA offer is just a little bit less generous across the board than what it has agreed in CETA”. Nonetheless, she said even a CETA-minus position was “for most professional and business services—legal notwithstanding—significantly better than GATS”.<sup>163</sup> The Professional and Business Services Council agreed, noting that TiSA “does not achieve everything the EEA achieves, and therefore would not be an alternative to an agreement with EEA style services provisions, but would be significantly better than nothing”.<sup>164</sup> The Government’s White Paper said: “The UK continues to be committed to an ambitious TiSA and will play a positive role throughout the negotiations.”<sup>165</sup>

### Conclusions

119. **Professional business services (PBS) comprise a wide variety of regulated and un-regulated professional services, encompassing some of the UK’s most successful exports globally and to the EU. The UK generates a large surplus in trade in PBS with the EU (£6.1 billion in 2015). It is now up to the Government to protect and maintain the UK’s strengths in business services in a deep and comprehensive UK-EU FTA.**
120. **The Government should ensure that any UK-EU FTA includes provisions on the mutual recognition of professional qualifications and also of regulatory structures. Failure to achieve such mutual recognition would, according to the Professional and Business Services Council, result in “absolute” barriers to trade for the most highly regulated professions.**
121. **In addition to securing market access for UK service providers to provide services temporarily in the EU, the Government should also seek to include provisions on the rights of UK businesses to establish themselves in the EU (and vice versa). While the extent to which such provisions have been provided under existing EU FTAs with third countries is unclear, it will be vital for the UK, given the significance of services trade via mode 3.**
122. **Issues relating to cross-border movement of persons delivering PBS will need to be addressed in UK-EU FTA negotiations. The free movement of persons has facilitated trade in PBS between the UK and the EU in two clear ways. Firstly, it has enabled firms to service clients and contracts at short notice and to assist partner firms in other Member States. Secondly, the free movement of persons has also enabled firms to recruit from a larger labour market and fill skills gaps. The Government should give full weight to these benefits,**

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162 [Q 23](#)

163 [Q 23](#)

164 Written evidence from the Professional and Business Services Council ([TAS0022](#))

165 HM Government, *The United Kingdom’s exiting from and new partnership with the European Union*, Cm 9417, February 2017, p 42: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/589191/The\\_United\\_Kingdoms\\_exit\\_from\\_and\\_partnership\\_with\\_the\\_EU\\_Web.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/589191/The_United_Kingdoms_exit_from_and_partnership_with_the_EU_Web.pdf) [accessed 15 February 2017]

**and the consequences of changing migration rules for PBS, both in negotiations and in the preparation of immigration legislation.**

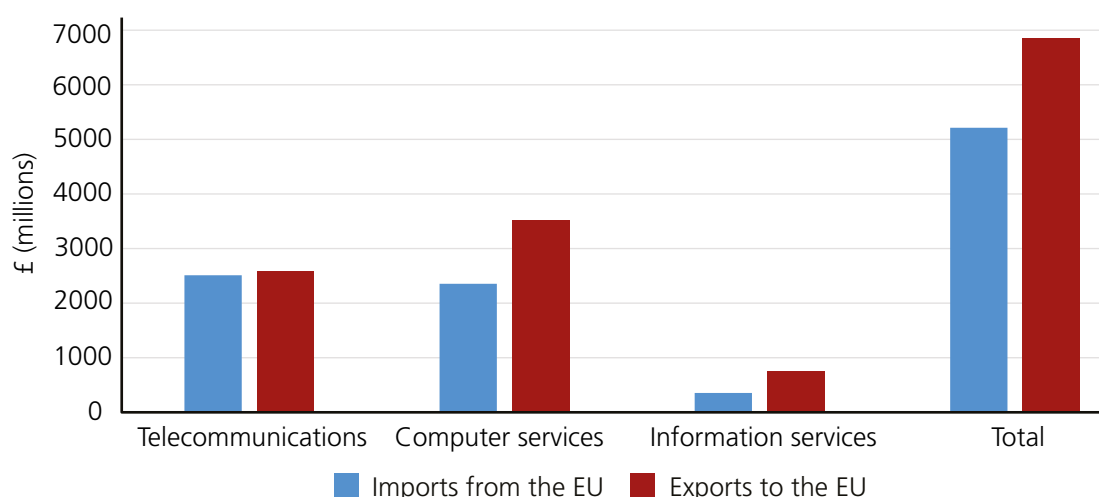
123. **Under a ‘no deal’ scenario, regulated PBS firms (such as legal and accounting firms) would face increased (and in some cases absolute) barriers to trading with the EU. Unregulated PBS, like management consulting, would be able to continue trading with the EU, although even they could be indirectly affected.**
124. **In such a scenario, it is likely that PBS firms, in particular those in the legal sector, would either relocate to the EU, or move resources to partner firms within the EU, in order to continue to trade on preferential terms. Both outcomes could have a negative effect on the UK’s trade balance, tax revenues and employment.**
125. **The Trade in Services Agreement (TiSA) provides an opportunity to update the global terms of trade for many services. But we note that negotiations on TiSA have stalled, and that the EU’s position has been to pursue terms in TiSA negotiations that are less favourable than those in CETA.**

## CHAPTER 5: DIGITAL SERVICES

### Digital services in the UK

126. The ONS measures trade in telecommunication, computer and information services, which includes trade in “computer, news agency and other information provision related service transactions”, and telecommunications services including the “broadcast or transmission of sound, images, data or other information.” In 2015, the UK had a sizeable surplus in global trade in these digital services, importing £9.2 billion but exporting £15.8 billion. Such trade is also growing, now accounting for 7% of the UK’s global services exports.<sup>166</sup>
127. Within this sector, the EU was the destination for 43% of exports and the source of 56% of imports. The UK had a digital services trade surplus with the EU of £1.6 billion in 2015 (see Figure 6). Imports in digital services from the EU have also been increasing as a proportion of total imports, from 47% in 2007 to 56% in 2015.<sup>167</sup>

**Figure 6: UK-EU Trade in digital services 2015**



Source: Written evidence from the ONS ([TAS0064](#))

128. It is widely accepted that the figures provided by the ONS do not accurately represent the importance of digital services and businesses to the UK’s economy. Professor Sir Charles Bean’s review of UK economic statistics concluded that “if the digital economy was fully captured by official statistics, it could add between one third and two thirds of a percent to the growth rate of the UK economy”.<sup>168</sup>
129. The limitations of the available data partly reflect difficulties in defining digital services and businesses. In a recent report, *The UK Digital Sectors After Brexit*, Frontier Economics defined ‘digital-producing’ sectors as those that produce digital goods and services. While this broad definition includes

166 Written evidence from the Office for National Statistics ([TAS0064](#))

167 Written evidence from the Office for National Statistics ([TAS0064](#))

168 HM Government, Press notice: “Take economic statistics back to the future’, says Charlie Bean’ (11 March 2016): <https://www.gov.uk/government/publications/independent-review-of-uk-economic-statistics-final-report/press-notice-take-economic-statistics-back-to-the-future-says-charlie-bean> [accessed 16 February 2017]

some manufactured goods, the report said that “81% of digital sector exports are primarily services”, including services key to the ONS’ definition, such as “software and services, internet, information and telecommunications services”. The report concluded that digital producing sectors of the UK’s economy contributed 5.3% to the UK’s Gross Value Added (GVA) in 2015, and had a collective turnover of £151 billion (4.8% of GDP).<sup>169</sup> Their GVA also grew by a faster rate than the economy generally from 2009–2014, achieving a compounded average annual growth rate of 3.9%, compared to an average growth of GVA across the UK economy closer to 3.3%. The report estimated that at least 1 million UK jobs were dependent on digital producing sectors.<sup>170</sup>

130. Digital services also provide opportunities for future innovation and growth in business and trade. techUK told us that the UK had “a rich ecosystem of established and emerging digital tech businesses”, and that digital services “created jobs at almost three times the rate of the rest of the economy in the first half of this decade”. They also said that the increased adoption and exploitation of digital services would be “critical over the coming decade”, to capture the “significant income and productivity gains that will result from accelerating the process of digitisation across the economy”.<sup>171</sup> Summarising the reasons to support UK trade in digital services, Antony Walker, CEO of techUK, said: “The sector is big, and probably bigger than we think it is. It is about the future, because the technology sector is the agent of change in a modern, global, digital economy, and we are really good at this stuff.”<sup>172</sup>

### Priorities for a UK-EU FTA

131. techUK warned the Government to “beware the siren call of an FTA”, noting that “the tech sector is predominantly a services-based sector and the increasing ‘servicetisation’ of goods renders an FTA largely ineffective”.<sup>173</sup> Skyscanner believed that “an FTA would certainly be preferable to an absence of provision for free trade”, but noted that “the extent of its attractiveness [would be] subject to the nature of the deal that is negotiated”.<sup>174</sup> Witnesses highlighted a number of issues that would be critical to the UK’s future trading relationship with the EU, which are outlined below.

#### *Access to skills and frictionless movement of persons*

132. techUK said the “UK suffers from a chronic digital skills shortage which is hampering the growth of the tech sector”, noting that “high-skilled vacancies in tech companies made up the largest proportion of the professional vacancy market”.<sup>175</sup> Frontier Economics said that to address this skills gap, UK firms in the digital sector “have been increasingly looking to European talent to accommodate growth”. EU-born workers represent a relatively small proportion of employees in the digital sector, approximately 6% of the total. Nevertheless, Frontier Economics found that “the foreign-born workforce,

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169 Gross Value Added is the measure of the value of goods and services produced in an industry or sector to the economy as a whole.

170 Frontier Economics, *The UK digital sectors after Brexit: An independent report commissioned by techUK* (24 January 2017) pp 12, 14–15 and 29: available at <https://www.techuk.org/insights/news/item/10086-uk-tech-sector-is-a-model-for-global-britain> [accessed 16 February 2017]

171 Written evidence from techUK ([TAS0087](#))

172 [Q 10](#)

173 Written evidence from techUK ([TAS0087](#))

174 Written evidence from Skyscanner ([TAS0014](#))

175 Written evidence from techUK ([TAS0087](#))

in particular the EU-born workforce, disproportionately drove growth in the digital sectors over the last half decade”. While the proportion of EU-born workers only increased from 4% to 6% of the total workforce over this period, they made up 17% of total workforce growth from 2009 to 2015. It would be important to consider “where future growth [in the workforce] will come from”<sup>176</sup> after Brexit.

133. Witnesses warned that greater restrictions on the movement of EU nationals would lead to businesses basing themselves outside the UK. Mr Walker said: “If you are a very small company that is growing very fast you will move your company to where the talent is.”<sup>177</sup> COADEC agreed that there was “a real risk that UK digital start-ups may simply opt to relocate to Europe, thus depriving the UK of the benefit of their growth”.<sup>178</sup>
134. Although there was widespread support for increasing digital skills in the UK’s domestic workforce, UK Interactive Entertainment (UKIE), techUK, COADEC, Skyscanner and Digital Catapult all stressed that this would be a long-term solution.<sup>179</sup> UK Cloud wrote that “whilst many initiatives are underway to resolve the issue in the longer term, having free access to the much wider European talent pool is a pre-requisite for growth in the immediate term”.<sup>180</sup>
135. Skyscanner also highlighted the importance of ensuring the seamless temporary movement of employees and service providers across the EU. They employed “more than 115 non-British EU citizens across our business”, and relied on the “free movement of persons to allow our employees to move backwards and forwards between our UK head-quarters and our European subsidiary entities in a smooth and efficient manner”. The loss of “the ability to move swiftly” would put them “at a heavy disadvantage to our competitors when recruiting from the competitive tech talent pool”.<sup>181</sup>

### *Free flow of data*

136. techUK told us: “In this digital age data flows cannot be separated from trade flows.”<sup>182</sup> According to Frontier Economics, “about half of all trade in services is digitally enabled”. While recognising the difficulty of measuring the extent of cross-border data flows, Frontier Economics estimated that in 2015 the UK accounted for 11.5% of global cross-border data flows—compared to 3.9% of global GDP and 0.9% of global population. Frontier Economics also said that “75% of UK cross-border data flows are with EU partner countries”. This includes flows for information, communications, search, audio and video transactions and intra-company and intra-machine data flows.<sup>183</sup> More information about data regulation is provided in Box 7.

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176 Frontier Economics, *The UK digital sectors after Brexit: An independent report commissioned by techUK* (24 January 2017) pp 31–32: available at <https://www.techuk.org/insights/news/item/10086-uk-tech-sector-is-a-model-for-global-britain> [accessed 16 February 2017]

177 Q 17

178 Written evidence from COADEC (TAS0011)

179 Written evidence from UK Interactive Entertainment (TAS0016), techUK (TAS0087) and COADEC (TAS0011)

180 Written evidence from UK Cloud (TAS0015)

181 Written evidence from Skyscanner (TAS0014)

182 Written evidence from techUK (TAS0087)

183 Frontier Economics, *The UK digital sectors after Brexit: An independent report commissioned by techUK* (January 2017) pp 35 and 37: available at <https://www.techuk.org/insights/news/item/10086-uk-tech-sector-is-a-model-for-global-britain> [accessed 16 February 2017]

**Box 7: EU data protection rules**

The Data Protection Directive 95/46/EC stipulates that the processing of personal data within the EU is subject to standards of transparency, ‘legitimate purpose’ and proportionality. Those who collect and process personal data (‘data controllers’) must protect it from misuse and must respect the rights of those who provide their personal data (‘data subjects’), for example by gaining their consent.<sup>184</sup>

In 2016, a major overhaul of the Directive was agreed, and the General Data Protection Regulation 2016/679/EU (GDPR) will replace the Directive from 25 May 2018.<sup>185</sup> Under the GDPR, EU citizens’ personal data may only be transferred to a third country if:

- the Commission has decided that a third country, territory or an international organisation ensures an adequate level of protection; and
- the organisation receiving the personal data of EU citizens has provided adequate safeguards. Individuals’ rights must be enforceable and effective legal remedies for individuals must be available following the transfer.<sup>186</sup>

While the GDPR sets high standards for the transfer of personal data between EU Member States and third countries, it does not address the movement of non-personal data (for example data that is not about a specific individual), or restrictions on the movement of personal data for reasons other than the protection of personal data (for example under taxation or accounting laws). The most common restrictions are national data localisation laws, which require organisations to store certain types of data on servers based in a particular country. The Commission is currently consulting on possible changes to data localisation rules, in order to create a European data market.<sup>187</sup>

137. techUK called on the Government to “place protecting international data flows right at the heart of its negotiating strategy”.<sup>188</sup> The Information Commissioner’s Office emphasised that “having a new UK data protection law similar, and essentially equivalent, to the GDPR will be critical to maintaining trade arrangements with the EU”.<sup>189</sup>
138. The Minister, Mr Hancock, told us that “we want to have a free flow of data with the rest of the EU”, and that “there is a great interest in the rest of the EU for having a free flow of data with the UK”. He supported the GDPR, saying that it “will come into force in the UK and [we] will put through domestic legislation to make that happen and make us compliant”. Although the UK would have the opportunity to amend data protection legislation

184 Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, (OJ L 281, 24 October 1995)

185 Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (Text with EEA relevance), (OJ L 119/1, 27 April 2016)

186 Information Commissioner’s Office, ‘Transfers of personal data to third countries or international organisations’ (January 2017): <https://ico.org.uk/for-organisations/data-protection-reform/overview-of-the-gdpr/transfer-of-data/> [accessed 22 February 2017]

187 European Commission, ‘Commission outlines next steps towards a European data economy’ (10 January 2017): [http://europa.eu/rapid/press-release\\_IP-17-5\\_en.htm?locale=en](http://europa.eu/rapid/press-release_IP-17-5_en.htm?locale=en) [accessed 22 February 2017]

188 Written evidence from techUK (TAS0087)

189 Written evidence from the Information Commissioner’s Office (TAS0032)



in the longer term, he emphasised that “we would want to be very careful that anything we did to make compliance easier [for businesses] would also ensure that we could still carry on with the free flow of data to the EU”.<sup>190</sup>

139. Others argued that the UK would need to do more than merely implement the GDPR to protect data flows post-Brexit—it would also need to secure an ‘adequacy decision’ from the Commission, which recognised that the UK had adequate data protection standards. Frontier Economics described securing an adequacy decision as necessary to ensure that UK law “satisfies recent EU court case law and matches the expectations of the Article 29 Working Group Party’s templates for adequacy decisions”. An adequacy decision from the Commission would be based on “a full review of the UK’s domestic data regime to determine how the UK’s data protection landscape matches the requirements of EU law”.<sup>191</sup>
140. Mr Walker highlighted the legal challenge to the ‘Safe Harbour’ agreement<sup>192</sup> (the previous basis for data flows between the US and the EU, which has now been replaced by the EU-US Privacy Shield<sup>193</sup>), to illustrate the difficulties of securing an adequacy decision. This legal challenge followed revelations about how US security agencies processed the data of EU citizens. Although UK agencies were involved in this data processing, as an EU Member State the UK was not directly implicated in the legal proceedings because, as Mr Walker explained, “when you are a member of the European Union ... the European Court of Justice has no jurisdiction over security matters”. He continued: “When you are outside the European Union, the European Court of Justice has to take account of the adequacy of any data protection requirements”. Mr Walker raised particular concern about the Investigatory Powers Act 2016, noting that “the UK could be open to challenge by European privacy campaigners and a case brought to the European Court of Justice ... could have real implications”.<sup>194</sup>
141. When asked about the Investigatory Powers Act, Mr Hancock replied: “We are very confident that the Act is consistent with both the GDPR and the fundamental rights of the EU.”<sup>195</sup>
142. Mr Walker also drew our attention to the Commission’s consultation on data localisation rules (see Box 7). He warned that the initiative could “require certain data to be hosted within the European Union”, meaning “that certain services could not be made available to the rest of the European market from here in the UK”. The EU could thus use the measure to “attract digital businesses away from the UK and require them to locate elsewhere in the European Union”.<sup>196</sup>

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190 [Q 67](#)

191 Frontier Economics, *The UK digital sectors after Brexit: An independent report commissioned by techUK* pp 38, (January 2017): available at <http://www.frontier-economics.com/documents/2017/01/the-uk-digital-sectors-after-brexit.pdf> [accessed 8 March 2017]

192 Case C-362/14 - *Maximillian Schrems v Data Protection Commissioner*

193 Commission Decision 2000/520/EC of 26 July 2000 pursuant to Directive 95/46/EC of the European Parliament and of the Council on the adequacy of the protection provided by the safe harbour privacy principles and related frequently asked questions issued by the US Department of Commerce ([OJ L 215](#), 25 August 2000)

194 [Q 16](#)

195 [Q 67](#)

196 [Q 12](#)

*Abolishing roaming charges for consumers*

143. The Broadband Stakeholder Group emphasised that “the large majority of telecoms revenue” was derived from “wholesale fixed and mobile voice and data services”, which were “predominantly delivered at national level”. Nevertheless, telecoms operators were affected by Regulation 2015/2120/EC, which provides for the abolition of roaming charges from June 2017, for consumers using their mobile phones while travelling in the EU. More information on this Regulation can be found in Box 8.

**Box 8: EU roaming rules**

Regulation 2015/2120/EU abolishes roaming charges by telecommunications operators within the EU. Since 2007 the EU has gradually reduced the charges EU mobile network operators (MNOs) can impose on subscribers for using telephone, SMS and data services in another Member State, and the Regulation, adopted in 2015 will abolish roaming charges across the EU by June 2017. The cost of roaming charges is derived from international agreements between MNOs located in different Member States on the wholesale prices for providing services to each other’s customers abroad. The abolition of roaming charges requires that the wholesale prices that networks charge each other be capped. The Commission has proposed to achieve this through secondary legislation to be enforced by National Regulatory Authorities, such as Ofcom in the UK.

The Regulation also specifies that retail charges for roaming services (which are added to the cost of wholesale roaming charges by MNOs as the final charge paid by the consumer) be eliminated.

Source: European Commission, *Technical Factsheet about roaming charges (December 2016)*: <https://ec.europa.eu/digital-single-market/en/news/end-roaming-charges-travellers-european-union-how-will-commission-make-it-work> [accessed 22 February 2017]

144. Which? highlighted the potential re-introduction of roaming charges as one of its main concerns for consumers after Brexit: “As it stands, and from what the Commission has said previously, the EU’s Roaming Regulation is an internal market instrument.”<sup>197</sup> Matthew Evans, CEO of the Broadband Stakeholder Group, raised a similar concern: “On the question of whether the UK would be able to participate in ... the decrease in wholesale roaming caps, I would have to say that I suspect not.”<sup>198</sup> Broadband Stakeholder Group told us that it was “unclear whether or how these measures would continue to be implemented post-Brexit”, arguing that one option would be “to negotiate with the EU a regional trade agreement to enable UK operators to obtain similar wholesale roaming rates to operators throughout the EU Member States”.<sup>199</sup>
145. We asked whether EU MNOs would be obliged to offer their UK counterparts capped prices on wholesale roaming charges after Brexit. Mr Evans said this depended on “the willingness of EU operators to continue to keep their wholesale costs in line with ours”. He conceded that the asymmetry in travel volumes, whereby more UK consumers travel to the EU than EU citizens travel to the UK, as well as the fact the UK travellers “use more

197 Written evidence from Which? (TAS0082)

198 Q 14

199 Written evidence from Broadband Stakeholder Group (TAS0017)

data generally” than EU visitors to the UK, could create an incentive for EU MNOs to increase the wholesale charges they applied to UK networks.<sup>200</sup>

146. We also took evidence from MNOs. Sky told us that, if the UK no longer benefited from the cap on wholesale roaming charges, “it is unlikely that operators such as Sky could offer domestic tariffs when consumers are travelling abroad”. Sky urged the Government to ensure that as a “result of bilateral arrangements”, the UK remained party to the “EU regulatory regime for international roaming”.<sup>201</sup>
147. Consultants Oxera agreed that the uncapped costs of wholesale roaming charges could be passed onto UK consumers. They also suggested that, outside of the EU Regulation, UK MNOs may also increase retail charges on top of wholesale roaming charges, in order to increase profits. Comparing the impact of the EU Regulation on costs for consumers in EEA countries and Switzerland (which effectively trades telecoms services on the basis of WTO rules), Oxera estimated that the revenue of UK MNOs could increase by between £250–750 million annually. They said that “around three-quarters of this gain would be due to retail price revenues, which derive from UK consumers, effectively constituting a “transfer [of wealth] from consumers to MNOs”. Oxera said this reflected the finding that “retail roaming prices are typically a large mark-up on the equivalent wholesale charge that underpins the service”.<sup>202</sup>
148. The Minister, Mr Hancock, noted that “we are a much bigger market than Switzerland”, and argued that “we have a much better position in terms of size.” He confirmed the Government was “undoubtedly” in favour of the abolition of roaming charges (and had “argued for it”), and that this issue “[would] no doubt be part of our thinking as we go through the negotiation”.<sup>203</sup>

#### *Retaining influence over EU rules and regulations*

149. techUK reminded us that there was “a huge body of European law that underpins the day-to-day operations of the technology sector”, the purpose of which was to “harmonise the single market and reduce non-tariff barriers for trade within the EU”.<sup>204</sup> Skyscanner also told us that a “harmonised Single Market framework” had had “a significant positive impact”, by “increasing operating efficiencies and reducing unnecessary costs.”
150. UK Cloud agreed: “Whilst the charge of over-regulation is frequently levelled at the EU, a single set of compliance costs is preferable to multiple regulatory compliance costs.”<sup>205</sup>
151. While witnesses were generally supportive of the Commission’s proposals to alter the shape of the Single Market for digital and telecommunications services under the Commission’s Digital Single Market Strategy (launched in May 2015) and the Connectivity Package (launched in September 2016), some were concerned that, post-Brexit, the Strategy could be used to introduce non-tariff barriers to UK businesses providing services in the EU.

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200 Q 14

201 Written evidence from Sky (TAS0003)

202 Written evidence from Oxera (TAS0068)

203 Q 72

204 Written evidence from techUK (TAS0087)

205 Written evidence from UK Cloud (TAS0015)

152. The Digital Single Market Strategy includes 16 legislative and non-legislative initiatives to create a Single Market in digital services by harmonising, among other things, copyright, consumer protection and VAT laws (largely for digital goods and services).<sup>206</sup> The Connectivity Package seeks to reform competition and consumer protection rules for telecommunications businesses.<sup>207</sup>
153. While Digital Catapult felt the market liberalisation proposed in the Digital Single Market Strategy “would offer a disproportionate benefit to the UK”, Antony Walker was concerned that it could do the opposite: “As that body of legislation is developed and approved at a European level, opportunities could be taken to make that market less accessible to UK firms once the UK exits the European Union.”<sup>208</sup> He concluded: “We need to be very careful that the DSM cannot be used against the interests of UK-based companies in the future.”<sup>209</sup> Commenting on the Connectivity Package, Broadband Stakeholder Group said the Commission’s proposals included measures to boost “investment in connectivity” and tackle “regulatory fragmentation across the EU”, but added that it was “unclear how these changes in regulations might affect the UK telecoms sector and its ability to provide services across the EU post Brexit”.<sup>210</sup>
154. Mr Hancock said that, “since the referendum, [the UK’s] impact on current EU debates is as significant as it ever was—read into that what you will”. The Government was “using the fact that we are members until we leave to contribute to and win those arguments” with other Member States. Asked whether the Government had considered ways to maintain this influence after Brexit, he said it was “far too early to say”, and that the answer depended on the wider question of “once we are in control of our own laws, how would we react to any given new European law?” The UK would be “free to choose either to move towards it, align with another part of the world or come up with our own solution”. He also noted that the UK had experience of working with regulators in other trading nations, such as the US, but that it was “too early to go into the details of what that structure would look like”<sup>211</sup> for the UK and EU post-Brexit.

### Trading under WTO rules

155. techUK described the move to trading in digital services under WTO rules as “a regulatory cliff edge”.<sup>212</sup> Mr Walker said that it was “a highly unattractive option from the perspective of the full breadth of techUK members”.<sup>213</sup> Jo Twist, CEO of UKIE, told us: “The WTO does not provide the free movement of labour, and it does not provide for the free movement of personal data between the UK and the EU”.<sup>214</sup>

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206 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: ‘A Digital Single Market Strategy for Europe’ [COM\(2015\)192](#)

207 European Commission, ‘Connectivity for a European Gigabit Society’ (30 November 2016): <https://ec.europa.eu/digital-single-market/en/connectivity-european-gigabit-society> [accessed 2 March 2017]

208 Written evidence from Digital Catapult ([TAS0013](#))

209 [Q 11](#)

210 Written evidence from Broadband Stakeholder Group ([TAS0017](#))

211 [Q 72](#)

212 Written evidence from techUK ([TAS0087](#))

213 [Q 18](#)

214 [Q 18](#)

156. As an internet business, Skyscanner did “not envisage a move from the EU regime to WTO (GATS) terms as likely to have a significant detrimental impact of itself”, but was concerned that enforcement of the GATS schedules could be “extremely difficult, often political”. They noted that GATS terms “have been heavily criticised due to the apparent lack of transparency in relation to settling disputes or negotiating new trade relations”. They therefore argued that trading on WTO terms would be “a much less attractive option than a free trade agreement”.<sup>215</sup>
157. UK Cloud were concerned that trading under WTO rules would affect future innovation in digital businesses: “Like most regulation, WTO terms pre-date digital and cloud.” While most WTO schedules were “not unreasonable (and in some aspects not dissimilar to the terms of being a member of the EU)”, it would be “a daunting prospect for many small businesses in the UK to get to grips with the terms as they apply to them”. They also noted that the “pace of regulatory change in the WTO is even slower than Brussels—hardly surprising given the scale and diversity of its members—which would exacerbate the usual scenario where technology outpaces regulation by an order of magnitude”.<sup>216</sup>

### Conclusions

158. **Digital services are a growing and successful part of the UK economy. The UK leads the EU in the provision of digital services, and the EU is a critical export market. The rapid growth in digital services in the UK has been fuelled by input from non-UK migrants, in particular EU nationals, moving to the UK to fill high-skilled jobs. The likelihood of future growth and innovation in the sector means that digital services should play an important part in the forthcoming negotiations. The Government should aim to maintain the UK’s strengths in this area in a future UK-EU FTA.**
159. **Preserving the free flow of data across borders is seen by industry as critical to the future of UK digital services. An ‘adequacy decision’ by the European Commission, recognising that the UK had adequate data protection standards (as well as reciprocal arrangements), would be needed to preserve this flow of data. We note concerns that certain provisions of the Investigatory Powers Act 2016, relating to the collection and storage of personal data by security services, could stand in the way of the Commission granting such a decision. We also note the Court of Justice of the European Union’s (CJEU) decision to deem the EU-US Safe Harbour agreement invalid.**
160. **A key benefit for UK consumers provided by the EU is the forthcoming abolition of roaming charges. This will be put at risk by Brexit, unless specific provisions are included in a UK-EU FTA extending the cap on wholesale roaming charges to UK Mobile Network Operators (MNOs). We note that there are no such provisions in existing FTAs, and that the number of UK citizens travelling to other EU Member States may dis-incentivise EU-based MNOs to extend the cap to UK MNOs. Post-Brexit, the Government and regulators should also take steps to prevent UK MNOs increasing retail charges for roaming services for UK consumers.**

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215 Written evidence from Skyscanner ([TAS0014](#))

216 Written evidence from UK Cloud ([TAS0015](#))

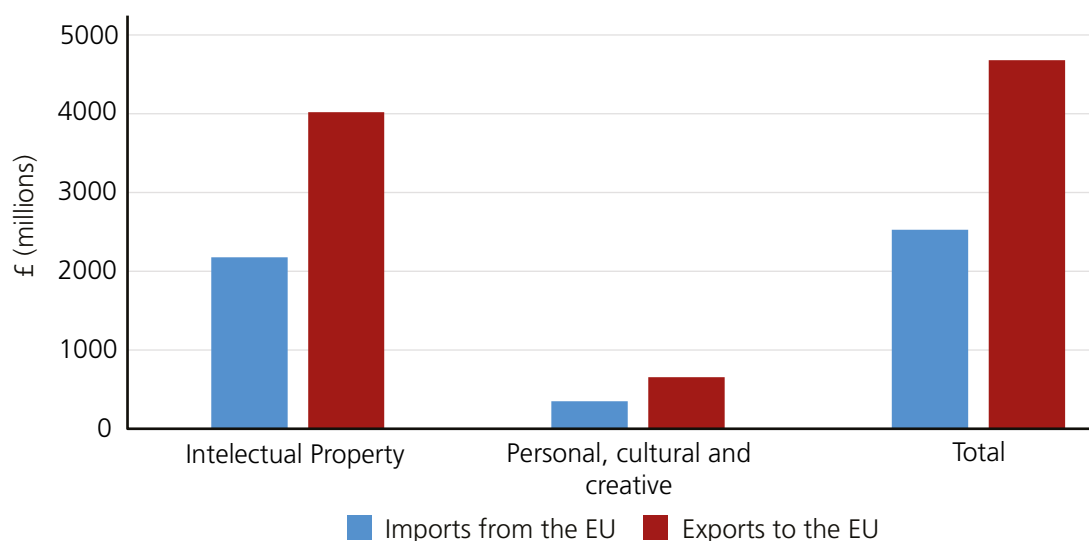
161. **The Government should seek mechanisms whereby it can continue to formally influence and engage with the Commission and the EU27 in the development of the Digital Single Market (DSM) after Brexit. The DSM is currently under review, and there is a risk that the EU may introduce provisions that could increase the non-tariff barriers faced by UK firms. This highlights the general need for any UK-EU FTA to include provisions on transposing relevant future changes in EU law into UK law, and for the UK to ensure that changes in domestic law do not jeopardise regulatory equivalence.**
162. **In the absence of a UK-EU FTA, we heard grave concerns from the digital services sector about trading under WTO rules, relating in particular to the state-led nature of the dispute resolution mechanism and the challenges fast-moving technology poses to a global membership organisation. Businesses would face huge difficulties in adapting to trade with the EU and the rest of the world under WTO rules.**
163. **We also note that, if the trading environment for UK-based digital businesses were to deteriorate significantly following Brexit, digital platforms and start-ups might choose to relocate or redirect parts of their activities to other EU countries.**

## CHAPTER 6: CREATIVE SERVICES

### Creative services in the UK

164. The ONS collects data on two categories of creative services trade. The first is ‘intellectual property’—payments received for the use of trademarks, design rights, and copyrighted works, including music recordings, films and television programmes. The second category is ‘personal, cultural and recreational’, which measures services and fees associated with the production of films and television programmes and the use of museums and libraries.<sup>217</sup> We received a wide range of evidence from witnesses representing creative services and, in this chapter, focus on common concerns across the creative industries, including EU market access, the protection of intellectual property rights, and access to skills.
165. In 2015 the UK’s global exports for these two categories of services amounted to 9% of all exports in non-financial services, or £13.9 billion, while global imports were valued at £11.3 billion, resulting in a surplus of £2.6 billion. Although only 35% of trade in intellectual property services and 24% of personal, cultural and recreational service exports went to the EU, the UK’s surplus in trade with the EU totalled £2.1 billion (see figure 7).<sup>218</sup>

**Figure 7: UK-EU trade in creative services**



Source: Written evidence from the ONS ([TAS0064](#))

166. John McVay, Chief Executive of Pact, described UK creative services and the creative industries as “a runaway success story during the past years”.<sup>219</sup> In 2015 the Government published a report on the importance of the creative industries to the UK’s economy, defining them as “those industries which have their origin in individual creativity, skill and talent and which have a potential for wealth and job creation through the generation and exploitation

217 Written evidence from the Office for National Statistics ([TAS0064](#))

218 Based on calculations from the Office for National Statistics written evidence ([TAS0064](#)). Total global imports in both categories of trade stood at £11.34 billion in 2015, and imports from the EU totalled £2.53 billion. Global exports totalled £13.985 billion, and exports to the EU stood at £4.6 billion.

219 [Q 47](#)

of intellectual property”.<sup>220</sup> Although this definition is broader than that we have adopted for the purposes of this chapter (and includes many digital services), the report underlines the value of creative industries to the UK’s economy: in 2014 the creative industries were worth £84.1 billion to the UK economy, representing 5.2% of Gross Value Added (GVA). In 2014 there were 1.8 million jobs in the creative industries, an increase of 5.5% from 2013. The report also found that the UK’s global trade in services from the creative industries grew by 3.5% between 2012 and 2013.<sup>221</sup>

167. COBA (the Commercial Broadcasters Association) explained that the UK was a “leading international hub for global media groups”. This brought numerous benefits, “ranging from job creation to helping build the critical mass that enables the UK to compete internationally”. This, they noted, “creates a virtuous circle, with investment in skills, content, and infrastructure incentivising further investment”.<sup>222</sup> Adam Minns, COBA’s Executive Director, described a recent survey of COBA members, which asked why the UK was such a successful media hub:

“What came back from that survey that was interesting was that the UK is very strong in creative skills, and the English language is a good advantage. In every other category, the UK is not as strong as I was expecting it to be ... Infrastructure, corporation tax and the regulatory regime—all the different factors you would look at as to where you base yourself—were considered, but the key thing was that [the UK] did not have any weaknesses ... other markets that you might want to invest in ... could be stronger in terms of labour costs, in that they are cheaper, but the infrastructure might not be very good ... That was very important.”<sup>223</sup>

168. The Government has also published a report on exports from the creative industries, breaking down trade into different categories of services with different global trading partners. Some 55% of the UK’s exports in fashion, product and graphic design services went to the continent of Europe in 2014, as did 57% of the UK’s exports in film, TV, video, radio and photography services.<sup>224</sup> The Creative Industries Federation confirmed these conclusions, noting that “wealthy countries closer to home, in particular in Europe, are far more significant consumers of our export products than large developing nations. We export more creative goods to Poland than we do to India.”<sup>225</sup>

### *The nature of trade in creative services*

169. Trade in creative services often takes the form of cross-border supply of services (GATS mode 1), whereby services are supplied from one country to another electronically. Alice Enders, Head of Research at Enders Analysis,

220 Department for Culture Media and Sport, *Creative Industries Economic Estimates* (January 2016): [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/523024/Creative\\_Industries\\_Economic\\_Estimates\\_January\\_2016\\_Updated\\_201605.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/523024/Creative_Industries_Economic_Estimates_January_2016_Updated_201605.pdf) [accessed 22 February 2017]

221 Department for Culture Media and Sport, *Creative Industries Economic Estimates* (January 2016) pp 5–6: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/523024/Creative\\_Industries\\_Economic\\_Estimates\\_January\\_2016\\_Updated\\_201605.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/523024/Creative_Industries_Economic_Estimates_January_2016_Updated_201605.pdf) [accessed 22 February 2017]

222 Written evidence from COBA (TAS0044)

223 Q 47 (Adam Minns)

224 Department for Culture, Media and Sport, *Creative Industries: Focus on Exports of Services* (June 2016), p 12: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/528175/Creative\\_Industries\\_2016\\_Focus\\_on\\_Exports\\_of\\_Services.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/528175/Creative_Industries_2016_Focus_on_Exports_of_Services.pdf) [accessed 22 February 2017]

225 Written evidence from the Creative Industries Federation (TAS0027)



referred to the example of “sales of programming abroad”, such as “British films that are distributed on the continent, in the US or elsewhere”.<sup>226</sup>

170. Creative services businesses also frequently establish a commercial presence in other countries, in order to sell services locally through a foreign affiliate or subsidiary (GATS mode 3). Ms Enders said that “transactions between UK companies and the subsidiaries of UK companies in the EU and US” were an important source of trade, which had “not been brought out” in the statistics.<sup>227</sup> Developing this point, she said that a lot of foreign direct investment (FDI) into the UK’s creative industries had “focused on serving not just the EU but what is referred to as EMEA [Europe, Middle East and Africa]”.<sup>228</sup>
171. Trade in creative services also occurs through consumption abroad (GATS mode 2), whereby consumers travel to the location where the service is provided. For example, a UK citizen could travel to Paris to go to the opera, or visit museums and galleries.
172. Finally, trade in publishing, design and fashion services often also includes trade in goods. Trade in goods is addressed in this Committee’s recent report on *Brexit: trade in goods*.<sup>229</sup>

### Priorities for a UK-EU FTA

173. Witnesses questioned whether a UK-EU FTA could provide access to the Single Market equivalent to that currently enjoyed by the sector. Discovery Communications Europe Ltd said that “a free trade deal equivalent to EEA membership will be challenging for the UK negotiators to achieve”,<sup>230</sup> while Ms Enders said: “It is extremely difficult to ask businesses in the creative industries to invest for a future trade agreement that does not exist yet and whose provisions with respect to the audio-visual industry would seem at first glance anyway to be difficult to obtain.”<sup>231</sup>

### *Access to the Single Market in broadcasting*

174. The Government has said it will focus on ensuring the “freest possible trade” between the UK and the EU, including “supporting the continued growth of the UK’s broadcasting sector”.<sup>232</sup> The Audiovisual Media Services Directive, which underpins the Single Market in broadcasting, is described in Box 9.

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226 [Q 47](#)

227 [Q 47](#)

228 [Q 50](#)

229 European Union Committee, *Brexit: trade in goods* (16th Report, Session 2016–17, HL Paper 129)

230 Written evidence from Discovery Communications Ltd ([TAS0001](#))

231 [Q 47](#)

232 HM Government, *The United Kingdom’s exiting from and new partnership with the European Union*, Cm 9417, February 2017, p 35: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/589191/The\\_United\\_Kingdoms\\_exit\\_from\\_and\\_partnership\\_with\\_the\\_EU\\_Web.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/589191/The_United_Kingdoms_exit_from_and_partnership_with_the_EU_Web.pdf) [accessed 22 February 2017]

**Box 9: The Audiovisual Media Services Directive (AVMSD) 2010/13/EU**

The Directive governs the EU-wide coordination of national legislation on all audiovisual media, including both traditional (referred to as ‘linear’) broadcasts and on-demand (‘non-linear’) services. The Directive establishes minimum regulatory standards that Member States and national regulators must implement, which aim to preserve cultural diversity, protect children and consumers, safeguard media pluralism, combat racial and religious hatred, and guarantee the independence of national regulators.

The Directive uses the ‘Country of Origin’ principle, meaning that a broadcaster only has to obtain a license and observe regulatory standards in any one Member State in order to be able to offer its services in the others without being subject to any additional requirements. Member States cannot restrict which broadcasts the public can receive or what programmes broadcasters from other Member States can retransmit in their country. This removes the obligation for broadcasters to meet multiple regulatory regimes when trading across borders.

The Directive requires broadcasters to promote the production of, and access to, ‘European works’, both for linear and on-demand services. The Directive defines ‘European works’ as audiovisual works that either originate in EU Member States, or in states party to the European Convention on Transfrontier Television. Works that are co-produced between the EU and third countries are also included.

For linear (television) services, the Directive requires Member States to ensure that broadcasters, “where practicable”, reserve a majority proportion of their transmission time for European works, excluding the time allotted to content such as news, sports events and advertising. Broadcasters should reserve at least 10% of their transmission time, or alternately allocate at least 10% of their programming budget, for European works created by independent producers. Member States are given flexibility as to how they choose to promote European works, and there is wide variation. The Directive is to be reformed as part of the Digital Single Market Strategy. One proposed change is to require non-linear, online and on-demand broadcasters to preserve 20% of their content for European works.

Source: European Commission, ‘Audiovisual Media Services Directive (AVMSD)’ (10 June 2016): <https://ec.europa.eu/digital-single-market/en/audiovisual-media-services-directive-avmsd> [accessed 24 February 2017]

175. Enders Analysis said the EU’s ambition to boost the production of audiovisual content had been “a fantastically successful effort ... since 1990, the development of the UK’s [audio-visual] group has been greatly stimulated by the implementation of the Single Market for [audio-visual] in the UK and in other EU Member States, along with tax credits and EU funding programmes.”<sup>233</sup>
176. Discovery Communications Europe Ltd described the UK as “the pre-eminent hub for international broadcasting in the EU”.<sup>234</sup> Adam Minns said that “we are something in the region of double or maybe triple our nearest competitor in the number of channels that are established and based here in the UK”. He added that “by very conservative estimates” the UK had 1,100 channels licensed by Ofcom, and that “the next biggest country in Europe is France, which has 400”. Mr Minns pointed out that 650 channels

233 Written evidence from Enders Analysis (TAS0052)

234 Written evidence from Discovery Communications Ltd (TAS0001)

were “licensed not for the UK at all but for non-domestic markets. They are based here, employing people here and investing here, but broadcasting into other European markets”.<sup>235</sup> This critical mass created “a cluster effect that attracts further investment”.<sup>236</sup>

177. Witnesses told us that continuing access to the Single Market in broadcasting would be vital. In the absence of such access, Sky warned that “broadcasters are unlikely to be able to rely on their Ofcom licences to broadcast” to other Member States.<sup>237</sup> Discovery Communications Europe Ltd said broadcasters would need “a local broadcasting licence and establishment of a local office every time a channel was launched”, which would be “prohibitively expensive”.<sup>238</sup> Moreover, Article 2 of the AVMSD states that a firm “shall be deemed to be established in the Member State where a significant part of the workforce involved in the pursuit of the audiovisual media service activity operates”.<sup>239</sup> As Ms Enders pointed out, this is “not just about having a brass plate on the continent. It is about having people, resources, the regulatory people, the whole nine yards”.<sup>240</sup> Mr Minns noted that “there is an obvious direct risk to jobs in the UK”. He knew of “at least one international company that is looking at moving people from the EU to the UK”, but added that there was now “a question mark over whether that would happen going forward”.<sup>241</sup> We recognise that other Member States may have an interest in attempting to attract these businesses away from the UK.
178. Ms Enders acknowledged that the cluster effect, to which we have referred, would be “very helpful” in “insulating us to some degree” from the impact of reduced market access, but noted that this effect was “the product of the very regime that we are moving away from”.<sup>242</sup> Pact noted that audiovisual services were excluded from almost all EU trade deals, due to the ‘*exception culturelle*’ (or cultural exception), which is outlined in Box 10.<sup>243</sup>

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235 [Q 47](#)

236 Written evidence from COBA ([TAS0044](#))

237 Written evidence from Sky ([TAS0003](#))

238 Written evidence from Discovery Communications Ltd ([TAS0001](#))

239 Directive 2010/13/EU of 10 March 2010, on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services, Article 2([OJL 95](#), 15 April 2010)

240 [Q 50](#)

241 [Q 50](#)

242 [Q 50](#)

243 Written evidence from Pact ([TAS0034](#))

### Box 10: The cultural exception

During the Uruguay Round of negotiations, the EU and Canada wished to exempt any product or service that was related to culture from the WTO agreements (such as the GATT, the GATS and the TRIPS). Although the texts of the WTO agreements do not mention the ‘cultural exception’, member countries used the flexibility allowed in determining their schedules under all three agreements not to list restrictions, and not to commit to liberalisation, in those ‘cultural’ goods or services. Under the GATS, this meant that countries decided not to remove restrictions on the use of quotas or government subsidies. The WTO Secretariat has commented as follows: “Audio-visual services is one of the sectors where the number of WTO members with commitments is the lowest (30, as of 31 January 2009).” The ‘cultural exception’ extends beyond WTO trading rules to FTAs, and explains why the EU has been reluctant to include audiovisual media services in FTAs.

*Source: Mira Burri, Trade versus Culture: The Policy of Cultural Exception and the World Trade Organization, in Pauwels, Donders and Loisen (eds.), Palgrave Handbook of European Media Policy, Palgrave Macmillan, (2013) pp 479–492 and written evidence from Enders Analysis (TAS0052)*

179. Ms Enders pointed out that even in CETA (“the most ambitious FTA for services”), the EU’s negotiating mandate made it “clear that ‘audiovisual and other cultural’ services were excluded” from negotiations.<sup>244</sup> Discovery Communications Europe Ltd said that the only exceptions to this had been the inclusion of audiovisual media services in the EU-South Korea FTA and the CARIFORUM-EU EPA.<sup>245</sup> Even these included only “limited and specific concessions around market access for animation and other content—falling far short of the access broadcasters currently enjoy under the Single Market regime”.<sup>246</sup>
180. Mr Hancock said the Government wanted “as open as possible a deal with the rest of Europe”, and there were “big advantages to the rest of Europe in having as open a deal as possible in this space with us”.<sup>247</sup> Asked about the risk that businesses might relocate outside the UK to maintain their ability to trade with EU Member States, Dr Norman told us:

“It is very easy for people to say that if Brexit goes wrong, these people can be relocated ... [but] I do not think they have any idea how difficult it is even to take the culture of a factory floor, which is highly automated, with a set of existing investments and union relationships, and transport that to another country. Try to do that in the broadcasting world, where people interact in the most intimate way and choose to cluster together—it is extraordinarily difficult.”<sup>248</sup>

<sup>244</sup> Written evidence from Enders Analysis (TAS0052)

<sup>245</sup> In 2008 the EU signed an Economic Partnership Agreement (EPA) with Antigua and Barbuda, The Bahamas, Barbados, Belize, Dominica, the Dominican Republic, Grenada, Guyana, Jamaica, Saint Lucia, Saint Vincent and the Grenadines, Saint Kitts and Nevis, Surinam, and Trinidad and Tobago (the CARIFORUM countries). The purpose of the agreement is to make it easier for people and businesses from the two regions to invest in and trade with each other and thus to help Caribbean countries grow their economies and create jobs. It also comes with substantial EU aid for trade. <http://ec.europa.eu/trade/policy/countries-and-regions/regions/caribbean/> [accessed 10 March 2017]

<sup>246</sup> Written evidence from Discovery Communications Europe Ltd (TAS0001)

<sup>247</sup> Q 73

<sup>248</sup> Q 73

*Support for content production*

181. As well as provisions for broadcasting, witnesses also said the Government should support UK collaboration with EU partners on production of content, through co-production treaties. Such bilateral treaties permit the co-production of audiovisual content producers from two states. Mr McVay told us that “the UK has been very good at signing co-production treaties with major territories”, for example by selling “formats” for programmes such as *Masterchef* internationally.<sup>249</sup> Ms Enders agreed that this was an important form of market access, but noted that it would mean collaboration, rather “than the sort of product that would be 100% UK-made”.<sup>250</sup>
182. In relation to content production, Mr Hancock said: “I am confident that we can remain this amazing, globally leading country for content production that we have developed into over the last 15 or 20 years”. He argued that the UK’s success had been “driven by our cultural values and investment in cultural institutions, by our system of education, by the hubs that we have built up ... [in] different parts of the industry”. While Europe was “an important market”, it was “only one”. The UK’s film industry was global and it was aligned with the US and China—it was not a sector “where we have to focus only on the EU relationship”.<sup>251</sup>
183. COBA told us it was important that “UK-made television programmes continue to qualify as ‘European works’ for the purposes of EU quotas”,<sup>252</sup> and Pact agreed that ensuring that “UK-originated content continues to count towards [EU] broadcasting and video-on-demand quotas” would mean that “broadcasters and buyers across the EU will continue to invest in UK content”.<sup>253</sup> Without this, UK-created content would be in direct competition with other third country providers, including the US.
184. In response, Mr Hancock said: “I can be cheerful on that ... [as] the Prime Minister likes to say, we are leaving the EU but we are not leaving Europe. In this case, that is not only physically true ... but is actually technically true.” He concluded that the Government had “no intention to change” the definition of European works.<sup>254</sup> We note that this will also be a matter for the EU, and that it will be subject to negotiation.

*Protecting UK fashion designers and intellectual property rights*

185. The British Fashion Council described the EU legal regime for protecting intellectual property (IP) rights as “a highly effective and efficient framework for [the] registration, exploitation and enforcement of IP rights”.<sup>255</sup> A key part of this legal regime is the EU’s Regulation on Registered and Unregistered Community Design, which is explained in more detail in Box 11.

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249 [Q 49](#)

250 [Q 49](#)

251 [Q 73](#)

252 Written evidence from COBA ([TAS0044](#))

253 Written evidence from Pact ([TAS0034](#))

254 [Q 74](#)

255 Written evidence from the British Fashion Council ([TAS0092](#))

### Box 11: Regulation on Community Designs 6/2002/EC

The Regulation established a one-off procedure for registering designs with the European Union Intellectual Property Office (EUIPO), granting exclusive rights to the use of those designs for up to 25 years across the EU for those who register.

The Regulation also provides for Unregistered Community Designs (UCD), which under certain conditions can also benefit from protection from deliberate copying without prior registration with the EUIPO. This right can cover the appearance of the whole or part of a design, including lines, contours, colours, shape, texture, materials, and features of ornamentation. Many cases brought before the courts (or which are settled between the parties) relating to copycat designs are based on UCD. In both cases, to be eligible for protection, designs must be new and must have an individual character.

Source: European Union Intellectual Property Office, 'FAQ - Community Design': <https://euipo.europa.eu/ohimportal/en/faqs-community-design> [accessed 24 February 2017]

186. The British Fashion Council said the protection afforded by UCD was particularly important to the fashion industry, because all designs were protected “automatically, thereby saving on the costs of registering all designs across a portfolio (which can be substantial)”. After the UK’s withdrawal, they were particularly concerned that UK designers would only be able to benefit from the EU’s protection for registered and, more importantly, unregistered designs, if the “relevant designs are first disclosed in the EU”. This could lead to “effectively closing down London Fashion Week as a platform to promote British businesses”.<sup>256</sup> The Creative Industries Federation agreed that this was a possibility: “Companies would enjoy less protection by first showing their work in the UK than in the EU.”<sup>257</sup> The British Fashion Council added that asking designers to register design rights in the EU before a fashion show would be “costly across an entire portfolio, making that option uncompetitive”.<sup>258</sup>
187. Witnesses also felt that the domestic protections for intellectual property were weaker than those in the EU. The Design Council said that the UK’s equivalent to the UCD right was “not an equitable right for UK designers”, because it did not protect novel surface design (for example, the look of a shirt rather than how that shirt was made). The Creative Industries Federation added that loss of UCD rights would “leave a gap in protection for our design and fashion businesses”.<sup>259</sup>
188. Witnesses also emphasised enforcement. The British Fashion Council said the enforcement regime for intellectual property rights in the EU was efficient and effective: “Such rights can be enforced in a single action and may lead to pan-EU relief in the form of an injunction (and/or damages) across the EU.”<sup>260</sup> Mr McVay told us:
- “Enforcement should be part of all future free trade agreements. It is very important. We are a society that will be increasingly trading on IP-based products that are licensed. ... We may not be making more

256 Written evidence from the British Fashion Council (TAS0092)

257 Written evidence from the Creative Industries Federation (TAS0027)

258 Written evidence from the British Fashion Council (TAS0092)

259 Written evidence from the Creative Industries Federation (TAS0027)

260 Written evidence from the British Fashion Council (TAS0092)

cars but we will be licensing intellectual property rights to developing markets, which, unfortunately, do not often respect those rights.”<sup>261</sup>

### *Access to skills*

189. Witnesses from the creative services sector echoed other sectors in underlining the importance of maintaining continued access to the EU’s labour market to address skills shortages and to support continued growth. The Creative Industries Federation said the Migration Tier 2 Shortage Occupation List included 17 creative industries occupations, and that EU nationals made up 6.1% of the sector’s employed workforce.<sup>262</sup> The Design Council said an inability to hire the same levels of skilled workers was “likely to cause short term market challenges, and may lead to longer term reductions in economic outlook”.<sup>263</sup>
190. Mr Hancock said: “Undoubtedly, attracting the brightest and best in the creative industries and in digital is the main concern we picked up from industry, but that process must be managed properly so that the immigration system serves the national interest.” This meant “having control over the numbers”. Alongside this, he said, “We must make sure that we have domestic training in place and perhaps an extra focus on that.”<sup>264</sup>

### **Trading under WTO rules**

#### *Audiovisual media services*

191. Discovery Communications Europe Ltd wrote, bluntly, that “WTO/GATS terms are extremely unattractive”.<sup>265</sup> Ms Enders explained that the EU’s schedule of GATS commitments on audiovisual (AV) and other cultural services were typically excluded, thanks to the cultural exception.<sup>266</sup>
192. For the same reason, Pact believed that EU Member States would “be able to impose discriminatory provisions on the UK, particularly with regards to the audio-visual sector”.<sup>267</sup> Ms Enders said this situation would not be improved by the Trade in Services Agreement (TiSA), because the Commission had indicated that “the EU will continue to exclude AV and other cultural services in TiSA”.<sup>268</sup>

#### *Transfrontier Television Convention*

193. Witnesses said the Transfrontier Television Convention could be considered as an alternative for UK broadcasters and content producers after Brexit, if appropriate provisions were not included in FTA. This is a Council of Europe Convention, establishing rules for the free circulation of television programmes between signatory states. It follows a ‘country-of-origin’ system for television broadcasts, and works originating from signatories to the Convention are considered to fall within the definition of European works for the purposes of the AVMSD.<sup>269</sup>

261 [Q 53](#)

262 Written evidence from the Creative Industries Federation ([TAS0027](#))

263 Written evidence from the Design Council ([TAS0041](#))

264 [Q 66](#)

265 Written evidence from Discovery Communications Europe Ltd ([TAS0001](#))

266 [Q 49](#)

267 Written evidence from Pact ([TAS0034](#))

268 Written evidence from Enders Analysis ([TAS0052](#))

269 European Convention on Transfrontier Television, Council of Europe, European Treaty Series [No. 132](#)

194. COBA said that the Convention had “significant limitations”. The Convention excluded “a number of important EU markets” (including Denmark, Greece, Ireland, Luxembourg, the Netherlands and Sweden, which are not signatories). It also did “not apply to on-demand services at all”, which were “arguably the fastest growing part of the UK television industry”.<sup>270</sup> Pact raised the issue of enforcement, noting that:

“[The Convention’s] implementation relies on the principles of mutual assistance and co-operation between the Parties. Any difficulties around the application of the Convention are discussed by a Standing Committee made up of parties to the Convention that seeks resolution of any difficulties. There is no recourse to, for example, any body such as the [CJEU]”.<sup>271</sup>

Pact also observed that, in future, “any EU country might leave the Convention” and suggested that the Convention could become “side-lined” as “the industry evolves”.<sup>272</sup> COBA concluded that “we do not consider it to be a viable alternative” to access to the Single Market.<sup>273</sup>

195. The Minister, Mr Hancock, noted that the Transfrontier Television Convention had been agreed in 1993, and that, “in this space, that is a long time ago.” However, he recognised that the Convention only covered “satellite technology”, omitting on-demand services.

### *Intellectual property*

196. The WTO’s Trade-Related Aspects of Intellectual Property Rights (TRIPS) agreement aims to promote effective and adequate protection of intellectual property rights by setting standards for their protection, to be provided by each signatory in each of the main areas covered by the agreement (such as copyright, trademarks, geographical indicators and patents).<sup>274</sup> In practice, the WTO TRIPS agreement does not ensure effective IP enforcement, and the Commission has previously stated that “the implementation of TRIPS requirements in national laws has proven to be insufficient to combat piracy and counterfeiting”. It has also argued that “the TRIPS Agreement itself has several shortcomings”.<sup>275</sup> The Creative Industries Federation concluded that the protection afforded by the TRIPS agreement would be less than that provided currently by the EU.<sup>276</sup>

### **Conclusions**

197. **The UK is a global hub for creative services. The success of the UK’s creative services industry is bolstered by innovation in digital services and by a general business environment in which companies from different parts of the creative sector ‘cluster’ in the UK. Brexit presents different risks and opportunities to different types of**

270 Written evidence from COBA ([TAS0044](#))

271 Supplementary written evidence from Pact ([TAS0081](#))

272 Supplementary written evidence from Pact ([TAS0081](#))

273 Supplementary written evidence from COBA ([TAS0078](#))

274 World Trade Organization, *Overview: the TRIPS Agreement*: [https://www.wto.org/english/tratop\\_e/trips\\_e/intel2\\_e.htm](https://www.wto.org/english/tratop_e/trips_e/intel2_e.htm) [accessed 13 March 2017]

275 ICTSD Intellectual Property and Sustainable Development Series: *Intellectual Property Provisions in European Union Trade Agreements: Implications for Developing Countries* (June 2007), p 18: <https://www.iprsonline.org/resources/docs/Santa-Cruz%20Blue20.pdf>

276 Written evidence from the Creative Industries Federation ([TAS0027](#))



**creative services, and it is important that the Government agrees a comprehensive UK-EU FTA that sustains the UK's global hub status.**

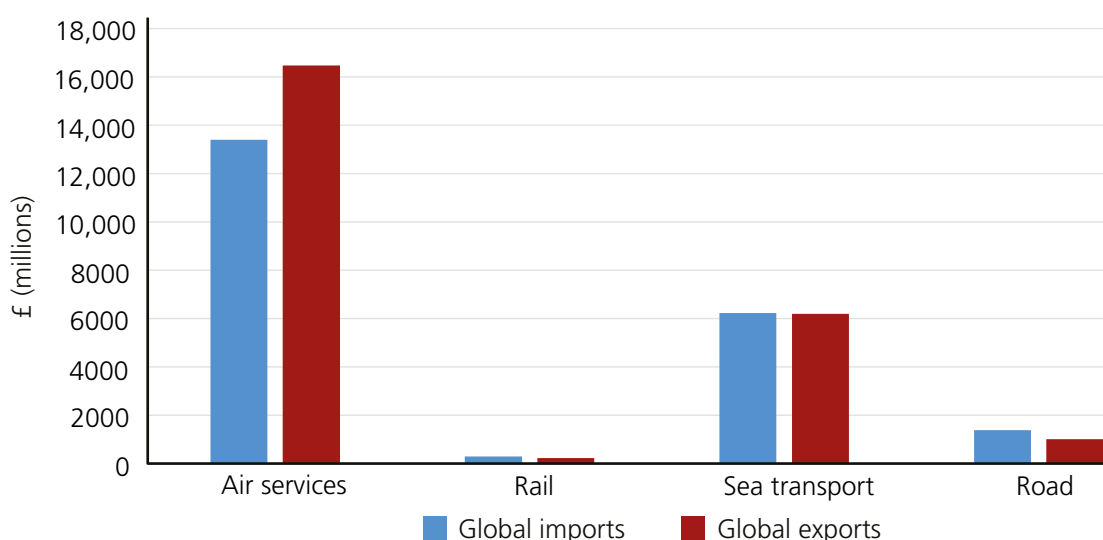
198. **Creative industries will need a comprehensive agreement on the protection of intellectual property rights. For example, in fashion, the continued protection of Unregistered Community Designs will be important to ensure that fashion designers are still protected when showing their designs for the first time in the UK. Without such protections, the viability of events like London Fashion Week could be called into question, posing a direct threat to jobs in the UK and, more broadly, to the standing of the UK's fashion industry.**
199. **Without appropriate agreements to maintain access to the Single Market, we note that UK broadcasters would be unable to broadcast services to the EU. This would affect almost 60% of channels licensed by Ofcom.**
200. **The EU has excluded provisions on audiovisual media services from all FTAs, except the EU-South Korea FTA and the CARIFORUM-EU EPA. A UK-EU FTA would need to go even further than these agreements, in order to maintain the level of EU market access sought by UK broadcasters.**
201. **A scenario where the UK left the EU without an agreement would be damaging for the UK's creative services. Audiovisual media services are excluded from the EU's schedule of commitments at the WTO, and neither the Transfrontier Television Convention nor co-production treaties are viable alternatives for trade. Protections for intellectual property rights afforded by the WTO's TRIPS agreement are considerably less than those currently enjoyed by UK businesses and citizens.**

## CHAPTER 7: AIR SERVICES

### Air services in the UK

202. Air services are a key part of what the ONS defines as ‘transportation services’, namely services associated with the international movement of goods (for example, freight shipping, road haulage and air cargo) and the international movement of people (through air passenger, road and rail services).<sup>277</sup> Imports are transportation services provided to UK citizens and businesses by firms based in other territories—for example, if a Scottish distillery uses a French airline to transport whisky from Scotland to France. Conversely, exports reflect transportation services provided by UK business to citizens and businesses based abroad—for example, if a Spanish farmer uses a UK airline to transport vegetables from Spain to the UK.
203. According to the ONS, globally in 2015 the UK exported £24.1 billion worth of transportation services. Approximately two-thirds of the value of these exports consisted of aviation services (£16.4 billion).<sup>278</sup>

**Figure 8: The UK’s global trade in transportation services 2015**



Source: ONS, *The Pink Book: 2016, Chapter 3.2 Trade in services*, (29 July 2016): <https://www.ons.gov.uk/economy/nationalaccounts/balanceofpayments/datasets/3tradeinservicesthepinkbook2016> [accessed 1 February 2017]

204. The British Air Transport Association (BATA) told us that the “UK has the largest aviation sector in the EU and the third largest globally, after the USA and China”.<sup>279</sup> The International Air Transport Association (IATA) said that the UK’s air market was “dominated by outbound traffic”, which accounted for “just over two-thirds of total flows”—in 2015, there were 53.9 million

277 HSBC and Oxford Economics, *Unlocking the growth potential of services trade* (2016), p 2: <https://www.oxfordeconomics.com/recent-releases/unlocking-the-growth-potential-of-services-trade> [accessed 20 February 2017]

278 Office for National Statistics, ‘The Pink Book: 2016, Chapter 3.2 Trade in services’ (29 July 2016): <https://www.ons.gov.uk/economy/nationalaccounts/balanceofpayments/datasets/3tradeinservicesthepinkbook2016> [accessed 1 February 2017]

279 Written evidence from the British Air Transport Association ([TAS0042](#))

visits overseas by UK residents, compared to 26.2 million visits to the UK by overseas residents.”<sup>280</sup>

205. IATA highlighted the importance of the aviation sector to the UK’s economy, noting that it contributed £55 billion to UK GDP in 2015 and supported 945,000 jobs in the UK. They said the average employee generated £84,000 in GVA annually, which was “over 60% higher than the whole economy average in the UK”.<sup>281</sup>
206. Aviation services also enable wider economic growth in the UK. Brian Pearce, Chief Economist at IATA, said people used air travel “as a means to an end for a business trip, a holiday or for accessing suppliers or markets”, and described the air transport network as “essentially, an infrastructure asset to enable the success of users, such as the City of London” and “high-tech industries”.<sup>282</sup> We also note that air services provide an important means of transporting cargo (thus facilitating trade in goods). BATA told us:

“Around 2.3 million tonnes of cargo pass through UK airports annually, with 40% of the UK’s trade with economies outside the EU, by value, transported by air. In 2014, the total value of tradable goods carried through UK airports exceeded £140 billion, with Heathrow the UK’s biggest port by value of goods transported.”<sup>283</sup>

207. The EU is also the single biggest destination market for the UK, accounting for 49% of passengers and 54% of scheduled commercial flights.<sup>284</sup> According to ONS, in 2015, 46% of all the UK’s exports and 56% of all the UK’s imports in transportation services were associated with the EU. The UK had a £1.1 billion deficit in transportation services with the EU in 2015, importing more services from EU based transportation providers than it exported.<sup>285</sup>

### Frameworks for trading air services

208. Dr Barry Humphreys CBE, founder of BKH Aviation, explained that aviation had “always been treated differently from other industries in global trade”, and was “never part of the WTO” or of bilateral FTAs:

“What evolved was a series comprising many hundreds, if not thousands, of treaties, international air services agreements, between countries which governed how aviation operated and was allowed to operate.”<sup>286</sup>

As we explain below, these complex bilateral air services agreements were abolished by the EU during the extension of the Single Market to air services.

209. Dr Humphreys believed that the broad objective for industry post-Brexit would be to “remain as close as possible to the status quo ... [we] have to look at the various models that are available or might be created to see how

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280 The International Air Transport Association (IATA), *The impact of ‘BREXIT’ on UK Air Transport* (June 2016): <http://www.iata.org/publications/economic-briefings/impact-of-brexit.pdf> [accessed 20 February 2017]

281 Written evidence from the International Air Transport Association (TAS0005)

282 Q 32

283 Written evidence from the British Air Transport Association (TAS0042)

284 The International Air Transport Association (IATA), *The impact of ‘BREXIT’ on UK Air Transport* (June 2016): <http://www.iata.org/publications/economic-briefings/impact-of-brexit.pdf> [accessed 20 February 2017]

285 Calculations based on written evidence from the Office for National Statistics (TAS0064)

286 Q 32

close they come to meeting that objective.”<sup>287</sup> These models, as described by the IATA, appear to be:

- Membership of the European Common Aviation Area (ECAA);
- A comprehensive bilateral air services agreement between the UK and the EU;
- Reliance, in the absence of any other agreement, upon pre-existing bilateral aviation agreements.<sup>288</sup>

### European Common Aviation Area agreement

210. The EU Single Market in aviation is effectively extended to third countries (such as Norway, Iceland, Liechtenstein, Switzerland, Croatia, Macedonia, Albania, Bosnia and Herzegovina, Kosovo, and Montenegro) via the European Common Aviation Area (ECAA) agreement. Under this agreement, airlines of signatory countries have full market access to fly between their territory and anywhere in the EU, and to provide flights between and within EU Member States, in exchange for accepting the EU *acquis* relating to aviation. The ability to fly domestic routes in another territory, and to fly between two territories without landing in one’s own territory, are referred to under the Chicago Convention as the seventh and ninth Freedoms of the Air.<sup>289</sup>
211. Dr Humphreys said that, whereas bilateral air service agreements tended to be “quite restrictive”, what the EU did was to “strip away all those restrictions and create a Single Market where any airline of any member state could operate freely and not be limited in any way”. The UK “was a major supporter of the creation of the EU internal aviation market”, and had “fought very strongly for some time” to “introduce the internal market against strong opposition from some other Member States, such as France and Germany”.<sup>290</sup>
212. The benefits of the Single Market in air services are clear. Sophie Dekkers, UK Country Director at easyJet, said the “liberation of the EU aviation market was part of the growth and the basis on which we grew as an airline and low cost [travel] grew within Europe”. She noted that “average fares are now down by 40% in real terms” since 1996, and “numbers of routes have increased by 180%”.<sup>291</sup> Dr Humphreys agreed that the Single Market in aviation had been “an enormous success; the improvement in competition and services for the consumer is there for everyone to see”. This was “now put at risk” by Brexit.<sup>292</sup> More information on the EU Single Market in aviation is given in Box 12.

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287 [Q 33](#)

288 The International Air Transport Association (IATA), *The impact of ‘BREXIT’ on UK Air Transport* (June 2016): <http://www.iata.org/publications/economic-briefings/impact-of-brex-it.pdf> [accessed 20 February 2017]

289 The Chicago Convention is a global agreement which outlines the basic rules and principles of air services between its member countries. It outlines nine ‘Freedoms of the Air’ which refer to access rights for airlines established in one country to operate in another. The seventh and the ninth Freedoms are ‘so called’ because outside of the EU, they are not usually included in bilateral air service agreements. The International Civil Aviation Organisation, *Convention on International Civil Aviation: Doc 7300*: <http://www.icao.int/publications/Pages/doc7300.aspx> [accessed 20 February 2017]

290 [Q 32](#)

291 [Q 32](#)

292 [Q 32](#)

### Box 12: Single Market in aviation

The EU Single Market in air services was created as a result of three packages of regulatory measures put forward by the Commission in the 1990s. The final package removed all remaining restrictions on airline operators in the EU, creating the concept of a ‘Community carrier’ to replace national airline carriers. ‘Community carriers’ could access any intra-EU route and offer services to customers without prior authorisation or permission from authorities in those Member States. Accordingly, an airline based in the UK can offer routes not just from the UK to any other EU Member State, but also routes between other EU Member States (without having to fly via the UK), as well as domestic routes in other Member States. In order to be a ‘Community carrier’, airlines have to comply with the following requirements:

- They have to be owned (greater than 50% ownership) and effectively controlled by an EU Member State and/or nationals from an EU Member State, and their principal place of business has to be located in a Member State.
- They have to ensure the safety of their operations in accordance with the EU’s safety regulations, evidenced by the receipt of an ‘air operator’s certificate’.

Common EU rules have also been adopted on competition, safety, security, consumer protection and environmental protection in aviation.<sup>293</sup> IATA listed over 140 pieces of EU legislation relating to aviation that are currently implemented in the UK, including those relating to the Single European Sky, SESAR,<sup>294</sup> and the European Aviation Safety Agency (EASA).<sup>295</sup>

EU membership also forms the basis upon which UK airlines access the aviation markets of some third countries. Dr Humphreys noted that the Commission had acquired “more and more competency to negotiate on behalf of the whole of Europe” for air traffic agreements with third countries.<sup>296</sup> While the UK has 111 bilateral air services agreements with third countries, these are complemented or (in cases where two agreements exist for the same country) overtaken by EU level agreements, including with the US, Canada, and neighbourhood countries such as Morocco and Israel.<sup>297</sup>

213. BATA believed that ECAA membership would be the “most straightforward” option for the aviation industry. It would, though, require the UK to accept the EU’s aviation *acquis*, while having no direct say over its “ongoing formulation or future development”. This “could be interpreted as a severe restriction of the UK’s ability, post-Brexit, to develop and make our policy in this area”.<sup>298</sup> IATA pointed out that while non-EU ECAA members (such

293 European Parliament, *Air Transport: Market rules* (December 2016): [http://www.europarl.europa.eu/atyourservice/en/displayFtu.html?ftuId=FTU\\_5.6.7.html](http://www.europarl.europa.eu/atyourservice/en/displayFtu.html?ftuId=FTU_5.6.7.html) [accessed 20 February 2017]

294 SESAR is the Single European Sky Air Traffic Management Research project—the technological pillar of the Single European Sky.

295 Written evidence from the International Air Transport Association (TAS0005)

296 Q 35

297 Written evidence from the International Air Transport Association (TAS0005)

298 Written evidence from the British Air Transport Association (TAS0042)

as Iceland, Liechtenstein, Norway and Switzerland) were members of the EASA Management Board, they did “not have voting rights”.<sup>299</sup>

214. Witnesses also suggested that ECAA membership might not afford continuing access for UK air services to third countries. The Airports Operators’ Association noted that “only one EU multilateral air services agreement has been extended to EEA countries—the EU-US Open Skies Agreement”, and this was only “by mutual consent of both signatories”.<sup>300</sup> Ryanair said that the Irish subsidiary of Norwegian Air had been “blocked for over 2 years from access to the US market”, even though this access “should be available without obstacle under the existing EU-US bilateral agreement”.<sup>301</sup>

### UK-EU Bilateral Air Services Agreement

#### *Access to the Single Market in aviation services*

215. Outside the Single Market in air services, Ryanair told us: “In stark terms ... traffic rights underpinning the bulk of air traffic to/from the UK will no longer exist”. Ryanair stressed that “specific political consent” through a bilateral UK-EU air services agreement would “be required for existing traffic rights to remain available”.<sup>302</sup>
216. To maintain its current operations, Ms Dekkers said easyJet needed “to be able to operate from the UK to the EU and from the EU to the UK”. It also needed to “enable EU to EU flying”, such as Paris to Milan flights, as well as “domestic flights within Europe”, such as flights from Paris to Toulouse. She said: “We operate all of those routes today and we would need a framework in place to support that going forward.”<sup>303</sup> In written evidence, easyJet argued that “any restrictions on air connectivity would damage productivity growth via trade and FDI, reduce passengers’ choice and put upward pressure on air fares”.<sup>304</sup>
217. Ms Dekkers believed that issues around market access would be “resolved because the parties on both sides will be keen to maintain that connectivity”. She noted that easyJet were part of the Airlines of Europe group, alongside Air France, Lufthansa and KLM, and that the group was “lobbying European governments” to ensure a good outcome. Although she recognised that the competition offered by firms like hers was “always a challenge”, the conversations she had had with her counterparts suggested they were “all supportive of, reaching an agreement that will mutually benefit both sides”.<sup>305</sup>
218. IATA believed that “given the size and importance of the UK aviation market, the UK could expect to have some negotiating leverage”.<sup>306</sup> However, Mr Pearce qualified this by saying that the interest of Member States in a comprehensive agreement depended on their own markets: in countries such

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299 Written evidence from the International Air Transport Association ([TAS0005](#)). EASA is the European Aviation Safety Agency. This agency drafts technical implementing rules and certifies and approves organisations and products in areas where the agency has exclusive competence, such as airworthiness. It also provides oversight and support to Member States relation to air operations and air traffic management. EASA, ‘The Agency: Facts and figures’: <https://www.easa.europa.eu/the-agency/the-agency> [accessed 22 February 2017]

300 Written evidence from the Airports Operators’ Association ([TAS0012](#))

301 Written evidence from Ryanair ([TAS0008](#))

302 Written evidence from Ryanair ([TAS0008](#))

303 [Q 34](#)

304 Written evidence from easyJet ([TAS0048](#))

305 [Q 34](#)

306 Written evidence from the International Air Transport Association ([TAS0005](#))

as Cyprus and Ireland, the UK represented “50% of the seats”, whereas in France and Germany it was “less than 10%”.<sup>307</sup> IATA also noted that Swiss airlines, despite a series of bilateral agreements allowing them to fly between EU Member States, could not provide domestic routes within another EU Member State.<sup>308</sup> Ryanair observed that, outside the Single Market, the global market in air services was “characterised by protectionist behaviour and the slow, contentious negotiation of bilateral traffic rights agreements”.<sup>309</sup>

219. Recognising that failure to reach a comprehensive agreement was a possibility, Ms Dekkers noted that easyJet currently had two operating certificates, “a UK one and a Swiss one”.<sup>310</sup> It was now taking steps towards “establishing an EU ... air operating certificate”.<sup>311</sup> This would “enable us to operate as a European airline and have a base within Europe”, thereby benefiting from European ‘Community carrier’ rights.<sup>312</sup>
220. In order to benefit from such rights, an airline would have to be majority owned and controlled by citizens in an EU Member State or in a state party to the ECAA Agreement. Dr Humphreys argued that, in a situation where a UK-based airline had to satisfy the requirement to become a ‘Community carrier’ post-Brexit, there might be only two options: either to have “different classes of share ownership”, or “forc[ing] shareholders to get rid of their shares”.<sup>313</sup>
221. The Minister for Aviation, Lord Ahmad of Wimbledon, noted that in the UK it was the job of the Civil Aviation Authority (CAA) to issue operating certificates, and that its counterparts in other EU Member States did the same. This would remain the case post-Brexit: “That is going to be very much a matter for [relevant aviation authorities] to determine in terms of their operating certificates for other countries.” In relation to easyJet, Lord Ahmad said it was a “publicly listed firm”, and “it would be inappropriate for me to suggest to a company what its share ownership should be”. He was “sure every airline will determine how it wishes to operate under the rules of any particular market it wishes to access”.<sup>314</sup>
222. More broadly, Lord Ahmad said the UK was “in a position of strength [and] it is of equal if not greater benefit to European operators to have access to the UK market”. He believed there was “a sense that continuing, uninterrupted access is in the best interests of both sides”.<sup>315</sup>

### *Access to third countries*

223. BATA was concerned that the EU’s agreements with third countries could “potentially cease to apply to the UK” post-Brexit, requiring “the UK to negotiate a whole raft of separate bilateral agreements”.<sup>316</sup> There was particular concern over the EU-US Open Skies agreement, which entered into force in 2008, and which allows US and EU airlines to fly from anywhere in the EU to anywhere in the US and vice versa.

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307 [Q 34](#)

308 Written evidence from the International Air Transport Association ([TAS0005](#))

309 Written evidence from Ryanair ([TAS0008](#))

310 [Q 36](#)

311 [Q 34](#)

312 [Q 36](#)

313 [Q 37](#)

314 [Q 70](#)

315 [Q 70](#)

316 Written evidence from the British Air Transport Association ([TAS0042](#))

224. Virgin Atlantic, whose joint venture with US carrier Delta Airlines accounts for 70% of its business, said: “There should be no limitations on flying between UK and US.” It also argued that negotiating continued access to the US should be given “equal priority to securing EU market access” and should not be seen as a “secondary concern”.<sup>317</sup> In the absence of such an agreement, according to BATA: “Contingency plans [should be] agreed with the US administration to ensure that services can continue ... to operate in the event that a new formal agreement is not in place by the time the UK leaves the EU.”<sup>318</sup>
225. Mr Pearce pointed to the wider significance of the EU-US Open Skies agreement for the UK economy: “We have a lot of joint business ventures across the north Atlantic, for instance, which hub over London, so those Open Skies agreements are a prerequisite for those structures.”<sup>319</sup> The Government, he argued, should “protect the wider Open Skies [and] ... third-country agreements”, and he recommended “early talks with the US”.<sup>320</sup>
226. Failing a new agreement, Dr Humphreys believed the UK could fall back on ‘Bermuda II’, the US-UK agreement that predated Open Skies. But this was “such a restrictive agreement that I feel fairly sure that the United States and the UK would reach a new liberal agreement very quickly and relatively easily”. This, he believed, would “probably [be] very similar to the EU-US agreement”.<sup>321</sup>
227. Lord Ahmad told us that he had already “had many representations from, and meetings with, airlines that are not UK-based”, such as American Airlines.<sup>322</sup> They had “made quite clear the importance of having continued and unhindered access to the UK as part of whatever future deal is struck”,<sup>323</sup> and were “very keen to ensure not just a smooth transition but the kind of access that is currently enjoyed by airlines on both sides”.<sup>324</sup>
228. Lord Ahmad also outlined the UK’s existing bilateral air services agreements. These included “the likes of Brazil, Russia, India and China—the BRICS”.<sup>325</sup> He had recently signed a Memorandum of Understanding (MOU) with the Chinese, “which has doubled ... passenger services”, and was hoping to sign a similar MOU with India shortly.<sup>326</sup>

### Negotiating strategies

229. Witnesses made a number of suggestions for the Government to include in its negotiating strategy on air services. First, it was argued that the Government should keep air services negotiations separate from wider EU withdrawal and trade negotiations. Mr Pearce said “one of the fears” in industry was that “air transport will get caught up in any horse-trading that might take place in the general trade negotiations”.<sup>327</sup> easyJet argued that aviation “should

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317 Written evidence from Virgin Atlantic Airways Ltd ([TAS0009](#))

318 Written evidence from the British Air Transport Association ([TAS0042](#))

319 [Q 34](#)

320 [Q 45](#)

321 [Q 35](#)

322 [Q 68](#)

323 [Q 71](#)

324 [Q 68](#)

325 [Q 70](#)

326 [Q 70](#)

327 [Q 34](#)



be ring fenced from the final agreement”.<sup>328</sup> In response, Lord Ahmad was “sure” that an agreement between the UK and the EU on air services “will form part and parcel of what is factored into the minds of our colleagues in Europe”.<sup>329</sup>

230. Secondly, witnesses highlighted the risk that the issue of Gibraltar could derail negotiations. The Airport Operators’ Association noted that Gibraltar Airport was “deeply concerned about any attempts by other EU Member States to exclude them from current and future arrangements between the UK and EU”.<sup>330</sup> Indeed, negotiations on the Single European Sky II proposal are currently stalled, as Spain has pushed for Gibraltar to be excluded from the scope of the proposal. Dr Humphreys warned that Spain could hold up negotiations, noting that “experience so far has suggested that it might well be prepared to do that”. But he also pointed out that “Spain is highly reliant on air services and the UK is one of its major markets”, and that Spain will therefore have “some interest in ensuring that air services continue efficiently”.<sup>331</sup>
231. Finally, witnesses said it was imperative that, in the words of easyJet, “An agreement must be in place prior to the UK’s formal exit from the EU.”<sup>332</sup> The Airport Operators’ Association said the “failure to agree a new air services agreement would seriously disrupt important trade and tourism links for the UK”.<sup>333</sup> IATA, however, highlighted that such agreements took “certainly longer than 2 years” to negotiate, and that the Commission had a “growing backlog of uncompleted mandates”. They concluded it was “unclear whether the UK would be able to jump the queue”.<sup>334</sup>

### Trading in the absence of a formal agreement

232. Leaving the EU without a bilateral UK-EU air services agreement in place would be, in the words of BATA, a “‘clean break’ in aviation terms”.<sup>335</sup> Ms Dekkers noted that aviation services were “not covered by the WTO”, so there was no “fall-back option”.<sup>336</sup> Without a bilateral air services agreement in place by 2019, UK airlines would no longer have the right to fly to and from EU Member States under existing Single Market rules, or to fly to third countries, such as the US, under the terms of the EU’s Open Skies agreements. UK airlines would not be able to offer services between two EU Member States without flying via UK airspace, or to serve domestic routes within EU Member States. UK airlines would no longer be designated as ‘Community carriers’.
233. BATA said the UK would, in such circumstances, have to fall back on bilateral air services agreements (which predate the creation of the Single Market) with individual Member States. It was “questionable whether these old agreements would still be valid”, given that they were agreed before the EU extended its competence on aviation matters. They would also be “so

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328 Written evidence from easyJet ([TAS0048](#))

329 [Q 71](#)

330 Written evidence from the Airports Operators’ Association ([TAS0012](#))

331 [Q 46](#), see also European Union Committee, *Brexit: Gibraltar* (13th Report, Session 2016–17, HL Paper 116)

332 Written evidence from easyJet ([TAS0048](#))

333 Written evidence from the Airports Operators’ Association ([TAS0012](#))

334 Written evidence from the International Air Transport Association ([TAS0005](#))

335 Written evidence from the British Air Transport Association ([TAS0042](#))

336 [Q 34](#)

out-dated” that they simply would “not be fit for purpose”.<sup>337</sup> Ryanair noted that, in the case of Spain, there was “potentially no right to fly as the relevant bilateral agreement has been repealed”.<sup>338</sup>

### Conclusions

234. **The UK is a global leader in air services. This position has been cemented in recent years by the creation of the European Common Aviation Area (ECAA) and the Single Market in air services. Under this framework, the most liberal air services trade in the world has emerged, benefiting European consumers and businesses alike. The UK’s leading position and shared interests with the EU in this sector provide leverage for the Government to negotiate a good deal for the UK’s air services after Brexit.**
235. **Firstly, the Government urgently needs to clarify whether it intends future UK trade in air services with the EU to be conducted on the basis of membership of the ECAA, or on the basis of a separate comprehensive bilateral air services agreement. In the former case, it would be important for the UK to retain voting rights in EU agencies, such as EASA and SESAR (which is not the case for existing non-EU ECAA members), and to have access to existing Open Skies agreements.**
236. **A bilateral air services agreement, if it were to maintain the level of market access currently enjoyed by UK airlines, would need to provide rights for UK airlines to fly non-stop between EU Member States, and to fly domestically within EU Member States. The UK is likely to have leverage in negotiations, given the size of its aviation sector, but we note that there is no precedent for the inclusion of the right to fly domestically within an EU Member State in a comprehensive bilateral air services agreement.**
237. **The Government also urgently needs to clarify the UK’s position post-Brexit with regard to countries with which the EU currently has an Open Skies agreement, including the United States. Failing that, the Government should rapidly explore the potential of agreeing new bilateral air services agreements with major markets (such as the US) before the UK leaves the EU in 2019, or set in place a transitional arrangement.**
238. **There is no adequate ‘fall-back’ position for aviation services in the event that no agreement is reached with the EU. Air services are excluded from the WTO, and the pre-existing bilateral air services agreements between the UK and individual EU Member States may not be valid, given the EU’s extended competence in this area. It follows that, in order to avoid significant damage to the UK aviation sector, either a UK-EU bilateral air services agreement must be agreed before the UK leaves the EU in 2019, or a transitional arrangement must be adopted, to allow continuing UK participation in the Single Market for aviation pending conclusion of a comprehensive agreement.**

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337 Written evidence from the British Air Transport Association ([TAS0042](#))

338 Written evidence from Ryanair ([TAS0008](#))

239. **Faced with the real risk that the UK may not achieve either of these objectives by 2019, airlines are considering registering part of their operations in other EU Member States. This will probably require them, after 2019, to comply with requirements that they be effectively controlled by shareholders from an EU Member State. In other words, they could cease to be UK airlines.**
240. **The airlines that gave evidence to this inquiry argued forcefully that the aviation sector should be prioritised, and that negotiations on a comprehensive bilateral aviation services agreement should be kept separate from the wider negotiations on withdrawal and the future UK-EU trading relationship. We note that a distinct bilateral deal in this area may be in the mutual interests of the UK and EU. However, negotiations on aviation services will still be just one element within a wide-ranging and immensely complex negotiation.**

## CHAPTER 8: TOURISM, EDUCATION AND HEALTH-RELATED TRAVEL SERVICES

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### UK trade in tourism, education and health-related travel services

241. Of the sectors covered by this inquiry, only trade in travel services falls under WTO (GATS) mode 2 ('consumption abroad'), whereby a consumer of services travels to the location of the service provider. While a traveller is defined as a person staying for less than one year in an economy where they are not a resident, trade statistics also include students and medical patients, however short their stay, because they remain formally residents of their country of origin.<sup>339</sup>
242. In this chapter, we consider the UK's trade in travel services, encompassing tourism (or personal travel), education and health-related travel services. We recognise that there are wider issues for these sectors in the context of Brexit, and our comments do not reflect on the relative importance of these services to the UK domestic economy. Nor do we discuss the need to travel for business purposes (to provide or consume a service), which is covered in previous chapters.

#### *Personal travel*

243. Personal travel services include recreational holidays and the money spent in the local economy by visitors. Overseas tourism in the UK is treated as 'exports', while UK tourism abroad is treated as 'imports'. Globally, trade in personal travel services accounts for 83% of all travel services imports and 55% of the UK's exports<sup>340</sup>. The ONS' written evidence to this inquiry showed that the UK runs a deficit of £11.5 billion in tourism services with the EU. This deficit is so large it outweighs the UK's surplus of trade in most other services sectors (valued at £9.8 billion).<sup>341</sup>

#### *Education-related travel*

244. Exports in education-related travel services are measured according to the tuition fees and other expenditure of students who are funded from abroad while studying in the UK. Likewise, imports relate to the expenditure of UK students studying abroad.<sup>342</sup> EU-funded R&D projects are not treated as traded education-related services, and are beyond the scope of this inquiry.
245. The UK is a world leader in education services. In 2014/15 there were 312,010 students from outside the EU enrolled at a UK university, and a further 124,575 students from EU countries. In total, 10.3% of the world's mobile students studied in the UK, second only to the US.<sup>343</sup>

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339 Military and Government personnel are an exception this and their expenditure is recorded under Government services. Written evidence from the Office for National Statistics ([TAS0064](#))

340 Office for National Statistics, 'The Pink Book: 2016, Chapter 3.3 Trade in services' (29 July 2016): <https://www.ons.gov.uk/economy/nationalaccounts/balanceofpayments/datasets/3tradeinservicesthepinkbook2016> [accessed 1 February 2017]. Figures calculated from the 'Travel personal other' category.

341 Written evidence from the Office for National Statistics ([TAS0064](#))

342 Written evidence from Universities UK ([TAS0033](#))

343 Written evidence from Universities UK ([TAS0033](#))

*Health-related travel*

246. Although accounting for a small percentage of the volume of services trade, trade in health-related travel services refers to the cost of medical and other expenses of those travelling abroad receiving medical treatment.
247. The NHS Confederation told us that “the principle of the free movement of services applies also to health services”. This was not only because “health service providers can offer their services in the other EU Member States”, but, more frequently, because patients can also receive health services abroad.<sup>344</sup> Examples include the short-term provision of emergency health services (through the use of the European Health Insurance Card), and the provision of longer-term care (for example, care for retirees in Spain, the costs of which are reimbursed through legislation between Member States). Trade in health services also includes elective treatment where a citizen of one Member State “goes to another to receive care on a voluntary basis”.<sup>345</sup>

*Priorities for a UK-EU FTA**Frictionless travel for EU tourists to the UK*

248. Kurt Janson, Director of the Tourism Alliance, explained: “Anything that makes the consumer experience in coming to the UK more costly and more hassle will mean they will simply go somewhere else.”<sup>346</sup>
249. Mr Janson gave the example of the “soft check at the border” for EU nationals, which meant that “90% of people will be serviced within 25 minutes”. If there were to be “hard checks for EU nationals”, in contrast, about “90% of people” would be “serviced within 45 minutes ... standing in a queue for 45 minutes is not going to encourage you to come here”. He quoted research which found that, “if you increased the cost of coming here by just 1% for overseas visitors, the revenue that the UK gets from overseas visitors will decrease by 1.3%”.<sup>347</sup>

*EU students and international fees*

250. Universities UK told us that EU students currently made up 5.5% of the UK higher education student population but as much as 25% of the student population at some universities. Demand from EU students supported the “provision of certain subjects, without which, specific courses might not be financially viable for home students alone to study”. They noted that “of all postgraduate engineering and technology students, 13% are other EU nationals, as are 16% of mathematical science postgraduate students”. They also noted that non-UK EU students paid fees of £600 million in 2014/15—accounting for as much as 8% of all income for universities.<sup>348</sup> Professor Sir Ian Diamond, Principal and Vice-Chancellor of the University of Aberdeen, told us that spending by EU students in the wider UK economy accounted for £3.7 billion, and supported over 34,000 jobs.<sup>349</sup>

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344 Written evidence from the NHS Confederation ([TAS0069](#))

345 Written evidence from the NHS Confederation ([TAS0069](#))

346 [Q 59](#). We note that the UK’s tourism sector may be affected by the fall in the value of sterling. This issue, and its broader implications, are discussed in European Union Committee, *Brexit: trade in goods* (16th Report, Session 2016–17, HL Paper 129)

347 [Q 59](#)

348 Written evidence from Universities UK ([TAS0033](#))

349 [Q 56](#)

251. Universities UK observed that the “principle of non-discrimination” ensured that EU students were “eligible to pay the same tuition fees as UK students”, and were “able to access financial support in the form of grants and loans”. They supported the continuation of these arrangements after the UK leaves the EU.<sup>350</sup>
252. The University of the Arts London noted that EU students paid no tuition fees in Germany, Austria, Denmark, Finland and Greece. They suggested that increasing tuition fees for EU students in the UK post-Brexit would result in a “notable business risk”, putting UK universities “at a market disadvantage to our EU competitors”. There was “no other industrial sector in which the Government would aim to reduce customer flows and inward investment”.<sup>351</sup>

#### *Provisions on health services*

253. The NHS Confederation noted that existing EU trade deals included “stringent safeguards”, to ensure governments continued to have the right to legislate on public health measures. It was important that any future UK-EU FTA included measures enabling the UK “to maintain high standards of protection for public health services and not to agree lower standards”.<sup>352</sup> Witnesses also wanted the process of recruiting health services staff from the EU to “be as simple and as straightforward as possible”<sup>353</sup> after Brexit.

#### *Reciprocal access to health care services*

254. The NHS Confederation were concerned that, post-Brexit, “British citizens on holiday in Europe might no longer be able to use the European Health Insurance Card”, thereby limiting their access to cross-border healthcare. Conversely, “EU tourists [in the UK] would no longer be entitled to receive NHS care following Brexit”. They called on the Government to “ensure that a fair alternative system is put in place, either with the EU as a whole or with those EU countries, such as Spain, which have high numbers of UK nationals living there”. Special regard should also be given to Northern Ireland, “which has a long tradition of collaboration with the Republic of Ireland in the provision of health services across borders”.<sup>354</sup>

#### **Trading under WTO rules**

255. Failure to agree a UK-EU FTA would result in UK-EU trade in tourism, education and health-related travel services being conducted on the basis of WTO rules.

#### *Personal travel*

256. Approximately 125 member countries have made commitments under the GATS for tourism and travel-related services, including the EU Member States under a shared schedule. This schedule covers market access and national treatment conditions for:

- Hotels, restaurants and catering services;

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350 Written evidence from Universities UK ([TAS0033](#))

351 Written evidence from the University of the Arts London (UAL) ([TAS0038](#))

352 Written evidence from the NHS Confederation ([TAS0069](#))

353 [Q 61](#) (Danny Mortimer)

354 Written evidence from the NHS Confederation ([TAS0069](#)). See also European Union Committee, [Brexit: UK-Irish relations](#) (6th Report, Session 2016–17, HL Paper 76), paras 153–157

- Travel agents and tour operators; and
- Tourist guide services.<sup>355</sup>

257. The EU's schedule lists few restrictions in the areas covered. Nonetheless, the Tourism Alliance said leaving the EU without bespoke measures in place to facilitate the movement of EU visitors would "have a very considerable detrimental impact on the UK tourism industry". While they could not put an exact figure on this impact, they believed that "just a 10% increase in costs would reduce tourism revenue from Europe by £1.3bn per annum and cost 24,000 jobs".<sup>356</sup>

### *Health and education-related travel*

258. Trading under WTO rules would not automatically facilitate continued trade in education and health services between the UK and the EU after Brexit. The GATS includes a blanket exemption for those services "supplied in the exercise of governmental authority", whereby services are supplied "neither on a commercial basis, nor in competition with one or more service providers".<sup>357</sup>

259. Witnesses generally welcomed this exemption, and were concerned that policy decisions might result in these types of services falling within the scope of the GATS in future.

260. The University and College Union was concerned that proposals to liberalise trade within the GATS could lead to education being included within trade agreements, posing "a threat to public interest regulations governing education". This was particularly troubling, given the Government's plans to "encourage a more market-based approach to higher education and make it easier for new providers to enter the sector".<sup>358</sup>

261. The NHS Confederation said the interpretation of the GATS exemption for publicly provided services was "controversial", because "the opening of health services to competition in England makes it difficult to argue that the services commissioned on behalf of the NHS are not supplied in competition with other providers". The practice of contracting out NHS services also meant it was "debatable whether these are supplied in the exercise of governmental authority".<sup>359</sup>

### **Conclusions**

**262. Of the categories of services under consideration in this inquiry, travel is the only one in which the UK has a large trade deficit with the EU. This is attributable to the fact that many more UK citizens travel to the EU for business and recreational purposes than the reverse. It follows that UK tourism is economically very important to some EU Member States, as well as being socially important to the UK.**

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355 WTO, 'Services: sector by sector: Tourism and travel related services': [https://www.wto.org/english/tratop\\_e/serv\\_e/tourism\\_e/tourism\\_e.htm](https://www.wto.org/english/tratop_e/serv_e/tourism_e/tourism_e.htm) [accessed 14 February 2017]. Information on the different categories of services traded by different member countries can be found on the WTO website. WTO, 'I-TIP Services': <http://i-tip.wto.org/services/> [accessed on 14 February 2017]

356 Written evidence from the Tourism Alliance ([TAS0029](#))

357 The General Agreement on Trade in Services (GATS) Article 1:3c. WTO, *The General Agreement on Trade in Services : an introduction* (31 January 2013): [https://www.wto.org/english/tratop\\_e/serv\\_e/gsintr\\_e.pdf](https://www.wto.org/english/tratop_e/serv_e/gsintr_e.pdf) [accessed on 14 February 2017]

358 Written evidence from the University and College Union ([TAS0057](#))

359 Written evidence from the NHS Confederation ([TAS0069](#))

263. **EU students travelling to the UK to study make a significant contribution to the UK economy, both by means of fees and by injecting money into towns and cities across the UK. These fees help universities to cross-subsidise courses that may not otherwise be viable. The Government should bear in mind the possible negative effect of increasing fees for EU students on trade in education services after Brexit. We note that determining the status of EU students going forward will form part of the Government's development of a new immigration policy in coming months.**
264. **Without provisions in a FTA, trade in education and health-related travel services between the UK and the EU will be restricted after Brexit. This is largely because publicly provided services are excluded from the GATS at the WTO—although this issue is the subject of ongoing debate.**



## CHAPTER 9: THE FUTURE UK-EU TRADING RELATIONSHIP

### Overview: the future of UK services

265. As we have emphasised throughout this report, a great deal is at stake for UK service providers in the forthcoming negotiations. Comprehensive trade in services is intertwined with the movement of goods, persons and capital and this is reflected in the founding principles of the Single Market. Existing EU FTAs with third countries do not provide a like-for-like replacement for existing trade terms. In respect of services, the UK's future FTA with the EU would need to be the most comprehensive in history.
266. In evidence given to the *Brexit: trade in goods* inquiry, Lord Bridges of Headley MBE, Parliamentary Under Secretary of State at the Department for Exiting the European Union (DExEU) told the EU External Affairs Sub-Committee that “clear themes” for services trade were becoming apparent to Government: “One is qualifications, which you mentioned; law is another; data, which is critical, is a third”.<sup>360</sup> While these themes are important and have been covered in our report, we have also identified many more issues that will need to be included in a FTA to ensure UK businesses can continue to trade as they do today. These are summarised in Table 2.

**Table 2: Key priorities for a comprehensive UK-EU FTA for services**

	<b>Profes- sional Business Services</b>	<b>Digital</b>	<b>Creative</b>	<b>Aviation</b>	<b>Travel</b>
<b>Common themes</b>	Access to talent and flexible movement of service providers Free flow of data Effective enforcement of the terms of trade (for all sizes of business)				
<b>Sector specific require- ments</b>	Mutual recognition of qualifications.  Mutual recognition of regulatory frameworks. Rights of establishment.	Abolition of roaming charges.	Compre- hensive access to Single Market in broadcast- ing.	Compre- hensive access to EU Single Market in aviation, particular- ly intra-EU services	Access for non- UK EU students to UK universities at current rates.
			Protection for Intel- lectual Property rights	Access to EU-US 'Open Skies' agreement.	Provisions on emer- gency, elective and long term health services.

360 Oral evidence taken on 8 February 2017 (Session 2016–17) [Q 125](#) (Lord Bridges of Headley MBE)

	<b>Profes- sional Business Services</b>	<b>Digital</b>	<b>Creative</b>	<b>Aviation</b>	<b>Travel</b>
<b>‘No deal’ scenario -trading under WTO rules</b>	Restricted trade.	Restricted trade	Very restricted trade for international broadcasting & reduced protection for intellectual property.	Very restricted trade for short-haul intra-EU services. Fall back on pre-existing bilateral air services agreements.	Restricted trade.

267. Losing access to the Single Market in any of these areas, or failure to secure a FTA at all (a ‘no deal’ scenario), could risk significant damage to the UK’s services sectors. For instance, WTO rules do not provide for trade with the EU in aviation or broadcasting services at all. Instead, UK firms would have to rely on outdated and restrictive agreements. While the UK’s global standing in these sectors may mitigate some negative consequences, businesses could be forced either to re-structure or relocate to continue to operate in the way that they do today. WTO rules also would not provide for the flexible and seamless movement of persons, nor would they ensure the free flow of data. Rules on market access differ between EU Member States—increasing the regulatory complexity for UK firms. Given these negative consequences, and the strong likelihood that agreeing a comprehensive FTA will take longer than the two years allowed under Article 50, we re-iterate our recommendation that the Government prioritise securing agreement to a transitional trading arrangement as part of the negotiations under Article 50, so as to avoid a regulatory ‘cliff-edge’ for businesses.
268. The rest of this chapter addresses the remaining issues that witnesses told us would need to be resolved within forthcoming negotiations to make a success of future UK-EU trade in non-financial services.

### **Engagement between Government and industry**

269. Importantly, most witnesses to this inquiry felt that the Government was making efforts to engage with UK services businesses on Brexit-related issues. This was both at the level of individual organisations and, as expressed by Ms Dekkers, within “industry group[s]”.<sup>361</sup> Mr Mortimer highlighted “extensive engagement”<sup>362</sup> with the Government departments responsible for the health sector. Ms Jones described dialogue with DExEU as “limited but increasing”.<sup>363</sup> Mr Janson agreed, noting: “We are constantly talking with DCMS, which is our sponsoring department ... there is just a hope that the concerns get fed through to the Brexit department and are taken on board”.<sup>364</sup>

361 [Q 45](#) (Sophie Dekkers)

362 [Q 63](#) (Danny Mortimer)

363 [Q 31](#) (Sally Jones)

364 [Q 63](#) (Kurt Janson)

270. While we welcome the Government’s current level of engagement across different services sectors, Mr Laurans said industry in general sought “reassurance that the points [they] are putting across are being taken on board”.<sup>365</sup> Communication must also be two-way as the negotiations evolve so that, in the words of Mr Evans, the Government continues to “narrow down the uncertainty as far as possible”, and so that industry can “know some of the potential options that are on the table ... and prepare itself”.<sup>366</sup>
271. We recognise that the favoured trade framework for many witnesses to this inquiry was EEA membership and that the Government has since made clear that it will not pursue this option. Professor Sir Ian Diamond made the following plea: “We are not saying, ‘We just want it to be the same. Please go away’. We are saying that we need to engage with this in a constructive way to get something that is good for the UK in every way.”<sup>367</sup>

### **The Great Repeal Bill, mutual recognition and regulatory equivalence**

272. Following the UK’s decision to leave the EU, the Government announced its intention to introduce a ‘Great Repeal Bill’, which will be key to forthcoming trade negotiations. In the words of the Government’s White Paper, *The United Kingdom’s exit from and new partnership with the EU*, the Great Repeal Bill will:

“Convert the ‘*acquis*’—the body of existing EU law—into domestic law. This means that wherever practical and appropriate, the same rules and laws will apply on the day after we leave the EU as they did before.”<sup>368</sup>

273. In general, witnesses supported the principle of avoiding divergence between UK and EU laws. EY said: “Regulatory complexity not only increases costs to our business but increases the risk of non-compliance which can damage stakeholder confidence in auditors.”<sup>369</sup> The ICAEW, the accounting standards and training body, said the UK’s international “reputation for proportionate regulatory structures, transparency and good governance” should “not be compromised as we leave the EU”. Instead, the Government should “seek to align the regulatory framework for the professional and business services sector with the existing EU framework”.<sup>370</sup> As for aviation, Mr Pearce, from IATA, said: “An international air transport network needs to be harmonised and any patchwork or disruption can be quite damaging to it.”<sup>371</sup> Similar views were expressed by witnesses from the digital and creative sectors.<sup>372</sup>
274. While the Great Repeal Bill may ensure that UK legislation is broadly in line with the EU *acquis* at the point of Brexit in 2019, it cannot legislate for mutual recognition. Mutual recognition requires States to agree to recognise each other’s regulations, standards and qualifications. This would require a reciprocal agreement between the UK and the EU, either as part of a future FTA or as a separate bilateral agreement. An example of this, highlighted in

365 [Q 31](#) (Mickaël Laurans)

366 [Q 18](#) (Matthew Evans)

367 [Q 63](#) (Professor Sir Ian Diamond)

368 HM Government, *The United Kingdom’s exiting from and new partnership with the European Union*, Cm 9417, February 2017, p 9: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/589191/The\\_United\\_Kingdoms\\_exit\\_from\\_and\\_partnership\\_with\\_the\\_EU\\_Web.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/589191/The_United_Kingdoms_exit_from_and_partnership_with_the_EU_Web.pdf) [accessed 21 February 2017]

369 Written evidence from EY ([TAS0035](#))

370 Written evidence from the Institute of Chartered Accountants in England and Wales ([TAS0020](#))

371 [Q 40](#)

372 [Q 55](#) (Ms Alice Enders)

Chapter 5 of this report, was how the UK would need to secure an adequacy decision from the European Commission (recognising that the UK had adequate data protection standards) in addition to implementing the General Data Protection Regulation, in order to ensure the continued free flow of data between the UK and EU Member States after Brexit.

275. Dr Norman argued that the Great Repeal Bill would make continued mutual recognition more likely. With respect to professional qualifications, he said the Bill would bring “into our law a framework of recognition which maintains a portion of the, as it were, bi-laterality or exchange involved” in any FTA. He continued: “Therefore, it raises the bar on states that wish to demur from those arrangements and discriminate against British nationals.”<sup>373</sup>
276. In relation to regulatory equivalence, the Great Repeal Bill would not prevent divergence after the UK leaves the EU. Witnesses from the digital sector were particularly concerned about the many legislative proposals currently under negotiation as part of the Digital Single Market Strategy, some of which may be agreed after the UK has left the EU. Remaining in line with EU law would require mechanisms for ensuring the continuing transposition of relevant EU legislation into domestic legislation. It would also require the UK to track the case law of the CJEU. Nothing the Government has said publicly so far suggests that it would be willing to contemplate such an approach.

#### Dispute resolution under a future UK-EU FTA

277. Separately, as part of negotiations, the UK and the EU will have to decide how the rules governing their trade in services (and mutual recognition of regulatory standards) should be policed. Throughout the inquiry, witnesses raised concerns about the dispute resolution mechanisms that would be available to businesses and the Government either under a FTA or under WTO rules. Disputes between EU-based businesses are handled by the Commission, national courts and the CJEU. The Government’s 2014 Review of the Balance of Competences found that even inside the Single Market, UK businesses faced unjustified non-tariff barriers to trade, and pressed for greater integration and liberalisation of the services market.<sup>374</sup> Outside the Single Market, these challenges are likely to be more pronounced, particularly for SMEs, for which costly and protracted legal proceedings are often prohibitive from the outset.
278. The Government’s White Paper said it would “seek to agree a new approach to interpretation and dispute resolution with the EU”, which “respect[s] UK sovereignty, protect[s] the role of our courts and maximise[s] legal certainty”. While the White Paper lists examples of dispute resolution mechanisms in EU FTAs with Canada and South Korea, it also states that the UK “should not be constrained by precedent”.<sup>375</sup>

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373 Q 69

374 HM Government, *Review of the Balance of Competences between the United Kingdom and the European Union, The Single Market: Free movement of services* (Summer 2014), p 6: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/332668/bis-14-987-free-movement-of-services-balance-of-competencies-report.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/332668/bis-14-987-free-movement-of-services-balance-of-competencies-report.pdf) [accessed 5 January 2017]

375 HM Government, *The United Kingdom’s exiting from and new partnership with the European Union*, Cm 9417, February 2017, p 14: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/589191/The\\_United\\_Kingdoms\\_exit\\_from\\_and\\_partnership\\_with\\_the\\_EU\\_Web.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/589191/The_United_Kingdoms_exit_from_and_partnership_with_the_EU_Web.pdf) [accessed 21 February 2017]

279. Our previous report concluded that a more robust mechanism for handling disputes than was normally found in FTAs would be required to police a future UK-EU trading relationship. While we heard suggestions for creating a UK-EU court, we recognised that this would not sit comfortably with the CJEU's position as the primary court within the EU.<sup>376</sup>

### The link between the movement of services and people

280. Industry will also need to be consulted on changes to the movement of persons after Brexit. The WTO's classification of the four modes of supply for trading services includes two modes requiring movement, either of the consumer (for example, in tourism), or of the service provider (as in many professional business services). More broadly, the consensus among our witnesses was that the short and long-term movement of EU citizens to the UK had helped to fill skills gaps and had driven growth in services, particularly in the digital sector. We heard that restrictions on the movement of EU citizens into the UK for work were likely to reduce economic output and growth.
281. Mr Hancock fundamentally disagreed: "Trade in services is not about moving people to and fro, largely, but about delivering services into another market". He believed that "digital services are largely done by somebody sitting at a computer in one country delivering services into another". He pointed out that the UK had "significant trade in services with other parts of the world, too, where we have a controlled migration policy", suggesting that introducing a similar policy for the EU would not stop services trade. He concluded: "I am not sure that it is credible to align trade in services and no controls at all on free movement of people."<sup>377</sup>
282. Ministers told us that the UK had been, and would remain, an attractive base for talent and service businesses. Dr Norman said: "If you look at many services sectors where you have an increasingly globally mobile population and you ask them where they would most like to be, many of them will say Menlo Park but many will say London ... Bristol, Manchester and other parts of this country, or Edinburgh."<sup>378</sup> Mr Hancock told us that the UK had the opportunity to design a new immigration system, "looking globally for top talent where hitherto the immigration system has been completely free with 27 countries and tight with others".<sup>379</sup>
283. We note that the link between trade and movement of persons also extends to the movement of low-skilled service providers. Professor Barnard told us that mode 4 was "largely dysfunctional because, although it is intended to cover low-skilled through to high-skilled movement, in fact all the instances are of high-skilled and very high-skilled migration".<sup>380</sup> She said the "only

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376 European Union Committee, *Brexit: the options for trade* (5th Report, Session 2016–17, HL Paper 72) p 49. We note that, in the case of investment chapters within FTAs, the EU has recently been moving towards a more institutional approach to dispute resolution. For example, CETA establishes a permanent Tribunal of 15 Members which will be competent to hear claims for violation of the investment protection standards established in the agreement. There are also provisions for an Appellate Tribunal, and a recognition that a permanent multilateral investment court, should it come into existence in the future, will replace the bilateral mechanism established in CETA. European Commission, *CETA: EU and Canada agree on new approach on investment in trade agreement* (29 February 2016): [http://europa.eu/rapid/press-release\\_IP-16-399\\_en.htm](http://europa.eu/rapid/press-release_IP-16-399_en.htm) [accessed 14 March 2017]

377 [Q 66](#)

378 [Q 66](#)

379 [Q 66](#)

380 [Q 1](#)

thing” she could find on the “Government’s website about mode 4 of GATS was in respect of diplomats and those entering into the private households of diplomats”.<sup>381</sup> In developing a new immigration policy, therefore, the Government will need to consider not just how to attract the top talent but also how to facilitate the movement of low-skilled workers.

284. Dr Norman said changes to the principle of free movement would be “part of an overall negotiation”. Asked about the possibility that the EU might insist on the principle of the free movement of persons as a price for Single Market access, Dr Norman recognised that negotiations would be “a two-way street”, but argued that the UK ran “very large financial and other business professional services markets out of the UK which other countries have a great interest in sending their people to, as we have a great interest in sending our people to them”.<sup>382</sup>
285. The issues relating to the future movement of people between the EU and the UK after Brexit have been addressed in more detail in a separate report by this Committee, *Brexit: UK-EU movement of people*.<sup>383</sup>

### Conclusions

286. **To protect the UK’s status as a global leader of trade in services, the Government will need to secure the most comprehensive FTA that has ever been agreed with the EU. Such an agreement should maintain and build on the UK’s many strengths in services trade. This will be a lengthy and complex process, but not impossible.**
287. **Losing access to the Single Market in any of these areas, or failure to secure a FTA at all (a ‘no deal’ scenario), would risk significant damage to the UK’s services sectors. While the UK’s global standing in services may mitigate some of the negative consequences, in some cases (for example aviation and broadcasting), businesses may be required to restructure or re-locate their operations to the EU27. Moreover, WTO rules would not provide for the flexible and seamless movement of persons, nor would they ensure the free flow of data. Rules on market access may differ between EU Member States, increasing regulatory complexity for UK firms.**
288. **Given these negative consequences, and the fact that it will almost certainly take longer than two years to agree a comprehensive FTA addressing the many complex issues raised in this report, we re-iterate the recommendation made in our report on *Brexit: the options for trade*, that the Government should prioritise the securing of a transitional trading arrangement with the EU as part of the negotiations under Article 50. Failure to do so could leave UK businesses vulnerable and facing a regulatory ‘cliff-edge’.**
289. **We recognise the Government’s current high level of engagement across the services sectors represented by witnesses to this inquiry. It is imperative that the Government not only listens to these views but uses them to inform its negotiating position with the EU. This structured two-way dialogue must be formalised and maintained**

381 [Q 9](#)

382 [Q 66](#)

383 European Union Committee, *Brexit: UK-EU movement of people* (14th Report, Session 2016–17, HL Paper 121)

throughout the lifecycle of negotiations, especially when trade-offs need to be made. We urge the Government to use the communication channels it has established to continue to narrow down uncertainty for services sectors and enable them to prepare for Brexit.

290. We note that the Government's planned Great Repeal Bill is intended to reduce uncertainty for UK businesses, by clarifying what rules will apply the day after the UK leaves the EU. But the Bill will not, on its own, secure either the mutual recognition of UK and EU standards, or the level of equivalence required to ensure continued trade in services. In sectors where the UK opts to seek equivalence, the Government should consider how relevant changes in EU law will be transposed into UK law after 2019 and how to ensure changes in UK law do not jeopardise that equivalence.
291. We welcome the Government's recognition that an effective dispute resolution mechanism will form part of its negotiations with the EU. We urge the Government to consult service providers fully, in particular SMEs, for which costly and protracted legal proceedings are often prohibitive, and to bring forward initial proposals at the earliest opportunity.
292. The Government has, we believe, under-estimated the reliance of the services sector on the free movement of persons. Moreover, there is a risk that the EU will take the view that comprehensive access to the Single Market in services is dependent upon some degree of movement of persons. The Government, in forthcoming immigration legislation, must ensure that it retains sufficient room for manoeuvre to facilitate a negotiated agreement on this key issue.

## SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

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### UK trade in non-financial services

1. Services are a competitive, profitable and growing part of the UK's trade. This is only partly reflected in the statistics on the UK's trade in services. The data in the Pink Book only capture some of the ways in which services can be traded and probably underestimate the importance of services trade for the UK. (Paragraph 33)
2. As with goods and financial services, the EU remains a critical trading partner for the UK's trade in non-financial services. Trade with the EU in professional business services, digital and creative services generated a surplus of £9.8 billion for the UK's trade balance in 2015. This was offset by large deficits in the UK's trade in tourism and, to a lesser extent, transportation services with the EU (£11.4 billion and £1 billion respectively). (Paragraph 34)
3. Nonetheless, the total volume of UK exports to the EU of non-financial services (£62.9 billion) is growing, and is much higher than the volume of exports of financial services (£26 billion). More jobs are also linked to trade and investment in these sectors. (Paragraph 35)
4. In preparing its negotiating strategy, the Government will need to take account of many factors, such as the value of the sectors' exports, the number of jobs that depend on them, whether the sectors are growing or declining, and, their strategic importance to the UK economy and the Government's longer-term trade and industrial strategies, together with a range of cross-sectoral issues. (Paragraph 36)
5. The Government therefore needs more accurate and detailed statistical information on trade in non-financial services than is currently available, particularly in relation to trade in modes 3 (establishing a commercial presence abroad) and 4 (the temporary movement of service providers across borders). Entering negotiations without such data could risk long-term, unintended consequences for the UK economy. (Paragraph 37)

### *Frameworks for trading non-financial services*

6. Although the EU Single Market in services is significantly less integrated than that in goods, it remains, even in its imperfect form, the most integrated market for trade in services in the world, and it continues to integrate further. (Paragraph 78)
7. In the absence of Single Market membership, it will be much harder to liberalise trade in services than trade in goods. This is because trade in services often involves the movement of persons and either the harmonisation or mutual recognition of regulatory frameworks regarding how services should be supplied. The EU does not have harmonised trade policy in relation to trade in services with third countries outside the Single Market, meaning that UK businesses could face differing non-tariff barriers between Member States, which will be difficult to identify and quantify. (Paragraph 79)
8. The UK's starting-point in negotiations with the EU on a FTA is unprecedented and unique, in that, even though the Single Market in services is incomplete, the rules and regulations in the UK and EU will be, at the point of departure, completely harmonised. On the other hand, existing FTAs have not led to great liberalisation in trade in services. Rather,



they tend to reduce the difference that exists between countries' formal restrictions to trade listed at the WTO and the actual trade policies they apply (which tend to be more liberal). Even terms similar to those agreed under the most ambitious FTAs agreed by the EU, such as CETA, would represent a deterioration of trading conditions for UK businesses. This would be the case both for sectors in which a harmonised Single Market framework exists, and also for sectors that are reliant on the EU acquis for the elimination of non-tariff barriers to trade, such as the mutual recognition of professional qualifications, free movement of persons, and the free flow of data. In short, the UK will require the most comprehensive FTA in services ever agreed with the EU. (Paragraph 80)

9. A deal which did not provide market access for all services sectors, or no deal at all, would result in the UK trading services with the EU on the basis of WTO rules, which would provide less favourable trading conditions than membership of the Single Market or a FTA. WTO terms would require the UK and the EU to comply with the 'Most Favoured Nation' principle: the UK would not be able to trade on more preferential terms with the EU, unless it applied those same terms to all other WTO member countries (and vice versa). (Paragraph 81)
10. A dispute resolution mechanism will undoubtedly be a feature of the UK's future trading relationship with the EU, implying an inherent trade-off between liberalising trade and the exercise of sovereignty. Under either a FTA or WTO rules there will be a fundamental change to the way in which trading terms are presently enforced for the UK. The Government needs to engage with service providers and clarify the dispute resolution mechanism it will seek in a FTA. It will also need to consider how individuals and businesses who were formerly able to appeal to domestic courts, and ultimately the Court of Justice of the European Union (CJEU), would be able to petition the Government to act on their behalf under a FTA or WTO trading rules scenario. (Paragraph 82)

### *Professional business services*

11. Professional business services (PBS) comprise a wide variety of regulated and un-regulated professional services, encompassing some of the UK's most successful exports globally and to the EU. The UK generates a large surplus in trade in PBS with the EU (£6.1 billion in 2015). It is now up to the Government to protect and maintain the UK's strengths in business services in a deep and comprehensive UK-EU FTA. (Paragraph 119)
12. The Government should ensure that any UK-EU FTA includes provisions on the mutual recognition of professional qualifications and also of regulatory structures. Failure to achieve such mutual recognition would, according to the Professional and Business Services Council, result in "absolute" barriers to trade for the most highly regulated professions. (Paragraph 120)
13. In addition to securing market access for UK service providers to provide services temporarily in the EU, the Government should also seek to include provisions on the rights of UK businesses to establish themselves in the EU (and vice versa). While the extent to which such provisions have been provided under existing EU FTAs with third countries is unclear, it will be vital for the UK, given the significance of services trade via mode 3. (Paragraph 121)

14. Issues relating to cross-border movement of persons delivering PBS will need to be addressed in UK-EU FTA negotiations. The free movement of persons has facilitated trade in PBS between the UK and the EU in two clear ways. Firstly, it has enabled firms to service clients and contracts at short notice and to assist partner firms in other Member States. Secondly, the free movement of persons has also enabled firms to recruit from a larger labour market and fill skills gaps. The Government should give full weight to these benefits, and the consequences of changing migration rules for PBS, both in negotiations and in the preparation of immigration legislation. (Paragraph 122)
15. Under a ‘no deal’ scenario, regulated PBS firms (such as legal and accounting firms) would face increased (and in some cases absolute) barriers to trading with the EU. Unregulated PBS, like management consulting, would be able to continue trading with the EU, although even they could be indirectly affected. (Paragraph 123)
16. In such a scenario, it is likely that PBS firms, in particular those in the legal sector, would either relocate to the EU, or move resources to partner firms within the EU, in order to continue to trade on preferential terms. Both outcomes could have a negative effect on the UK’s trade balance, tax revenues and employment. (Paragraph 124)
17. The Trade in Services Agreement (TiSA) provides an opportunity to update the global terms of trade for many services. But we note that negotiations on TiSA have stalled, and that the EU’s position has been to pursue terms in TiSA negotiations that are less favourable than those in CETA. (Paragraph 125)

### *Digital services*

18. Digital services are a growing and successful part of the UK economy. The UK leads the EU in the provision of digital services, and the EU is a critical export market. The rapid growth in digital services in the UK has been fuelled by input from non-UK migrants, in particular EU nationals, moving to the UK to fill high-skilled jobs. The likelihood of future growth and innovation in the sector means that digital services should play an important part in the forthcoming negotiations. The Government should aim to maintain the UK’s strengths in this area in a future UK-EU FTA. (Paragraph 158)
19. Preserving the free flow of data across borders is seen by industry as critical to the future of UK digital services. An ‘adequacy decision’ by the European Commission, recognising that the UK had adequate data protection standards (as well as reciprocal arrangements), would be needed to preserve this flow of data. We note concerns that certain provisions of the Investigatory Powers Act 2016, relating to the collection and storage of personal data by security services, could stand in the way of the Commission granting such a decision. We also note the Court of Justice of the European Union’s (CJEU) decision to deem the EU-US Safe Harbour agreement invalid. (Paragraph 159)
20. A key benefit for UK consumers provided by the EU is the forthcoming abolition of roaming charges. This will be put at risk by Brexit, unless specific provisions are included in a UK-EU FTA extending the cap on wholesale roaming charges to UK Mobile Network Operators (MNOs). We note that there are no such provisions in existing FTAs, and that the number of UK citizens travelling to other EU Member States may dis-incentivise EU-based

MNOs to extend the cap to UK MNOs. Post-Brexit, the Government and regulators should also take steps to prevent UK MNOs increasing retail charges for roaming services for UK consumers. (Paragraph 160)

21. The Government should seek mechanisms whereby it can continue to formally influence and engage with the Commission and the EU27 in the development of the Digital Single Market (DSM) after Brexit. The DSM is currently under review, and there is a risk that the EU may introduce provisions that could increase the non-tariff barriers faced by UK firms. This highlights the general need for any UK-EU FTA to include provisions on transposing relevant future changes in EU law into UK law, and for the UK to ensure that changes in domestic law do not jeopardise regulatory equivalence. (Paragraph 161)
22. In the absence of a UK-EU FTA, we heard grave concerns from the digital services sector about trading under WTO rules, relating in particular to the state-led nature of the dispute resolution mechanism and the challenges fast-moving technology poses to a global membership organisation. Businesses would face huge difficulties in adapting to trade with the EU and the rest of the world under WTO rules. (Paragraph 162)
23. We also note that, if the trading environment for UK-based digital businesses were to deteriorate significantly following Brexit, digital platforms and start-ups might choose to relocate or redirect parts of their activities to other EU countries. (Paragraph 163)

### *Creative services*

24. The UK is a global hub for creative services. The success of the UK's creative services industry is bolstered by innovation in digital services and by a general business environment in which companies from different parts of the creative sector 'cluster' in the UK. Brexit presents different risks and opportunities to different types of creative services, and it is important that the Government agrees a comprehensive UK-EU FTA that sustains the UK's global hub status. (Paragraph 197)
25. Creative industries will need a comprehensive agreement on the protection of intellectual property rights. For example, in fashion, the continued protection of Unregistered Community Designs will be important to ensure that fashion designers are still protected when showing their designs for the first time in the UK. Without such protections, the viability of events like London Fashion Week could be called into question, posing a direct threat to jobs in the UK and, more broadly, to the standing of the UK's fashion industry. (Paragraph 198)
26. Without appropriate agreements to maintain access to the Single Market, we note that UK broadcasters would be unable to broadcast services to the EU. This would affect almost 60% of channels licensed by Ofcom. (Paragraph 199)
27. The EU has excluded provisions on audiovisual media services from all FTAs, except the EU-South Korea FTA and the CARIFORUM-EU EPA. A UK-EU FTA would need to go even further than these agreements, in order to maintain the level of EU market access sought by UK broadcasters. (Paragraph 200)

28. A scenario where the UK left the EU without an agreement would be damaging for the UK's creative services. Audiovisual media services are excluded from the EU's schedule of commitments at the WTO, and neither the Transfrontier Television Convention nor co-production treaties are viable alternatives for trade. Protections for intellectual property rights afforded by the WTO's TRIPS agreement are considerably less than those currently enjoyed by UK businesses and citizens. (Paragraph 201)

### *Air services*

29. The UK is a global leader in air services. This position has been cemented in recent years by the creation of the European Common Aviation Area (ECAA) and the Single Market in air services. Under this framework, the most liberal air services trade in the world has emerged, benefiting European consumers and businesses alike. The UK's leading position and shared interests with the EU in this sector provide leverage for the Government to negotiate a good deal for the UK's air services after Brexit. (Paragraph 234)
30. Firstly, the Government urgently needs to clarify whether it intends future UK trade in air services with the EU to be conducted on the basis of membership of the ECAA, or on the basis of a separate comprehensive bilateral air services agreement. In the former case, it would be important for the UK to retain voting rights in EU agencies, such as EASA and SESAR (which is not the case for existing non-EU ECAA members), and to have access to existing Open Skies agreements. (Paragraph 235)
31. A bilateral air services agreement, if it were to maintain the level of market access currently enjoyed by UK airlines, would need to provide rights for UK airlines to fly non-stop between EU Member States, and to fly domestically within EU Member States. The UK is likely to have leverage in negotiations, given the size of its aviation sector, but we note that there is no precedent for the inclusion of the right to fly domestically within an EU Member State in a comprehensive bilateral air services agreement. (Paragraph 236)
32. The Government also urgently needs to clarify the UK's position post-Brexit with regard to countries with which the EU currently has an Open Skies agreement, including the United States. Failing that, the Government should rapidly explore the potential of agreeing new bilateral air services agreements with major markets (such as the US) before the UK leaves the EU in 2019, or set in place a transitional arrangement. (Paragraph 237)
33. There is no adequate 'fall-back' position for aviation services in the event that no agreement is reached with the EU. Air services are excluded from the WTO, and the pre-existing bilateral air services agreements between the UK and individual EU Member States may not be valid, given the EU's extended competence in this area. It follows that, in order to avoid significant damage to the UK aviation sector, either a UK-EU bilateral air services agreement must be agreed before the UK leaves the EU in 2019, or a transitional arrangement must be adopted, to allow continuing UK participation in the Single Market for aviation pending conclusion of a comprehensive agreement. (Paragraph 238)
34. Faced with the real risk that the UK may not achieve either of these objectives by 2019, airlines are considering registering part of their operations in other EU Member States. This will probably require them, after 2019, to comply with requirements that they be effectively controlled by shareholders from

an EU Member State. In other words, they could cease to be UK airlines. (Paragraph 239)

35. The airlines that gave evidence to this inquiry argued forcefully that the aviation sector should be prioritised, and that negotiations on a comprehensive bilateral aviation services agreement should be kept separate from the wider negotiations on withdrawal and the future UK-EU trading relationship. We note that a distinct bilateral deal in this area may be in the mutual interests of the UK and EU. However, negotiations on aviation services will still be just one element within a wide-ranging and immensely complex negotiation. (Paragraph 240)

### *Tourism, education and health-related travel services*

36. Of the categories of services under consideration in this inquiry, travel is the only one in which the UK has a large trade deficit with the EU. This is attributable to the fact that many more UK citizens travel to the EU for business and recreational purposes than the reverse. It follows that UK tourism is economically very important to some EU Member States, as well as being socially important to the UK. (Paragraph 262)
37. EU students travelling to the UK to study make a significant contribution to the UK economy, both by means of fees and by injecting money into towns and cities across the UK. These fees help universities to cross-subsidise courses that may not otherwise be viable. The Government should bear in mind the possible negative effect of increasing fees for EU students on trade in education services after Brexit. We note that determining the status of EU students going forward will form part of the Government's development of a new immigration policy in coming months. (Paragraph 263)
38. Without provisions in a FTA, trade in education and health-related travel services between the UK and the EU will be restricted after Brexit. This is largely because publicly provided services are excluded from the GATS at the WTO—although this issue is the subject of ongoing debate. (Paragraph 264)

### *The future UK-EU trading relationship*

39. To protect the UK's status as a global leader of trade in services, the Government will need to secure the most comprehensive FTA that has ever been agreed with the EU. Such an agreement should maintain and build on the UK's many strengths in services trade. This will be a lengthy and complex process, but not impossible. (Paragraph 286)
40. Losing access to the Single Market in any of these areas, or failure to secure a FTA at all (a 'no deal' scenario), would risk significant damage to the UK's services sectors. While the UK's global standing in services may mitigate some of the negative consequences, in some cases (for example aviation and broadcasting), businesses may be required to restructure or re-locate their operations to the EU27. Moreover, WTO rules would not provide for the flexible and seamless movement of persons, nor would they ensure the free flow of data. Rules on market access may differ between EU Member States, increasing regulatory complexity for UK firms. (Paragraph 287)
41. Given these negative consequences, and the fact that it will almost certainly take longer than two years to agree a comprehensive FTA addressing the many complex issues raised in this report, we re-iterate the recommendation made in our report on Brexit: the options for trade, that the Government should

prioritise the securing of a transitional trading arrangement with the EU as part of the negotiations under Article 50. Failure to do so could leave UK businesses vulnerable and facing a regulatory ‘cliff-edge’. (Paragraph 288)

42. We recognise the Government’s current high level of engagement across the services sectors represented by witnesses to this inquiry. It is imperative that the Government not only listens to these views but uses them to inform its negotiating position with the EU. This structured two-way dialogue must be formalised and maintained throughout the lifecycle of negotiations, especially when trade-offs need to be made. We urge the Government to use the communication channels it has established to continue to narrow down uncertainty for services sectors and enable them to prepare for Brexit. (Paragraph 289)
43. We note that the Government’s planned Great Repeal Bill is intended to reduce uncertainty for UK businesses, by clarifying what rules will apply the day after the UK leaves the EU. But the Bill will not, on its own, secure either the mutual recognition of UK and EU standards, or the level of equivalence required to ensure continued trade in services. In sectors where the UK opts to seek equivalence, the Government should consider how relevant changes in EU law will be transposed into UK law after 2019 and how to ensure changes in UK law do not jeopardise that equivalence. (Paragraph 290)
44. We welcome the Government’s recognition that an effective dispute resolution mechanism will form part of its negotiations with the EU. We urge the Government to consult service providers fully, in particular SMEs, for which costly and protracted legal proceedings are often prohibitive, and to bring forward initial proposals at the earliest opportunity. (Paragraph 291)
45. The Government has, we believe, under-estimated the reliance of the services sector on the free movement of persons. Moreover, there is a risk that the EU will take the view that comprehensive access to the Single Market in services is dependent upon some degree of movement of persons. The Government, in forthcoming immigration legislation, must ensure that it retains sufficient room for manoeuvre to facilitate a negotiated agreement on this key issue. (Paragraph 292)

## APPENDIX 1: LIST OF MEMBERS AND DECLARATIONS OF INTEREST

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### Members

Lord Aberdare  
 Baroness Donaghy  
 Lord German  
 Lord Green of Hurstpierpoint  
 Lord Lansley  
 Lord Liddle  
 Lord Mawson  
 Baroness Noakes  
 Baroness Randerson  
 Lord Rees of Ludlow  
 Lord Wei  
 Lord Whitty (Chairman)

### Declaration of Interests

Lord Aberdare  
*No relevant interests declared*

Baroness Donaghy  
*No relevant interests declared*

Lord German  
*No relevant interests declared*

Lord Green of Hurstpierpoint  
*Shareholdings as in the House of Lords register of interests*  
*Membership of informal advisory group to CEO of EEF on Brexit and Trade*  
*Chair at Asia House*  
*Chair at Natural History Museum*  
*Member of the international advisory board at Akbank*  
*President, Institute of Exports and International Trade (unpaid)*

Lord Lansley  
*Senior Advisor at LOW Europe/LOW Associates. LOW Associates provide services in event management and secretariat services to the European Commission*

Lord Liddle  
*Pro-Chancellor of Lancaster University (unpaid)*  
*Chair of Policy Network (unpaid). This international centre left think-tank accepts sponsorship from bodies with interests in European policy making.*  
*Cumbria County Councillor (in receipt of Member's allowance). Cumbria has interests in future of structural funds, CAP, environmental regulation, and energy policy post Brexit.*  
*His wife, Caroline Thomson, is Chair of Digital UK; a Director of VITEC plc (with large European trading interests); a Director of the English National Ballet; a Director of CN Group; a non-executive member of NHS Improve and UKGI; and a non-executive director of London First.*

Lord Mawson  
*No relevant interests declared*

Baroness Noakes

*Deputy Chairman of Ofcom*

*Financial interests in a wide range of listed companies as declared in the House of Lords Register of Interests and which may be affected by the matters covered in the Report.*

Baroness Randerson

*Governor at Cardiff Metropolitan University (unremunerated).*

Lord Rees of Ludlow

*No relevant interests declared*

Lord Wei

*No relevant interests declared*

Lord Whitty

*Vice President at the Chartered Trading Standards Institute.*

The following Members of the European Union Select Committee attended the meeting at which the report was approved:

Lord Boswell of Aynho (Chairman)

Baroness Brown of Cambridge

Baroness Browning

Baroness Falkner of Margravine

Lord Green of Hurstpierpoint

Lord Jay of Ewelme

Baroness Kennedy of The Shaws

Earl of Kinnoull

Lord Liddle

Baroness Prashar

Lord Selkirk of Douglas

Baroness Suttie

Lord Trees

Lord Whitty

Baroness Wilcox

Lord Woolmer of Leeds

During consideration of the report the following Members declared an interest:

Lord Boswell of Aynho

*Family farming interest as declared in the Register of Members' Interests*

Baroness Brown of Cambridge

*A range of university affiliations, primarily Professor Emerita at Aston University; Honorary Fellow of Murray Edwards College, Cambridge; Title E Fellow at Churchill College, Cambridge*

Baroness Prashar

*Non-executive Director, Nationwide Building Society*

Lord Selkirk of Douglas

*Diversified investment portfolio in McInroy & Wood income fund managed by third party*

A full list of Members' interests can be found in the Register of Lords Interests: <http://www.parliament.uk/mps-lords-and-offices/standards-and-interests/register-of-lords-interests/>



## APPENDIX 2: LIST OF WITNESSES

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Evidence is published online at <http://www.parliament.uk/brexit-trade-services-eu-inquiry> for inspection at the Parliamentary Archives (020 7219 3074).

Evidence received by the Committee is listed below in chronological order of oral evidence session and in alphabetical order. Those witnesses marked with a \*\* gave both oral and written evidence. Those marked with \* gave oral evidence and did not submit any written evidence. All other witnesses submitted written evidence only.

### Oral evidence in chronological order

*	Dr Angus Armstrong, Director of Macroeconomics, National Institute of Economic and Social Research	<a href="#">QQ 1–9</a>
*	Professor Catherine Barnard, Professor of EU Law, University of Cambridge	<a href="#">QQ 1–9</a>
*	Professor Holger Breinlich, Professor of Global Economics, University of Nottingham	<a href="#">QQ 1–9</a>
**	Matthew Evans, Chief Executive, Broadband Stakeholder Group	<a href="#">QQ 10–19</a>
**	Dr Jo Twist, Chief Executive, Association for UK Interactive Entertainment	<a href="#">QQ 10–19</a>
**	Antony Walker, Deputy Chief Executive, techUK	<a href="#">QQ 10–19</a>
**	Ian Harris, Director, Z/Yen Group Limited	<a href="#">QQ 20–31</a>
**	Sally Jones, Director of International Trade Policy and Global Brexit Insight Lead, Deloitte LLP (and representing the Professional and Business Services Council)	<a href="#">QQ 20–31</a>
**	James Kenny, Head of Global Affairs, Arup	<a href="#">QQ 20–31</a>
**	Mickaël Laurans, Head of Brussels Office, the Law Society	<a href="#">QQ 20–31</a>
**	Sophie Dekkers, UK Country Director, easyJet	<a href="#">QQ 32–46</a>
**	Dr Barry Humphreys CBE, Founder, BKH Aviation	<a href="#">QQ 32–46</a>
**	Brian Pearce, Chief Economist, International Air Transport Association	<a href="#">QQ 32–46</a>
**	Alice Enders, Head of Research, Enders Analysis	<a href="#">QQ 47–55</a>
**	John McVay, Chief Executive, Pact	<a href="#">QQ 47–55</a>
**	Adam Minns, Executive Director, COBA	<a href="#">QQ 47–55</a>
**	Professor Sir Ian Diamond, Principal and Vice-Chancellor of the University of Aberdeen, Chair, Universities UK	<a href="#">QQ 56–63</a>
**	Kurt Janson, Director, Tourism Alliance	<a href="#">QQ 56–63</a>
**	Danny Mortimer, Chief Executive, NHS Employers	<a href="#">QQ 56–63</a>

- \*\* Ray Symons, Head of EU and International Affairs,  
British Retail Consortium [QQ 56–63](#)
- \* Lord Tariq Mahmood Ahmad of Wimbledon,  
Parliamentary Under Secretary of State for Transport  
(Minister for Aviation), Department for Transport [QQ 64–76](#)
- \* Rt Hon Matt Hancock MP, Minister of State for  
Digital and Culture, Department for Culture, Media  
and Sport [QQ 64–76](#)
- \* Dr Jesse Norman MP, Parliamentary Under  
Secretary of State (Minister for Industry and Energy),  
Department for Business, Energy and Industrial  
Strategy [QQ 64–76](#)

### Alphabetical list of all witnesses

- Advertising Association [TAS0026](#)
- \* Lord Tariq Mahmood Ahmad of Wimbledon,  
Parliamentary Under Secretary of State for Transport  
(Minister for Aviation), Department for Transport  
([Q 64–76](#))
- Airport Operators Association [TAS0012](#)
- Allen and Overy LLP [TAS0025](#)
- \* Dr Angus Armstrong, Director of Macroeconomics,  
National Institute of Economic and Social Research  
([QQ 1–9](#))
- Association of Leading Visitor Attractions [TAS0056](#)
- \*\* ARUP ([QQ 20–31](#)) [TAS0079](#)
- The Bar Council [TAS0086](#)  
[TAS0093](#)
- \* Professor Catherine Barnard, Professor of EU Law,  
University of Cambridge ([QQ 1–9](#))
- Professor Holger Breinlich, Professor of Global  
Economics, University of Nottingham ([QQ 1–9](#))
- British Phonographic Industry [TAS0043](#)
- British Air Transport Association [TAS0042](#)  
[TAS0061](#)
- British Fashion Council [TAS0092](#)
- British Ports Association and UK Major Ports Group [TAS0040](#)
- \*\* British Retail Consortium ([QQ 56–63](#)) [TAS0050](#)
- \*\* Broadband Stakeholder Group ([QQ 10–19](#)) [TAS0017](#)
- Building Design Partnership [TAS0060](#)
- The Business Services Association [TAS0024](#)
- Cavendish Coalition [TAS0053](#)  
[TAS0054](#)

	Chartered Institute of Marketing	<a href="#">TAS0030</a>
	Clifford Chance LLP	<a href="#">TAS0036</a>
	The Coalition for a Digital Economy	<a href="#">TAS0011</a>
**	The Commercial Broadcasters Association ( <a href="#">QQ 47–55</a> )	<a href="#">TAS0044</a> <a href="#">TAS0078</a> <a href="#">TAS0090</a>
	Creative Industries Federation	<a href="#">TAS0027</a>
	Design Council	<a href="#">TAS0041</a>
	Digital Catapult	<a href="#">TAS0013</a>
	Discovery Communications Europe Inc	<a href="#">TAS0001</a>
**	easyJet ( <a href="#">QQ 32–46</a> )	<a href="#">TAS0048</a> <a href="#">TAS0073</a>
**	Enders Analysis ( <a href="#">QQ 47–55</a> )	<a href="#">TAS0052</a> <a href="#">TAS0089</a>
	Energy UK	<a href="#">TAS0072</a>
	EY	<a href="#">TAS0035</a>
	Eurostar International Ltd	<a href="#">TAS0074</a>
	Freight Transport Association	<a href="#">TAS0018</a>
	Freshfields Bruckhaus Deringer LLP	<a href="#">TAS0046</a>
*	Rt Hon Matt Hancock MP, Minister of State for Digital and Culture, Department for Culture, Media and Sport ( <a href="#">QQ 64–76</a> )	
	Hook Tangaza	<a href="#">TAS0088</a>
**	Dr Barry Humphreys CBE ( <a href="#">QQ 32–46</a> )	<a href="#">TAS0065</a>
	Information Commissioners Office	<a href="#">TAS0032</a>
	The Institute of Chartered Accountants in England and Wales	<a href="#">TAS0020</a>
**	International Air Transport Association ( <a href="#">QQ 32–46</a> )	<a href="#">TAS0005</a>
	InterTradeIreland	<a href="#">TAS0051</a>
	Invest Northern Ireland	<a href="#">TAS0049</a>
**	Sally Jones ( <a href="#">QQ 20–31</a> )	<a href="#">TAS0080</a>
	KPMG	<a href="#">TAS0030</a>
**	The Law Society ( <a href="#">QQ 20–31</a> )	<a href="#">TAS0021</a> <a href="#">TAS0066</a>
	Linklaters LLP	<a href="#">TAS0047</a>
	Management Consultancies Association	<a href="#">TAS0002</a>
	MillionPlus	<a href="#">TAS0059</a>
	NHS Confederation	<a href="#">TAS0069</a>
**	NHS Employers ( <a href="#">QQ 56–63</a> )	<a href="#">TAS0077</a>

*	Dr Jesse Norman MP, Parliamentary Under Secretary of State (Minister for Industry and Energy), Department for Business, Energy and Industrial Strategy ( <a href="#">QQ 64–76</a> )	
	Office for National Statistics	<a href="#">TAS0064</a>
	Oxera	<a href="#">TAS0068</a>
**	Pact ( <a href="#">QQ 47–55</a> )	<a href="#">TAS0034</a> <a href="#">TAS0081</a>
**	Professional and Business Services Council	<a href="#">TAS0022</a>
	The Publishers Association	<a href="#">TAS0039</a>
	Radiocentre	<a href="#">TAS0037</a>
	Rail Delivery Group	<a href="#">TAS0006</a>
	Royal Institute of British Architects	<a href="#">TAS0045</a>
	Royal Haulage Association	<a href="#">TAS0010</a>
	Royal Academy of Engineering	<a href="#">TAS0084</a>
	Ryanair	<a href="#">TAS0008</a>
	Dr Albert Sanchez-Graells, Senior Lecturer in Law, Bristol University	<a href="#">TAS0083</a>
	Sky	<a href="#">TAS0003</a>
	Skyscanner	<a href="#">TAS0014</a>
**	techUK ( <a href="#">QQ 10–19</a> )	<a href="#">TAS0087</a>
**	Tourism Alliance ( <a href="#">QQ 56–63</a> )	<a href="#">TAS0029</a>
	Trades Union Congress	<a href="#">TAS0070</a>
	University of the Arts London	<a href="#">TAS0038</a>
	University and College Union	<a href="#">TAS0057</a>
	UK Chamber of Shipping	<a href="#">TAS0007</a>
	UK Cloud	<a href="#">TAS0015</a>
**	UK Interactive Entertainment ( <a href="#">QQ 10–19</a> )	<a href="#">TAS0016</a> <a href="#">TAS0058</a>
	UK Music	<a href="#">TAS0028</a>
	UKInbound	<a href="#">TAS0004</a>
	The UK Trade Policy Observatory	<a href="#">TAS0085</a>
	Unison	<a href="#">TAS0075</a>
	Unite	<a href="#">TAS0071</a>
**	Universities UK ( <a href="#">QQ 56–63</a> )	<a href="#">TAS0033</a>
	Union of Shop, Distributive and Allied Workers	<a href="#">TAS0067</a>
	Virgin Atlantic Airways Ltd	<a href="#">TAS0009</a>
	Visit Scotland	<a href="#">TAS0055</a>

	Which?	<a href="#"><u>TAS0062</u></a>
		<a href="#"><u>TAS0082</u></a>
**	Z/Yen Group Limited ( <a href="#"><u>QQ 20-31</u></a> )	<a href="#"><u>TAS0091</u></a>

**APPENDIX 3: GLOSSARY**

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AV	Audiovisual
AVMSD	Audiovisual Media Services Directive
BATA	British Air Transport Association
CAA	Civil Aviation Authority
CETA	Comprehensive Economic and Trade Agreement
CJEU	Court of Justice of the European Union
COADEC	The Coalition for Digital Economy
COBA	The Commercial Broadcasters Association
DCMS	Department for Culture, Media and Sport
DExEU	Department for Exiting the European Union
DSM	Digital Single Market
EASA	European Aviation Safety Agency
ECAA	European Common Aviation Area
EEA	European Economic Area, covering all those party to the EEA agreement: all EU Member States and Norway, Liechtenstein and Iceland
EFTA	European Free Trade Area. This consists of a free trade area between the EFTA states (Norway, Liechtenstein, Iceland and Switzerland). EFTA conducts FTA negotiations on behalf of its members; and for those members party to the EEA Agreement, it also provides the basis for the EFTA Surveillance Authority and the EFTA Court.
SME	Small and medium-sized enterprises
EMEA	Europe, the Middle East and Africa
ENT	Economic Needs Test
EPA	Economic Partnership Agreement
EPC	European Professional Card
EUIPO	European Union Intellectual Property Office
L'exception culturelle	The concept of making exceptions for cultural products or services under World Trade Organization (WTO) or other international agreements.
FDI	Foreign Direct Investment
FRC	Financial Reporting Council
FTA	Free Trade Agreement
GATS	General Agreement on Trade in Services at the WTO
GATT	General Agreement on Tariffs and Trade at the WTO

GDP	Gross Domestic Product
GDPR	General Data Protection Regulation
GVA	Gross Value Added
GVC	Global Value Chain
HS2	High Speed Two - a planned new high-speed rail network in the UK which will link London and the West Midlands and the West Midlands to Leeds and Manchester
IATA	International Air Transport Association
ICAEW	Institute of Chartered Accountants in England and Wales
IFS	Institute for Fiscal Studies
IP	Intellectual Property
ITIS	International Trade in Services survey
MOU	Memorandum of Understanding
MNO	Mobile Network Operators
NIERS	National Institute of Economic and Social Research
OECD	Organisation for Economic Co-operation and Development
ONS	Office for National Statistics
PBS	Professional and Business Services
RIBA	Royal Institute of British Architects
SESAR	Single European Sky Air Traffic Management Research
Single Market	The Single Market refers to the market which exists between the EU's Member States. It consists of the free movement of goods, people, services and capital through harmonised rules interpreted by the Court of Justice of the European Union.
SME	Small and medium-sized enterprises
Tariffs	Levies imposed on traded goods
TFEU	Treaty on the Functioning of the EU
TiSA	Trade in Services Agreement
TiVA	Trade in Value Added
TRIPS	Trade-Related Aspects on Intellectual Property Rights
UCD	Unregistered Community Designs
UKIE	UK Interactive Entertainment
VAT	Value-Added Tax
WTO	World Trade Organization