



The Rt. Hon. the Lord Whitty
Chair, EU Internal Market Sub-Committee
House of Lords
London
SW1A 0PW

27 April 2018

Dear Lord Whitty,

Thank you for your report *Brexit: trade in non-financial services*. Please accept my apologies for the delay in responding. You will recall that Baroness Anelay wrote on 16 August and 26 October to provide an update and explanation for the delay. I promised that the Government's response would be forthcoming in the new year during the debate in the House on 18 December 2017.

The Committee's report provides detailed, instructive analysis of many of the key factors relating to the UK's exit from the EU which will affect trade in non-financial services. Since the publication of the report there have been a number of developments, including the provision of information covering 58 sectors of the economy to the Exiting the European Union Committee and the House of Lords EU Committee, the joint report of the UK Government and the Commission on sufficient progress and the welcome decision of the European Council to recognise this. The UK and EU negotiating teams have also reached agreement on the terms of an implementation period that will start on 30 March 2019 and last until 31 December 2020. We welcome the endorsement of this agreement by the March European Council.

The UK's services sector is a global success story. We are host to top international firms. Small and medium sized services enterprises flourish in the UK and the sector is highly competitive internationally. Services are the fastest growing components of the global economy¹ and accounted for 79% of the UK economy in 2016.² The sector is large and diverse, including areas such as retail, accountancy, consulting, legal services, creative industries, digital, education, medical services, tourism and catering. The Government continues to discuss the implications of leaving the EU with a broad range of stakeholders from across the services sector.

Since the publication of the report, the Government has invoked Article 50 and the negotiations for our exit from the EU have begun.

¹ 'Data Bank: World Development Indicators', OECD, 2017.

² '[UK GDP\(O\) low level aggregates](#)', ONS, March 2017.

As the Prime Minister set out in her Mansion House Speech on 2 March 2018, the UK is seeking the broadest and deepest possible partnership - covering more sectors and co-operating more fully than any Free Trade Agreement anywhere in the world today. Both the UK and the EU want good access to each other's markets; both want competition to be fair and open; and both want reliable, transparent means of verifying commitments and resolving disputes. As we progress into the second stage of the negotiations with the European Union, we will seek to secure the freest trade possible in services between the UK and the EU, through a new, ambitious economic partnership.

A formal response to each of the recommendations made in the Committee's report is enclosed herewith. I would like to thank the Committee again for its work on this subject. The Committee's experience and scrutiny is a welcome contribution to this debate, and the Government remains committed to engaging with select committees throughout the process of withdrawal.

Kind regards,

A handwritten signature in blue ink, appearing to read 'Matthew Callanan', with a long horizontal flourish extending to the right.

LORD CALLANAN
MINISTER OF STATE FOR EXITING THE EUROPEAN UNION

Response - Brexit: trade in non-financial services

The conclusions and recommendations in the *Brexit: trade in non-financial services* report have been grouped together where appropriate and are in the numbered paragraphs below, in bold italics. The Government's response is in bullet points below.

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.

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.

- The Government agrees that services sectors are a large part of the UK economy and an important and growing, integrated component of value chains. Trade in services represents around 20% of the value of world trade³, but it accounted for 45% of the value of UK exports in 2016.⁴ Services are an important and growing component of supply chains, and digital technology is continuing to make more services tradeable. The UK exported £245.4bn of services in 2016, an increase of 40% since 2010. By comparison, goods exports increased by 12% over the same period. The UK exported £90.4bn of services to the EU in 2016, which represented 37% of total UK service exports that year. Services trade makes a substantial positive contribution to the UK's current account balance. The UK had a £92.4bn surplus in services trade in 2016.⁵ In the same year, the OECD notes that the UK was the second largest exporter of services in the world.⁶ Services sectors are diverse, including areas such as retail, accountancy, consulting, legal services, creative industries, medical services, tourism and catering.

³ 'World Trade in Services: Evidence from A New Dataset', IMF, March 2017.

⁴ '[09 Geographical breakdown of the current account, The Pink Book](#)', ONS, October 2017.

⁵ '[09 Geographical breakdown of the current account, The Pink Book](#)', ONS, October 2017.

⁶ 'OECD Services Trade Restrictiveness Index: Policy trends up to 2018', OECD, January 2018.

The UK exported £66.1bn of business services in 2016, as well as £30.8bn of travel services and £26bn of transportation services.⁷

- The decision to leave the EU presents new demands on trade data and ONS is taking action to improve trade data to fully meet this need. We are working with the ONS and across Government to understand how best to use current services data to inform our approach to future trade negotiations, and to explore new types of data. ONS lists trade in services data as high priority in its 2016 development plan for UK trade statistics, and it continues to be a priority in their 2017 plan. For example, increasing the size of its main sample survey, and improving the sample design to allow more detailed and accurate statistics by service type and country, to ensure that UK trade policy and negotiations are as informed as possible. This survey (with improved design) is already in the field.

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).

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.

- The UK and EU Member States benefit from our close trading relationship. The UK exported around £63bn of non-financial services and around £27bn of financial services to the EU in 2016. It is therefore in our mutual interest to pursue a bold and ambitious free trade agreement allowing for the freest possible trade in services between the UK and the EU. It is also the case that the UK exported significantly more of both non-financial (£121bn) and financial (£34bn) services to countries outside of the EU. UK services exports to countries outside of the EU grew at a faster rate than services exports to EU member states over the period 1999 to 2016.⁸

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

⁷ '09 Geographical breakdown of the current account, The Pink Book', ONS, October 2017.

⁸ 'UK Balance of Payments, The Pink Book: 2017', ONS, October 2017.

longer-term trade and industrial strategies, together with a range of cross-sectoral issues.

- The Government agrees with the Committee's recommendation. The Government is undertaking a wide range of analysis looking at the implications of UK withdrawal from the EU. We are examining all areas of the UK economy from a number of perspectives and seeking input from a wide range of stakeholders.
- On 27 November 2017, 39 reports covering 58 sectors of the UK economy were released to the Committee. These included several reports on the non-financial services sector, including on Professional Business Services (PBS), creative industries, technology, tourism, higher education, medical services, post and retail. Further sectors, such as legal services, architecture and consultancy services were covered within these reports. The reports cover: a detailed description of each sector; the current EU regulatory regime; how existing international frameworks facilitate trade in services between different countries; and sector views.

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.

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.

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.

- As the Committee notes, we are starting from a unique position. Unlike most negotiations, including those on CETA, these talks will not be about bringing two divergent systems together, but about managing the continued cooperation of the UK and the EU. As the UK is currently an EU Member State, both sides have matching rules and regulatory frameworks. This is why the Government is looking to be ambitious, to agree a free trade agreement of greater scope and ambition than any before, including allowing for continued and relatively liberalised trade in services and a continued system for the mutual recognition of professional qualifications. It is in the best interests of both the UK and the EU to maintain the freest possible trade in services following UK exit.

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).

- Services sectors are a diverse, large part of the UK's economy and services trade has been growing quickly with the rest of the world, including some of those countries with whom we trade on WTO terms. Both the UK and the EU would of course manage the transition to WTO rules, but it is not the outcome that either are seeking. The Government is seeking to agree a comprehensive, bold and ambitious FTA with the EU. The European Council's guidelines aspire to a balanced, ambitious and wide-ranging agreement.

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.

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.

- We are continuing to discuss the implications of leaving the EU with a broad range of stakeholders from across the services sector. This issue, amongst many others, is one that we know has been raised.
- We agree that as part of our future relationship with the EU, there will need to be an agreed means of resolving any disputes that might arise. The Prime Minister's Mansion House speech was clear that the jurisdiction of the ECJ in the UK must end and that the ultimate arbiter of disputes about our future partnership cannot be the court of either party. The Prime Minister said that we will need an arbitration mechanism that is completely independent to ensure that any disagreements about the purpose or scope of the agreement can be resolved fairly and promptly.
- Annex A of the White Paper *The United Kingdom's exit from and new partnership with the European Union* and our *Future Partnership Paper on Enforcement and Dispute Resolution* sets out a number of examples that illustrate how other international agreements approach interpretation and dispute resolution. However, we should not be constrained by precedent. We will be seeking a bespoke arrangement unique to the UK in our future relationship with the EU and its agencies, and our approach to dispute resolution will also need to be unique in order to work best for both the UK and the EU. We will continue to work with the EU to preserve UK and European security, and to fight terrorism and uphold justice across Europe.

Professional business services

11. Professional business services (PBS) comprise a wide variety of regulated and unregulated 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.

- We agree with the Committee's recommendation to be mindful of the significance of professional and business services. We understand the concerns of stakeholders in the sector, including access to talent, being able to move people across borders to provide services, the importance of cross-border data flows and the mutual recognition of qualifications.

- The Government is continuing to discuss the implications of leaving the EU with a broad range of stakeholders from across the professional and business services sector. DExEU ministers are working closely with colleagues across Government to ensure that we are all speaking to every sector. For example, we work closely with BEIS who co-chair the Government-Industry Professional and Business Services Council.
- On professional and business services, we have the opportunity to establish a broader free trade agreement than ever before, including a labour mobility framework that enables travel to provide services to clients in person, and the continued recognition of professional qualifications.

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.

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.

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.

- The mutual recognition of qualifications is important to a wide range of services sectors, particularly professional and business services. The Government has discussed this with a range of industry stakeholders and will continue to do so. As the PM said in her Mansion House speech, given that UK qualifications are already recognised across the EU and vice versa - it would make sense to continue to recognise each other’s qualifications in the future.

- The WTO estimates that around 55 - 60% of services trade relates to establishment overseas.⁹ We will aim to secure arrangements which allow for the freest possible trade in services between the UK and the EU.
- We also recognise the importance of access to talent for the PBS sector and its need to operate 'fly-in, fly-out' business models. We want to limit the number of barriers that could prevent UK firms from setting up in the EU and vice versa, and agree an appropriate labour mobility framework that enables UK businesses and self-employed professionals to travel to the EU to provide services to clients in person and that allows UK businesses to provide services to the EU over the phone or the internet. And we want to do the same for EU firms providing services to the UK.
- It is still too early to say what rules will be in place for British citizens travelling to the EU after we leave. There are a number of ways how this may work and we are carefully considering our options and the potential impacts they may have on different categories of people. At every step of the negotiations, we will work to ensure the best possible outcome for the British people. As the Secretary of State for Exiting the European Union made clear in his Berlin speech, provisions to allow people to move to deliver services are commonplace in trade agreements today but as in other areas and given where we are starting, the UK and the EU should seek to go beyond existing arrangements and existing precedents.

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.

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.

- The Government understands the challenges facing some parts of the professional and business services sector associated with the UK's exit from the EU, including the current provisions that support legal services trade. As the Committee observes, many PBS firms already operate and are established in the EU, and in order to allow this to continue, we will pursue arrangements to secure the freest possible trade in services between the UK and the EU.

⁹ ['Measuring GATS Mode 4 Trade Flows'](#), WTO, October 2008.

- We are confident that this is in the interests of both sides, so we approach these negotiations anticipating success. We do not want or expect a no deal outcome.

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.

- We strongly support the conclusion of the Trade in Services Agreement (TiSA) negotiations and the UK will continue to play a positive role in promoting the resumption of negotiations. TiSA has the potential to advance the global standards of services trade, setting ambitious new rules and harnessing the liberalisation of trade in services achieved in the last two decades. We support TiSA negotiations being resumed as soon as possible, securing a better deal for UK businesses over and above existing WTO rules.

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.

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.

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.

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.

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.

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.

- The Government is committed to ensuring that the UK is the best place to start and grow a digital business, trial a new technology, or undertake advanced research - and that the UK digital sectors remain world-leading. UK digital sectors form a core part of the Government's plan to create an economy that is fit for the future, set out in both the UK Digital Strategy launched in March 2017 and the Industrial Strategy. These recognises the importance of digital and creative sectors, which are global by nature, in supporting wider economic growth in the UK, as well as their potential to improve productivity and boost competitiveness.
- Within the EU, the UK has been at the forefront in arguing for an open, flexible Digital Single Market, aiming for reforms that reflect the dynamic nature of the digital economy, increase cross-border e-commerce and facilitate scale-up of digital businesses. While the UK will be leaving the EU's Single Market, we will seek to continue to work closely with the EU on digital issues, as we build on our existing strong relationship. In negotiations we will seek an ambitious agreement with the EU that enables the best possible access to each other's markets.
- As we exit the EU, we will consider all options available on mobile roaming. Arrangements on mobile roaming would be subject to any negotiations; however, a future partnership between the UK and EU is in the interests of both sides. Recognising this fact, a number of Mobile Network Operators have already committed publicly to continue surcharge-free roaming in the EU on UK exit.

- The stability of data transfer is a cross-cutting issue that is important for many sectors - from financial services to tech, to energy companies. As we leave the EU we will seek to maintain the stability of data transfer between EU Member States and the UK. On 24 August the Government published a future partnership paper on how to ensure the continued protection and exchange of personal data between the EU and the UK in light of the UK's withdrawal from, and new partnership with, the EU.
- The Data Protection Bill was introduced on 13 September. The Bill is intended to create a new data protection framework fit for the digital age, which incorporates the provisions of the EU's General Data Protection Regulation (GDPR) into domestic law. It builds on existing standards for protecting personal data, in accordance with the GDPR, giving people more control over use of their data, and providing new rights to move or delete personal data.
- As the Prime Minister said in her Munich speech this February, we want to go further and seek a bespoke arrangement to reflect the UK's exceptionally high standards of data protection. We envisage an ongoing role for the UK's Information Commissioner's Office, which would be beneficial in providing stability and confidence for EU and UK individuals and businesses alike. And we are ready to start working through this with colleagues in the European Commission now.
- The activities of UK law enforcement and the security and intelligence agencies are governed by one of the world's most robust legal frameworks and oversight arrangements, which ensure use of investigatory powers by UK public authorities adheres to strict principles of necessity, proportionality and legality. The UK is already compliant with EU law on data protection and is confident that UK investigatory powers legislation should not present a significant obstacle to the data protection negotiations.

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.

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.

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.

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.

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.

- UK creative industries are important to the London and UK economy, promoting creativity and innovation, boosting economic growth and enhancing Britain's reputation abroad. The creative sector is one of the UK economy's greatest success stories, and is growing by 8.9% a year, making it the second fastest growing industrial sector. It develops and produces high quality content and talent that is both recognised and respected across the world. The Government is determined to do all it can to ensure that this sector continues to thrive in the years ahead.
- We remain committed to building a strong skills talent pool to meet the needs of individuals and employers. The creative industries play a huge and important role in our culture and economy. That is why we want to reach the best possible deal in negotiations so that UK cultural and creative sectors can continue to grow and thrive, including attracting the best talent. The Government will continue to engage with industry and academia to ensure the UK is developing and has access to the skills it needs.
- The UK is the EU's biggest broadcasting hub, hosting a large number of international broadcasting companies. In the course of the negotiations, we will focus on ensuring the ability to trade as freely as possible with the EU and supporting the continued growth of the UK's broadcasting sector.

We recognise the important contribution broadcasters make to our country and are determined to create the best possible environment for them to succeed.

- As the Prime Minister said in the Mansion House speech, on broadcasting, we recognise that we cannot have exactly the same arrangements with the EU as we do now and we should explore creative options with an open mind, including mutual recognition which would allow for continued transfrontier broadcasting - recognising the enriching role that British broadcasters and programme makers play, not only in British - but more broadly in our common European - culture.
- We recognise that continued strong protection for intellectual property is vital for creative sectors, protecting the lifeblood of the industry. The UK has a competitive edge globally in protecting and enforcing IP rights. We want to ensure that the UK's intellectual property regime, including protection of unregistered designs, will continue to properly support innovation and UK creative industries.
- As part of its WTO membership, the UK has committed to meet certain minimum standards of intellectual property protections set out in the TRIPS Agreement. However, in many cases, existing UK law – either domestic or EU-derived – goes beyond these standards. We do not expect that situation to change as a result of the UK leaving the EU.

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.

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.

- The Government is aware that aviation is a critical network industry that underpins the functioning of the economy and international trade.

The UK is a big global player – we have the largest aviation network in Europe and our airports service the third largest aviation network in the world.

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.

- The Government is seeking the best possible relationship with the EU in the field of air services and is looking at all the options to deliver that. The precise form of the UK's future air services relationship with the EU will be a matter for the negotiation, but we have a mutual interest in securing a good outcome. Of course, the Government will ensure that a high standard of aviation safety is maintained and that our air traffic management research programme is appropriately resourced. As the Prime Minister set out in her Mansion House speech, we want to explore with the EU the terms on which the UK could remain part of certain EU agencies, including the European Aviation Safety Agency. We accept that this would mean abiding by the rules of those agencies and making an appropriate financial contribution.

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.

- As the Prime Minister has said, we will pursue a deep and special partnership with the EU. Air services agreements are concluded on the basis of reciprocity and whilst the Government is prepared for various scenarios, the outcome will be a matter for the negotiation. However, all EU Member States benefit from liberal aviation market access and we believe we have a common interest in getting the best outcome.

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.

- Air services between the UK and a number of countries outside the EU (notably the US) are currently determined by EU-negotiated agreements. The Government will be seeking new, bilateral, arrangements with those countries as a matter of priority. The target is to ensure current market access levels are preserved and to have identified arrangements for this before we leave the EU. We will also continue to seek new and improved bilateral Air Services Agreements with the rest of the world – aiming, as we always have, to improve connectivity, choice and value for money for businesses and consumers.

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.

- As noted in our response to recommendation 29, we are working to ensure we have the best possible liberal access to European aviation markets. EU Member States benefit from liberal market access. We have a common interest in getting the best possible outcome.

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.

- Ownership and control rules may have implications for both UK and non-UK airlines. The Government is fully cognisant of the ownership and control issues facing a number of carriers. The UK is and will remain an excellent base to do business, to establish headquarters or to found a business, including in the aviation sector.

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.

- The Government recognises the social and economic benefits of a healthy tourism sector. Similarly, the citizens of EU Member States benefit from access to the UK. The Government is working closely with the tourism sector and devolved administrations to ensure that the sector's views about the challenges of our exit are understood and we recognise the importance of issues like aviation, travel visas and access to labour for the tourism sector. We are confident our departure from the EU presents opportunities for growth in tourism. We have a common interest in securing a mutually beneficial agreement on tourism in future and we want to ensure the continued growth of our thriving tourism sector.

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.

- We highly value the contribution of EU students, researchers and academic staff. We have already committed to underwrite successful bids for Erasmus+ which are submitted while the UK is still a Member State, even if they are not approved until after we leave, and/or payments continue beyond the point of exit.
- As the Prime Minister mentioned in her Mansion House speech, the UK is committed to establishing a far-reaching science and innovation pact with the EU, facilitating the exchange of ideas and researchers. This would enable the UK to participate in key programmes alongside our EU partners.
- Current EU principles of equal treatment and non-discrimination will continue to apply during the implementation period.
- We have agreed as part of the Withdrawal Agreement with the EU that those who become resident in the UK before the end of the implementation period will have a right to apply for leave to remain in the UK thereafter. Those with this leave to remain and who meet the relevant eligibility requirements may have access to home fees status and student loans after the end of the implementation period. With regard to Academic Year 2019/20, applications for

courses do not open until September 2018, and we will ensure students starting courses in that Academic Year have information on eligibility criteria well in advance of this date.

- Entitlement to student home fee status and student finance after the implementation period for those outside the scope of the Withdrawal Agreement is a matter for the UK Government and Parliament to consider in due course. We will also want to discuss this issue with our EU partners.
- We have previously confirmed that EU citizens will remain eligible to apply for Research Council PhD studentships at UK institutions for 2017 to 2018, and 2018 to 2019, to help cover costs for the duration of their study.
- There is no limit on the number of genuine international students which educational institutions in the UK can recruit, and, equally importantly, the Government has no plans to limit any institution's ability to recruit international students.
- Therefore we will continue to welcome those with the skills, the drive and the expertise to make a positive contribution. We will be setting out initial proposals for our future immigration arrangements in due course.

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.

- Under current EU rules, insured individuals can benefit from the use of the European Health Insurance Card (EHIC) scheme. A valid EHIC gives card holders the right to access needs-arising state-provided healthcare, at either a reduced cost or for free, during a temporary stay, including for tourist or education-related stays in another EEA country or Switzerland. The EHIC covers treatment that is medically necessary until the holder's planned return home. In addition, the UK has reciprocal healthcare arrangements with a number of non-EU/EEA countries, which are outside EU rules.
- This ensures that card holders do not have to worry about all the costs of healthcare when they travel abroad for tourism, study or other reasons.
- For the purposes of the Withdrawal Agreement, and in a reciprocal deal, we have agreed with the EU to protect the rights of individuals who are in a cross-border situation at the end of the implementation period, and entitled to a UK EHIC, to continue to benefit from that scheme for as long as that cross-border situation continues. This includes for holiday or study purposes, for example.

- In addition, individuals who are in scope of the Withdrawal Agreement and are, or who have been subject to the legislation of an EU27 Member State prior to the end of the implementation period, or who are resident in another Member State at the end of the implementation period (and vice versa), will not only receive reciprocal healthcare in their Member State of residence once they start exporting a relevant benefit or pension, but will continue to be able to use their UK EHIC to receive health cover if they temporarily visit another Member State. These rights apply for as long as they remain in scope of the Withdrawal Agreement.
- As set out in the policy paper on Citizens' Rights that we published in June last year, the UK wants to secure continuation of EHIC rights for current and future UK EHIC holders subject to a reciprocal deal.

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.

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.

- As the Prime Minister reiterated at her Mansion House speech, we want the broadest and deepest possible partnership – covering more sectors and co-operating more fully than any Free Trade Agreement anywhere in the world today.
- As the Committee has noted, we are starting from a very different position to other countries looking to agree Free Trade Agreements with the EU: from a position of close regulatory alignment, trust in one another's institutions, and a spirit of cooperation stretching back decades. This Government is committed to working with stakeholders in the sector to ensure that we can secure the best trade deal for our services sectors as we leave the EU.

We are confident that it is in both the UK and the EU's interest to arrive at a mutually beneficial deal, and we will approach the negotiations in this spirit.

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'.

- The UK and the EU negotiating teams have reached agreement on the terms of an implementation period that will start on 30 March 2019 and last until 31 December 2020. During the implementation period, the UK will no longer be a Member State of the EU, but market access will continue on current terms. We believe that continuity is in the interests of all parties (the UK, EU and third countries).
- Both the UK and the EU have recognised the importance of such a period in the interests of providing certainty and continuity to businesses and individuals. As noted elsewhere in this response, we start from a unique position, and this, coupled with the importance of agreeing the future partnership, gives us confidence that we can reach an agreement in the time period set out by the Treaty.

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.

- We recognise the importance of providing certainty to industry. We have committed to providing business and the wider public with as much information as possible without undermining the national interest throughout the negotiation. We are achieving this through regular engagement with stakeholders including businesses at both a Ministerial and official level across Whitehall, and we are listening and talking to as many organisations, companies and institutions as possible. DExEU Ministers have undertaken a wide ranging programme of stakeholder engagement in the past year, including attendance at over 80 round

tables and over 350 bilateral meetings, both independently and jointly with Ministers from other Government departments. The Secretary of State for Exiting the European Union has hosted business leaders at Chevening House to strengthen our engagement as negotiations get underway. This engagement will continue to inform our negotiation position as we enter the exit process.

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.

- As the report notes, the EU (Withdrawal) Bill will convert current EU law into domestic law wherever practical, giving businesses and consumers as much certainty as possible. As the UK is an existing EU member state, it has the same rules and regulations as the EU. To make the UK the best place to do business means fostering a high quality, stable and predictable regulatory environment. This means the Withdrawal Bill will, so far as possible, maintain the status quo in this regard and provide a good starting point for a deep and special partnership with the EU.
- During the implementation period, the UK will no longer be a Member State of the EU, but market access will continue on current terms. To give businesses and citizens certainty, common rules will remain in place until the end of the period meaning businesses will be able to trade on the same terms as now up until the end of 2020.
- This will be given effect in domestic law through the Withdrawal Agreement and Implementation Bill.
- After the end of the implementation period, we will move into a new era of cooperation and partnership between the UK and the EU. As the Prime Minister made clear in her Florence speech, the EU is not *“legally able to conclude an agreement with the UK as an external partner while it is itself still part of the European Union”*. The Government will introduce further legislation where it is needed to implement the future relationship into UK law, ensuring Parliament is fully involved.

45. The Government has, we believe, underestimated 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.

- The Government has been clear that as we conduct our negotiations, it must be a priority to regain control of the numbers of people who come here from Europe, but we will continue to welcome those with the skills, the drive and the expertise to make a positive contribution.
- As part of this, it is important that we carefully consider the options that are open to us for our future immigration system, and the impacts on the different sectors of the economy and the labour market. That is why the Government has asked the Migration Advisory Committee to gather evidence on patterns of EU migration and the role of migration in the wider economy.
- This will help us to design a new immigration system that works in the national interest and ensures that employers have access to the skills they need. We will be setting out our initial proposals for future immigration system arrangements in due course.